Arbitration CAS 2016/A/4871 Vladimir Sakotic v. FIDE World Chess Federation (FIDE), award of 2 August 2017

Panel: Mr Clifford Hendel (USA), President; Mr Ivaylo Dermendjiev (Bulgaria); Mr Michele Bernasconi (Switzerland)

Chess
Violation of an International Federation's Code of Ethics
Admissibility of the appeal
Standard of proof
Violation of the FIDE Code of Ethics article 2.2.2
Proportionality of the sanction

1. **The term "filed" in Article R31 of the CAS Code is synonymous with "sent". Under Article R32 of the CAS Code, what is decisive in determining the timeliness of a written submission is the time of *sending*; the time of actual receipt or delivery at CAS is irrelevant. Article R32 of the CAS Code is thus properly understood as a "mailbox rule" for the timeliness of filing. According to Article R31, if they are transmitted in advance by facsimile or by electronic mail at the official CAS email address, the filing of written submissions is valid upon receipt of the facsimile or of the electronic mail by the CAS Court Office provided that the written submission and its copies are also filed by courier within the first subsequent business day of the relevant time limit.**

2. **Neither the FIDE regulations nor the CAS Code stipulates what is the standard of proof. However, it is well-established under CAS jurisprudence that when the governing sports body regulations do not provide the applicable standard of proof, the panel must determine it. It is widely-accepted at CAS that when dealing with disciplinary cases, the panel must apply the standard of "comfortable satisfaction". This standard falls between "beyond reasonable doubt" and "balance of probabilities" on the standard of proof spectrum.**

3. **To find a violation of Article 2.2.2, of the FIDE Code of Ethics it is sufficient if an official has directly or indirectly (i) acted in a way that is no longer inspiring the *"necessary confidence"* or (ii) if he has *"in other ways become unworthy of trust"*. The existence of damages is not necessary.**

4. **CAS shall only interfere in the exercise of the discretion used by the previous instance where the sanction imposed is *"evidently and grossly disproportionate to the offence"* or where CAS comes to a different conclusion on the merits of the case than did the previous instance. According to the applicable Article 3.1 of the Code of Ethics, officials acting in contravention to this code can be temporarily excluded from membership or office. While said article does not explicitly set a maximum period of exclusion, it is**

safely implied, by Articles 3.2, 3.3, and 3.4 of the same code, which set a three-year sanction as the limit, that the maximum period of sanction under Article 3.1 is also three years.

I. INTRODUCTION

1. Mr. Vladimir Sakotic (the "Appellant") brings an appeal against the FIDE World Chess Federation ("FIDE" or the "Respondent"), challenging a decision of the FIDE Ethics Commission ("EC") rendered on 9 September 2016 and notified with reasons on 31 October 2016, which found him to have violated Article 2.2.2 of the FIDE Code of Ethics and suspended him for three years from holding any office or position with FIDE, participating in any meeting of FIDE as a delegate or in any other capacity, and representing any organization in its relations with FIDE, with references to FIDE including its member federations, continental associations and other affiliated international organizations (the "Appealed Decision").

II. PARTIES

2. The Appellant is a Montenegrin national resident of Belgrade, Serbia, long active in the world of chess, in particular the organization of chess tournaments. He was the president of the Montenegro Chess Federation ("MCF") from February 2013 to February 2014 and the Executive Director of the European Chess Union ("ECU") from 2011 to 2014.

3. The Respondent, the FIDE World Chess Federation, is the international governing body of chess. It is organized under Swiss law and has its seat in Lausanne, Switzerland.

III. FACTUAL BACKGROUND

4. This section of the award sets out a summary of the main relevant facts, as established based on the Parties' written submissions and the testimony adduced and arguments made at the hearing that took place on 11 April 2017. Additional facts are set out, where material, in other parts of this award.

A. The European Youth Chess Championship 2013

5. The European Youth Chess Championship – a competition for the top youth chess players in Europe – is held every year under the aegis of ECU. The organization of the event is awarded to the member federation (or another body, such as a club or private organization, if granted the organizational rights by the member federation) with the winning bid following the bid procedure set out in the ECU Tournament Rules.

6. According to the former MCF President, Mr. Srdja Dragasevic, in June 2011, the Appellant, as the then President of the Mladost Chess Club of Montenegro, proposed that MCF should apply for the European Youth Chess Championship of 2013 (the "Competition") and that it assign its organization to NGA "Potez" ("Potez"), a non-governmental association founded by some of the members of the Mladost Chess Club, the most notable being Mr. Miodrag Prijovic (President of Potez).

7. An exchange of letters from 20 to 30 June 2011 between Mr. Dragasevic and Mr. Prijovic provided that MCF would assign to Potez the rights to organize the Competition in exchange for an amount of EUR 25,000, payable no later than fifteen days before the start of the Competition, fifty percent of all donations and sponsorships, and entitlement to all funds received from state and local government authorities. According to Mr. Dragasevic, he did not consult the MCF Board about this agreement.

8. An agreement was supposedly signed between MCF and Potez on 28 November 2012, although it has not been submitted in the present arbitration nor in the EC proceeding (the "MCF-Potez Agreement").

9. On 28 June 2011, MCF submitted a bid for the Competition, listing Potez as the organizer.

10. On 19 September 2011, in Circular Letter No. 5/2011, ECU informed its members that – following ECU's Board decision of 14 September 2011 in Albena, Bulgaria – it had awarded the Competition pursuant to the ECU Tournament Rules to MCF and that it would be held in Budva, Montenegro.

11. On 23 September 2011, in response to the Circular, the then MCF President, Mr. Dragasevic, signed and sent a letter to ECU in which he announced that MCF had transferred to Potez its rights to organize the Competition:

"… the rights and responsibilities related to the Championship have been passed from the Montenegro Chess Federation to the NVU 'Potez' from Niksic and Miodrag Prijovic as the representative of the company. The rights and responsibilities are related to signing the contract with the European Chess Union, payment of deposit fee as well as other guarantees in connection with the organization, officials and financial relations. In the future, the Montenegro Chess Federation will not be responsible for any financial issues related to the above-mentioned".

12. On 10 October 2011, the Turkish Chess Federation ("TCF") appealed to the CAS the decision of ECU to award MCF the Competition. It sought to be awarded the Competition or, alternatively, to have a new bid procedure conducted. On 22 March 2012, the CAS dismissed TCF's appeal in its entirety. On 14 May 2012, TCF brought an action to annul the CAS Decision before the Swiss Federal Tribunal ("SFT"). On 19 September 2012, the SFT dismissed the action.

