

FIDE ETHICS AND DISCIPLINARY COMMISSION
APPEAL CHAMBER

The EDC Appeal Chamber, sitting in the following composition –

Chairperson: Mr Francois Strydom
Members: Mr Ravindra Dongre
Mr David Hater

In accordance with Article 26.4 of the FIDE Charter, hereby renders the following:

DECISION

CASE NO: 11/2023(A) : ALLEGED VIOLATION OF THE FIDE CHARTER AND THE EDC CODE RELATED TO THE RUSSIAN INVASION OF UKRAINE

1. This is an appeal against the Decision of the EDC First Instance Chamber (per Johan Sigeman (Chair), Yolander Sammy and Khaled Arfa) rendered on 7 June 2024.
2. In the First Instance Decision, the Chess Federation of Russia (“**CFR**”) was sanctioned by a temporary exclusion of membership in FIDE for a period of 2 years, to be suspended provided the CFR meets certain conditions of suspension within 60 days from the date of Decision. Furthermore, the FIDE President, Mr Arkady Dvorkovich (“**Mr Dvorkovich**”) was sanctioned to a reprimand.

THE APPEALS

3. The parties:
 - 3.1. The first appellant is Mr Dvorkovich.
 - 3.2. The second appellant is the CFR.
 - 3.3. The first respondent is the Ukrainian Chess Federation (“**UCF**”). The UCF was the complainant in the First Instance proceedings.

- 3.4. The second respondent is Mr Andrii Baryshpolets (“**Mr Baryshpolets**”). He was one of the parties initiating the complaint but was found to lack the necessary legal standing.
- 3.5. The third respondent is Mr Peter Heine Nielsen (“**Mr Nielsen**”). He was also one of the parties who initiated the complaint, but he also was found to lack the necessary legal standing.
4. The appeals and cross-appeal:
 - 4.1. In the main appeals, Mr Dvorkovich and the CFR each appeals separately their convictions, and the sanctions imposed by the First Instance Chamber.
 - 4.2. In a single cross-appeal received from the UCF, Mr Baryshpolets and Mr Nielsen, they appeal certain aspects of the First Instance Decision.
5. Formal admissibility of the appeals and cross-appeal:
 - 5.1. In terms of Article 17.1 of the Ethics and Disciplinary Code (“**EDC Code**”), there shall be a right of appeal to the EDC Appeal Chamber for the unsuccessful party, whether complainant or respondent, and any other directly affected member of the FIDE family against the final decision of any First Instance Chamber of the EDC.
 - 5.2. Pursuant to Rule 42.2 of the EDC Procedural Rules (“**the Procedural Rules**”), any member of the FIDE family who has been found guilty of a violation of the EDC Code and sanctioned in any form, has a right of appeal against the conviction and/or the sanction imposed based upon a wrong application of the law, an incorrect or incomplete finding of legally relevant facts, and/or an inappropriate decision either less or beyond the charged offence.
 - 5.3. Based upon the above, Mr Dvorkovich and the CFR have a right of appeal to the EDC Appeal Chamber.

- 5.4. Pursuant to Rule 42.3 of the Procedural Rules, any member of the FIDE family who acted as the complainant in the first instance proceedings has a right of appeal against the acquittal of the respondent on any charge in the First Instance proceedings. Such member also has a limited right of appeal against the sanction imposed, only if the sanction can be described as grossly disproportionate or clearly inappropriate or affected by a serious misdirection regarding material facts.
- 5.5. In principle, the UCF, Mr Baryshpolets and Mr Nielsen have a right of appeal against Mr Dvorkovich's acquittal on the Second Charge and the Third Charge and the severity of the sanctions imposed on Mr Dvorkovich and the CFR. They do not enjoy a right of appeal against specific findings relative to the First Charge, save to the extent that these may motivate their request for stricter sanctions.
- 5.6. According to Article 17.4 of the EDC Code and Rule 43.3 of the Procedural Rules, the right to appeal must be exercised within 21 calendar days from the date on which the appealable decision is communicated to the parties. In the present case, the decision of the First Instance Chamber was communicated to the parties on 7 June 2024 and the period in which to lodge an appeal lapsed on 28 June 2024.
- 5.7. The appeal documents of the CFR were received on 27 June 2024 and the separate appeal of Mr Dvorkovich was received on 28 June 2024. A joint appeal (the cross-appeal) was received from the UCF, Mr Baryshpolets and Mr Nielsen on 28 June 2024.
- 5.8. In terms of Rule 43.5 of the Procedural Rules, an appeal lodgement fee of €150 must be paid prior to or simultaneous with the lodgment of the appeal. This requirement was met by all of the parties.

- 5.9. Accordingly, the substantive and procedural requirements for lodging an internal appeal as set out in Procedural Rules 42 and 43 having been met, the appeal and cross-appeal (limited as indicated in 5.5 above) are declared admissible in terms of Procedural Rule 44.5, subject to the Appeal Chamber's findings on the legal standing of the parties and the admissibility of the original complaints hereunder.
6. Procedural history:
- 6.1. Following the filing of the parties' appeals and cross-appeal as noted above, the appeal case was registered on 30 June 2024 and the parties were advised that, in accordance with Procedural Rule 45.3, there would be only one round of an exchange of submissions in the appeal case.
- 6.2. Subsequently, in the period 19 – 22 July 2024 each of the parties submitted an Answer to the opposing party's appeal.
- 6.3. On 9 August 2024, the Appeal Chamber, in accordance with its powers under the Procedural Rules, directed certain enquiries to Mr Dvorkovich and the CFR and requested copies of certain documents.
- 6.4. The CFR and Mr Dvorkovich provided their answers to the enquiries on 20 August and 22 August 2024 respectively, and thereafter the UCF, Mr Baryshpolets and Mr Nielsen replied on 23 August 2024. Mr Dvorkovich and the CFR submitted a final reply on 28 August 2024.
- 6.5. On 17 July 2024, the CFR applied for provisional measures in the form of a stay of execution of the First Instance Decision. The answer of the UCF, Mr Baryshpolets and Mr Nielsen was received on 1 August 2024. On 2 August 2024, the Appeal Chamber ruled that implementation of the sanction of a temporary exclusion of the CFR's membership in FIDE would be

stayed for the time being and that the stay would lapse simultaneously with the publication of this final decision in the appeal case.

BACKGROUND

7. The original complaints:

- 7.1. In the respondents' original complaint (a joint complaint of the UCF, Mr Baryshpolets and Mr Nielsen) reliance was placed on various alleged breaches by Mr Dvorkovich and the CFR of the FIDE Charter as well as the EDC Code and its predecessor, the FIDE Code of Ethics in relation to conduct prior to 1 April 2022.
- 7.2. The various complaints were organised by the EDC Chair in 3 charges, namely the First Charge (against both Mr Dvorkovich and the CFR), the Second Charge (against both Mr Dvorkovich and the CFR) and the Third Charge (against Mr Dvorkovich only).
- 7.3. **The First Charge** related to the association of Mr Dvorkovich and the CFR with sanctioned individuals in the CFR Board of Trustees and CFR Supervisory Board.
- 7.4. **The Second Charge** related to the alleged recognition by Mr Dvorkovich and the CFR of occupied Ukrainian territories as part of the CFR. These territories consist of Crimea, Donetsk, Luhansk, Kherson and Zaporozhye.
- 7.5. **The Third Charge** related to an alleged failure by Mr Dvorkovich to observe political neutrality. A number of separate incidents were relied upon in the complaint, principally that Mr Dvorkovich was the chairman of the Skolkovo Foundation until March 2022 (which later became a sanctioned entity) and that Mr Dvorkovich had made a public statement on the Skolkovo Foundation website which can be interpreted as Russian war propaganda.

