



**Arbitration CAS 2017/A/5131 Shaker Alafoo v. Hisham Al Taher, Mehrdad Pahlevanzadeh & Bahrain Mind Sports Association, award of 7 June 2018**

Panel: Mr Alexander McLin (Switzerland), Sole Arbitrator

*Chess*

*Alleged violations of the FIDE Code of Ethics in the context of elections*

*CAS jurisdiction*

*Standing to be sued and obligations of the appellant in this regard*

1. For an arbitral tribunal to have jurisdiction, the following conditions must be satisfied: (i) the subject-matter of the dispute is capable of settlement by arbitration; (ii) the arbitration agreement is valid in terms of form and substance; (iii) the dispute is within the scope of the arbitration agreement both *ratione materiae* and *ratione personae*; and (iv) the parties had the capacity to enter into a binding arbitration agreement. Issues of jurisdiction and standing (whether to sue, or to be sued) can be somewhat intermingled. This being said, the question of the jurisdiction of CAS must be considered *stricto sensu*.
2. It is the federation, association or other sports body that took the appealed decision that must be the party (respondent) to the procedure. Other parties may exceptionally be named as respondents in addition to this if the appellant has claims against them, but only provided the body having taken the appealed decision is present as a party. In a way, the federation or association that took the decision acts as an “anchor respondent” which allows for the potential presence of other respondents, but without which an appeal cannot subsist against the latter. Regardless of whether or not legal representation has been obtained in the initial stages of proceedings before the CAS, it remains the appellant’s responsibility to meet the necessary requirements of an appeal, in particular by identifying the appropriate respondent(s). It is not possible to circumvent the obligation to name the (right) respondent already with the statement of appeal based on Article R48 CAS Code by requesting to join such party at a later stage. The CAS Code does not allow such a ‘correction/substitution’ of a respondent, especially when the time limit to file the appeal has expired. The substitution of a respondent through joinder is further not possible based on Article R56 CAS Code.

## I. PARTIES

1. Mr Shaker Alafoo (the “Appellant”) is a Bahraini national born on 1 January 1969, domiciled at Al Shahab Avenue, Building 230, Juffaire, 323 Manama, Bahrain. He is a chess player and a former employee of the Third Respondent.

2. Mr Hisham al Taher (the “First Respondent”) is the current General Secretary of the Asian Chess Federation, with its address at PO Box 66511, Al Ain, United Arab Emirates.
3. Mr Mehrad Pahlevanzadeh, (the “Second Respondent”) is the current Treasurer of the Asian Chess Federation.
4. The Bahrain Mind Sports Association (“BMSA” or the “Third Respondent”), with its address at PO Box 26717, Manama, Bahrain is the Bahraini national governing body for mind sports, including the sport of chess. It is a member of the Fédération Internationale des Echecs (“FIDE”) or World Chess Federation, the international governing body for chess, domiciled at Reymond & Associés, avenue de la Gare 1, 1002 Lausanne, Switzerland.
5. The First Respondent, Second Respondent and Third Respondent are referred to jointly as the “Respondents”.
6. FIDE has filed a request to be considered an *amicus curiae* in the present proceedings, and has filed a submission accordingly.

## II. FACTUAL BACKGROUND

7. Below is a summary of the relevant facts and allegations based on the parties’ written submissions and evidence adduced. Additional facts and allegations found in the parties’ written submissions and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, he refers in his Award only to the submissions and evidence it he considers necessary to explain its his reasoning.
8. In August 2016, the Appellant, in addition to being the manager of the BMSA, was a member of the electoral ticket of Mr. Prospero Pichay, a candidate for the presidency of the Asian Chess Federation (the “ACF”).
9. Following the presidential election, which Mr Pichay lost to Sheikh Sultan Bin Khalifa Al Nehyan of the UAE, the Appellant filed a complaint in August 2016 (supplemented in September and November 2016) before the FIDE Ethics Commission (the “ETH”) against the Respondents concerning alleged violations of the FIDE Code of Ethics in the context of the election. Specifically, these alleged violations concerned the supposed acceptance and non-disclosure of payments in return for political support of a candidate for the presidency of the ACF who was running against Mr Pichay.
10. The ETH heard the matter on 7 April 2017 and ultimately issued its decision on 18 April 2017.
11. In the context of the proceedings before the ETH, the Appellant requested the recusal of one of its members on the basis of a potential conflict of interest.