13. On 30 September 2012, Potez, represented by Mr. Prijovic, entered into an agreement with *UG "Centar za razvoj saha"* ("Center for Chess Development" or "Centar"), an association from Belgrade, Serbia, represented by J.S., an immediate family member of the Appellant, under which Potez assigned to Centar its rights to organize the Competition (the "Potez-Centar

Agreement"). The most relevant provisions of the Potez-Centar Agreement, as translated from the Serbian original[1], are the following:

- *Article 1: "The scope of this Agreement is the assignment of rights to technical organization of the European Youth Chess Championship in Budva 2013".*
- *Article 2: "Through the Agreement signed with the Montenegro Chess Federation, the NGO "Potez" acquired all rights to technical organization of the European Youth Chess Championship 2013, according to particular conditions set by that agreement. The Montenegro Chess Federation notified the European Chess Union about the rights referred to in paragraph 1 of this article of the Agreement".*
- *Article 3: "With this agreement Potez agrees that the rights to technical organization of the European Youth Chess Championship in Budva 2013 be assigned to the Centre under following conditions:*
  - *The Centre undertakes to allow Potez to keep the entire communication with third parties, with the Montenegro Chess Federation and the European Chess Union before all.*
  - *The Centre undertakes to fully respect all provisions of the Agreement that Potez signed with the Montenegro Chess Federation*
  - *The Centre undertakes to fully respect all provisions of the Agreement that Potez signed with the European Chess Union".*
- Article 5: *"Both contracting parties undertake to keep business secret and to provide this Agreement for inspection exclusively to competent state authorities and to the European Chess Union upon their requests".*

14. There is no evidence that the ECU Board or General Assembly approved the Potez-Centar Agreement.

15. On 14 October 2012, Mr. Prijovic sent a letter to Mr. Danailov (ECU President) explaining the circumstances that had required that Potez transfer to Centar its rights to organize the Competition:

"… we would like to inform you that despite our best wishes we are not able to be the organisers of the championship. The reasons for this are problems of organizational and financial nature, caused by, among other things, the fact that due to the court case at CAS and Swiss Federal Court, for almost a year it was not possible to start with the preparation of the organisation. Because of this, NGO "Potez" by the signed contract transferred all rights regarding organisation to the UG "Centar za razvoj saha" from Belgrade. By signing the contract with UG "Centar za razvoj saha", we took the obligation to inform you about it and this is exactly what we are doing hereby. We believe that you will accept our explanation and this information… I kindly ask you to consent to transferring the Championship from the location Becici (hotels "Iberostar", "Mediteran", "Tara"), as originally offered, to the location "Slovenska plaza" in the city of Budva".

16. There is no evidence that Mr. Danailov presented this information to the ECU Board, the General Assembly or anyone else at the ECU.

[1] The translations contained in the present Award were made by the Parties and are undisputed.

17. On 23-24 January 2013, the ECU Board Meeting in Armenia discussed the Competition. According to the minutes of said meeting, following a favorable site inspection on 1 December 2012, the ECU Board approved the request to change the Competition venue:

"Sava Stoisavljevic informed the Board members that the organisers of the European Youth Championship 2013 had requested to change the tournament venue. ECU President had asked Mr. Burstein to do the inspection. Mr. Burstein reported that he had seen the new facilities; the new prices were lower (by 16%) compared to the ones offered in the original bid and the tournament hall was in the city centre. His recommendation was to accept the request. Secretary General asked the Board members if they agreed to approve the request. The Board members unanimously decided to approve the request of the European Youth Championship 2013 organisers to change the tournament venue".

18. The minutes of the ECU Board Meeting make no mention of the facts that (i) Potez had transferred to Centar its rights to organize the Competition or (ii) Mr. Danailov (in his capacity as ECU President) and Centar were set to sign an agreement the very next day. Ms. Stoisavljevic, who chaired this ECU Board Meeting, confirmed that she had not informed the ECU Board at that time of the Potez-Centar Agreement, on the grounds that it was not customary to do so.

19. On 24 January 2013, upon the advice of a Swiss attorney, ECU and Centar entered into an agreement, under which ECU granted the organization of the Competition to Centar (the "ECU-Centar Agreement"). Said agreement, signed by Mr. Danailov on behalf of ECU and by J.S. on behalf of Centar, provided *inter alia* that *"[a]ccording to the tournament rules (bid procedure), at the moment of the signing the contract [sic] the organiser has to transfer the deposit fee of 7,500 € to the ECU account"*. This agreement seems not to have been shared with the ECU until Mr. Sakotic forwarded it to the ECU administration on 13 August 2014.

20. In preparation for the Competition, J.S. hired Mr. Dejan Milosevic (MCF Secretary General) to be the Tournament Director and D.A. to be the Tournament Manager.

21. On 9 February 2013, MCF unanimously elected the Appellant as its new President. According to his testimony, he secured the delegates needed by, in part, promising that he would raise for MCF an additional EUR 10,000 (i.e. EUR 35,000 instead of EUR 25,000) from the Competition.

22. On 13 February 2013, MCF entered into a sponsorship agreement with the telecommunications company MTEL L.L.C (the "MTEL Sponsorship"). Under this agreement, MTEL agreed to be the general sponsor for the Competition and in exchange to pay EUR 30,000 to MCF in two installments: EUR 19,500 by 10 March 2013 and EUR 10,500 immediately after the end of the Competition.

23. On 14 March 2013, the Competition invitation was sent out to the national chess federations as an annex to ECU's Circular letter no. 1/2013.

24. On 17 May 2013, MCF and Potez entered into the *"Agreement on Settlement of Financial Obligations"* which governed the *"manner and dynamics of settlement of financial obligations of the Organizer to the Federation, regarding the agreement on the transfer of technical organization of the [Competition], between these*

two parties as of June 2011" (the "MCF-Potez Settlement of Financial Obligations I"; translated from the Serbian original). This document, which was signed by Mr. Milosevic for MCF and Mr. Prijovic for Potez, stipulated *inter alia* that the financial obligations of the "Organizer", Potez, amounted to EUR 25,000, that Potez agreed to settle the debt due from MCF to the Appellant in the amount of EUR 2,164 and 3,563 for 2011 and 2012, and that the parties would split sponsorship revenues equally. The document makes no mention of Centar.

25. On 27 May 2013, Mr. Sakotic, as MCF President, informed the Prime Minister of Montenegro of the Competition *"which will take place in the organization of the Montenegro Chess Federation"* and offered him the role of patron of the event, describing it as the most massive official tournament event in the history of Montenegro. This communication made no reference to either NGO "Potez" or Centar.

26. On 8 June 2013, Chess Plus LLC was incorporated in Delaware (USA). No information as to this company's shareholder or shareholders is on file.

27. J.S. later retained the services of Chess Plus LLC. J.S. declared in a written statement filed before the EC that *"Given that 'Centar za razvoj šaha' is an association of citizens and is not the tax obligor, I was forced to hire financial agency "Chess plus LLC" for the needs of the financial consulting and services, in connection with the organization of the tournament in Budva. This agency performed the following tasks: The creation of portal for the on-line registration and processing of the data related to it, delivering of invoices to participants, the admission of the payments from Russia, as well as the payouts according to the order of the organizers".*

28. The Competition took place from 28 September to 9 October 2013 in Budva, Montenegro.

29. It was later discovered that the Tournament Manager and General Secretary of MCF, Mr. Dejan Milosevic, had sent out a considerable amount of invoices to players and federations for accommodation charges, organization fees and ECU entry fees requiring that payment be made to the Delaware company, Chess Plus LLC. Other invoices also called for payment to MCF (*"Sahovski Savez Crne Gore"*), *Hoteleska Grupa "Budvanska Rivijera"* (i.e. the hotel where the Competition took place), and directly to Centar.

30. On 15 November 2013, MCF and Potez entered into a *"Record on Settlement of Financial Obligations"* which governed the *"manner and amount of settlement of financial obligations of the Organizer to the Federation, regarding the agreement on transfer of technical organization of the [Competition], between the two parties as of June 2011"* (the "MCF-Potez Settlement of Financial Obligations II"; translated from the Serbian original). By way of this document, which was signed by Mr. Milosevic for MCF and Mr. Prijovic for Potez, the parties agreed that the "Organizer", Potez, had settled certain obligations including the debt due to the Appellant in the amount of EUR 2,164 and 3,563 for 2011 and 2012. The Parties also agreed that the total amount of settlement was EUR 36,457, which included the EUR 25,000 promised under the MCF-Potez Agreement and the additional EUR 10,000 that the Appellant had promised when he took office as MCF President. This document, like the MCF-Potez Settlement of Financial Obligations I signed before the Competition, also makes no mention of Centar.