8. Findings of the First Instance Chamber:
- 8.1. On the issue of admissibility and legal standing, the First Instance Chamber held that Mr Baryshpolets and Mr Nielsen lacked sufficient legal standing to bring the complaint to the EDC for want of a direct and substantial interest in the matters at hand. It was held that this did not affect the continuance of the case, as the UCF was found to enjoy legal standing.
- 8.2. The First Instance Chamber concluded that Mr Dvorkovich's position in the CFR Board of Trustees, together with sanctioned individuals, constitutes an improper association and is in breach of Article 6.16(d) (*act as role model*), Article 6.25(a) (*damage to FIDE's reputation or brings chess into disrepute*), Article 8.1(c) (*avoidance of improper association*) read with Article 8.2 and 8.12 (*involvement with association or person whose activity is inconsistent with the objectives or interests of FIDE*) of the EDC Code. Mr Dvorkovich was thus convicted of the First Charge.
- 8.3. The First Instance Chamber held that Mr Dvorkovich was not actively involved in the organisation by the CFR of chess activities in the occupied territories and that he stood to be acquitted on the Second Charge.
- 8.4. The First Instance Chamber held that Mr Dvorkovich's activities forming the subject matter of the Third Charge were not such as to inflict any harm to FIDE's reputation and that he had to be acquitted on this charge as well.
- 8.5. Regarding the position of the CFR under the First Charge, the First Instance Panel concluded that the CFR was in breach of its obligations under the EDC Code - Article 6.25(a) (*damage to FIDE's reputation or brings chess into disrepute*), Article 7.1 and 7.2 read with Article 4.3, 4.4 and 4.8 of the FIDE Charter (*non-compliance with FIDE principles*), Article 11.4(a) read with Article 11(l) and 11(m) of the FIDE Charter (*violation of duty or*

obligation imposed by the FIDE Charter) and Article 11.6 (b) (*disparagement of FIDE's reputation and interest*). The CFR was thus found guilty on the First Charge.

- 8.6. Regarding the Second Charge (recognition of occupied territories in Ukraine), the First Instance Chamber held that the activity by the CFR in Crimea, even if it does not include any official declaration of inclusion, is at least *de facto* recognising occupied territories in Ukraine as part of Russia. This was held to be a breach of the EDC Code - Article 6.25(a) (*damage to FIDE's reputation or bringing chess into disrepute*), Article 7.1 and 7.2, read with Article 4.3, and 4.8 of the FIDE Charter (*non-compliance with FIDE principles*) and Article 11.4(a) read with Article 11(l) and 11(m) of the FIDE Charter (*violation of duty or obligation imposed by the FIDE Charter*). The CFR was accordingly found guilty on the Second Charge.
- 8.7. As alluded to above, Mr Dvorkovich was sanctioned to a reprimand in respect of his conviction on the First Charge. The CFR's convictions on the First Charge and Second Charge were combined for purposes of sanction and a 2-year exclusion of membership in FIDE was imposed on the CFR, subject to potential suspension if certain conditions of suspension were to be met.

GROUND OFS OF APPEAL

9. Mr Dvorkovich's appeal:
 - 9.1. Mr Dvorkovich challenges his conviction on each of Articles 6.16(d), 6.25(a) and 8.1(c) of the EDC Code.
 - 9.2. Regarding Article 6.16(d) (*act as role model*), Mr Dvorkovich admits his membership of the CFR Board of Trustees but submits that he did not take part in any meetings or activities of

the Board of Trustees, that it is an inactive body and that the general foreign public is probably unaware of the existence of the Board of Trustees and its composition. Accordingly Mr Dvorkovich's "role model" functions are not affected in any manner. Mr Dvorkovich also draws attention to the fact that during the elective General Assembly in August 2022 he received an overwhelming support from the delegates and argues that his political opponent in the presidential elections, Mr Baryshpolets, is precluded by the principle of estoppel to raise the present complaint.

- 9.3. Regarding Article 6.25(a) Mr Dvorkovich argues that his seat on the Board of Trustees, an inactive body, cannot lead to a potential damage of FIDE's reputation and there is no evidence of actual reputational damage to FIDE or chess as a sport.
- 9.4. Regarding the duty of FIDE officials to avoid improper association, as stated in Article 8.1(c) of the EDC Code, Mr Dvorkovich noted that no sanctions had been imposed by the United Nations ("**UN**") or the International Olympic Committee ("**IOC**") or other sports-governing bodies such as FIDE. In the circumstances, Mr Dvorkovich's association with individuals sanctioned by only a minority of countries can never be said to be "improper". Mr Dvorkovich draws attention again to the FIDE elections in August 2022 and contends that the concept of estoppel prevents Mr Baryshpolets and Mr Nielsen from making issue of Mr Dvorkovich's membership in the Board of Trustees since they intentionally abused their procedural rights by waiting until September 2023 (the date of their complaint), being completely silent before on this issue. Finally, Mr Dvorkovich submits that the First Instance Chamber unlawfully exceeded its margin acting as a legislator when determining which behaviour

should amount to a breach of Article 8.1, 8.2 and 8.12 of the EDC Code.

10. The CFR's Appeal:

- 10.1. The CFR challenges its conviction on each of Articles 6.25(a), 7.1 and 7.2, 11.4(a) and 11.6(b) of the EDC Code.
- 10.2. Regarding Article 6.25(a) it argues that on a proper interpretation the Article only applies to a natural person and not to a national federation such as the CFR. It further argues that the mere existence of several sanctioned persons as CFR Board of Trustees members does not cause any reputational damage to FIDE and/or the game of chess as the limited number of sanctioning countries does not imply the recognition of the reasonableness of such sanctions by the entire international community. Furthermore, the Board of Trustees is an inactive body with advisory functions only. It has no influence in the operational management of CFR's projects and programs. In any event, the fact of having sanctioned individuals in the Board of Trustees is insufficient as evidence of reputational damage to FIDE.
- 10.3. Regarding Articles 7.1 and 7.2 of the EDC Code, the CFR submits that the existence in the inactive Board of Trustees of persons sanctioned in a small number of countries is no evidence of any human rights' violations, discrimination against anyone or evidence that friendly relations with other member federations are not pursued by the CFR.
- 10.4. Regarding Article 11.4(a) and the duty to act independently from any government, public or private institution and to promote amicable and courteous relations with other member federations and their members, the CFR argues that the fact that some Russian governmental officials are members of the Board of Trustees is irrelevant as the Board of Trustees has no real

influence on the activities and decision-making processes of the CFR.

- 10.5. Regarding Article 11.6(b), the CFR draws attention to the fact that actual harm (as distinct from potential harm) is required and in circumstances where the majority of the chess community has no knowledge that sanctioned persons are linked to the CFR, such association did not in any way damage the reputation of FIDE.
- 10.6. CFR submits that it had not in any way damaged FIDE's reputation or brought chess into disrepute by organising the chess events on the territory of Crimea and inviting the sportsmen from Donetsk, Luhansk, Kherson and Zaporozhye to participate in such events. It is contended that the development and promotion of the game of chess by organisation of the chess events and ensuring the participation of as many chess players as possible from different regions cannot be seen as direct evidence that there was any actual damage to FIDE's reputation or the game of chess.
- 10.7. The CFR submits that in order for a violation of Article 11.4(a) to be proven, there should be some duty or obligation imposed on the CFR by either the FIDE Charter or a decision of the FIDE General Assembly. The CFR points out that FIDE had not adopted any decision which contained a duty or obligation on CFR not to hold chess events in Crimea and/or not to grant the people from Donetsk, Luhansk, Kherson and Zaporozhye the right to participate in the events organised by the CFR.
- 10.8. The CFR emphasises that neither organising of chess events in some territories nor participation of the players from certain territories in the CFR's chess events could in any way be considered as recognition by the CFR of such territories as part of Russia. The CFR, as national sports body, does not have

such powers and the acknowledgement of territories as part of some State is a political act which may be committed by the States only. The CFR has never made any public statement regarding the status of Donetsk, Luhansk, Kherson and Zaporozhye.

- 10.9. The CFR further argues that one of the fundamental principles of Olympism is that the practice of sport is a human right. The CFR simply follows the Olympic and FIDE Charter by promoting and developing the game of chess in different regions and the right to have access to the sport is a natural right which a person should not be deprived of regardless of the political situation. Had the CFR not provided the opportunity to the people in the occupied territories to participate in its chess events, these people would be left without access to sport.
- 10.10. Regarding the sanction, in the event that the Appeal Chamber upholds the CFR's convictions, the CFR submits that the EDC has no competence to suspend the CFR from FIDE membership as this power falls within the exclusive competence of the FIDE General Assembly. Even though Article 13.1(e) of the EDC Code lists temporary exclusion from membership amongst the available forms of sanction, the right of the EDC to impose such a sanction should be understood as a conditional right depending on the decision of the General Assembly. Article 13.1(e) conflicts with the relevant provisions of the FIDE Charter and the latter should enjoy over-riding force.
- 10.11. Therefore, even if the CFR had violated the EDC Code (*quad non*), the First Instance Chamber should have applied a sanction other than the temporary exclusion of membership in FIDE, such as a warning, reprimand or fine. This is submitted on the strength of the presence of mitigating circumstances, *inter alia*, the significant contribution to the FIDE family and the development

of sport made by the CFR and its production of many grandmasters, World and European champions in chess who have glorified and enhanced the reputation of chess as well as FIDE around the world.