12. In its decision (the “Appealed Decision”), the ETH concluded *inter alia* as follows:

“...

4. *The ETH notes the complainant’s request for the recusal of the Asian representative on the ETH on the basis of a potential conflict of interest, but finds that the investigation has disclosed no grounds which require Mr. Rajesh Hari Joshi to recuse himself and rejects the request for recusal.*

...

7. *The ETH notes that although it may have been justified for Mr. Al Afoo to bring a complaint to the ETH, it records that the ETH cannot find any merit in or ground for the allegation that the financial assistance was given with a corrupt purpose.*

8. *Accordingly, the ETH unanimously rules that:*

8.1 *The respondents are not guilty of any violation of art. 2.1 or 2.2.2 of the FIDE Code of Ethics.*

8.2 *The case no. 4/2016 is dismissed. ...” (Emphasis original).*

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

13. On 5 May 2017, the Appellant filed his statement of appeal with the Court of Arbitration for Sport (“CAS”).
14. On 16 May 2017, the CAS Court Office notified all Parties of the receipt of the appeal, and of the relevant provisions governing deadlines, costs, the arbitration panel and the language of arbitration. It notified the Respondents that the Appellant had requested for the matter to be referred to a sole arbitrator.
15. The same day, the CAS Court Office notified FIDE of the appeal and of the Code Article R41.3 provision allowing it to participate in the proceedings as a party, should it wish to do so. It also requested an unmarked copy of the Appealed Decision.
16. On 20 May 2017, the First Respondent wrote to the CAS Court Office on behalf of the Respondents, stating that the Respondents did not agree that the matter be dealt with by a sole arbitrator, but that a panel of three arbitrators should rather be constituted. The letter also remarked that the Respondents reserved all their rights, including the right to object to CAS jurisdiction.
17. Also on 20 May 2017, the Appellant submitted an appeal brief referring to his earlier statement of appeal.
18. On 22 May 2017, the CAS Court Office notified the parties of the deadline for Respondents’ answers, and of the fact that the President of the CAS Appeals Arbitration Division, or her Deputy, would decide whether or not the matter would be submitted to a sole arbitrator or to a panel of three arbitrators once the position of the Third Respondent had been received.

19. On 23 May 2017, the BMSA communicated its position that it wished for a panel of three arbitrators. It also generally reserved its rights, including to object against CAS jurisdiction.
20. FIDE wrote to the CAS on 29 May 2016, stating that it wished to take part in the proceedings as *amicus curiae* within the meaning of Article R41.4(6) of the Code, and conveyed its arguments.
21. On 30 May 2017, the CAS Court Office also communicated to the parties the decision of the President of the CAS Appeals Arbitration Division to submit the matter to a sole arbitrator.
22. On 8 June 2017, the attorney for the Respondents provided his powers of attorney and explicitly reserved his clients' rights to challenge CAS jurisdiction. The following day, he requested a 10-day extension to file the Respondents' answer brief, which, following an objection from the Appellant, was ultimately granted by the President of the CAS Appeals Arbitration Division on 19 June 2017.
23. The Respondents filed their answer brief on 22 June 2017.
24. On 23 June 2017, the CAS Court Office notified the parties of the seven-day deadline granted to the Appellant to file his comments on the Respondents' objection to the jurisdiction of CAS. It also informed the parties of the appointment of Mr Murray Rosen QC, barrister in London, United Kingdom, as sole arbitrator.
25. On 26 June 2017, the CAS Court Office notified the parties of the identity of the Appellant's counsel, and of their disclosure that Messrs Saoul and Gregoire are from the same barristers' chambers as Mr Rosen.
26. Also on 26 June 2017, the CAS Court Office notified the parties of Mr Rosen's expressed wish to emphasise that "*Although I am a member of the same chambers as the appellant's counsel, I practice solely as a "neutral" arbitrator, mediator and judge. We are a large set and it is not uncommon for several members to be involved in the same matter as opponents and/or tribunal members. We have policies and procedures to avoid any risk at all of incorrect communication. In any event I would never speak to counsel in chambers or elsewhere about a case in which we each have a role, or anything relating to it*".
27. The same day, the Respondents objected to the appointment of Mr Rosen, and the CAS Court Office communicated to the parties that Mr Rosen had decided to step down as sole arbitrator.
28. On 30 June 2017, the CAS notified the parties of the appointment of Mr Alexander McLin, attorney-at-law in Geneva, Switzerland, as Sole Arbitrator.
29. The same day, the Appellant sought an extension of 28 days to file his response to the Respondents' objection to the jurisdiction of CAS.
30. On 4 July 2017, the Respondents commented that, while they did not object to the extension, the amount of time proposed was too lengthy. The same day, the Sole Arbitrator granted the Appellant an extension of 15 days.
31. On 21 July 2017, the Appellant filed his comments on jurisdiction.