B. The deposit fee of EUR 7,500

31. On 15 March 2013, an email was sent to MCF, accompanied by invoice no. 79/13 dated 11 March 2013, requesting *inter alia* payment of the deposit fee of EUR 7,500 to the ECU:

> *"The following is my view on the financial standing and moves that should be made. The amount equaling to EUR 19,500.00 total was paid in. Out of that, for the European Chess Union, a deposit amounting to EUR 7,500.00 must be disbursed, and the Invoice is attached. This disbursement should take place on Monday, and I should be informed therefore or provided with the SWIFT"* (as translated from the Serbian original).

32. The listed sender of the email is the Appellant. The listed addressees are *"Dejan"* (Dejan Milosevic, the MCF General Secretary, as noted above) and *"Zoran"* (Zoran Perunicic, a then "expert associate" of MCF). The sending email account is vladimirsakotic@yahoo.com and the recipient accounts are office@cgsah.org, and dejan.milosevic@cgsah.org. The Appellant contests the authenticity of this email.

33. The accompanying invoice no. 79/13 (i) requested MCF to pay the deposit fee of EUR 7,500 to the Slovenian account of European Chess Union LCC, a corporation registered in 2011 by Harvard Business Services in Delaware (USA) and (despite its name) entirely unassociated with ECU (as ECU confirmed, see *infra* at para. 36), and (ii) displayed the name of the then ECU General Secretary, Ms. Sava Stoisavljevic, and the ECU logo on the top and bottom. The Appellant contests the authenticity of this invoice.

34. On 2 April 2013, MCF transferred EUR 7,500 to European Chess Union LLC's Slovenian account. The bank transfer receipt of this transaction references *"/RFB/INVOICE NO 79/13"* under *"Remittance Information"*.

35. On 18 November 2013, the deposit fee was refunded to MCF. The relevant bank form shows that European Chess Union LLC transferred EUR 7,500 to MCF (*"Sahovski Savez Crne Gore"*) as *"Return of the Deposit Fee, Invoice 79-13"*.

36. On 6 November 2014, ECU confirmed for MCF that:

- ECU was completely unaware of the existence of the Slovenian bank account of European Chess Union LLC and, more generally, of the Delaware-based company itself until the EU Extraordinary General Assembly in Batumi/Georgi on 25 October 2014.
- the Slovenian bank account of European Chess Union LLC referenced in invoice no. 79/13 did not belong to ECU.
- to the best of its knowledge, its official records and files made no mention and had no copy of invoice no. 79/13.
- according to its official bank records, ECU never received a deposit fee payment in the amount of EUR 7,500 from the MCF for the Competition.

37. On 21 May 2015, the ECU – asserting its obligation to protect its members, the entire chess family and FIDE – publicly announced that the European Chess Union LLC and its Slovenian bank account had no connection whatsoever with ECU.

C. The ECU and MCF complaints before the FIDE Ethics Commission

38. During the Competition, a group of five chess clubs and three national team members expressed their dissatisfaction with the management of the Competition. They pointed out their suspicion that Mr. Sakotic and Mr. Prijovic and others connected to Potez and Centar had taken advantage of their positions and acted in conflict of interest to benefit from the Competition, leaving MCF, which was facing significant financial struggles, to only earn EUR 25,000 out of a revenue stream supposedly exceeding EUR 200,000. The letter invited the state authorities to further investigate their suspicion.

39. The clubs then requested MCF to hold an extraordinary session to exclusively discuss the Competition, which the MCF Board, at its meeting of 3 March 2014, agreed to do.

40. On 24 February 2014, the Appellant resigned from his post as MCF President, indicating that not doing so *"would additionally complicate [the] situation"* and *"deepen"* the crisis, making MCF *"the loser in such a situation"*.

41. On 6 August 2014, MCF filed a criminal complaint against the Appellant for alleged abuse of power and unconscientious performance of office by signing, antedating and falsifying a series of documents causing damage to MCF. However, it appears that the Montenegrin authorities never initiated a criminal proceeding against the Appellant as confirmed by a certificate dated 30 November 2016 of the court in Podgorica: *"SAKOTIC VLADIMIR … is not registered with criminal offence records under jurisdiction of this court and NO CRIMINAL PROCEEDING against this person is underway at this moment"* (translated from the Serbian original).

42. Between August and October 2014, the ECU conducted an investigation into the Competition.

43. On 30 October 2014, MCF suspended the Appellant and lodged a complaint against the Appellant with the EC.

44. On 24 November 2014, the EC:

- notified the Appellant that ECU on 10 November 2014 had filed a complaint before the EC against him. In that complaint, ECU requested the Appellant, Mr. Danailov and Ms. Stoisavljevic to be banned for three years for their alleged violations of Articles 2.2.1 2.2.2, 2.2.3 and 2.2.11 of the FIDE Code of Ethics, which condemn: (i) *"Fraudulence in the administration of any FIDE office or national federation office that affects other federations"* (Article 2.2.1); (ii) *"Office bearers who through their behavior no longer inspire the necessary confidence or have in other ways become unworthy of trust"* (Article 2.2.2); (iii) *"Organizers, tournament directors, arbiters or other officials who fail to perform their functions in an impartial and responsible manner"* (Article 2.2.3); and (iv) *"Any conduct likely to injure or discredit the reputation of FIDE, its events, organizers, participants, sponsors or that will enhance the goodwill which attaches to the same"* (Article 2.2.11).

- notified the Appellant that MCF had filed a complaint against him on 30 October 2014. MCF's complaint alleged the Appellant had *"abuse[d] his position"* and requested that he be banned from working and participating in chess events, competitions, meetings and education.
- invited the Appellant to state his position by 8 December 2014 on the admissibility of the cases and the jurisdiction of the EC to hear the dispute.

45. The EC registered the cases as n. 13/2014 *"Organisation of 2013 European Youth Chess Championship in Budva, Montenegro (first complaint)"* and n. 14/2014 (*"Organisation of 2013 European Youth Chess Championship in Budva, Montenegro (second complaint)"*.

46. On 8 December 2014, Mr. Sakotic, along with Mr. Danailov and Ms. Stoisavljevic, objected to EC's jurisdiction in cases n. 13/2014 and n. 14/2014. The EC on 15 December 2014 held itself competent to hear the complaints for alleged breaches of Articles 2.2.2, 2.2.3 and 2.2.11, but not of Article 2.2.1. On 15 April 2015, the EC issued the motivation for its decision. On 7 May 2015, the respondents appealed the EC decision to CAS. On 21 December 2015, the panel in CAS 2015/A/4062 *S. Danailov & Sakotic & Stoisavlevic v. World Chess Federation* upheld the decision of the EC, confirming the EC's competence to hear MCF and ECU's complaints.

47. Accordingly, on 21 January 2016, the EC notified the parties that cases n. 13/2014 and 14/2014 would continue and granted the respondents a deadline until 19 February 2016 (later extended until 18 March 2016) to comment on ECU's and MCF's original complaints, as well as the supplementary evidence and representations they submitted on 18 May 2015 which had been forwarded to the respondents on 22 June 2015.