11. The cross-appeal of the UCF, Mr Baryshpolets and Mr Nielsen:
 - 11.1. The respondents support the conviction of Mr Dvorkovich and the CFR on the First Charge, but wish to appeal some specific findings:
 - 11.1.1. The finding of the First Instance Chamber that no breach of the EDC Code has been established insofar as that there are also sanctioned individuals in the CFR Supervisory Board (Decision, paragraph 106).
 - 11.1.2. The finding the Mr Dvorkovich's participation in a ceremony (together with Mr Dmitry Peskov) honouring outstanding Russian chess players held in the Central Chess Club in Moscow on Chess Day in July 2023 does not constitute a breach of the EDC Code (paragraph 114).
 - 11.1.3. The First Instance Chamber's failure to find that FIDE, under the leadership of Mr Dvorkovich, has acted in violation of IOC Rules or Recommendations, such as banning Russian and Belarussian athletes from competing internationally in chess (paragraph 116).
 - 11.2. Similarly, the respondents support the conviction of the CFR on the Second Charge, but disagree with Mr Dvorkovich's acquittal on the Second Charge. The respondents argue that Mr Dvorkovich himself recognises the illegally annexed territories of Ukraine as part of the Russian Federation, thereby denying the independence and territorial integrity of Ukraine. In addition, the respondents challenge the First Instance Decision by its failure

to find that Mr Dvorkovich and the CFR breached the EDC Code by their participation in the Defender of the Fatherland Day tournament in February 2022, just prior to the Russian invasion of Ukraine. (Decision, paragraphs 125 and 126).

- 11.3. The respondents also seek to appeal Mr Dvorkovich's acquittal on the Third Charge and specifically the findings that his former chairmanship of the Skolkovo Foundation (paragraphs 131 and 132), his interview with the BBC in September 2018 (paragraph 133) and his statements published on the Skolkovo website in March 2022 (paragraph 134) do not constitute a breach of the EDC Code.
- 11.4. Based on the above arguments, the respondents ask the Appeal Chamber to revisit the Decision in the mentioned parts and apply stricter sanctions on both Mr Dvorkovich and the CFR.

PRELIMINARY REMARKS AND RULING

12. Request for oral hearing:
 - 12.1. In his Statement of Appeal Mr Dvorkovich requested the Appeal Chamber, pursuant to Rule 62 of the Procedural Rules, to conduct an oral hearing in the matter and suggested that such an oral hearing could take place on occasion of the FIDE Congress in Budapest, Hungary in September 2024.
 - 12.2. Mr Dvorkovich's request for an oral hearing was supported by the CFR but opposed by the respondents.
 - 12.3. On 29 August 2024, the Chairman of the Appeal Chamber advised the parties that the Appeal Chamber is *prima facie* disinclined to permit an oral hearing in this matter, but will announce its ruling in this regard with motivation after further deliberation, either as part of the final decision or separately before.

- 12.4. In the view of the Appeal Chamber, the appeals and cross-appeal turn on legal arguments and the facts are largely common cause or non-controversial. The parties had ample time to exchange statements and make submissions, and in the view of the Appeal Chamber no purpose would have been served by creating another opportunity for the repeat of the legal submissions, most probably by lawyers representing the parties at some cost to them. This is not a matter where witness testimony had to be heard to resolve the disputes, and the parties could best be saved the inconvenience and costs of an oral hearing and avoid a further politicization and delay in the finalisation of the matter.
13. Having stated its position above, the Appeal Chamber would nevertheless wish to assure the parties that the Appeal Chamber has carefully considered all matters and arguments put forward by the parties, even if reference is made in this decision only to those matters necessary to explain the Appeal Chamber's reasoning and its decision.
14. The Appeal Chamber would also like to take the opportunity to compliment the parties and their lawyers on the completeness and quality of their written submissions. It has certainly contributed to the efficiency with which this procedure could be disposed of.

APPEAL FINDINGS ON LEGAL STANDING AND ADMISSIBILITY OF ORIGINAL COMPLAINTS

15. Legal principles:
- 15.1. In terms of the EDC Code, the EDC shall only consider complaints and reports received which meet requirements for the admissibility of complaints and reports as set out in the EDC Code. The EDC has no power to investigate on breaches of the EDC Code on its own initiative, but shall open a case, investigate

and judge on it after receiving an admissible complaint by a person or a report by a FIDE organ within its competence (Articles 3.7 and 3.8 of the EDC Code).

- 15.2. The requirements for the admissibility of complaints and reports are set out in Article 5 of the EDC Code, the relevant parts of which read as follows:

“Art. 5 – **ADMISSIBILITY OF COMPLAINTS AND REPORTS**

5.1. In order for a complaint or report to be accepted and adjudicated by the EDC, it must meet the following minimum substantive requirements:

- (a) the complainant must have the necessary standing to submit the complaint;
- (b) the person or body against whom the complaint is directed, i.e. the respondent, must be a member of the FIDE family;
- (c) the allegations made and documents furnished as part of the complaint must disclose, at least on a *prima facie* basis, conduct which amounts to one or more violations of this Code;
- (d) the alleged misconduct must have been committed in the international sphere, or if in the national sphere, fall within one of the exceptions on the basis of which the EDC will exercise jurisdiction;
- (e) the alleged misconduct must have been committed during the course of a period of no more than five (5) years immediately preceding the date on which the complaint or report is received by FIDE or a competent FIDE organ commences its investigation in instances of fraud, corruption and cheating, and no more than three (3) years preceding such date in all other instance.

5.2. A complainant shall have the necessary standing to submit a complaint or report if –

- (a) he, she or it is a member of the FIDE family other than a person mentioned in Article 4.2(e), 4.2(i) and 4.2(o) – (u); and
- (b) in the case of an individual complainant, he or she is personally and directly affected by the alleged misconduct or otherwise has a direct and substantial interest in the matter; or
- (c) in the case of the General Assembly, FIDE President, FIDE Council and Management Board representing FIDE’s interest in general; or
- (d) in the case of another FIDE organ submitting a report to the EDC, such organ represents the general interests of FIDE in a specific area of interest or speciality within FIDE’s governance of the sport of chess.

5.3. ...

5.4. ...”

(our under-lining)

15.3. The distinction between the “international sphere” and the “national sphere” is drawn in Article 4.7 of the EDC Code, which reads as follows:

“4.7 This Code shall apply in respect of any and all conduct forbidden in this Code if performed by a member of the FIDE family and such conduct takes or took place on an occasion in one of the following spheres:

- (a) the **international sphere**, meaning FIDE tournaments, events and congresses, as well as other tournaments and events which has a multi-national participation, or at which norms for FIDE titles can be earned, or serve as a qualifying event for a major FIDE tournament or event including the World Cup, or the relevant conduct in some manner affects the interests of other national federations of the international chess community as a collective. The fact that the tournament is FIDE-rated is not on its own determinant of its international nature, but may be taken into account together with other factors.

(b) and the **national sphere**, meaning tournaments, events and meetings organised or hosted or under the auspices of a national federation which fall outside the international sphere, but only in the following circumstances:

i the case on which the alleged violation is based has international implications of affects various national member federations of FIDE and has not been judged at national level through the national federation's own ethics process; or

ii the national ethics process has operated in a manner that in itself is a breach of this Code or of the fundamental principles of law and fair trial.”

(our under-lining)

15.4. Referring to the above, the first requirement for admissibility of a complaint before the EDC is that the complainant must have the necessary standing to submit the complaint. In the case of an individual complainant (whether a natural person or a legal person, such as a national member federation), the complainant must be personally and directly affected by the alleged misconduct or otherwise has a direct and substantial interest in the matter.

15.5. The issue of standing to sue and to be sued before the Court of Arbitration for Sport (“**the CAS**”) is discussed in Coccia and Colucci (editors): International Sports Justice (Sports Law and Policy Centre, 2024) at pages 80 – 87. At page 80, Professor Coccia writes as follows:

“It is important to clarify right away that, under Swiss law, an issue of standing is not an issue of jurisdiction but one that falls within the merits (*lato sensu*) of the case: “the Panel deems convenient to clarify that the issue of standing to sue indeed refers to the merits of the case”. (CAS 2018/A/5888 at para 154). To be precise, the requirement of standing to sue, although falling within the merits *lato sensu* of the case, must be considered as a preliminary requirement

to the merits *stricto sensu* ..., to be characterised as a “condition of admissibility” (in French “*condition de recevabilité*”; in fact, lacking such condition a CAS Panel may not embark upon the analysis of the full merits (*stricto sensu*) of the dispute.”