32. On 25 July 2017, the Respondents responded by raising objections to the admissibility of the amended prayers for relief in the Appellant's 21 July 2017 submission, and to parts of the submission that it contended were beyond the scope of the issue of jurisdiction. They also reiterated their objection to CAS jurisdiction. The Appellants responded the same day with a brief justification regarding the nature of their submission.
33. On 17 August 2017, the CAS Court Office wrote to the parties, informing them of the Sole Arbitrator's decision to bifurcate the proceedings and render a preliminary decision on jurisdiction.

#### IV. SUBMISSIONS OF THE PARTIES

34. The Appellant's submissions, in essence, may be summarized as follows. The Appellant's statement of appeal (which he indicated should be considered as his appeal brief) was submitted *pro se*, whereas in his further submission he was represented by counsel.

- In his statement of appeal, to be considered as his appeal brief, the Appellant contends that the ETH ignored certain important evidence in the Appealed Decision, namely:
  - A letter signed by the ACF General Secretary (the First Respondent), addressed to the BMSA;
  - An alleged admission by ACF Treasurer (the Second Respondent) that he is presenting untrue and fake financial reports to the ACF Continental Assembly which do not properly reflect ACF expenditures;
  - An alleged admission by the BMSA that they "accepted and received those undisclosed funds for the purpose as stated in the letter", and that the existence of said letter was never denied by the BMSA.

- In his submission in response to the Respondents' challenge for lack of jurisdiction, the Appellant makes the following clarification:

He states that the letter referred to in the statement of appeal "*gave rise to a reasonable suspicion of wrongdoing*", in that "*In 2014, an amount of USD 35 000 was provided as (\$5000 + 25000 + 5000). Please note that the subsidy included an amount allocation for purchasing a business air ticket for the Secretary-General, to participate in the meetings of the International and the Asian Chess Federation **and to support the campaign of Sheikh Sultan Bin Khalifa bin Shakhboot Al Nahyan for the presidency of the new term for the Asian Federation***" (emphasis Appellant's).

- That this presented a compelling case of unethical conduct (the offer and acceptance of consideration with a view to influencing the result of an election into FIDE office, something that is expressly prohibited under the FIDE Code of Ethics (para. 2.1).
- The Appellant then goes on to make the following arguments:
  - On the correct party to respond to the appeal

- The Appellant initially acted pragmatically by seeking advice from the CAS in order to file his appeal. In representing himself, he cannot be held to the same standards as a lawyer, and he should not be expected to master the technical legal considerations associated with determining the party or parties against whom to bring the appeal.
- Given the position taken by FIDE (*infra*), the latter should be joined as a party to the proceedings, at which point their comments on the issue of jurisdiction can be considered. The existing Respondents would not be prejudiced as it would be consistent with their positions as to who should be a party to the present appeal.
- On the alleged lack of jurisdiction
  - Once FIDE is joined to these proceedings, the objection on the ground of lack of jurisdiction falls away.
  - Jurisdiction is found in the FIDE Code of Ethics para. 4.5, which provides that:

*“Any decisions made by the Ethics Commission may be the object of appeal arbitration proceedings in accordance with the Code of sports-related arbitration of the Court of Arbitration for Sport in Lausanne, Switzerland”.*
  - It is also found in the FIDE Statutes, at rule 13.1 of the FIDE Handbook, which states:

*“Notwithstanding any provisions to the contrary in these Statutes, any final decision taken by a FIDE organ (including the Ethics Commission), and any decision made by the Electoral Commission (Chapter 8, Art. 3.4 of the Statutes) may be challenged exclusively by way of appeal before the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland, which will resolve the dispute in a final and binding manner. Only parties directly aggrieved by a decision may appeal to the CAS. The time limit for appeal is twenty-one days from receipt by the appellant of the decision appealed against or, in the case of a decision by the FIDE General Assembly, twenty-one days from the closed of the General Assembly. The time-limit for appeal against the decisions of the Electoral Commission is laid down in Chapter 8, Art. 3.4 of the Statutes”.*
  - The Appellant was “directly aggrieved” by virtue of having run on the presidential ticket of the losing party in the 2014 ACF presidential elections. Had his candidate won the presidency, the Appellant would have become ACF Treasurer. This was recognized by the ETH as a “personal interest”. In acting as a whistleblower, he was also acting in the interests of the sport as a whole.
- On the alleged lack of standing and other objections
  - The question of lack of standing to be sued (passive standing) also falls away once FIDE becomes a Respondent to the present proceedings.
  - The Appellant clearly has a legitimate interest in the proceedings for the reasons stated above. It would be absurd to conclude otherwise. The Appellant was identified as the “Complainant” as well as one of the “Parties” in the Appealed Decision.

- The Appellant has met the only applicable test (Rule 13.1 of the FIDE Handbook). There is no basis to suggest that “*a decision of the FIDE Ethics Commission can in any event only be appealed by the party that is imposed a sanction by the Commission*”, as alleged by the Respondents.
  - In response to the Respondents’ argument that the “*submissions of Appellant do not contain any statements of fact or any legal argumentation on how the appealed decision issued by the ETH FIDE would infringe the FIDE Code of Ethics*”, the Appellant points out that at the time that the appeal was lodged, the ETH had not provided the reasons for its decision, which were provided only on 3 July 2017, well after the deadline for doing so. At the time, the Appellant was acting *pro se*; he only obtained *pro bono* legal advice later on and, notwithstanding, his Statement of Appeal satisfies all the requirements of R48 of the Code. In any event, the nature of the appeal is obvious.
  - It is incorrect and inflammatory to suggest that the Appellant has filed the appeal for “*political and revenge purposes*”.
- The Appellant makes the following requests for relief in his appeal brief:
    - “- *Life time ban of Mr. Hisham Al Taber*
    - *Life time ban of Mr. Mebrdad Pahlavanzadeh*
    - *Suspension of Bahrain Mind Sports Association from FIDE to the maximum term*
    - *Revocation of the results of the election of Asian Chess Federation held on August 11 2014 in Trompso – Norway*
    - *Financial compensation to the appellant to be decided by CAS*”.
  - The Appellant further makes the following “conclusion” as part of his submission in response to the jurisdictional objection:

*‘In sum, the Appellant submits that:*

    - a. *FIDE should be joined as a Respondent;*
    - b. *The existing Respondents shall be treated as affected parties, should they wish;*
    - c. *No order as to costs should be made.*

[...]

*The Appellant acknowledges that, should FIDE be joined as a Respondent CAS may wish to make consequential orders to allow:*

    - a. *FIDE to respond to the case in a more substantial manner than its letter of 29 May 2017 (including to take any jurisdictional points which it may wish to raise, albeit the Appellant repeats the points made above that it would be troubling if an International Federation sought to shut out an appeal such as this on jurisdictional grounds, so as to deprive a member of the legal rights plainly afforded to him under the FIDE Handbook and Code of Ethics, with the effect that a genuine and serious concern as to unethical conduct within the sport of chess is shielded from independent scrutiny. In the present day and age, an appeal like this, and the transparency and scrutiny that it brings, should be welcomed); and*
    - b. *The Appellant to clarify its case, should any such clarification be needed, now that the reasons for FIDE ETH’s decision have been produced and/ or respond to any submissions lodged by FIDE*”.

