



**Arbitration CAS 2017/A/5042 Iurii Anikieiev v. International Draughts Federation (IDF), award of 2 July 2018**

Panel: Mr Philippe Sands QC (United Kingdom), Sole Arbitrator

*Draughts*

*Disciplinary dispute*

*Breach of party's procedural rights*

*Appeal before CAS on the basis of a denial of justice*

*Exhaustion of actual legal remedies*

*Starting point of a time-limit to lodge an appeal*

*Amendment of request for relief*

1. By disrespecting its own regulations related to jurisdiction of its decision-making bodies and the procedural safeguards of its code of ethics in relation to a potential case of ethical violations, an international federation breaches natural justice and the relevant party's right to a fair hearing.
2. The refusal of a judicial or quasi-judicial body to rule on a request falling within its competence within a reasonable period of time may give rise to an appeal to the CAS on the basis of a denial of justice.
3. Pursuant to art. R47 of the CAS Code, an appeal may be filed with CAS *inter alia* provided that the appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of the relevant body. Such legal remedies however need to be actual remedies, *i.e.* readily and effectively available to an aggrieved party and must grant access to a definite procedure.
4. The moment when a person becomes aware of a decision depends on the circumstances of the case. It may be when the decision is made if that party participates to the relevant assembly or meeting, when it receives the minutes of the relevant meeting, or when it receives formal notification of the decision.
5. Pursuant to art. R56 of the CAS Code, unless the parties agree otherwise or the President of the panel orders otherwise on the basis of exceptional circumstances, the parties shall not, *inter alia*, be authorised to supplement or amend their requests after the submission of the appeal brief and of the answer. Said exceptional circumstances may result of the fact that after two parties agreed before CAS on the implementation of a procedure, one of said parties unjustifiably refuses to adhere to said agreed procedure.

## I. PARTIES

1. The Appellant is a Ukrainian draughts player who has competed successfully at the international level.
2. The Respondent (the International Draughts Federation, “IDF”) is, according to Article 1 of its Charter (the “Charter”)<sup>1</sup>, *“a legal entity – organization established to develop and promote the game of draughts on the traditional 64-squared board, as well as other types of draughts (...) in Bulgaria and around the World, organizing and conducting international sporting events, drawing the World and Continental titles”*.

## II. FACTUAL BACKGROUND

### A. Background facts

3. Below is a summary of the relevant facts and allegations based on the parties’ written submissions, pleadings and evidence adduced. Additional facts and allegations found in the parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has carefully considered all the facts, allegations, legal arguments and evidence submitted by the parties and deemed admissible in the present proceedings, he refers in this Award only to the submissions and evidence he considers necessary to explain his reasoning.
4. These proceedings concern the suspension of the Appellant, for a period of three years (specifically, from 16 December 2016 to 15 December 2019), from participating in all competitions held by the IDF. The Appellant invites the CAS *inter alia* to declare this suspension null and void. The Respondent submits *inter alia* that the CAS has no jurisdiction to do so.
5. The first matter of contention between the parties relates to events in connection with the IDF European Championship in Georgia in November 2016. The Appellant had been intending to participate in this tournament, but was not permitted to do so by the IDF.
6. The Appellant submits that his being prevented from competing was *“not legitimate”* and was based on the IDF’s desire to *“remove strong competitors, including [him]”*. In response, the IDF submits that the Appellant was *“suspended”* from this tournament *“because of repeated publications of biased and unreliable information on the IDF activity, and because of the statements tainting the image of the federation and of draughts-64 in general”*. The translated report of the IDF Board Meeting of 15 October 2016 states, at paragraph 4.2:

*“Following the consideration of applications from the national federations, it was decided not to allow Iurii Anikieiev (Ukraine) to participate in the European Championships 2016 for multiple cases of publication of tendentious and unreliable information about the IDF’s activities and statements, damaging its image and image of draughts-64 in general. This disciplinary measure is of a one-time nature. If violations of the Code [of Ethics] are repeated, more severe measures can be taken against [the Appellant]. In case of carrying*

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<sup>1</sup> Approved by the IDF General Meeting of 29 August 2016

*our sports criteria and the absence of violations of the IDF Code of Ethics [the Appellant] can subsequently be considered for participating in the IDF official competitions (World Championships, etc.)”.*

7. On 18 October 2016 the Appellant sent an email to the IDF President, Mr Vladimir Langin, challenging his exclusion from the European Championship and requesting specific details of the accusations of wrongdoing levelled against him.
8. Further correspondence ensued between Mr Langin and the President of the Ukrainian Draughts Federation (the “UDF”), Mr Anatoliy Yatsenko. By a letter dated 1 November 2016 Mr Yatsenko contested the legitimacy of the Appellant’s exclusion from the European Championship, alleging *inter alia* that it amounted to “*unfair competition and violation by the IDF of the basic sport principle Fair Play in favor of the Russian national team*”. Mr Langin replied by email on 2 November 2016, stating *inter alia* that the Appellant’s exclusion from the European Championship was “*final and not subject to appeal*”. Notwithstanding this, on 12 November 2016 (shortly before the European Championship was due to commence) the Appellant offered to “*waive the rewards from prize fund in favor of the IDF*”, in the event that he was permitted to compete in the tournament and was successful. This offer was not taken up by the IDF and, in the event, the Appellant did not compete at the European Championship.
9. The dispute between the Appellant and the Respondent did not, however, end there. A translated document entitled ‘Short report of the IDF Board meeting’, dated 16 December 2016 (the “Short Report”), records the following decision/resolution being taken/adopted by the IDF Board in respect of the Appellant (the “December 2016 Suspension”):