48. On 18 March 2016, Mr. Sakotic submitted his defense. The EC forwarded it to complainants on 1 April 2016 and invited them to reply by 22 April 2016, making it clear that they could not introduce new issues that did not form part of the complaints. ECU filed a reply by the prescribed deadline; however, MCF did not *"because it did not know the new facts and evidence, but was ready to present a statement once it was advised of the procedural position"*, as MCF explained in a letter to the EC dated 11 May 2016.

49. On 1 April 2016, the EC noted that *"[i]t seems to us that the MCF missed the deadline of 22 April 2016 and that the Ethics Commission should not receive any further evidential statements from the complainants"*.

50. On 3 May 2016, Mr. Sakotic, believing that the EC had violated his procedural rights by granting complainants the opportunity to reply to his defense, threatened to – and ultimately did – withdraw from further participation in, i.e. boycotted, the remainder of the proceeding. He also expressed frustration with the *"insults"* the ECU reply purportedly contained and the alleged conspiracy between the EC and MCF to ensure his conviction. In response, on 11 May 2016, the EC maintained that it fully respected his procedural rights at all times, noting *inter alia* that (i) for the EC to make a proper decision, a right of reply was necessary to determine whether complainants agreed/disagreed with a number of facts raised by Mr. Sakotic in his defense, (ii) complainants would be precluded from filing any new matters in their replies, (iii) Mr. Sakotic would have the opportunity to comment on the complainants' replies at the hearing (and later

it also granted him a second written submission, see *infra* at para. 53), (iv) Mr. Sakotic could elaborate as to his claim of insults and, if well-founded, they would be stricken from the record, and (v) Mr. Sakotic's claim of conspiracy was patently untrue.

51. On 27 May 2016, MCF requested an extension to file a reply, maintaining that it had only missed the deadline to file because of unfamiliarity with the case resulting from recent management changes at the Federation.

52. On 28 May 2016, the hearing that was scheduled to take place in Athens was postponed because of the respondents' unavailability.

53. On 13 July 2016, the EC, based on its meeting in Athens on 26-28 May 2016, informed Mr. Sakotic that (i) the hearing would take place in 7 September 2016 at a venue still to be determined (eventually Baku, Azerbaijan), and (ii) it had agreed to extend until 28 July 2016 MCF's time limit to file a reply and to grant Mr. Sakotic until 19 August 2016 to then comment on both complainants' replies. The EC received an auto-response from Mr. Sakotic's email indicating that he would be on vacation until 28 August 2016 and unable to answer emails.

54. On 1 August 2016, MCF submitted its reply. Mr. Sakotic did not comment on complainants' replies.

55. On 7 September 2016, the EC held a hearing in Baku, Azerbaijan. Apart from the EC, only representatives of ECU and MCF were present at the hearing; the three respondents did not attend.

56. On 9 September 2016, the EC issued the operative part of the Appealed Decision, finding Mr. Sakotic to have violated Articles 2.2.2 of the Code of Ethics and suspended him for three years from holding any office or position with FIDE, participating in any meeting of FIDE as a delegate or in any other capacity, and representing any organization in its relations with FIDE, with references to FIDE including its member federations, continental associations and other affiliated international organizations. The EC also found Mr. Danailov and Ms. Stoisavljevic to have violated clause 2.2.3 of the Code of Ethics (the latter *"to a lesser degree"*) and suspended them respectively for eighteen months and six months from the same functions (except that it did not preclude Mr. Danailov from exercising his powers as the President of the Bulgarian Chess Federation within Bulgaria but only externally in its relations with FIDE).

57. On 31 October 2016, the EC issued the motivation for the Appealed Decision (summarized *intra* at para. 62). Neither Mr. Danailov nor Ms. Stoisavljevic appealed said decision to the CAS.

D. Post-decision communications between Mr. Sakotic and the EC

58. On 7 October 2016, Mr. Sakotic sent a letter to the EC to ask whether: (i) the term of the EC sanction included the suspension the MCF imposed on him, (ii) he could be a chess arbiter and/or chess organizer and/or FIDE lecturer during his suspension, (iii) he could, during his suspension, sign a bid form to be sent by a national chess federation to FIDE or ECU for the

application to organize a chess competition, and (iv) he could, during his suspension, be a delegate (representative of a club) at the meetings/assemblies of a national chess federation.

59. In response, the EC replied on 31 October 2016 that: (i) it *"took due account"* of the suspension MCF imposed on 30 October 2014, (ii) Mr. Sakotic could perform activities as a chess arbiter, chess organizer, and FIDE lecturer (but that his appointment to those positions would remain under the respective discretion of the federation/organizer concerned, federation/hosting body concerned, or the relevant FIDE commission), (iii) he could sign a bid form on behalf of the national chess federation or the organizer if the latter is an organization, but could sign a bid form as the organizer only provided he was the organizer in his personal capacity, and (iv) he was not allowed to be a club delegate at national chess federation meetings.

60. On 7 November 2016, Mr. Sakotic requested further clarification on whether the MCF suspension is included in the term of the EC sanction and when exactly that sanction would expire.

61. On 8 November 2016, the EC replied as follows: *"According to the decision of the MCF of 30 October 2014, the MCF imposed on you a temporary suspension within the system of the MCF until the finalization of the FIDE Ethics enquiry as well as the criminal charges lodged by the MCF against you. The MCF suspension is an internal and independent matter and is not directly affected by the FIDE suspension which applies from 10 October 2016 for a period of 3 years. However, as the FIDE enquiry has now being finalized but the suspension imposed by FIDE Ethics also cover certain of your potential activities in Montenegro, as explained in my letter of 31 October 2016, I suggest you enquire from MCF to what extent they regard the MCF suspension still to be in force"*.

IV. THE APPEALED DECISION

62. The operative part of the Appealed Decision, insofar as the Appellant is concerned, reads as follows:

> *"5.2. Mr Sakotic is guilty of violating clause 2.2.2 of the Code of Ethics – Office bearers who through their behaviour no longer inspire the necessary confidence or have in other ways become unworthy of trust;*
>
> *[…]*
>
> *6. The ETH imposes the following sanctions:*
>
> *[…]*
>
> *6.2 Mr. Sakotic is suspended for a period of three (3) years from holding any office or position within FIDE, from participating in any meeting of FIDE as delegate or another capacity, as well as representing any organisation in its relations with FIDE. The reference to FIDE herein includes its member federations, continental associations and other affiliated international organisations.*
>
> *7. The commencement date of the suspension… is 10 October 2016 in order to allow for the preparation of the written motivation.*
>
> *[…]"*.

63. The motivation of the Appealed Decision included *inter alia* the following pronouncements:

a) On adverse inferences:

"An adverse inference must be drawn against both Mr Danailov and Mr Sakotic for their absence at the hearing. The nature of their explanations in their defence statements, their irrational protest against the complainants being afforded an opportunity of reply and their absence from the hearing, are all consistent with an intention of obstructing a full inquiry into the facts of the matter and of selectively placing facts before the ETH. The conclusion is inescapable that they simply cannot answer the points arising from the replying statements of the ECU and MCF. In the absence of any factual challenge by Mr Danailov and Mr Sakotic, the replying statements of the ECU and MCF stand largely uncontroverted".

b) On the focus of case:

"13.3. … the focus of the present enquiry is the role of the respondents as ECU officials. It is consequently not strictly necessary for the ETH to make a finding regarding the allegations that the MCF was not registered as a sports organisation with the Directorate of Youth and Sport of Montenegro and the allegations that the consent of the Government was absent for the organisation of the 2013 EYCC".

c) On breach of conflict of interest and fiduciary duties:

"13.38. All of the above indicates an awareness on the part of Mr Sakotic and his allies, including [J.S.], that the situation gave rise to intolerable conflicts of interest. It is clear that these individuals manipulated affairs to ensure that the profits of the tournament would flow to them at the expense of the MCF as the hosting federation, whereas the illusion was maintained that the MCF was still hosting the tournament…

13.39. It is further clear to the ETH that Mr Danailov, Mr Sakotic and Ms Stoisavljevic, as ECU officials, conspired to keep the true facts out of the public eye. Hence there was no mention of the legal opinion received, the change of organiser and the contract to be signed with Centar at the ECU Board Meeting in Yerevan, Armenia in January 2013. The respondents' justification for not having had to disclose these facts to the rest of the ECU Board Members cannot be upheld. They must have known that if it made known to the ECU Board all the rights and responsibilities vest in [J.S.]'s entity, the ECU Board would have raised objections on the basis of a conflict of interest.