15.6. At page 81 Professor Coccia proceeds:

“The notion of standing in CAS arbitration is characterised by both a formal element and a substantive one. The “formal standing” element, also known as “*legitimatío ad causam*”, requires that the party suing or being sued has, under the applicable rules, the legal status entitling it to bring a legal action as claimant/appellant or to be summoned as respondent; not always the applicable rules set out this requirement. The “substantive standing” element, also known as “legal interest” or “legitimate interest”, must always be present and requires that the suing or respondent party has something at stake in the dispute that deserves legal protection.”

And at pages 83-84, Professor Coccia continues:

“Some CAS Panels, in reference to the appeal procedure, have characterized the notion of substantive standing – often defined as “legal interest” or “legitimate interest” – as an “aggrievement requirement”, stating that “only an aggrieved party, having something at stake and thus a concrete interest in challenging a decision adopted by a sports body, may appeal to the CAS against that decision (CAS 2009/A/1880-1881 at para 153). In other words, a party has no standing if it “is not directly affected by the decision appealed from” (CAS 2006/A/1206 at para 31). As it is said in French, “*pas d’entérêt, pas d’action*” (i.e. no interest, no action).

Indeed, as stated by a CAS panel, “the above described ‘aggrievement requirement’ is an essential element to determine the legal interest and the standing of a party to appeal before the CAS as a sports body’s decision, because the duty assigned to a panel by the CAS Code rules governing the appeal arbitration procedure is that of solving an actual dispute and not that of delivering an advisory opinion

to a party that has not been aggrieved by the appeal decision (CAS/2009/A/1880-1881 at para 154).

Another CAS panel stated as follows: “A court shall only have to decide the merits of a request, if the applicant has sufficient legal interest in the outcome of the decision. If, on the contrary, the request is not helpful in pursuing the applicant’s final goal, the judicial resources shall not be wasted on such matter” (CAS 2020/A/7590-7591 at para 84).

It is important to note that such legal interest must be present not only at the beginning of the case but also at the time of the final award (CAS 2018/A/5746 at para 173).

The requirement of a sufficient interest at stake in the dispute can be of a financial or a sporting nature and even reputational. A CAS panel so stated: “The requirement of standing to sue or standing to appeal has been dealt with many times by CAS panels, in particular in connection with appeals against the decisions of sporting bodies. In principle, standing to sue is recognised if a person appealing against a certain decision has an interest worthy of protection, i.e. a sufficient interest in the matter being appealed (cf. CAS 2008/A/1674; CAS 2010/A/2354). In other words, an appellant has to demonstrate that he or she is sufficiently affected by the appeal decision and has a tangible interest, of financial or sporting nature, at stake” (CAS 2013/A/3140 at para 8.3).

16. Correct application:

16.1. in the proceedings before the First Instance Chamber, Mr Dvorkovich and the CFR challenged the legal standing of the Mr Baryshpolets and Mr Nielsen to file the complaint. At that stage the legal standing of the UCF seemed to have been assumed.

16.2. However, in the dissenting opinion expressed in the First Instance Chamber the view was expressed that the complaint lodged by the UCF constituted an abuse of process against Mr Dvorkovich and as such must be declared inadmissible. In his

appeal, Mr Dvorkovich makes common cause and concurs with the view that the UCF's complaint is inadmissible. In the appeal of the CFR, it does not seem to challenge the First Instance Chamber's finding that the UCF has legal standing in the matter and in the CFR's answer to the respondents' appeal, it only takes issue with the legal standing of Mr Baryshpolets and Mr Nielsen. However, in the CFR's final reply to the queries of the Appeal Chamber, dated 28 August 2024, the CFR seems to extend its objection of a lack of legal standing also to the UCF.

- 16.3. However, the fact that issues of standing do not pertain to jurisdiction but are conditions of admissibility has the consequence that a party is not precluded from later raising the lack of standing of the opposing party if it had failed to do so at the outset and the Panel may address an issue of standing *ex officio* even if the parties have not mentioned it in their submissions (Coccia at 81).
- 16.4. In the decision under appeal the First Instance Chamber held (at paragraph 66) that it is obvious that the UCF is directly affected by the on-going war in Ukraine and therefore it is held that the UCF has legal standing in the matter.
- 16.5. In coming to this finding, the First Instance Chamber, with respect to our colleagues, focussed on the wrong issue: the focus should not be on the effects of the war, as the war is conducted by the Russian State and not by the CFR.
- 16.6. The real question to be investigated in the case of a complaint of misconduct under a sports disciplinary code is whether the complainant is personally and directly affected by the alleged misconduct of the accused party or otherwise has a direct and substantial interest in the situation caused by the accused party.
- 16.7. In the context of the First Charge, one should enquire whether the complainant is affected or interested in the fact that there are

sanctioned individuals in the CFR Board of Trustees and CFR Supervisory Board. In the context of the Second Charge, the query is directed at whether the complainant affected by or has a legal interest in the alleged recognition by Mr Dvorkovich and the CFR of the occupied Ukrainian territories as part of the CFR.

17. The First Charge:

17.1. The CFR Board of Trustees and CFR Supervisory Board are bodies or structures in the internal organisation of the CFR. On the facts of the present case, the presence of sanctioned individuals on these Boards does not have an external effect as far as the outside world is concerned. It is difficult to conceive on what basis another chess federation or outside individual can claim to be “personally and directed affected by” or to have “a direct and substantial interest” in the composition of a chess federation’s internal governance structure.

17.2. In terms of Article 4.10 of the FIDE Charter, 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. This means that in the review of the membership of a national federation, FIDE can and shall consider the member federation’s compliance with FIDE Principles (Article 4 of the FIDE Charter) and their member obligations (Article 11 of the FIDE Charter). If the member federation fails to fulfil its duties, it may be suspended and ultimately expelled from FIDE (Article 13.1 of the FIDE Charter). Save as stated, FIDE must recognise and respect the national federation’s autonomy and principal authority over chess activities in their own countries or territories (Article 9.1 of the FIDE Charter).

17.3. Therefore, regarding the First Charge, it would appear that none of the UCF, Mr Baryshpolets and Mr Nielsen can claim a legal

interest or aggrievement based upon the fact that there are sanctioned individuals in the Board of Trustees and Supervisory Board of the CFR. If those sanctioned individuals were to be removed tomorrow, it would not in any way improve the situation for the UCF, Mr Baryshpolets and Mr Neilsen.

- 17.4. Another relevant consideration when testing the admissibility of the complaint in terms of Article 5.1 of the EDC Code is whether the alleged misconduct has been committed in the international sphere. In the view of the Appeal Chamber the presence of the sanctioned individuals in the respective Boards does not have international implications or does not affect the interests of other National Federations or the international chess community as a collective. It is an entirely domestic affair.
- 17.5. It follows that the complaint forming the subject matter of the First Charge, whether it is advanced by the UCF, Mr Baryshpolets or Mr Nielsen, must be held to be inadmissible for the reasons that the complainants do not have legal standing and the relevant conduct does not fall within the international sphere.
- 17.6. The arguments of Mr Baryshpolets and Mr Nielsen that they suffer from the Russian aggression in the Ukraine and the consequences of the war do not create legal standing for them as, as pointed out above, the war is not conducted by the accused party, the CFR, and the alleged misconduct under the First Charge is not directly related to the war.
- 17.7. Messrs Baryshpolets and Nielsen's argument that, in the absence of personal legal standing, they should nevertheless be allowed to join the complaint of the UCF also fails for the reason that the UCF also lacks legal standing in relation to the First Charge.

18. The Second Charge:
 - 18.1. The alleged misconduct under the Second Charge is the recognition of occupied Ukrainian territories as part of the CFR. More specifically, it refers to the CFR's organisation of chess events in the occupied territories and the integration of the chess players from these territories under the governance of the CFR.
 - 18.2. In terms of Article 9.1 of the FIDE Charter, member federations have principal authority over chess activities in their own countries or territories. According to Article 9.2, only one federation for each country can be affiliated to FIDE as a member. In terms of Article 11(d), each member federation must maintain full control and governance of chess in its country with the only exceptions being unofficial and unrated events.
 - 18.3. The word "country" as used in the FIDE Charter has been defined as "any country, state, territory or part of a territory recognised by the international community, in conformity with the Olympic Charter and the IOC regulations".
 - 18.4. The term "member federation" refers to the single national chess association or similar organisation which has principal authority over chess activities in its own country or territory and which has been admitted to FIDE as a FIDE member.
 - 18.5. The term "national chess federation" means a legal entity recognised by FIDE as the governing body for the support of chess in its respective country which complies in all respects with the FIDE rules and regulations, including the Charter.
 - 18.6. Based on the above, if one FIDE member federation were to organise official chess events or seek to exercise authority over chess activities in the country or territory belonging to another FIDE member federation, the first mentioned federation would

infringe upon the independence, territorial integrity and sovereignty of the last-mentioned federation.