35. The Respondent's submissions, in essence, may be summarized as follows:

- CAS does not have jurisdiction to hear this appeal due to (a) the lack of an arbitration agreement between the Appellant and the Respondents; (b) the lack of a "statutory clause" of the BMSA that Appellant could use to confer jurisdiction over the BMSA; (c) the FIDE statutes do not confer a jurisdictional basis for an appeal directed against the Respondents, and (d) a decision of the ETH can only be appealed by a party upon which it has imposed a sanction, which is not the case in this matter.
- The Appellant lacks (active) standing to sue as he has no legitimate personal interest.
- By virtue of the fact that the Appellant did not name FIDE, the ETH (or indeed the ACF) as respondents, the institution having rendered the appealed decision is absent from the present procedure, resulting in a lack of the necessary "passive" standing (standing to be sued). The Appellant is asking for revocation of a decision of the ACF General Assembly, while the latter association is not a party to the present proceedings. The CAS cannot issue a decision against an entity that has not been named as a respondent.
- Any challenge to the ACF General Assembly decision of 11 August 2014 is in any event manifestly late.
- The Appellant's submissions do not meet the prerequisites of an appeal brief before CAS and the appeal should therefore be deemed as withdrawn in accordance with Article R51 of the Code.
- The appeal has been filed for "*political and revenge purposes*" and as such generally lacks legal merit.
- The Respondents make the following prayers for relief:
  - "... the Respondents respectfully requests that the CAS issues an award as follow:*
  - 1a) The CAS rules that it has no jurisdiction and the Appeal is dismissed.*
  - In the alternative:*
  - 1b) The Appeal is dismissed for lack of standing (active and passive).*
  - In any event:*
  - 2 The costs of the proceeding shall be borne by the Appellant;*
  - 3 The Appellant shall be ordered to pay a contribution towards the legal fees of the Respondents".*

36. Subsequent to the Appellant's submission of his comments on the Respondents' jurisdictional objection, the Respondents objected:

- "a) to the admissibility of the amended prayers for relief and requests submitted by the Appellant;*
- b) that the Submission of the Appellant of 21 July 2017 is accepted to the file, with the sole exception of Para. 16 to 24 of such Submission.*
- c) Finally, just for avoidance of doubt, Respondents explicitly maintain their objection against the jurisdiction of CAS for the present appeal directed against Respondents (since, as recognized by Appellant, there is*



*no arbitral agreement between Appellant and Respondents and there is no legal basis for CAS jurisdiction for an appeal directed against Respondents”).*

37. In making their objections, the Respondents argue that the Appellant has amended his prayers for relief and provided additional comments in contravention of Article R56 of the Code, which provides that

*“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 and the answer”.*

38. The Respondents argue that only two out of 13 pages submitted as comments by the Appellant were pertinent solely to the issue of jurisdiction, and that the rest should therefore be deemed inadmissible and disregarded.

## V. THE POSITION OF FIDE

39. FIDE’s position in the present proceedings is as follows:

*“As a preliminary comment, to avoid being estopped from challenging the admissibility of the appeal, FIDE maintains from the outset that (i) the Appellant does not have standing to appeal since he was not a party to the proceedings before the FIDE Ethics Commission, (ii) that the Appellant’s appeal does not have a legal interest to appeal since the results of the Asian Chess Federation’s elections held on 11 August 2014 cannot be challenged anymore and have become final and binding and (iii) that the appeal is wrongly directed not against the FIDE Ethics Commission, who took the decision appealed against, but against individuals who have not the capacity to be respondents in these proceedings. Pursuant to the CAS consistent case law, on the federation, association or other sports body which took the appealed decision may be a party to the CAS procedure (see TAS 2012/A/2705 [...], Order dated 28 June 2012, para. 20).*

*... we hereby submit FIDE’s application to participate in the [present] arbitration procedure **as amicus curiae** within the meaning of Article R41.4(6) of the CAS Code.*

*... FIDE submits that the appeal is not directed against the correct respondents. If FIDE was to intervene in the present arbitration proceedings within the meaning of Article R41.3 of the CAS Code, it would be placed in the contradictory position of being a party to the arbitration and, at the same time, arguing that because it is not an (original) party, the appeal is inadmissible.*

*Subsidiarily and in order to protect its rights ... FIDE requests its intervention in the present arbitration proceedings within the meaning of Article R41.3 of the CAS Code.*

***First**, there is an arbitration agreement between FIDE and the parties. Indeed, FIDE Statutes expressly provide that “any final decision taken by a FIDE organ (including the Ethics Commission) [...] may be challenged exclusively by way of appeal before the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland, which will resolve the dispute in a final and binding manner in accordance with the Code of Sports-related arbitration” (Article 13.1 of FIDE Statutes ...).*

*FIDE is bound by the same arbitration agreement binding the original parties to the present procedure.*

**Second**, FIDE has a legal interest to participate in the proceedings and to ensure that decisions issued by its internal commissions, such as the FIDE Ethics Commission, be sustained and complied with.

The FIDE Ethics Commission issued the decision made in respect of the Respondents; FIDE has obviously a legitimate interest in defending the decision of its Ethics Commission.