13.40. The ETH accordingly finds that there was a deliberate concealment by all three respondents of the fact that the organisation rights had been transferred to Centar. In concluding the Centar agreement and failing to disclose this to the ECU Board, the respondents breached not only their fiduciary duties, but also the letter and spirit of the ECU Tournament Rules and Financial Regulations.

13.41. For the avoidance of any doubt, the ETH wishes to make it clear that the effective allocation of the tournament to the entity of [J.S.], [an immediate family member] of the ECU Executive Director… is a clear breach of the duty on the part of… Mr. Sakotic as the Executive Director to avoid placing personal interest above the interest of the ECU. In the case of Mr Sakotic, it was also a breach of his fiduciary duties owed to the MCF".

d) On the inconsistent manner of invoicing:

"13.50. … The inconsistent manner of invoicing, and in particular the use of different entities for receipt of funds, strongly suggests that ECU entry fees were siphoned off (possibly as a fraud upon the ECU or the tax authorities) and that Chess Plus LLC was nothing other than the off-shore alter ego of Centar. No details regarding the identity of the members and employees of Centar and Chess Plus LLC were given. All of this underscore the lack of transparency with which the respondents have presented their respective cases before the ETH".

e) On Chess Plus LLC and European Chess Union LLC:

"13.51. In the statement of [J.S.], incorporated into the statement of defence of Mr Sakotic, [J.S.] admits hiring ChessPlus LLC to perform various functions. It is significant that Chess Plus LLC, like the imposter corporation European Chess Union LLC, were both incorporated in the State of Delaware, USA using the services of the same registered agent and having the same business address. The inference is irresistible that these two entities were established by the same person or persons, or persons known to each other. The fact that both entities feature in the invoices issued for the 2013 EYCC connect them with Mr Sakotic and/or [J.S.] as the likely founders of the two entities concerned. At the very least, Mr [Sakotic] and [J.S.] had knowledge of both entities (which is either admitted or not denied) and the use of these two entities for unlawful or irregular purposes. Again, Mr Sakotic's absence from the hearing did not instil any confidence in his version on the part of the ETH".

f) On the EUR 7,500 deposit:

"13.47. … [T]he ETH has little hesitation to state that it is comfortably satisfied that the e-mail instruction of 15 March 2013, together with invoice 79/13, was given by Mr. Sakotic. In giving such an instruction, Mr Sakotic committed a fraud on the MCF and the ECU. Even if Mr Sakotic's version is accepted that the deposit fee had been paid in cash earlier and that the payment of €7 500 initiated by way of the e-mail of 15 March 2013 related to a distribution of the organiser's part of the sponsorship monies, then the nature of the payment was misrepresented and a fraud upon MCF was nevertheless committed.

[…]

13.52 Regarding Mr Sakotic's version that the ECU deposit fee of €7 500 was paid in cash at the Belgrade office of the ECU on 29 January 2013, as supported by the statement of the [sic] Mr [D.A.], this version is not acceptable to the ETH. Ms Stoisavljevic's version is also vague and unconvincing in this regard. According to the statement of Mr Kurt Gretener, the current ECU bookkeeper since January 2009, there was no such cash payment for any deposit in January 2013. Mr Gretener, in turn relies on a document captioned, "Cash payments in the ECU office from 15 December 2012 to May 2013", signed by both Mr Sakotic and Ms Stoisavljevic and which is kept in the binder with all receipts from 2013 at the ECU premises in Switzerland. Furthermore, the payment of the ECU deposit fee is not reported in the ECU books and accounts as audited and approved. An accounting in respect of the deposit fee was also not included in Ms Stoisavljevic's reconciliation and settlement.

13.53. It is significant that there is no mention in the papers before the ETH of a claim for a refund of the deposit fee, or alternatively, a decision by the ECU Board that the deposit fee be forfeited. This is consistent with the fact that the deposit was never paid.

13.54. In the result, the ETH finds that the ECU deposit fee was not paid in respect of the 2013 EYCC to the potential prejudice of the ECU and in violation of the Tournament Rules and Financial Regulations".

g) On the distribution of collected entry fees:

"13.57. … According to Regulation 4.3 of the ECU Financial Regulations, the collected entry fees must be distributed to the ECU and the organising federation in accordance with annex 1 as soon as possible. It is then up to the organising federation to give its share, or part of it, to the organiser. This does not contemplate a direct distribution to the organiser even if it is entitled to the federation's entire share of the ECU entry fees.

[…]

13.59. The Centar contract was not the standard ECU contract for European Youth Chess Championships. Clause 11 was inserted in the Centar contract in terms of which the federation's portion of the ECU entry fees would be paid back to Centar as the organiser. This is a deviation from the ECU Financial Regulations and had to be ratified by the ECU Board.

[…]

13.61. On a proper interpretation of the ECU Tournament Rules, it is only the National Federation which is entitled to attribute the organisation of an ECU competition to another body if it does not wish to organize the competition itself. In the absence of formal consent by the MCF Board, the assignment of rights from Potez to Centar was in our view invalid".

64. The EC concluded in para. 13.63 of the Appealed Decision that: *"the ETH finds that Mr Sakotic was the mastermind who conceived and executed, with the help of others including Mr Danailov and Ms Stoisavljevic, and at the expense of the MCF and the ECU, a personal profit-making scheme in breach of his fiduciary duties to both the ECU and the MCF and in violation of the ECU Tournament Rules and Financial Regulations. In the process, he inflicted severe moral and financial damage to the organisations he was supposed to serve in a fiduciary position".*

65. As to Mr. Sakotic's applicable sanction, the EC held in the Appealed Decision that:

"16.7. The conduct of which Mr Sakotic was found guilty is of a very serious nature. In particular, his involvement in the diversion offends to the imposter corporation, European Chess Union LLC by means of invoice 79/13 was of a fraudulent nature. As already found, the ETH believes that Mr Sakotic was the mastermind behind the scheme to make secret profits and to conceal the true state of affairs from the ECU Board and others. Mr Sakotic's argument that there are no FIDE or ECU document that covers the notion of "conflict of interest" or any other restriction or prohibition in this regard is an astonishing submission from someone who occupied such high offices in both the ECU and the MCF. Although Mr Sakotic's guilt was assessed in his position as ECU official, for the purposes of sanction, the degree of his moral blameworthiness is also influenced by the fact that he violated his fiduciary duties to the MCF as well.