*“Multiple cases of violation IDF Code of Ethics (paragraphs 2.2.4 and 2.2.8) by international grandmaster [the Appellant] after his suspension from participation in European Draughts-64 Championship 2016 were considered.*

*In accordance with the IDF Code of Ethics (point 3.7.) IDF board decided to suspend [the Appellant] to participate in all official IDF competitions on the three years up to December 15, 2019.*

*It was stressed that the decision of the IDF Board has no purpose persecution of [the Appellant] for what he is citizen of Ukraine and for his political beliefs, or eliminating a competitor, as he has repeatedly tried to represent in the Ukrainian press, commenting that he was not allowed to participate in the European Draughts-64 Championship in Tblisi, Georgia.*

*At the European Championship in Georgia to [the Appellant] were offered the options out of the situation, was explained the position of IDF and the need to comply with the Code of Ethics. Unfortunately after that [the Appellant] embarked on a path of lies and insults in the media.*

*Once again, it was stressed that the [IDF] in recent years has taken a great step forward for the development of draughts-64 and reached a new level of holding official competitions. The relationship between the [IDF] and participants of draughts events are regulated by federation Charter and Code of Ethics. All participants in the federation activities have not only rights but also responsibilities. Compliance with corporate ethics is a necessary condition for the further development and promotion of draughts-64 in the world”.*

10. The Appellant: (a) did not attend the IDF Board Meeting on 16 December 2016; (b) was not warned in advance of the allegations against him, or that he faced a three year period of suspension; and (c) was not afforded the opportunity to make representations in respect of the allegations against him, or the sanction imposed on him.
11. The Appellant was not sent any written notification of the December 2016 Suspension, but the Short Report was published on the IDF's website on 5 January 2017. On 19 January 2017 the Appellant sent an email to Mr Langin, stating that he had been "*unofficially notified*" of the December 2016 Suspension; confirming that neither he nor the UDF had received any official letter concerning his suspension; and requesting that the "*official decision*" be posted to him.
12. The Appellant received no response to this message and so sent a follow-up email to Mr Langin on 9 February 2017. In this email, the Appellant referred to the IDF Code of Ethics (the "Code of Ethics"), observing *inter alia* that the IDF Board did "*not have the authority to decide upon the disciplinary sanctions, which are under the competence of the special body – IDF Ethical Committee*". The Appellant stated that in light of the IDF's conduct, he regarded himself as not being suspended from competition and sought confirmation that he could participate in upcoming IDF tournaments. Otherwise, he asked to be notified of "*the final decision of the IDF's Board*".
13. Again, no response was forthcoming from the IDF.
14. On 28 February 2017 Mr Yatsenko sent an email to Mr Langin, reiterating that no official information had been received from the IDF regarding the Appellant's suspension and seeking confirmation of the position, including whether the decision was "*not subject to reconsideration*".
15. Mr Langin replied to Mr Yatsenko on 2 March 2017, stating that the IDF "*deals with its members, but not individuals*"; that the Appellant's request for confirmation was "*sent in circumvention of the national federation*"; and that it was therefore "*not considered*" by the IDF. Mr Langin referred to the Short Report, published online on 5 January 2017, as the "*official information source of the IDF*". Mr Langin also accused Mr Yatsenko of making "*deliberately misleading and slanderous*" comments in the media regarding the IDF.

## **B. The structure of the IDF, the Charter and the Code of Ethics**

16. The Charter was approved/adopted by the IDF General Meeting of 29 August 2016.
17. Article 26 of the Charter provides that the "*bodies*" of the IDF are: (a) "*The General Meeting*"; and (b) "*The Board*". The General Meeting is described as "*the highest governing body*" of the IDF; it is "*attended by all the members of [the IDF], in person or through their legal representatives or by individuals authorized in written form*".
18. Membership of the IDF is governed by Section V of the Charter.
19. By Article 29 of the Charter, an Ordinary General Meeting is "*held every two years and shall be convened by decision of the Board or upon a request of at least one third of members of [the IDF]*".

20. Article 37 of the Charter provides that an Extraordinary General Meeting is *“held on the proposal of the Board or at the request of at least 1/3 of the members of the [IDF], eligible to vote, not later than two months after the decision”*.
21. Article 40 (5) of the Charter provides that the General Meeting has jurisdiction regarding *“cancellation of the decision of other bodies of the [IDF], which is contrary to law, Charter or other internal documents regulating the activities of the [IDF]”*.
22. Article 43 of the Charter provides that the IDF Board is *“the governing body”* of the IDF.
23. Article 51 (12) of the Charter provides that the IDF Board has jurisdiction *“to perform other activities that are not within the exclusive competence of the General Meeting and other bodies of the [IDF]”*.
24. The Code of Ethics was also approved/adopted by the IDF General Meeting of 29 August 2016.
25. Article 3 of the Code of Ethics is entitled *“Sanctions”* and Article 3.7 stipulates that *“Any player who violates the Code of Ethics may be suspended from participation in all the competitions held by the IDF, or specific types of events for up to **3 years** or fined up to **2,000 euros**”*.
26. The applicable *“Administrative procedures”* for considering and determining an alleged violation of the Code of Ethics are laid down in Article 4 thereof.
27. Article 4.4 of the Code of Ethics provides that the persons/entities entitled to file complaints for consideration by the Ethics Committee are defined as *“National Federations that do not have financial debt to the IDF, their members and the members of the IDF Board”*.
28. The Complainant must address their complaint to the IDF office and the IDF General Secretary; pay a lodgement fee of EUR 100; and clearly set out, in writing, the nature of the complaint.
29. Article 4.7 of the Code of Ethics provides that the Ethics Committee will only consider a complaint that complies with the formalities laid down in Articles 4.1 to 4.6.
30. Article 4.8 of the Code of Ethics provides that the defendant to the complaint *“should have enough time to defend themselves if necessary”*. Article 4.11.1 further provides that the Chairman of the Ethics Committee will, as part of the complaints handling process, *“request an opinion of accused person”* and communicate this to the other members of the Ethics Committee, prior to a decision being taken on the complaint.
31. With regard to the composition of the decision-making body, Article 4.10 of the Code of Ethics provides that:

*“The Ethics Committee is composed from three persons nominated by the Board or the General Meeting and approved by the General Meeting. Members of the Ethics Committee must not be members of the Board”*.