- 18.7. The international community, as represented by the UN and IOC, regard the areas of Crimea, Donetsk, Kherson, Luhansk and Zaporozhye as part of Ukraine.
- 18.8. On the above basis the UCF, which is supposed to have principal authority over the chess activities in the mentioned occupied territories, is personally and directly affected by the alleged misconduct on the part of the CFR as contemplated in Article 5.2(b) of the EDC Code. It follows that the UCF has legal standing in relation to the Second Charge and the relevant complaint of the UCF must be declared admissible.
- 18.9. On the other hand, the interests of Mr Baryshpolets and Mr Nielsen are not directly affected, in a legal sense, by the conduct of the CFR in relation to the occupied territories.
- 18.10. Mr Baryshpolets is a Ukrainian citizen and chess grandmaster who lives in the USA. Mr Baryshpolets has family members and relatives in Ukraine and submits that the CFR's breaches directly or indirectly support the Russian aggression, which results in hundreds of thousands of casualties, millions of refugees and continuous security threats of its citizens, including his own family.
- 18.11. The key arguments advanced by Mr Baryshpolets in support of his submission that he enjoys legal standing in the case is that he is a Ukrainian and his family members suffer from Russian aggression, he is a lifetime chess-lover and substantially involved in the chess world, and the seriousness of the breaches that harm the reputation of chess by supporting Russia's aggressive war.

- 18.12. As pointed out in paragraph 69 of the First Instance Decision, Mr Baryshpolets has not shown a more direct and substantial interest than any other Ukrainian member of the FIDE family. His Ukrainian nationality and the fact that his family members suffer from Russian aggression are not sufficient as the mentioned aggression is exercised by the Russian state, and not the alleged offender of the EDC Code, namely the CFR. Furthermore, as a general rule, it is not for Mr Baryshpolets to complain about reputational damage to FIDE or the sport of chess as these interests do not represent his own personal interests. Accordingly, the finding of the First Instance Chamber that Mr Baryshpolets lacks legal standing in relation to the Second Charge is confirmed.
- 18.13. Mr Nielsen is a Danish grandmaster living in Lithuania, a country bordering Russian. Mr Nielsen points out that the Russian aggression has had a severe impact on his lifestyle and career as a professional chess player and trainer.
- 18.14. These unfortunate consequences are brought about by the Russian state and not the CFR. Mr Nielsen has failed to establish a direct link between the CFR's activities in the occupied territories and his own personal interests. The Appeal Chamber agrees with the finding in paragraph 71 of the First Instance decision that Mr Nielsen lacked sufficient legal standing to bring the complaint to the EDC.

19. The Cross-Appeal:

- 19.1. We have already concluded that all the respondents lacked legal standing in respect of the First Charge (association with sanctioned individuals). We have also found that a party cannot appeal the First Instance Chamber's individual findings in relation to a charge on which a conviction was brought out, save

to the extent that those findings may impact on the sanction imposed.

- 19.2. The same applies in respect of the cross-appeal to the extent that it relates to the CFR's conviction of the Second Charge, i.e., it cannot be appealed. Although the respondents would otherwise have had a right of appeal on Mr Dvorkovich's acquittal under the Second Charge, they lack legal interest and appeal standing in relation to Mr Dvorkovich's alleged recognition of the occupied territories and his participation in the Defender of the Fatherland Day celebrations. There is no personal and direct interest of the UCF, Mr Baryshpolets and Mr Nielsen which is implicated by Mr Dvorkovich's relevant conduct.
- 19.3. As regards the respondents' cross-appeal in relation to the Third Charge (lack of political neutrality) on which Mr Dvorkovich was acquitted, again there does not seem to be any personal and direct implication for the interests of the UCF, Mr Baryshpolets and Mr Nielsen because of Mr Dvorkovich's former chairmanship of the Skolkovo Foundation and his public statement on the Skolkovo website. The complaint related to Mr Dvorkovich's interview to the BBC in September 2018 has exceeded the time limit of three years in art. 5.1(e) of the EDC Code.
- 19.4. To the extent that Mr Dvorkovich's alleged conduct may have caused reputational harm for FIDE or the sport of chess, it is for FIDE, acting through one of its organs, to bring such a complaint (Compare EDC cases 2/2018 *Ilyumzhinov* and 2/2022 *Karjakin*). In two precedents the respondent was convicted of causing reputational harm for FIDE or the sport of chess in conjunction with other convictions infringing the personal interests of a complainant other than FIDE (See EDC cases 10/2021 *Short* and 4/2023 *Kobalia*). The latter situation is not present *in casu*.

- 19.5. The respondents' interest in the reputation of FIDE and the sport of chess is at best an indirect interest. Accordingly, the respondents lack the necessary appeal standing.
- 19.6. Regarding the cross-appeal against the sanction imposed by the First Instance Chamber, the UCF, as an interested party in relation to the alleged misconduct of the CFR under the Second Charge, in principle, has a right of appeal. For purposes of admissibility of such cross-appeal against the sanction the Appeal Chamber will accept that a sufficient *prima facie* case has been established, assuming that the Appeal Chamber were to uphold the convictions, for the imposition of a more severe sanction having regard to the additional circumstances relied upon by the respondents which had not been taken into account by the First Instance Chamber. The UCF's cross-appeal relating to the sanction is therefore admitted. The cross-appeal of Mr Baryshpolets and Mr Nielsen regarding the sanction is not admissible given their general lack of a personal and direct interest in the charges.

APPEAL FINDINGS ON THE MERITS

20. The First Charge:
 - 20.1. Given the Appeal Chamber's finding of the inadmissibility of the complaint under the First Charge, the First Charge falls to be dismissed and there is no reason for the Appeal Chamber to discuss the merits thereof. However, the Appeal Chamber's view is that even had the First Charge had been admissible, the Appeal Chamber would have held that there lacks the necessary factual foundation for a conviction. Our reasons are provided briefly hereunder.

- 20.2. The position of Mr Dvorkovich and the CFR is that the CFR Board of Trustees has been established as a mere advisory body which may make recommendations to the CFR, and it has been an inactive body, with no meetings or activities, since its inception ten years ago.
- 20.3. The limited powers of the Board of Trustees are borne out by the CFR Charter and the Regulations on the Board of Trustees (2015). Members of the Board of Trustees are approved by the CFR Supervisory Board upon the proposal of the Chairman of the Board of Trustees. The latter is elected by the CFR Supervisory Board upon the proposal of the CFR President. All members of the CFR Board of Trustees have become members since the foundation of the Board of Trustees in 2014. There have been one or two changes in the membership of the Board of Trustees over the last ten years.
- 20.4. The inactivity of the Board of Trustees is substantiated by the fact that since establishment, not a single meeting of the Board has been held. There are no reports that the Board of Trustees have submitted to the CFR Congress or Supervisory Board. The Board of Trustees does not perform marketing tasks for the attraction of sponsorship and funds to the CFR. None of these facts are challenged by the respondents in their reply to the answers provided by Mr Dvorkovich and the CFR to the questions of the Appeal Chamber.
- 20.5. It appears that the Board of Trustees effectively exists only on paper and has had no influence as regards the CFR's chess activities. Accordingly, the presence of sanctioned individuals in the Board of Trustees is basically unknown to the international chess community, a fact that the Appeal Chamber accepts, and it has not been shown in the present case to cause damage to FIDE's reputation, potentially or actually. Neither could it amount

to a non-compliance with the FIDE principles in Article 4.3 (respecting human rights), 4.4 (rejecting any discrimination) and 4.8 (promotion of friendly relations between member associations and others) of the FIDE Charter, nor constitute a violation of the duties imposed on the CFR by way of Article 11(l) (acting independently from any government, etc.) and 11(m) (promote amicable and courteous relations with other member federations and others) of the FIDE Charter.

20.6. The mentioned Article 11(l) obliges a member federation to act independently from any government except for what is provided as mandatory by its national legal order.