Besides, should the appeal be upheld, FIDE would be affected by the reversal of the FIDE Ethics Commission decision. Indeed, the Appellant requests, *inter alia*, that Respondents Hisham Al Taher and Mebrdad Pablevanzadeh be banned for life. Similarly, the Appellant requests that the results of the Asian Chess Federation's elections held on 11 August 2014 be "revoked". Both Respondents Hisham Al Taher and Mebrdad Pablevanzadeh are high-ranked officials of the Asian Chess Federation (ACF). ACF is FIDE's Continental Association for Asia (see Chapter 6 of FIDE Statutes) and an affiliated organisation within the meaning of Article 2.8 of FIDE Statutes.

The Appellant further requests that the Bahrain Mind Sports Association, which is the FIDE member association for Bahrain, be suspended "to the maximum term". Yet the suspension or the exclusion of FIDE members is within the sole authority of FIDE General Assembly, which is the supreme power of the federation (Articles 2.5 and 4.1 of FIDE Statutes).

In view of the above, we respectfully request that FIDE be allowed to participate as third party to the present arbitration proceedings ...".

## VI. LEGAL DISCUSSION

### A. Jurisdiction

40. Article R47 of the Code provides as follows:

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

41. The relevant texts in the FIDE Statutes and Code of Ethics read as follows:

*"Notwithstanding any provisions to the contrary in these Statutes, and final decision taken by a FIDE organ (including the Ethics Commission) [...] may be challenged exclusively by way of appeal before the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland, which will resolve the dispute in a final and binding manner in accordance with the Code of Sports-related Arbitration. Only parties directly aggrieved by a decision may appeal to the CAS". (Art. 13.1 FIDE Statutes).*

*"Any decisions made by the Ethics Commission may be the object of appeal arbitration proceedings in accordance with the Code of sports-related arbitration of the Court of Arbitration for Sport in Lausanne, Switzerland". (FIDE Code of Ethics para. 4.5)*

42. For an arbitral tribunal to have jurisdiction, the following conditions must be satisfied: (i) the subject-matter of the dispute is capable of settlement by arbitration; (ii) the arbitration agreement is valid in terms of form and substance; (iii) the dispute is within the scope of the

arbitration agreement both *ratione materiae* and *ratione personae*, and (iv) the parties had the capacity to enter into a binding arbitration agreement (BERGER/KELLERHALS, *International Arbitration in Switzerland*, 3<sup>rd</sup> ed., Berne 2015, para. 687).

43. The Code Commentary recognizes that:

*“[t]he distinction between what constitutes a jurisdictional issue and what relates to the merits of the case is often a daunting task... ‘hybrid’ situations arise and there is no categorical answer to these questions”* (MAVROMATI/REEB, *The Code of the Court of Arbitration for Sport: Commentary, Cases and Materials*, Alphen aan den Rijn 2015, p. 46).

44. The Respondents contest the existence of an applicable agreement to arbitrate, whereas the Appellant relies on Art. 13.1 of the FIDE Statutes and para. 4.5 of the FIDE Code of Ethics as providing the necessary arbitration agreement. The position of FIDE in this respect is of particular relevance: as the drafter of the Statutes, it is arguably in the best position to determine the extent to which the arbitration clause at issue should apply to parties that are either its members, or whose interactions with its members have led to a dispute.

45. While an arbitration agreement appears to exist *prima facie*, and its subject matter appears capable of settlement by arbitration, the extent of its applicability to the parties in the present case (*ratione personae*) and to the subject matter of the current appeal (*ratione materiae*) need a separate assessment.

46. It is not coincidental that the Respondents’ arguments do not cease upon determining that, in their view, CAS lacks jurisdiction to hear this appeal. The Respondents could have limited themselves solely to addressing issues relating “purely” to jurisdiction (as indeed they find the Appellant should have done in his comments) while reserving their right to make arguments as to standing on the merits, if the Sole Arbitrator were to find that preliminarily that CAS does have jurisdiction. However, the Appellants and the Respondents, and indeed FIDE, have all chosen to address issues pertaining to standing in their submissions for the reason that they are inextricably linked to the issue of jurisdiction.

47. Standing has relevance to admissibility and ultimately to the merits, but it is not devoid of pertinence when considering the existence of CAS jurisdiction in a given matter. This is evidenced by the nature of the parties’ submissions, as well as the preliminary position taken by FIDE.