32. The three members of the Ethics Committee were appointed at the IDF General Meeting on 29 August 2016, namely Viktor Osin (President), Bogdan Yanev (member) and Viktor Makarov (member).

33. Article 4.9 of the Code of Ethics is a key provision in the context of these proceedings. It provides as follows:

*“Any decisions made by the Ethics Committee may be subject to appeal at the IDF General Meeting. Any decision of the General Meeting of this appeal may be subject to arbitration in accordance with the Code of Arbitration for Sport in the Sport Arbitration Court in Lausanne, Switzerland”.*

34. With regard to the mechanisms for appealing a decision of the Ethics Committee, Articles 4.11.4 and 4.11.5 provide as follows:

*“4.11.4 After receiving the decision, all the parties involved – the complainant, the accused and the Ethics Committee – have **six weeks** to lodge an appeal to the General Meeting for consideration at the next General Meeting. This must be done by registered letter sent to the IDF General Secretary.*

*4.11.5 If the complainant or the accused party does not agree with the decision taken by the General Meeting, they have **twenty-one days** after receipt of the decision to file a complaint with the Court of Arbitration for Sport in Lausanne, Switzerland”.*

### **III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

35. The Appellant filed his Statement of Appeal on 23 March 2017. A more detailed Appeal Brief was filed on 7 April 2017.

36. The Respondent’s Answer was filed on 2 May 2017. In paragraph 1 of that document, the IDF submitted that *“this case is not subject to the jurisdiction of the Court of Arbitration for Sport”.*

37. Following correspondence between the parties and the CAS Court Office regarding the identity and appointment of the arbitrator, on 9 May 2017, pursuant to Article R54 of the Code of Sports-related Arbitration (the “CAS Code”), the parties were informed of the identity of the Sole Arbitrator who had been appointed to decide the matter.

38. In accordance with Article R55 of the CAS Code, on 17 May 2017 the Appellant filed further written submissions in respect of the IDF’s stated objection to the CAS’s jurisdiction to determine the appeal.

39. On 29 September 2017 the Sole Arbitrator conducted a telephone hearing with the parties in relation to the issue of jurisdiction (as to which, see further below).

#### IV. WRITTEN SUBMISSIONS OF THE PARTIES ON THE ISSUE OF JURISDICTION

40. The Appellant's submissions on the issue of jurisdiction may be summarized as follows:

- Article 4.9 of the Code of Ethics makes specific reference to the CAS as a recognised arbitral body of appeal.
- The Appellant was suspended for an alleged violation of the Code of Ethics.
- By adopting the Code of Ethics, the IDF had "*consented that 'any decision' following the application of the [Code of Ethics], including the disqualification of the players for the alleged violation of the Code (...) may be finally appealed at CAS*".
- The fact that the suspension was imposed (a) by the IDF Board rather than the Ethics Committee and (b) in contravention of the procedural safeguards detailed within the Code of Ethics, "*shall not influence on the existence and validity of the agreement to arbitrate*".
- The Appellant is entitled to the protection of an independent dispute resolution process, as provided by the CAS.
- It would be unfair and unjust to deprive the Appellant of this protection, by virtue of the IDF's decision to disregard the procedures laid down by the Code of Ethics; and the Appellant would be left with no feasible route of appeal.
- The fact that the IDF Board had no authority to suspend the Appellant "*shall not influence on CAS jurisdiction and Player's possibility to appeal*".
- Having regard to the manner in which the Appellant's suspension was decided upon (*i.e.* by the IDF Board, in contravention of the procedures laid down by the Code of Ethics), there was no obligation on the Appellant to pursue any further internal remedies (in particular, by appealing to the General Meeting of the IDF), prior to filing his appeal with the CAS.
- Alternatively, the decision of the IDF Board was "*tantamount*" to and/or should be treated as a decision of the General Meeting, such that the Appellant was entitled to proceed directly to the CAS.
- Further or alternatively, for the reasons outlined in paragraph 61 of the Appeal Brief, the Appellant's right to appeal against a sanction premised on a breach of the Code of Ethics, as defined by Article 4.9 of the Code of Ethics (*i.e.* by appealing to the General Meeting), is "*illusory*" and not a genuine remedy for the purpose of Article R47 of the CAS Code.