16.8. In terms of the amended Code of Ethics, the ETH is empowered to impose bans of up to 15 years. Had this power existed at the time of the offence of which Mr Sakotic was found guilty, the ETH would certainly have considered imposing a ban longer than 3 years. The ETH took due account of the fact that Mr Sakotic was suspended by the MCF on 30 October 2014, two years ago. The ETH also takes account of the fact that

M[r] Sakotic faces possible further criminal prosecution. Bearing all this in mind, as well as the absence of remorse or any appreciation for his wrongdoing, the ETH believes that a maximum period of suspension of 3 years is appropriate and fully justifiable in the circumstances of Mr Sakotic".

V. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

66. On 21 November 2016, in accordance with Article R47 and R48 of the Code of Sport-related Arbitration, 2016 edition (the "CAS Code"), the Appellant filed a statement of appeal.

67. On 2 December 2016, the CAS Court Office, in accordance with Article R32 of the CAS Code, granted the Respondent an extension of an additional 10 days to file the appeal brief.

68. On 12 December 2016, in accordance with Article R51 of the CAS Code, the Appellant filed his appeal brief, in which he also (i) requested the suspension of the Appealed Decision, (ii) sought to introduce certain exhibits and strike others, (iii) asked CAS to summon Mr. Radojica Grba as a witness, and (iv) made an unclear procedural request.

69. On 18 January 2017, in accordance with Article R55 of the CAS Code, the Respondent filed its answer to the appeal brief, in which *inter alia* it contested the appeal's admissibility on the basis of its having purportedly not having been timely filed.

70. On 20 January 2017, pursuant to Article R54 of the CAS Code, the CAS Court Office on behalf of the Deputy President of the CAS Appeals Arbitration Division, notified the Parties of the formation of the Panel, constituted as follows: Mr. Clifford J. Hendel (President), Mr. Ivaylo Dermendjiev (appointed by the Appellant) and Mr. Michele A.R. Bernasconi (appointed by the Respondent).

71. On 2 February 2017, the Panel:

- Rejected the Respondent's objection to admissibility, as it found that the statement of appeal and appeal brief were timely filed in accordance with Article R31 of the CAS Code (with reasoning for its decision ultimately to be included, as requested by the Respondent at the hearing and agreed by the Panel, in the award).
- Rejected the Appellant's request, without prejudice to refiling, seeking to suspend the Appealed Decision in accordance with Article R32, as lacking in clarity and not developed in accordance with the rules of the CAS Code.
- Admitted all of the exhibits the Appellant sought to introduce or strike in accordance with Article R44.3 of the CAS Code.
- Informed the Appellant that each party was responsible for the availability and costs of witnesses in accordance with Article R44.2, para. 3 and Article R57, para. 3 of the CAS Code, but offered, if the Appellant provided the CAS Court Office with Mr. Radojica Grba's contact details, to send to the intended witness an invitation to testify at the hearing.
- Requested the Appellant to clarify its procedural request.

72. On 7 February 2016, the Appellant sent the CAS Court Office the contact info for Mr. Grba. Additionally, the Appellant clarified that its procedural request was an application for suspension of the CAS arbitration proceedings pending a decision of the Montenegrin authorities on the criminal charges MCF had filed, but then withdrew the request since the Montenegrin authorities had decided not to criminally prosecute him.

73. On 20 March 2017, the CAS Court Office sent the Parties the Order of Procedure, which they duly signed and returned to CAS on 24 March 2017. The CAS Court Office also sent a letter to Mr. Grba, inviting him to testify at the hearing in person, by telephone or Skype. Mr. Grba never responded to the letter of CAS nor did he attend the hearing.

74. On 11 April 2017, a hearing was held at CAS headquarters in Lausanne, Switzerland. In attendance at the hearing were:

- For the Appellant: Messrs. Vladimir Sakotic (the Appellant), Rastko Svicevic (counsel) and Vladimir Mihaj (counsel), and Ms. Olivera Ristic (interpreter).
- For the Respondent: Mr. Francois Strydom (FIDE Representative), Mr. Jean-Marc Reymond (counsel) and Ms. Delphine Deschenaux-Rochat (counsel).
- The three members of the Panel as well as Mr. Francisco A. Larios (*ad hoc* clerk), and Mr. Jose Luis Andrade (CAS Counsel).

75. The following individuals testified at the hearing: Mr. Vladimir Sakotic (in person), J.S. and D.A. (by video conference), and Mr. Kurt Gretener (by teleconference).

76. The Parties confirmed at the beginning of the hearing that they had no objections to the constitution and composition of the Panel.

77. At the conclusion of the hearing, the Parties confirmed that they were satisfied by the manner in which the Panel conducted the hearing and raised no procedural objections thereto.

78. On 7 July 2017, the Panel issued a first version of this award. With the agreement of the Parties, said first version is annulled and replaced by the present version, which (i) corrects a clerical error in the calculation of the duration of the sanction and (ii) anonymizes both of Appellant's witnesses by identifying them by their initials rather than by their names, and in the case of one, by deleting certain other identifying references.

VI. SUBMISSIONS OF THE PARTIES

79. The following is a brief summary of the Parties' submissions and does not purport to include every contention put forth by the Parties. However, the Panel has thoroughly considered in its discussion and deliberation all of the evidence and arguments submitted by the Parties.

A. The Appellant: Mr. Vladimir Sakotic

80. In his appeal brief, the Appellant requests the following relief:

"According to the Chapter 13.3 of FIDE Statutes and Chapter R32 of the CAS Procedural Rules, the appellant requests that the CAS suspends the decisions which are subject to this appeal until the Arbitral award by the Court of Arbitration for Sport has been given. Appeal to pause the execution of the decisions appealed against the appellant is based on the following reasons:

- *MCF suspended Mr. Sakotic, whose suspension begins on the 30th of October 2014*
- *If the MCF suspension is included in the FIDE ETH suspension, then there was a chance of making this procedure pointless*

One should ask oneself a question, whether the period of suspension imposed by the Montenegro Chess Federation is part of the period intended for the punishment and when (the precise date) does the punishment expire?

2a. Issue a new decision which replaces the decision challenged/issued by the FIDE Ethics commission cases n. 13/2014 & 14/2014 and allow Mr. Vladimir Sakotic to hold any office or position within FIDE and to participate in any meeting of FIDE as delegate or in another capacity, as well as to represent any organization connected with FIDE (member federations, continental associations, and other affiliated international organizations), or (alternatively)

2b. According to CAS proceeding rules (R32) the Appellant may apply to the CAS to suspend the ongoing process until matters in Montenegro are clarified".