48. Issues of jurisdiction and standing (whether to sue, or to be sued) can be somewhat intermingled. As Prof. Luigi Fumagalli explains:

*“‘Twilight’ zones, in fact, can be identified, in which it is not easy to define an issue as pertaining to jurisdiction or to the merits... consent must exist with regard to a matter capable of settlement by arbitration... CAS Panels may be called to address all jurisdictional issues that may be raised in every arbitration, and therefore to answer any of the following questions: whether the party invoking the clause is a party thereto, whether the party against which the arbitration is brought is bound by the clause, and whether the parties’ consent to arbitration was validly expressed in light of the applicable substantive or formal requirements, whether the object of the dispute falls*

*within the scope of the arbitration agreement*” (FUMAGALLI L., Review of CAS jurisprudence regarding jurisdiction and admissibility, CAS Bulletin 2016/1, pp. 17-18).

49. This being said, the question of the jurisdiction of CAS must be considered *stricto sensu*. In doing so, there is no doubt that Article 13.1 of the FIDE Statutes constitutes a valid arbitration agreement, as indeed does para. 4.5 of the FIDE Code of Ethics. The Sole Arbitrator finds FIDE’s position on this issue to be the most convincing. FIDE finds itself, as well as the parties, bound by the arbitration agreement. There is no legal impediment to the resolution of the dispute by arbitration. Likewise, there is generally no legitimate reason why the parties cannot be considered validly bound by this agreement. Finally, the subject matter of the dispute — namely a decision of the ETH — is clearly arbitrable.
50. As a result, the Sole Arbitrator finds that CAS has jurisdiction to rule on the present matter.

## **B. Admissibility**

51. Article R49 of the Code provides the following:

*“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”.*

52. The decision of the ETH was issued on 18 April 2017, and the statement of appeal was filed with the CAS on 5 May 2017.
53. In addition, the appeal complies with the relevant requirements of Articles R48 and R64.1 of the CAS Code.
54. As a result, the appeal is therefore admissible.

## **C. Applicable law**

55. Article R58 of the CAS Code provides the following:

*“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 the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*

56. The Appellant refers in his submissions to various FIDE regulations, and the Respondents refers to adjudication *“on the basis of applicable Regulations and, subsidiarily, on the basis of Swiss law”*.
57. The Sole Arbitrator does not find any evidence that the parties have agreed on the application of any specific national law. As a result, subject to the primacy of applicable FIDE regulations and to the extent necessary for the resolution of this dispute, Swiss law shall apply complementarily.

## D. Standing

58. As stated *supra* at paras. 46 and 47, the Parties have all made submissions as to standing as well as to jurisdiction, recognizing the extent to which these issues are intermingled. Importantly, all parties have had the opportunity to comment on and take a position with respect to FIDE's letter of 29 May 2017.

59. Since the Respondents objected to the Appellant's submissions on standing in his letter of 21 July 2017, and the Appellant has responded (despite the lack of instruction by the Sole Arbitrator with respect to such correspondence), the Sole Arbitrator has considered all the parties' submissions on the issue of standing with respect to his assessment of this issue.

### a) *Standing to sue*

60. As the Respondents point out, the scope of the arbitration clause is limited to "*parties directly aggrieved*", and considers that the Appellant's status as "Complainant" before the ETH does not qualify him, since he was not a fully-fledged party to the proceeding before the ETH. FIDE also maintains that this is the case. The Appellant, on the other hand, considers that the ETH having found that the Appellant had a "*personal interest in the present complaint*" and that "*the [Appellant] has filed a complaint relating to matters, [which] if proven, may be regarded as harmful to its own legal interests*", a sufficient personal interest subsists. By virtue of the fact that the Sole Arbitrator's holding does not turn on this issue (*see infra*), he does not make a determination on this issue.

### b) *Standing to be sued*

61. The Respondents also note that the appeal seeks the revocation of the results of the ACF election, while the ACF is not named as a respondent. Moreover, as FIDE also points out, the elections can no longer be contested as they "*have become final and binding*". In essence, given that relief is sought by the Appellant to revoke the election and that the concerned body is absent from these proceedings, jurisdiction cannot be extended to the Respondents.

62. The Respondents and FIDE both cite TAS 2012/A/2705 holding that it is the federation, association or other sports body that took the appealed decision that must be the party (respondent) to the procedure. Other parties may exceptionally be named as respondents in addition to this if the appellant has claims against them, but only provided the body having taken the appealed decision is present as a party. In a way, the federation or association that took the decision acts as an "anchor respondent" which allows for the potential presence of other respondents, but without which an appeal cannot subsist against the latter.