41. The Respondent's submissions on the issue of jurisdiction may be summarized as follows:

- The IDF is a legal entity incorporated in Bulgaria and subject to the domestic laws of Bulgaria (in particular, the provisions of the Bulgarian Private International Law Code).
- Resolutions adopted by the IDF Board are “*not open to appeal at the CAS, therefore, CAS does not have jurisdiction to resolve this dispute*”.
- The IDF and the Appellant did not enter into any specific arbitration agreement, and the Charter “*contains no provision on filing an appeal against the IDF Body with CAS*”.
- The IDF has not granted any authority to the CAS to “*adopt any binding resolutions towards the activities of the IDF Board*”.
- Section 4 of the Code of Ethics does not “*touch upon matters of bringing athletes to disciplinary responsibility by the IDF itself at the initiative of the IDF managing bodies (administrative procedure)*”.
- The IDF Board has a general authority to suspend athletes from competitions held by the IDF.
- Resolutions adopted by the IDF Board may be appealed “*efficiently and urgently*” by filing a complaint to the General Meeting, but the Appellant did not seek to pursue any such appeal.
- It would have been open to the General Meeting to cancel the decision of the IDF Board (exercising its jurisdiction specified in Article 40 (5) of the Charter); and the Appellant’s failure to appeal to the General Meeting means that he failed to exhaust all internal remedies available to him.
- Resolutions adopted by managing bodies of non-for-profit organizations may be appealed with a court where an organization is located (in this instance, Bulgaria); and an appeal to a Bulgarian court would be “*more affordable to a party than appeal with CAS*”.
- Articles 4.11.4 and 4.11.5 of the Code of Ethics provide a right of appeal to the CAS only after a complaint has been considered by the General Meeting.

## V. THE TELEPHONE HEARING ON 29 SEPTEMBER 2017

42. In the course of this hearing, the parties orally supplemented their written submissions on the issue of jurisdiction. On behalf of the Appellant, it was submitted *inter alia* that:
- A crucial point was whether the IDF could escape the jurisdiction of the CAS by relying on its own wrongdoing.
  - Once the IDF Board had rendered a decision based on the Code of Ethics, it was estopped from relying on other facts to say that the CAS (appeal) provisions in the Code of Ethics were not applicable.

- The IDF Board had exercised the *de facto* functions of the Ethics Committee and the Appellant should therefore have all rights in respect of that decision, as if it had been taken by the Ethics Committee.
  - If the CAS did not have jurisdiction to determine the Appellant's appeal, he would be left with no actual and effective means of appealing the contested decision.
43. On behalf of the IDF, it was submitted *inter alia* that:
- The CAS could only review decisions of the General Meeting, adopted subsequent to decisions of the Ethics Committee.
  - The Appellant could have filed a complaint with the Ethics Committee himself – in effect, asking the Ethics Committee to confirm that he had *not* breached the Code of Ethics – and he remained free to do so.
  - In the event that the Ethics Committee were to uphold such a complaint, the IDF Board would have to consider that decision and, if it wished to contest the decision, refer it to the General Meeting.
  - The President of the IDF confirmed, however, that if the Ethics Committee issued a decision in favour of the Appellant, he would recommend that the IDF Board follow and accept the decision of the Ethics Committee.

## VI. THE SUSPENSION OF THE PROCEEDINGS

44. Having regard to the parties' oral submissions during the Telephone Hearing on 29 September 2017, the Sole Arbitrator canvassed with the parties the option of suspending the CAS proceedings, pending the completion of a fresh (and *de novo*) internal process, as indicated above. Having considered their respective positions, both parties agreed to adopt this course.
45. In the circumstances, on 4 October 2017 the CAS Court Office sent a letter to the parties, stating as follows:

*“Following the conference call with the Sole Arbitrator on 29 September 2017 (the “Telephone Hearing”), I confirm that the present proceedings shall be suspended until further notice, pending the completion of the internal process as agreed between the parties in the course of the Telephone Hearing (as detailed below).*

*The Sole Arbitrator wishes to express his considerable appreciation and gratitude for the constructive and professional manner in which the Telephone Hearing was conducted by both parties and their counsel.*

*As agreed at the Telephone Hearing, the present proceedings are suspended on the basis of the following understanding of the Sole Arbitrator:*

- *The Sole Arbitrator does not, at this stage, express any view on the jurisdiction of the CAS to determine the Appellant's appeal, or on any aspect of the substantive merits of the Appellant's complaints.*
- *The Appellant shall initiate a procedure with IDF Ethics Committee to determine whether he has committed any violation of the IDF Ethics Code, as previously determined by the IDF Board by its decision of 16 December 2016, on the basis that the President of the IDF Board has indicated his view that the IDF Board shall not object to the consideration of this matter by the IDF Ethics Committee.*
- *The IDF Ethics Committee is expected to render a decision with respect to the Appellant's alleged violations of the IDF Ethics Code, on a de novo basis: (a) expeditiously; and (b) at the latest, within three months of receipt of the Appellant's submission to the IDF Ethics Committee.*
- *In the event that the IDF Ethics Committee renders a decision in the Appellant's favour, the President of the IDF will support that decision and shall recommend that it be respected by the IDF Board.*
- *In the event that the Appellant is dissatisfied with the outcome of this internal process, the Respondent acknowledges that the Appellant may appeal the decision of the IDF Ethics Committee directly to the CAS and to this Tribunal, without prejudice to the jurisdiction of the CAS to determine the Appellant's appeal, or any aspect of the substantive merits of the Appellant's complaints.*
- *The parties have liberty to apply to restore the present proceedings”.*

## VII. EVENTS FOLLOWING THE SUSPENSION OF THE PROCEEDINGS

46. On 18 October 2017, in accordance with the parties' procedural agreement, the Appellant filed a written complaint under the Code of Ethics (the “Formal Complaint”), in relation to the decision of the IDF Board of 16 December 2016. Pursuant to Article 4.11.1 of the Code of Ethics, the Appellant's complaint was directed to the IDF Office and the IDF General Secretary. The Appellant also paid the requisite filing fee of EUR 100, in accordance with Article 4.5 of the Code of Ethics.
47. In the Formal Complaint, the Appellant submitted *inter alia* that the IDF's decision of 16 December 2016 was “*arbitrary and offends the sense of justice and equity*”. In particular, the Appellant contended that:
  - The decision was null and void based on the fact that it was taken in violation of the procedural requirements and fundamental principles of public policy;
  - Alternatively, the decision should be set aside, given that the IDF Board had failed to prove the existence of the violation; and
  - In any event, the sanction imposed was evidently and grossly disproportionate.