20.7. It follows that the Appeal Chamber does not agree with the reasoning contained in paragraphs 81-98 and 105-113 of the First Instance Decision to the extent that it resulted in an adverse finding against Mr Dvorkovich and the CFR.

20.8. Regarding the position of Mr Dvorkovich as FIDE President, although the Appeal Chamber believes that Mr Dvorkovich's association with sanctioned individuals in the dormant CFR Board of Trustees does not constitute an ethical offence, the Appeal Chamber would respectfully urge Mr Dvorkovich to avoid, as far as is practically possible, any appearances with individuals closely associated with the military conflict in the Ukraine or any event which may be said to glorify Russia's military campaign in the Ukraine.

21. Second Charge:

21.1. The Second Charge related mainly to the CFR's alleged recognition of the illegally occupied territories of Ukraine by way of the CFR's organisation of chess activities involving players from the occupied territories.

21.2. During the proceedings before the First Instance Chamber, the respondents relied, *inter alia*, on the following facts:

21.2.1 The CFR lists tournaments in Crimea in its calendar and recognises Crimea as part of the Russian Federation. Among the tournaments, the CFR has arranged for stages of the “Cup of Russia” to be played in Sevastopol, Crimea.

21.2.2 In June 2023 the CFR conducted an open all-Russian team tournament amongst pupils called “White Rook”, where it included teams from Crimea, Donetsk and Luhansk.

21.2.3 In July 2023, the CFR managed “Aluston 2023”, an all-Russian competition in rapid chess and a stage of the “Rapid Grand Prix of Russia”, a tournament where they assign participants to represent their home regions, including occupied regions of the Ukraine.

21.2.4 On 11 March 2023, the CFR posted on its website a report of a working meeting of the CFR executive with leaders of the federations in the Southern Federal District and the North Caucasus Federal District participated, including Crimea and the City of Sevastopol and representatives of the Donetsk People’s Republic. One of the issues discussed was initiatives for the fast integration of all categories of athletes from the Donetsk People’s Republic, Luhansk People’s Republic, Kherson and Zaporozhye regions in chess life.

21.3. In the CFR’s response before the First Instance Tribunal, it raised the following defences:

21.3.1 The CFR is not a government or any other authority which is entitled to recognise or deny recognition of any part of the country whether in Russia or abroad.

- 21.3.2 The CFR admits the facts specified in the complaints, but disputes that any violation is constituted by such actions. Arranging one of the Cup stages in Crimea does not amount to recognition, since the organiser is free to select a venue within the country or abroad. Furthermore, chess players in the occupied territories suffer greatly from the impotence of the UCF to organise any chess events for them in circumstances where the FIDE Charter seeks to promote the respect of all internationally recognised human rights which includes the right to play, to develop talent and to compete as a natural right which a person should not be deprived of, regardless of the political situation.
- 21.3.3 CFR has never requested a FIDE rating for the tournaments specified in the complaint, neither did it send any participants to international competitions because of such tournaments.
- 21.3.4 The activities in question were organised to promote the mission of FIDE in diffusion and development of chess amongst all nations of the world, as well as the raising of the level of chess culture and knowledge on a sporting, scientific, creative, educational and cultural basis.
- 21.4. In its submissions of 28 November 2023 and 13 February 2024, the CFR claims that the occupied territories (other than Crimea) are not accepted as members of the CFR, therefore the situation is fundamentally different from the IOC's suspension of the Russian Olympic Committee ("**ROC**") for reason of the acceptance of the other territories into the ROC.
- 21.5. The First Instance Chamber concluded that the CFR's activity in Crimea, even if it does not include any official declaration of

inclusion, is at least *de facto* recognition of the occupied territories of Donetsk, Kherson, Luhansk and Zaporozhye as part of Russia. It was found that the CFR has expanded its activities to those parts of Ukraine being covered by the UN Resolution ES-11/4 from October 2022, thereby ignoring the resolution or at least the principle on which it is founded. The CFR was accordingly convicted of the violation of various articles in terms of the EDC Code (Decision, paragraphs 122-123).

21.6. In the Appeal Chamber's enquiries of 9 August 2024, the CFR was asked to provide a list of all the relevant events organised by the CFR in which there was participation of players from the occupied territories over the last two years. In addition, the Appeal Chamber asked whether these events were rated within the CFR National Rating System.

21.7. In its answer of 20 August 2024, the CFR supplied the following answer:

"The Chess Federation of Russia (CFR) consists of regional chess federations. The responsibilities of the CFR include holding tournaments of the all-Russian level: national championships among men and women in all age categories, as well as other competitions of the all-Russian level (the BELAYA LADYA SCHOOL CHAMPIONSHIP, THE RUSSIAN CHESS CUP etc.). Other competitions are held by regional chess federations, as well as city federations, clubs, etc., the CFR receives information about tournaments from regional representatives, so-called rating administrators, after which the CFR include the competitions in the calculation of the all-Russian rating."

and

"All-Russian competitions such as individual or team national championships, Russian Cup finals, etc., have not been held in the territories of any of the regions listed above, however their regional

stages, organised by local chess federations, were held there. All of the above-mentioned tournaments were rated in the CFR National Rating System.

It is also worth noting that the vast majority of these tournaments (more than 50%) are competitions among children, organised in local chess clubs, as well as competitions among veterans. On average, 20-40 people take part in them, where 90% of the participants are local residents.”

- 21.8. The CFR further provided information extracted from the CFR Rating Database that shows that during the past two years, the following number of rated classical chess tournaments were held: the City of Sevastopol – 76; the Republic of Crimea – 191; the Donetsk Peoples Republic – 26. No rated competitions were held in the Kherson and Zaporozhye Regions.
- 21.9. In its answer the CFR further conceded that it had never sought permission or approval from FIDE or the UCF in connection with the CFR’s activities in the occupied territories. The CFR also acknowledged that the CFR is a member of the ROC, which fact suggests that the CAS decision regarding the ROC (referred to hereunder) has a binding effect on the CFR.
- 21.10. In their reply, the respondents noted that if rapid and blitz events are included in the statistics, the actual number of events are as follows: the City of Sevastopol – 153; the Republic of Crimea – 553; the Donetsk Peoples Republic – 260 and Luhansk Peoples Republic – 94. This amounts to 2630 registered tournaments in the period August 2022 - August 2024, albeit that several of the events comprised of different divisions of the same tournament.
- 21.11. In response to the CFR’s claim that no all-Russian competitions have been held in the occupied territories, the respondents point out that the Russian Championship for the Deaf was hosted in Crimea in June 2024.

- 21.12. The respondents also submits that the reason that no tournaments held in Kherson and Zaporozhye are registered in the CFR Rating Database is that these regions are primarily under Ukrainian control.
- 21.13. In the respondents' reply of 23 August 2014, they brought forward new evidence in the form of a news item published on the CFR web page on 7 August 2024. In this news report, the CFR announced the "inclusion of regional federations of all 89 constituent entities of the Russian Federation in terms of the CFR" and attached a document accrediting the list of regional federations. The list mentions, *inter alia*, the following regional federation members: Republic of Crimea, Chess Federation of the City of Sevastopol, Chess Federation Luhansk Peoples Republic, Chess Federation Donetsk Peoples Republic, Chess Federation of Zaporozhye Region and Chess Federation of the Kherson Region. It does not escape the Appeal Chamber that the CFR refers to regional federation members from "Republics" not recognized by the international community.
- 21.14. The CFR was given the last opportunity to comment and delivered a reply dated 28 August 2024. In its reply, the CFR does not dispute the evidence that the regional chess federations in the occupied territories have been incorporated into the CFR membership structure. Any such dispute would be surprising given the fact of the announcement on the CFR website.
- 21.15. Although this constitutes the submission of new evidence on appeal, the Appeal Chamber regards the evidence admissible in terms of Procedural Rule 43.2. As the announcement on the webpage was only made on 7 August 2024, it was obviously not available to the respondents at the time of filing their statements in front of the First Instance Panel. The evidence is further highly

relevant in substantiation of the Second Charge, namely the recognition by the CFR of the occupied territories. The source of the information is the CFR itself and it was given an opportunity to reply.