63. The Appellant contends that the absence of jurisdiction "falls away" once FIDE is joined as a party to the proceedings, which it concludes should be done. According to the present analysis, it is rather and more specifically the question of standing to be sued that might be remedied were FIDE to become a fully-fledged party to this case. In any event, the question would then become whether this is possible from a procedural standpoint.

64. According to Article R48 of the Code, the statement of appeal shall identify the Respondent(s).

65. The Sole Arbitrator first notes that the Appellant has failed to designate FIDE as a Respondent within the deadline prescribed at Article R49 of the Code, which he could have done to cure any procedural mistake in its initial statement of appeal.
66. Article R56 of the Code provides that:

*“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 and of the answer”.*
67. The Appellant argues that issues of determining the right respondents are technical matters, and that some flexibility should be granted to the Appellant in light of the fact that he only obtained counsel after he submitted his statement of appeal and appeal brief.
68. The applicable provisions of the Code allowing for parties to be added to a pending arbitration are joinder and intervention.
69. Article R41.2 of the Code allows a respondent to join a third party and is applicable in appeal proceedings by virtue of Article R54 of the Code. However, the Respondents in the present case have not formally requested the joinder of FIDE which cannot therefore be considered as a party under such provision.
70. Article R41.3 of the Code allows a third party to intervene. FIDE has decided not to intervene under the rationale of CAS 2008/A/1517, stating that *“it would be placed in the contradictory position of being a party to the arbitration and, at the same time, arguing that because it is not an (original) party, the appeal is inadmissible”*. It rather has expressly requested to participate as *amicus curiae* within the meaning of Article R41.4(6) of the Code.
71. The Code Commentary provides some useful insight with respect to whether the Appellant can cause FIDE to be joined as a party at this stage of the proceedings, referring to applicable football-related case law:

*“If a player wishes the national federation to participate in the arbitration, he must name such federation as a respondent in the statement of appeal and attach the arbitration clause binding the national federation to the proceedings. It is not possible to circumvent the obligation to name the (right) respondent already with the statement of appeal based on Article R48 CAS Code by requesting to join such party at a later stage. The CAS Code does not allow such a ‘correction/ substitution’ of a respondent, especially when the time limit to file the appeal has expired. The substitution of a respondent through joinder is further not possible based on Article R56 CAS Code”.* Para. 82, p. 292-93.
72. The Appellant’s suggestion that the joinder of FIDE would be consistent with the positions of FIDE and of the Respondents, thereby resolving the issue of jurisdiction (or, presumably, of standing to be sued), is therefore insufficient. Indeed it is somewhat misleading, as FIDE clearly and primarily asserts that it does not wish to become a party, and despite any considerations associated with the Appellant’s stated lack of legal representation early in the process, the Code

does not provide for a mechanism that would allow for third party to be compelled to join. FIDE would have to intervene by choice.

73. The Sole Arbitrator further notes that the Appellant's requests for relief, namely life bans for the First and Second Respondents and suspension for the Third Respondent for the maximum term, as well as revocation of the results of the ACF election, would require the presence of FIDE and/or the ACF as parties to these proceedings. Regardless of whether or not legal representation has been obtained in the initial stages of proceedings before the CAS, it remains the Appellant's responsibility to meet the necessary requirements of an appeal, in particular by identifying the appropriate respondent(s).
74. In the instant case, the Respondents therefore do not have standing to be sued in the absence of FIDE being named as a Respondent. It follows from this lack of (passive) standing that they could not be deemed to have consented to be named as Respondents in an arbitration proceeding before CAS in the absence of FIDE, the body that should rightfully defend the decision of its Ethics Commission. There is a natural logic to this, given that while certain third parties may have had an interest in the outcome of a decision (in the instant case, the Respondents), they were not themselves the masters of such a decision and are not those who have the means to modify it (if indeed any modification remains possible).

#### **E. Conclusion**

75. The Respondents have no standing to be sued in this case. The appeal filed by the Appellant is therefore without merit.

## **ON THESE GROUNDS**

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

1. The appeal filed by Mr Shaker Alafoo on 5 May 2017 against the decision issued by the Ethics Commission of the World Chess Federation ("FIDE") on 18 April 2017 is dismissed.
2. (...).
3. (...).
4. All other motions or prayers for relief are dismissed.