48. In section VII of the Formal Complaint, the Appellant requested the following relief:

*“(1) To CONSIDER the Complaint and RENDER a decision on merits.*

*(2) To CONFIRM that the IDF Decision is null and void.*

*(3) Alternatively, to ISSUE a new decision, which sets aside the IDF Decision, confirming that Iurii Anikieiev has not committed any violation under the IDF Code, and that, therefore, there are no consequences to be imposed on him.*

*(4) To REFUND the deposit of EUR 100 to the Player”.*

49. Receipt of the Formal Complaint was acknowledged by the IDF’s Head of Office, Mrs Ekaterina Ivanova, on 24 October 2017. Mrs Ivanova confirmed that *“The Complaint will be directed according to the procedures of the IDF Code of Ethics”*.

50. On 18 November 2017 the Appellant received an email from Mr Osin, which stated that because the UDF *“had not paid an annual membership fee for 2017 and has a financial debt to the IDF”*, the Formal Complaint *“can not be considered by the IDF Ethics Commission and I have to return it to you”*. In this regard, Mr Osin relied on Article 4.4 of the Code of Ethics, which states that *“Only National Federations that do not have financial debt to the IDF, their members and the members of the IDF Board can file a complaint for consideration by the Ethics Committee”*.

51. Mr Osin further stated that the UDF’s membership of the IDF had been suspended with effect from 6 November 2017, in accordance with a decision of the IDF Board. According to the minutes of that board meeting, Mr Langin had voted against the proposal to suspend the UDF’s membership of the IDF, but had been outvoted by five votes to one. The Appellant was informed that he would be entitled to *“apply again to the IDF Ethics Commission after the [UDF] has resolved all formalities regarding the membership in the IDF and the payment of the existing financial debt”*.

52. On 6 December 2017 the UDF submitted a complaint (for the attention of the Ethics Committee) regarding the suspension of its membership of the IDF, which it regarded as unauthorised and improper. The UDF confirmed that it had paid annual membership fees in respect of both 2017 and 2018, in the total sum of EUR 40 (*i.e.* EUR 20 *per annum*). The Sole Arbitrator finds that payment of this sum, on 23 November 2017, has been evidenced and demonstrated by a written bank statement.

53. By an email dated 16 December 2017, which was sent to the IDF office (and copied to Mr Langin), the Appellant: (a) reiterated that the UDF had in fact paid the annual IDF membership fees in respect of both 2017 and 2018; and (b) re-submitted the Formal Complaint.

54. On 6 January 2018, having received no response from the IDF, the Appellant sent a further email seeking clarification in respect of his situation. The Appellant also provided documentary evidence of payments made to the IDF.

55. On 8 January 2018 Mrs Ivanova notified the Appellant that the “*head of the Ethics Commission, is unavailable, as he is on vacation on his main job*”, and stated that “*After returning from vacation, he will respond to you*”.
56. On 16 January 2018 Mr Osin sent a further email to the Appellant, stating as follows:
- “I again inform you that the membership of the [UDF] in the IDF has been suspended, in addition, the Ethics Committee received a complaint from the [UDF]. Therefore, your complaint can not be considered in accordance with paragraph 4.7. of the Ethics Code”.*
57. Article 4.7 of the Code of Ethics states that “*The IDF Ethics Committee shall consider only the application lodged in full compliance with Articles 4.1 – 4.6*”.
58. The Appellant responded to Mr Osin on the same day (16 January 2018), stating (in summary) that:
- Article 4.4 of the Code of Ethics does not refer to National Federations whose membership of the IDF has been suspended; rather it only excludes or precludes (from filing a complaint for consideration by the Ethics Committee) those National Federations who owe a financial debt to the IDF.
  - He had already provided documentary proof that the UDF did not owe any financial debt to the IDF.
  - The Code of Ethics does not specify that a complaint from a Player may not be considered by the Ethics Committee in circumstances where a National Federation (of which the Player is a member) has also filed a complaint. In any event, the Formal Complaint was a different complaint to that filed by the UDF on 6 December 2017.
  - The IDF President had personally assured the Sole Arbitrator that the IDF and the IDF Board would not obstruct the consideration of the Appellant’s complaint by the Ethics Committee.
59. Mr Osin replied to the Appellant on 7 February 2018, stating that:
- “*The IDF President can not influence on the decisions of the Ethics Committee*”; and
  - “*The [UDF], whose membership in the IDF is suspended, loses all rights based on the membership, including the right to consider cases in the Ethics Commission, the members of the federation, respectively, also lose all rights based on the membership of the federation*”.
60. In light of the IDF’s ongoing refusal to refer the Formal Complaint to the Ethics Committee, on 19 February 2018 the Appellant sent a letter to the CAS Court Office, in which he:
- Explained the series of events, following the Telephone Hearing on 29 September 2017.

- Alleged that the IDF was seeking to obstruct justice.
- Stated that he had “*no other choice but to ask the CAS to proceed with my initial appeal and to render a final award*”.
- Made a “*formal request*” to change his prayer for relief, pursuant to Article R56 of the CAS Code, so as to permit him to appeal “*the refusal of the IDF Ethics Committee to proceed with my complaint*”.
- Requested, in the event that permission was not granted to amend his prayer for relief, an operative part of the CAS Award by 26 February 2018.