- 21.16. The result is that in its evaluation of the CFR's conviction on the Second Charge, the Appeal Chamber is possessed of evidence which was not available to the First Instance Chamber and which evidence changes the facts as accepted by the First Instance Chamber in paragraphs 122 and 123 of the First Instance Decision, namely, that according to the evidence in front of the First Instance Chamber, there had been no formal decision taken by the CFR to include the regional chess federations in the occupied territories as members of the CFR. This new evidence also renders the IOC's decision in October 2023 to suspend the ROC for including, as its members, the regional sports organisations which are under the authority of the NOC of Ukraine (namely, Donetsk, Kherson, Luhansk and Zaporozhye) highly relevant and directly applicable.
- 21.17. In arbitral proceedings before the CAS (CAS 2023/A/10093) the ROC sought the setting aside of its suspension by the IOC. The CAS Panel held that the IOC decision did not breach the principles of legality, equality, predictability or proportionality (the ROC's grounds of challenge). As a result, the ROC appeal was dismissed, and the IOC decision remains in force.
- 21.18. The CAS held, in response to the argument that the ROC has no power in relation to the armed conflict in Ukraine, that the IOC decision did not sanction the ROC for the armed conflict. Rather, the IOC decision sanctioned the ROC because it had accepted regional Ukrainian organisations as members in violation of rules 28.5 and 30.1 of the Olympic Charter. Rule 28.5 defines the territorial jurisdiction of an NOC and provides that the

geographical areas over which an NOC exercises jurisdiction must coincide with the geographical limits of the “country” in which it is established and has its headquarters. Rule 30.1 defines “country” wherever the expression appears in the Olympic Charter as meaning “an independent state recognised by the international community”.

- 21.19. The CAS Panel considers that resolution ES-11/4 of the UN General Assembly (passed with a vote of 143 in favour, 5 against and 35 abstentions) is overwhelming evidence that the international community did not recognise the boundaries that Russia sought to achieve by its annexation of the relevant regions and that the international community recognised Ukraine as an independent state which included the relevant regions. By admitting the regional sports organisations of the relevant regions as its members, the ROC violated the territorial integrity and sovereignty of the corresponding Ukraine sporting bodies.
- 21.20. The same arguments apply with equal force in the present case. By inclusion of the regional chess federations in the occupied territories as CFR members, and by the organisation of chess events in the territories of the relevant regional chess federations which are recognised in the CFR rating system, the CFR violates the territorial integrity and sovereignty of the UCF. It also violates the principles enshrined in the FIDE Charter to the effect that each FIDE member federation has principal authority over the chess activities in its own country and has to the duty to maintain full control and governance of chess in its country with the borders of its country fixed in conformity with the Olympic Charter and the IOC regulations as an expression of the views of the international community.
- 21.21. Considering the specific breaches of the EDC Code faced by the CFR, the Appeal Chamber considers that the CFR’s guilt in

terms of Articles 7.1 and 7.2 (duty to comply with FIDE principles as set out in FIDE Charter) has been established with reference to Article 4.8 of the Charter – FIDE shall promote friendly relations between and among member associations, clubs, officials and players.

- 21.22. It speaks for itself that taking over the chess organisation and governance in regions belonging to a neighbouring federation is the antithesis of the promotion of friendly relations with such federation. The CFR is also guilty of the breach of Article 11.4(a) of the EDC Code (violation of statutes or GA decisions) by failing to promote amicable and courteous relations with other member federations (Charter, Article 11(m)).
- 21.23. Regarding the issue of whether the CPR's conduct in the occupied territory damages, actually or potentially, affects FIDE's reputation, the Appeal Chamber's view is that this question must be answered in the affirmative. The international community expects FIDE to organise its affairs in accordance with the provisions of the FIDE Charter (and the IOC expects FIDE to comply with the Olympic Charter and IOC decisions) and the hypocrisy of double standards could make the CFR's conduct disreputable in the eyes of the public, if no disciplinary action is taken by FIDE against the CFR (Compare the decision of the Appeal Chamber in EDC case number 2/2022 *Karjakin* at paragraph 7.17). In any event, the CFR's conduct in the occupied territories of Ukraine could lead to a reasonable (but erroneous) impression that FIDE supports and/or associates itself with the military invasion and annexation by Russia of the occupied territories in the Ukraine and in this way harm FIDE's reputation.

- 21.24. It is accordingly the conclusion of the Appeal Chamber that the First Instance Chamber's conviction of the CFR on the Second Charge was correct (Decision, paragraph 123).
- 21.25. In conclusion, the outcome of the appeal against the convictions by Mr Dvorkovich and the CFR is as follows:
- 21.25.1 Mr Dvorkovich's appeal against his conviction on the First Charge succeeds.
- 21.25.2 The CFR's appeal against its conviction on the First Charge succeeds.
- 21.25.3 The CFR's appeal against its conviction on the Second Charge fails.

SANCTION

22.

- 22.1 As regards the CFR, the First Instance Chamber imposed a single sanction in respect of the convictions on both the First Charge and the Second Charge.
- 22.2 Having set aside the CFR's convictions on the First Charge, but maintaining the conviction on the Second Charge, the Appeal Chamber is free to interfere with the sanction imposed by the First Instance Chamber in accordance with Procedural Rule 42.3.
- 22.3 The Appeal Chamber considers, in determining a suitable sanction, all the considerations listed in Article 14.2 of the EDC Code.
- 22.4 The offence that the CFR is convicted of (nominally, the failure to maintain friendly relations with the UCF, but fundamentally, the breach of the UCF's territorial integrity and sovereignty as guaranteed by the FIDE Charter) is very serious and strikes at the core of the basis upon which chess associations all over the

world have agreed to associate themselves with each other in the FIDE organisation.

- 22.5 The sanction of a temporary exclusion from FIDE membership, as provided for in Article 13.1(e) of the EDC Code, is *prima facie* not disproportionate to the gravity of the offence *in casu*. This is borne out by the CAS decision in the matter concerning the ROC where it was held that an indefinite suspension of the ROC as a member of the Olympic Movement for a similar violation could not be set aside for a lack of proportionality.
- 22.6 In the proceedings before the First Instance Chamber and on appeal, the CFR submitted that the sanction of a temporary exclusion from FIDE membership as provided for in Article 13.1(e) of the EDC Code is against the scheme of the FIDE Charter and beyond the powers of the EDC. The CFR finds support in the dissenting opinion given in this regard by one of the members of the First Instance Panel. The CFR therefore submits that, if it is held that the CFR had violated the EDC Code, another type of sanction should have been applied, for example a warning, reprimand or fine.
- 22.7 In the light of the outcome of this matter, there is less of a need for the Appeal Chamber to motivate fully its view as to why the CFR's arguments regarding the unenforceability of Article 13.1(e) must be rejected. Suffice it to say that the necessary power appears from Article 26.6 of the Charter, to be read together with Article 13.1(e) of the EDC Code. In this regard, the Appeal Chamber fully supports the reasoning of the majority members in the First Instance Chamber at paragraph 50-63 of the First Instance Decision.
- 22.8 In any case, there are some steps underway to reform the EDC power under Article 13.1(e) of the EDC Code at the upcoming General Assembly to be held in Budapest in September 2024. The proposals for reform, if adopted by the General Assembly,

would recognise the EDC's existing power to impose a sanction of the temporary exclusion of a national federation's membership in FIDE, albeit subject to certain controlling measures for the implementation of such a sanction in future.

22.9 Further, there exists an important aspect influencing the choice of an appropriate sanction which did not receive due attention from the First Instance Chamber. As pointed out in CFR's statement of appeal, FIDE had not adopted any decision addressing the CFR's duty not to hold chess events in Crimea and/or not to grant the people from Donetsk, Kherson, Luhansk and Zaporozhye, the right to participate in these events organised by the CFR. This must be seen against the background that FIDE (like most other international sports governing bodies) is confronted with many territorial disputes between different national federations. By way of example, the CAS Panel in the ROC decision mentions the ongoing dispute over the territory of Kashmir between India, Pakistan and China, the situation surrounding the Turkish/Cypriot occupation of Northern Cyprus, the conflict between Armenia and Azerbaijan over the territory of Nagorno Karabakh and the Israeli-Palestinian conflict regarding Israeli sports activities in the internationally recognised Palestinian territories. As pointed out in the CAS decision (at paragraphs 97-100 and 104-108), there are significant differences in each case which may warrant different treatment.

22.10 The Appeal Chamber understands the CFR to rely on FIDE's omission to formulate rules and regulations regarding the organisation of chess activities in disputed territories and the precedents which exists within FIDE of other national federations occupying and organising chess activities in territories belonging to another chess federation as a factor for

mitigation of the sanction. No argument is advanced by the CFR in the present proceedings based on an alleged violation of the principle of equality in terms of which similar cases must be treated similarly, as the ROC sought to do in the mentioned CAS case. The ROC's contention for a violation of the principle of equality in that case was, in any event, rejected by CAS.