81. In his statement of appeal, the Appellant had also requested: *"Legal fees and Costs of proceedings. Costs of proceedings are to by [sic] paid by FIDE to Appellant which should also reimburse the cost paid in advance by Appellant. Legal fee shall be submitted upon completion of this case".*

82. In support of his requests for relief, the Appellant submits essentially as follows:

a) The Appealed Decision wrongfully takes into account that Mr. Sakotic was under criminal prosecution in Montenegro. The MCF pressed criminal charges against Mr. Sakotic, but the Montenegrin prosecutors never initiated a criminal proceeding. The EC should thus not have (i) used expressions such as *"criminally charged"* and *"criminal proceedings"* to describe Mr. Sakotic in the Appealed Decision's introduction, (ii) associated Mr. Sakotic with words like *"mastermind"* and *"criminal activities"*, and (iii) used his supposed status as criminally prosecuted as a *"pillar of the decision"*. This goes against the presumption of innocence protected by Article 6 of the European Convention on Human Rights.

b) The EC violated Mr. Sakotic's procedural rights in the proceeding below by: (i) granting ECU and MCF, in contravention of the FIDE Ethics Commission Procedural Rules (the "EC Procedural Rules"), an opportunity to reply to Mr. Sakotic's defense without first advising or consulting him on that matter, (ii) extending the deadline for MCF to file its reply to Mr. Sakotic's defense after it had already expired and without justified reasons, and (iii) failing to provide Mr. Sakotic with MCF's reply and accompanying exhibits until

after the EC hearing, thereby precluding him from commenting on them before or, if he had wished to attend, at the hearing (Mr. Sakotic was away on a *"forced vacation"* to tend to his ill mother, who passed away mid-August 2016, when the EC sent the aforementioned documents and, upon his return home, was unable to gain access to them as the link had expired). More generally, Mr. Sakotic characterizes the behavior of the EC, the ECU and MCF as biased and lacking in equanimity and objectivity, having *"from the very beginning of the procedure in cases 13/2014 and 14/2014… treated* [him] *as an offender and in unfriendly manner"*. This includes deliberately postponing by 45 days the notification of the decisions taken at the EC Assembly held on 26-28 May 2016 in order to grant MCF as much time as possible to prepare its defense statement.

c) The EC applied the wrong laws and regulations and, as such, the Appealed Decision is invalid. First, it applied a version of the Law on Sport of Montenegro which was no longer in force on 28 August 2011 when MCF submitted its bid for the Competition. Second, the EC applied the ECU Tournament Rules of 1 January 2013, whereas the applicable edition is the one from 2010.

d) The Appealed Decision goes against the principle of *in dubio pro reo* and is incorrectly grounded on assumptions and false constructions, without the support of any clear evidence.

e) The Appealed Decision wrongfully used damages to MCF and ECU as a basis for finding Mr. Sakotic guilty. Neither MCF nor ECU suffered any material damages. MCF received EUR 51,457.50 for transferring its rights to organize the Competition (i.e. its assets did not diminish). Whether or not MCF could have received a better deal is not Mr. Sakotic's problem; Mr. Srdja Dragasevic, who signed the MCF-Potez Agreement in 2011 before Mr. Sakotic even became MCF President, held that responsibility. Furthermore, since MCF assigned its organizing rights to Potez, which, in turn, transferred them to Centar, MCF lost all claims to any benefits from the Competition (including its shares of the ECU entry fees). The fact that MCF did not civilly sue Mr. Sakotic for damages, as well as the lack of any evidence of damages, confirms that MCF suffered no damages. ECU received a total revenue in 2013 of EUR 238,181.28, out of which EUR 75,020.83 (i.e. 25 percent more than the projected EUR 60,000) came from the Competition. Not only did the transfer of rights from MCF to Potez to Centar to organize the Competition not cause any damages to MCF or ECU, it also reduced the costs for the Competition's participants by approximately EUR 100,000.

f) Mr. Sakotic's powers and responsibilities as ECU Executive Director are not as expansive as EC led to believe in the Appealed Decision; in reality, they are rather insignificant and grant him no capacity in relation to the organization of the Competition itself or the transfer of the rights to organize the Competition. The ECU Statutes do not establish the position of ECU Executive Director and, currently, nobody holds it. The position was actually created by the ECU Board of 12-13 January 2011 and granted him only the following powers and responsibilities:

"- Dealing with the technical details of the management of the ECU office in Belgrade

- Technical organization of the meetings

- Communication with the organizers of the competitions (respect of the contract and the level necessary for the ECU competitions, number of judges, the ceremony requirements, etc.)

- The official ECU website

- The ECU manual

- Working on the ECU projects (Commercial project, Chess in Schools, Chess as life, Chess palace, Chess as a Hope (chess for the disabled), Chess as Means to Fight the Drug Addiction)".

With such limited powers and responsibilities, Mr. Sakotic cannot be considered as the *"mastermind"* of any supposed scheme to make secret profits. Furthermore, he cannot be held responsible for the conduct of other individuals falling outside the scope of his authority, e.g. MCF's transfer to Potez of the rights to organize the Competition (which occurred before his MCF presidency) or to their subsequent transfer to Centar (as he had *"no authorisation with respect [to] the creation and signing of any contract on behalf of the ECU"*). For example, the fact that Mr. Dragasevic did not present the letter of 28 June 2011 to the MCF Board of Directors does not implicate, either directly or indirectly, Mr. Sakotic. There is no evidence that Mr. Sakotic went beyond his own powers and responsibilities.

g) Mr. Sakotic did not send the email of 15 March 2013 or the invoice no. 79/13 dated 11 March 2013 for the deposit of EUR 7,500.

Instead, the email and invoice were forged, as confirmed by (i) the written statements of Mr. Zoran Perunicic and Mr. Dejan Milosevic who denied having received the contested email, (ii) the *"graphical representation of the e-mail copy"* (i.e. the heading does not include the initial address to which it was allegedly sent), (iii) the fact that the MCF's account at *Crnogorska komercijalna banka* does not show an incoming/outgoing transaction for a deposit of EUR 7,500, and (iv) the fact that D.A. testified that he personally had delivered invoice no. 79/13 to MCF officers.

At the time of the supposed email and invoice, MCF had already paid the deposit of EUR 7,500 in cash on 28 January 2013 at the offices of the ECU in Belgrade. This is evidenced by:

- the written statements and testimony of D.A. and J.S.; and
- the written statement of Mr. Burnstein (ECU Treasurer) which the EC ignored but which confirms that organizers of competitions paid deposits in three ways, one of them being cash deposits, and that he *"was notified by the ECU office that the deposit had been paid cash"*, which is of exceptional importance considering that under Article 49 of the ECU Statutes the ECU Treasurer *"exercise*[s] *overall control over the financial administration" of the ECU"*).

The written statement and testimony of Mr. Gretener on this issue of the cash deposit is not convincing. The fact that the cash deposit is not included in the document *"Cash payments in the ECU office from 15 December 2012 to May 2013"* does not mean it did not

occur. First, since it was a cash deposit, Mr. Sakotic had to inform Mr. Burnstein (as he did), not Mr. Gretener. Second, deposit fees are not to be included in the aforementioned document since it corresponds to a *"security that the client… will fulfil its liabilities"*, i.e. it is not a revenue or expense. A deposit fee would be recorded in the *"Off-balance sheet deposits"* document that Mr. Sakotic requested from ECU to no avail on 23 February 2016.

The EUR 7,500 payment actually corresponded to the organizer's share of the MTEL Sponsorship. In any case, no damage occurred because the deposit fee belongs to the organizer of the competition, not MCF.

h) Mr. Sakotic had no part in and did not plan in advance the assignment from Potez to Centar. That assignment became necessary due to problems of organizational and financial nature that arose from the Turkish Chess Federation's appeals to CAS and SFT, which delayed Potez from planning the Competition until 22 March 2012.

i) There is no conflict of interest. Mr. Sakotic's limited powers as ECU Executive Director made it impossible for him to take decisions that would place his own personal interest ahead of those of the ECU, i.e. create a conflict of interest situation. Further, there cannot be conflict of interest because Mr. Sakotic did not sign any document related to the organization of, or transfer of rights to organize, the Competition, nor was he authorized to do so. Moreover, it remains unproven whether and how Mr. Sakotic made personal profits to the detriment of ECU.