61. A copy of the Appellant’s letter was sent by the CAS Court Office to the IDF.
62. On 22 February 2018 the Appellant provided translated copies of the relevant correspondence and other supporting documentation. These were provided by the CAS Court Office to the IDF on the same day.
63. The IDF did not submit any further representations, whether in respect of the Appellant’s request to change his prayer for relief or otherwise.

## VIII. JURISDICTION

64. The CAS does not have an unfettered right to determine appeals against decisions taken by sports federations, or by particular bodies within such federations. Article R47 of the CAS Code provides as follows:

*An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body.*

*An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned.*

65. The Appellant and the IDF did not agree a specific arbitration agreement and there is no reference to the CAS in any Articles of the Charter. The only references to the CAS are to be found in the Code of Ethics, Articles 4.9 and 4.11.5. For ease of reference, those Articles provide as follows:

*4.9 Any decisions made by the Ethics Committee may be subject to appeal at the IDF General Meeting. Any decision of the General Meeting of this appeal may be subject to arbitration in accordance with the Code of Arbitration for Sport in the Sport Arbitration Court in Lausanne, Switzerland.*

*4.11.5 If the complainant or the accused party does not agree with the decision taken by the General Meeting, they have **twenty-one days** after receipt of the decision to file a complaint with the Court of Arbitration for Sport in Lausanne, Switzerland.*

66. Article 4.4 of the Code of Ethics specifically identifies “members of the IDF Board” as a category of persons entitled to “file a complaint for consideration by the Ethics Committee”. Accordingly, in the Sole Arbitrator’s judgment, there was nothing to preclude any members of the IDF Board who had genuine concerns about the Appellant’s compliance with the Code of Ethics from addressing those concerns to the Ethics Committee for investigation and determination, in accordance with the Code of Ethics. As noted above, however, that is not what happened in this case.
67. In short, by taking the action it did on 16 December 2016, the IDF Board elected to bypass the Ethics Committee (which, according to the Code of Ethics, is the body specifically tasked with investigating and determining alleged breaches of the Code of Ethics) and to disregard the procedural safeguards laid down by the Code of Ethics. The Sole Arbitrator considers that on any reasonable analysis, what happened in this case was an egregious breach of natural justice and the Appellant’s right to a fair hearing. The circumstances are such as to risk bringing the IDF into disrepute.
68. With regard to the appeal processes described in Article 4.9 of the Code of Ethics, it is common ground between the parties that: (a) the Ethics Committee has not actually taken any decision in respect of the Appellant; (b) the Appellant did not file any appeal against his suspension with the General Meeting; and (c) no General Meeting has been convened to consider the legitimacy or propriety of the Appellant’s suspension.
69. Notwithstanding the above, the Sole Arbitrator has reached the conclusion the CAS does have jurisdiction in respect of the Appellant’s appeal, as amended (as to which, see further Section XI below). In this regard, the Sole Arbitrator makes the following findings:
  - Pursuant to the IDF’s own governing rules and regulations, the body that is empowered to determine alleged breaches of the Code of Ethics is the Ethics Committee.
  - On the IDF’s own case, as explained during the course of the Telephone Hearing on 29 September 2017, the Appellant was entitled to submit a complaint to the Ethics Committee, *inter alia* seeking a determination that he had not violated the Code of Ethics.
  - In accordance with the procedure agreed between the parties at the Telephone Hearing on 29 September 2017 (the “Agreed Procedure”), the Appellant duly did so.
  - According to CAS jurisprudence, the refusal of a judicial (or quasi-judicial) body to rule on a request falling within its competence, within a reasonable period of time, may give rise to an appeal to the CAS, on the basis of a denial of justice. In CAS 2005/A/944, the Panel held as follows (at paragraph 7 of the Award):

*“As this Panel already stated in its decision of 15 July 2005, if a body refuses without reasons to issue a decision or delays the issuance of a decision beyond a reasonable period of time, there can be a denial of justice, opening the way for an appeal against the absence of a decision (CAS 2005/A/899; see also CAS award of 15 May 1997, published in Digest of CAS Awards 1986-1998, p. 539; see also PAULSSON J., Denial of justice in international law, New York 2005, pp. 176-178). Swiss case law also expressly provides that when a body fails to rule within a reasonable period of time (which depends on the circumstances of each case) on a request that falls within its competence, it commits a so-called “formal” denial of justice (see, e.g., decision of the Swiss Federal Tribunal, ATF 119 Ib 311; ATF 107 Ib 160; see also HOTZ R., Die Schweizerische Bundesverfassung, Kommentar, Zurich 2002, n. 10 ff ad Art. 29)”.*

- On the facts of the present case, as reflected in the evidence before the Sole Arbitrator, the Ethics Committee does have competence to rule on the Formal Complaint, which has been filed by the Appellant in accordance with Articles 4.1 to 4.6 of the Code of Ethics.
- Article 4.9 of the Code of Ethics specifically provides for a right of appeal to the CAS in respect of a decision taken pursuant to the Code of Ethics, in circumstances where the first instance decision of the Ethics Committee has been appealed to the General Meeting. Accordingly, the IDF’s own rules envisage the prospect of the CAS being an arbiter in respect of appeals concerning ethical violations alleged to have been committed by, *inter alia*, players. That is the substance of this case.
- With regard to the obligation on a party to exhaust internal remedies before appealing to the CAS, on the exceptional facts of the present case the prospect of the Appellant appealing a decision of the Ethics Committee to the General Meeting under Article 4.9 of the Code of Ethics is: (a) practically not possible under the literal wording of that provision, on the basis that the Ethics Committee has refused to adopt or render a “decision” in respect of the Formal Complaint; and (b) in any event, an illusory and ineffective remedy, on the basis *inter alia* that the Appellant is unable to compel the convening of a General Meeting (or an Extraordinary General Meeting), and the next General Meeting is not due to take place until circa. 29 August 2018.