22.11 Nevertheless, the Appeal Chamber suspects that the existence of other examples of the non-compliance with FIDE's principles regarding the sovereignty of each member federation's territory could have caused the CFR to underestimate the consequences of its activities in the occupied Ukrainian territories. However, the fact that some FIDE member federations do not comply strictly with the FIDE Charter in the context of territorial disputes does not excuse the RCF from respecting and applying the relevant FIDE principles. FIDE is committed, and compelled by its Charter, to respect the internationally recognised borders of all countries around the world.

22.12 However, the problem of the non-compliance with FIDE's principles in the instance of these territorial disputes is a reality and cannot be ignored. **The Appeal Chamber recommends that the FIDE Council prepares and adopts a set of general regulations dealing with the governance and organisation of chess activities in occupied territories as well as the need for FIDE's approval and monitoring of the situations that exist or may arise in this context.** Given the urgency of the matter, as the CFR remains in default of its obligations under the Charter in relation to the occupied Ukrainian territories, the Appeal Chamber would suggest that a **period of 3 (three) months** from the date of this decision would be a reasonable period to prepare and adopt such regulations. In future, cases of the alleged breach of these regulations could be brought to the

EDC or the FIDE Council may take alternative actions to enforce compliance with the regulations.

- 22.13 Such regulations would support FIDE's mission in the diffusion and development of chess, promotion of close international cooperation of chess devotees and to improve harmony and promote peace among all people of the world and to eradicate or at least limit the influence of politics in sport. It would also protect the chess communities in occupied territories to exercise their rights to practice sport and remain active participants in the chess world, regardless of geo-political problems.
- 22.14 As a further mitigating circumstance, the Appeal Chamber considers the CFR's outstanding contribution to the FIDE family and the development of chess as a sport over a long time.
- 22.15 Regarding the UCF's cross-appeal in respect of the sanction, for the reasons stated above, the Appeal Chamber does not believe a more severe sanction than that imposed in the first instance is called for; on the contrary, given the abovementioned mitigating circumstances and the fact that the CFR's appeal against its conviction on the First Charge has succeeded, justice demands that a lesser sanction be imposed.
- 22.16 The only forms of sanction available to the EDC in the case of a national federation member, other than a temporary exclusion from membership, is a warning, reprimand or fine. A warning or reprimand is clearly inappropriate given the severity of the offence at hand. A fine up to a maximum of €50,000 may be imposed within the time limit and according to the methods specified by the EDC (Article 13.1(c) of the EDC Code).
- 22.17 When it comes to the quantum of a fine to be imposed, there are not many precedents in the EDC jurisprudence. In EDC case 1/2019 two officials of the Sudan Chess Federation were sanctioned with a fine of US\$1,000 each, payable to the FIDE Secretariat within three months from the date of the decision,

failing which a ban of 1 year as an official of any FIDE, ACC or SCF chess structure would apply. The officials were found guilty of making false public announcements about disciplinary steps that FIDE had ostensibly taken.

22.18 In EDC Case no. 2/2023 the EDC imposed a fine of €10,000 on GM Magnus Carlsen payable to FIDE's financial department within 30 days of the date of the decision, for improperly withdrawing from a tournament.

22.19 If the quantum of the fine imposed in Carlsen's case is taken as a guide, the present circumstances where a major national federation (and not an individual chess player) commits a much more serious offence (compared to Carlsen's transgression) demand a fine of a much higher value. In the judgment of the Appeal Chamber a fine close to the maximum in the amount of €45,000 would be suitable with the proviso that if the fine is not paid within the specified period, an alternative sanction of the temporary exclusion from membership will be substituted therefor (in accordance with the precedent in EDC case no. 1/2019). This measure is unfortunately necessary to ensure the actual payment of the fine within the specified period.

ATTACK ON THE EDC AND ITS POWERS

23.

23.1 It is unfortunate that the Appeal Chamber has to say something about the CFR's reaction to the release of the First Instance decision. Simultaneous with filing its statement of appeal, the CFR copied the EDC with a letter addressed to the FIDE General Assembly expressing the CFR's dissatisfaction with the First Instance Chamber's decision, the sanction of a temporary exclusion of membership imposed and the EDC's performance of its duties.

- 23.2 It accused the EDC, acting on behalf of FIDE, of having made a deliberate political and unsportsmanlike decision and siding with Ukraine in the military and political confrontation between Russia and Ukraine. The CFR drew attention to Article 8.46 of the EDC Code requiring FIDE officials and employees to remain politically neutral in their dealings on behalf of FIDE with government institutions, national and international organisations.
- 23.3 The view is expressed that, in its decision, the EDC has exceeded its authority and powers under the FIDE Charter and has violated its duties under Article 8.4 of the EDC Code. Accordingly, the CFR asks for a deletion of Article 13.1(e) of the EDC Code.
- 23.4 In the appeal decision in EDC case no. 4/2023 (*Kobalia*), the Appeal Chamber had occasion to draw attention to Rule 29.6 of the EDC Procedural Rules concerning attacks on the EDC. Without suggesting that the CFR has made itself guilty of the conduct contemplated by Procedural Rule 29.6, the sentiments expressed by the CFR to the FIDE General Assembly in its mentioned letter must be deplored.
- 23.5 Members of the EDC perform their functions in good faith, independently and without fear or favour to the interests at stake. In the present case, the CFR was provided with a motivated decision of 36 pages, dealing in great detail with the various arguments and stating the First Instance Chamber's reasons for accepting or rejecting the arguments. If a First Instance Chamber should err in its reasoning or conclusions, then the appropriate remedy is an internal appeal to the Appeal Chamber and, if still dissatisfied, a further appeal to CAS.
- 23.6 There are absolutely no grounds to believe in the present case that the members of the First Instance Panel acted in any way other than in accordance with their good conscience and judgment of the facts of the matter. To accuse the members of

the First Instance Panel of a lack of political neutrality and a breach of Article 8.46 of the EDC Code is unwarranted and completely wrong. The said Article 8.46 clearly has an external focus and does not apply to EDC members sitting in the capacity as a judge in an internal disciplinary case (compare also the definition of “FIDE officials” in the appendix to the EDC Code and Article 16.4 of the FIDE Charter). Moreover, by the very nature of a judge’s function, he or she must make findings for and against the parties before him or her.

- 23.7 The conviction of the CFR does not imply at all that the EDC has sided with the UCF, or has displayed any bias against the CFR. Based upon the CFR’s argument, had the First Instance Chamber acquitted the CFR on all charges, it could have been accused by the UCF of taking sides.
- 23.8 The Appeal Chamber expresses the sentiment that it hopes that in future cases it will be given the space and respect needed to properly fulfil its function as the independent judiciary organ of FIDE. The EDC is an important pillar in the balance of power within FIDE.

CONCLUSION (OPERATIVE PART OF APPEAL DECISION)

24. Having considered all arguments, the Appeal Chamber decides, by unanimity of its members, as follows:
- 24.1 The appeal of Mr Dvorkovich against his conviction on the First Charge succeeds and the conviction is set aside.
- 24.2 The sanction imposed by the First Instance Chamber on Mr Dvorkovich is annulled.
- 24.3 The appeal of the CFR against its conviction on the First Charge succeeds and the conviction is set aside.
- 24.4 The appeal by the CFR against its conviction on the Second Charge fails and the conviction is confirmed and maintained.

- 24.5 The sanction imposed by the First Instance Chamber on the CFR is replaced with the following:
- (a) A fine of €45,000 payable to the FIDE Treasurer within 21 (twenty-one) days from the date of this decision; failing which, a temporary exclusion of membership in FIDE, including any participation in FIDE meetings and events, for a period of 1 (one) year commencing on the 22nd day from the date of this decision.
 - (b) Proof of payment of the fine (if paid) must be submitted to the FIDE Office and the EDC chairman then in office by no later than 21 (twenty-one) days from the date of this decision.
- 24.6 The cross-appeal of the UCF, Mr Baryshpolets and Mr Nielsen fails and is dismissed.
- 24.7 The FIDE Council is urged to adopt and implement the recommendation made in paragraph 22.12 above.
25. In accordance with Article 17.2 and 17.4 of the EDC Code and Procedural Rule 73.1, this final decision of the Appeal Chamber is appealable to the CAS within 21 (twenty-one) days following communication of this decision.
26. The FIDE Office is requested to communicate this decision forthwith to the appellants and respondents and to publish the decision on the FIDE website in due course.

DATE: 12 September 2024

F P Strydom

FRANCOIS STRYDOM:
APPEAL CHAMBER CHAIRMAN