70. In relation to this last point, the Sole Arbitrator has taken account of the decision of the CAS in CAS 2007/A/1365, in which the Panel held as follows (underlining added):

*“31. The Panel notes that the present appeal procedure was brought by WADA to CAS against the Executive Committee’s decision of 31 July 2007. If, under FILA rules, WADA has some internal legal remedies available to it against the Appealed Decision, WADA’s appeal would not be admissible.*

(...)

*35. (...) the Panel is not able to pinpoint in the FILA Constitution and Regulations any internal legal remedy against decisions taken by the FILA Executive Committee. Nor can it be said that, in*

*principle, all FILA Executive Committee's or FILA Bureau's decisions might be reviewed by the FILA Congress. In this respect, the Panel recalls that another CAS Panel has stated that an international federation's rule granting the opportunity to submit a given matter to the international federation's congress is not "an actual 'remedy' in the strict legal sense, because it does not grant (...) the right to call an extraordinary Congress. Nor waiting a couple (or more) years for the next ordinary Congress, with no specific procedure, may amount to a 'remedy'. To be such, the internal remedy must be readily and effectively available to the aggrieved party and it must grant access to a definite procedure" (CAS 2003/O/466[...]).*

36. *Therefore, the Panel is of the view that, after the Executive Committee adopted the Appealed Decision, WADA had no legal remedy available to it in order to preserve its rights other than an appeal to the CAS. In other words, the Appealed Decision was a "final" decision within the FILA legal system; hence, WADA complied with the requirement of exhaustion of legal remedies set out by Article R47 of the CAS Code".*
71. As to the question of whether a notional ability to submit a complaint to the General Meeting constitutes "*an actual 'remedy' in the strict legal sense*", to which the Sole Arbitrator has concluded the answer is in the negative, as set out in paragraphs 19 and 20 of the Award above:
- Article 29 of the Charter provides that the "*Ordinary GM is held every two years and shall be convened by decision of the Board or upon a request of at least two thirds of members of the Organization*" – accordingly, the Appellant had no right or power to compel the prompt convening of a General Meeting, even if a decision of the Ethics Committee had in fact been rendered; and
  - Article 37 of the Charter provides that "*The Extraordinary General Meeting is held on the proposal of the Board or at the request of at least 1/3 of the members of the Organization, eligible to vote, not later than two months after the decision*" – again, therefore, the Appellant had no right of power to compel the prompt convening of an Extraordinary General Meeting, in order to challenge a decision made by the Ethics Committee.
72. Furthermore, the Agreed Procedure specifically envisaged a direct route of appeal to the CAS, *i.e.* bypassing the General Meeting, in respect of any decision taken by the Ethics Committee following the submission of the Appellant's complaint to that body. In the Sole Arbitrator's judgment it was implicit in the Agreed Procedure that the Appellant could also appeal, directly to the CAS, a refusal on the part of the Ethics Committee to adjudicate upon the Appellant's complaint, in circumstances in which it was submitted in accordance with the Agreed Procedure.

## **IX. ADMISSIBILITY**

73. Article R49 of the CAS Code provides as follows:

*In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt*

*of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders his decision after considering any submission made by the other parties.*

74. In its Answer, the IDF contends that the “*Appellant defaulted a term of filing an appeal under R49 Code*”, although it is unclear from paragraphs 16 to 20 of that document when, on the IDF’s case, time started to run for the Appellant to file his appeal (without prejudice to its submission that the CAS does not have jurisdiction to determine the appeal).
75. The Sole Arbitrator notes that in Article 4.11.5 of the Code of Ethics, the time limit for appealing against a decision taken by the *General Meeting* (with regard to an alleged violation of the Code of Ethics), to the CAS, is twenty-one days after receipt of the decision. This is consistent with Article R49 of the CAS Code, which refers to a period of 21 days “*from the receipt of the decision appealed against*”.
76. With regard to the issue of time limits, the Appellant submits as follows:
- The Appellant has never in fact received an official suspension decision from the IDF.
  - The IDF intentionally refused to provide the Appellant (and his federation) with the official decision, notwithstanding that Article 4.11.3 of the Code of Ethics stipulates that such a decision “*shall be communicated to the Chairman and all parties of the conflict*”.
  - The Appellant and his federation had explicitly asked for an official decision to be communicated to him on three occasions (on 19 January 2017, 9 February 2017 and 28 February 2017).
  - Subsequent to these requests, on 2 March 2017 the IDF informed the Appellant that the “*decision on suspension*” was “*published on the official website of the IDF (...) on 5 January 2017*”, and that this internet resource “*is the official information source of the IDF*”.
77. On the facts of this case, the Sole Arbitrator does not consider that the time limit under Article R49 of the CAS Code started to run from the point in time when the Appellant was unofficially notified of his suspension (*i.e.* on 19 January 2017), absent: (a) any formal confirmation of the decision; or (b) the provision by the IDF of any reasons, explanation or supporting documentation, or indeed any direction as to where the written decision could be located. The Sole Arbitrator notes in particular the observations of the CAS in CAS 2007/A/1423, where it was held (at paragraph 54 of the Award) that “*The moment when a person becomes aware of a decision depends on the circumstances of the case. It may be, for example, when the decision is made if that party participates to the relevant assembly or meeting, it may be when he received the minutes of the relevant meeting, or when it receive formal notification of the decision [sic]*”. In the present case: (a) the Appellant was not invited to participate in the IDF Board Meeting on 16 December 2016, and did not do so; (b) he was not provided with the minutes of that meeting; and (c) despite repeated requests, he was

not officially and formally notified of the suspension decision, and provided with a hyperlink to that decision, until 2 March 2017.

78. In the circumstances, the Sole Arbitrator finds that the Appellant had twenty-one days from 2 March 2017 to file his appeal with the CAS.
79. The Appellant's Statement of Appeal was filed on 23 March 2017, namely within that 21 day time limit.
80. On 31 March 2017, *i.e.* within the time limit for the filing of an Appeal Brief (as provided in Article R51 of the CAS Code), the Appellant requested a five-day extension of the time limit to file the Appeal Brief, which would otherwise have expired on 2 April 2017. This request was granted by the CAS Secretary General on 31 March 2017 and the Appeal Brief was subsequently filed by the Appellant on 7 April 2017, in compliance with the extended time limit.
81. In the circumstances, the Sole Arbitrator finds that the appeal is admissible.

## **X. APPLICABLE LAW**

82. Article R58 of the CAS Code provides as follows:

*The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.*

83. The "*applicable regulations*" in this case are the Charter and the Code of Ethics.

## **XI. THE APPELLANT'S REQUEST TO AMEND HIS REQUEST FOR RELIEF**

84. By his letter dated 19 February 2018, the Appellant filed a request to change his prayer for relief, pursuant to Article R56 of the CAS Code, so as to permit him to appeal against "*the refusal of the IDF Ethics Committee to proceed with my complaint*".

85. Article R56 of the CAS Code provides as follows:

*Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer.*

86. On the unusual and exceptional facts of this case - and in particular having regard to the Telephone Hearing between the Parties and the Sole Arbitrator on 29 September 2017 - the

Sole Arbitrator concludes that the Appellant should be granted permission to amend his request for relief, so as to permit him to challenge, in these proceedings, the refusal of the IDF Ethics Committee to proceed with (*i.e.* to consider and to issue a determination in respect of) the Formal Complaint.

87. The Appellant has acted in accordance with the Agreed Procedure. He validly filed the Formal Complaint with the Ethics Committee. The IDF, however, has not acted in accordance with the Agreed Procedure. The Sole Arbitrator does not consider that there is any justification for the IDF's arbitrary refusal to adhere to the Agreed Procedure. The Sole Arbitrator notes that Article 15(6) of the Swiss Rules of International Arbitration obliges all participants in arbitral proceedings to act in accordance with the requirements of good faith. Regrettably, the Sole Arbitrator does not consider, in the particular circumstances of these proceedings, to conclude that the IDF has respected or applied that principle.
88. In the circumstances of this case, which are exceptional, the Sole Arbitrator concludes that it is appropriate, and in the interests of justice, to permit the Appellant to amend his request for relief.

## **XII. MERITS**

89. As set out above, at paragraphs 10, 58 – 60, 67 and 87 in particular, the Appellant's due process rights have been violated by the IDF's conduct and treatment of him. In the first instance, the IDF Board bypassed the procedures and natural justice safeguards that are laid down in its own governing rules and regulations (*i.e.* Section 4 of the Code of Ethics), when suspending the Appellant for an alleged violation of the Code of Ethics. Having then expressly agreed (in the course of the Telephone Hearing on 29 September 2017) that the Ethics Committee would reconsider the matter *de novo* upon a validly filed request from the Appellant, and do so expeditiously, the Appellant has been left in a situation where his request for a determination by the Ethics Committee has, without justification, effectively been disregarded.
90. In the circumstances, the Sole Arbitrator concludes that:
- in the absence of any decision as to suspension by the Ethics Committee, the December 2016 Suspension shall be annulled;
  - the matter shall be referred back to the Ethics Committee for an expeditious determination of: (a) whether the Appellant committed any breach of the Code of Ethics, as alleged by the IDF; and (b) if so, what (if any) sanction ought to be imposed for such breach, having regard to the period of time for which the Appellant has already been suspended from IDF competitions; and
  - on the basis of the commitment made by the Respondent in the course of the Telephone Hearing on 29 September 2017, the Appellant shall have the right to appeal the decision of the Ethics Committee directly to the CAS.

## ON THESE GROUNDS

### **The Court of Arbitration for Sport rules that:**

1. The CAS has jurisdiction to hear the appeal filed by Mr Iurii Anikieiev on 23 March 2017 - as amended, pursuant to Mr Iurii Anikieiev's request of 19 February 2018 - against the decision of the Board of the International Draughts Federation of 16 December 2016.
2. The appeal filed by Mr Iurii Anikieiev on 23 March 2017 - as amended, pursuant to Mr Iurii Anikieiev's request of 19 February 2018 - against the decision of the Board of the International Draughts Federation of 16 December 2016, of which he was informed only on 2 March 2016, is admissible.
3. The decision of the Board of the International Draughts Federation of 16 December 2016 to suspend and prevent Mr Iurii Anikieiev from participating in all competitions held by the International Draughts Federation for a period of three years (from 16 December 2016 to 15 December 2019) is annulled.
4. The matter is referred back to the Ethics Committee of the International Draughts Federation for an expeditious determination of: (a) whether Mr Iurii Anikieiev committed any breach of the Code of Ethics, as alleged by the International Draughts Federation; and (b) if so, what (if any) sanction ought to be imposed for such breach, having regard to the period of time for which Mr Iurii Anikieiev has already been suspended from competitions organised by the International Draughts Federation.
5. (...).
6. (...).
7. All further requests for relief are dismissed.