B. The Respondent: FIDE World Chess Federation

83. The Respondent submitted in its Answer the following prayers for relief:

"I. Ruling that the Appeal is inadmissible;

II. Alternatively to I., dismissing entirely any and all Requests for Relief made by the Appellant Vladimir Sakotic;

III. In all events, ordering the Appellant Vladimir Sakotic to pay all the costs of the arbitration, including without limitation the fees and expenses of the Panel and Respondent's legal fees and expenses".

84. In support of its prayers for relief, the Respondent submits essentially the following arguments:

a) The appeal is inadmissible. This matter should be dealt with as a preliminary matter and without a hearing. The Appellant sent its appeal brief by email on 12 December 2016. It then sent a hard copy of the appeal brief via courier on 13 December, which arrived at CAS on 14 December 2016. Pursuant to Article R31, para. 3 of the CAS Code, the Appellant's filing by courier was late because it was not made *"within the first subsequent business day of the relevant time limit"* (i.e. on 13 December 2016, but rather only 14 December 2016) or *"within midnight of the relevant deadline"* as required by CAS jurisprudence (CAS 2015/A/4262 supports this conclusion). As such, the Panel must consider the appeal withdrawn and inadmissible in accordance with Article R51 of the CAS Code. Further, if the Statement of Appeal was also not filed by courier by 22 November 2016 (one day

after its email submission), then the Panel must consider the present procedure terminated pursuant to Article R49.

b) The EC's references in the Appealed Decision to criminal proceedings in Montenegro were correct and appropriate and in no way brand the Appellant as a criminal or constitute a *"pillar"* of that decision. The EC merely states a fact on the record, i.e. that the Appellant was criminally charged, that the criminal proceedings were apparently in an early stage, and that the Appellant possibly faced further criminal prosecution, all of which the Appellant himself admitted. The EC's reference to *"criminal proceedings"*, especially in light of the Appellant's own use of the term, must not be confused with a formal indictment in a criminal court. The EC's reference to the Delaware based companies *"as vehicles for criminal activities"* in no way suggests, expressly or implicitly, that the Appellant committed criminal activities. The conclusion that the Appellant was the *"mastermind"* resulted not from prejudgment, but rather from a careful examination of the evidence submitted and the Parties' written and oral submissions.

c) The EC did not violate the Appellant's procedural rights and, in any case, the *de novo* nature of the CAS appeals arbitration cures any alleged procedural defects or violations of this kind. No procedural rights violation occurred because (i) there is no evidence to support that the EC conspired with ECU and MCF against the Appellant, (ii) the EC Procedural Rules do not preclude a second round of submissions, and, in any case, the Appellant was provided the opportunity to comment on complainants' replies in a further response and at the hearing, (iii) the EC granted the MCF an extension of the missed deadline to file a reply based on exceptional circumstances and this had no prejudice to the proceeding or on the Appellant, (iv) the EC is not responsible for the Appellant's failure to not use his email during a period of the proceeding, to immediately request copies of the exhibits that became inaccessible through the provided web link due to his delay in attempting to open it, or to request an extension of time for rebuttal or postponement of the hearing, and (v) MCF's submission of five exhibits that allegedly could have been submitted with its reply were not in breach of the EC's instructions and, in any case, the Appellant did not object to their submission during the EC proceedings and they were not decisive to the EC's findings.

   The EC's behavior during the proceedings was correct and appropriate and all allegations related to the deliberate postponement of the disciplinary proceedings to accommodate MCF are untrue and unproven. As far as attendance at the EC hearing, the EC did its utmost to ensure the Appellant's participation (e.g. by permitting witness testimony via tele- or video-conference); however, the Appellant did not even express his intention not to attend.

d) The EC correctly applied the Law of Montenegro and the ECU Tournament Rules and thus the Appealed Decision cannot be annulled. The EC did not declare the Appellant guilty based on failure to comply with the Law of Montenegro no longer in force; it considered that it was to decide whether the Appellant violated the FIDE Code of Ethics and not whether he had violated national law *per se*. In any event, the Appellant's challenge of this law is a mere technical objection, as the Appellant fails to indicate whether the

new Law of Montenegro changed the requirement of governmental approval. As to the ECU Tournament Rules, it is true that the EC used the 2013 version, but (i) the Appellant relied on the same version in the proceeding below so an objection as to their applicability now would contravene the principle of *venire contra factum proprium*, and (ii) there is no material difference between the relevant provisions of the 2010 and 2013 versions so the EC's reasoning would remain the same even if it used the 2010 version. In any event, the EC ruled that the Appellant violated the FIDE Code of Ethics, rather than the ECU Tournament Rules *per se*.

e) The applicable standard of proof is comfortable satisfaction as this is an ethical case. The criminal presumption of innocence – *in dubio pro reo* – does not apply.

f) A violation of Article 2.2.2 of the FIDE Code of Ethics does not require a financial or other damage. For this reason, the question of damages was irrelevant in determining whether the Appellant violated that article and the EC thus did not examine that question in much detail (i.e. it did not establish the amount of damage caused). That said, the EC did conclude to its satisfaction that financial harm to MCF and the ECU existed.

Damages to MCF: Pursuant to the ECU Tournament Rules and the ECU Financial Regulations (Article 4.3), the entry fees could not be directly distributed to the organizer, as they were here, but rather had to be distributed to the ECU and the organizing national federation (MCF), the latter who would be responsible for giving its share to the organizer. MCF did not validly waive its entitlement to/completely abandon its rights and responsibilities in organizing the competition, as proven by the lack of an MCF Board decision/notice of assignment of rights to Potez, the lack of written evidence that MCF consented to transfer to Centar its rights to organize the Competition, the secrecy surrounding Centar's involvement, and MCF's participation after the transfer of its rights to organize the Competition (i.e. leasing/paying for the rental tournament hall and signing of the MTEL Sponsorship). MCF suffered damage by the unlawful delegation of the organization to Centar and the payment of fees/revenues to various entities (including Centar and Chess Plus LLC), aggregating more than EUR 200,000 and which would have accrued to MCF.

Damages to ECU: ECU suffered damages because (i) it never received the deposit fee of EUR 7,500 as required by the ECU Tournament Rules and ECU Financial Regulations, and (ii) of the possibility of underpayment (entry fees were made payable to various entities, including Chess Plus LLC, in an irregular manner of invoicing suggesting a siphoning-off of revenues).

g) There is no proof of the supposed cash deposit made on 28 January 2013 at the ECU office in Belgrade. No such deposit is mentioned in the *"Cash payments in the ECU office from 15 December 2012 to May 2013"* or in the ECU books and accounts. The Appellant's claim that there is no such record of the cash deposit because it is meant to be returned is untenable. The evidence actually supports the opposite – that the ECU deposit fee was made to European Chess Union LCC following invoice no. 79/13 in violation of the ECU regulations. There is no evidence that said payment was not a deposit fee and

somehow connected to the MTEL Sponsorship. There is no reason to believe that the Appellant's email of 15 March 2013 and the accompanying invoice no. 79/13 were forged. The Appellant's reference (in his testimony at the hearing) to an email sent 10 days prior to 15 March 2013 that may have been used to forge the email of 15 March 2013 is unreliable as the Appellant (i) never filed that previous email (albeit filing over 200 exhibits), and (ii) does not remember the content of that email. There is also no evidence to support the Appellant's position that MCF's account at *Crnogorska komercijalna banka* was not used to carry out the deposit/return of deposit. The testimony of J.S. and D.A. that the payment of EUR 7,500 on 2 April 2013 was a loan reimbursement is illogical.

h) The Appellant's limited powers as ECU Director or the fact that he did not sign the MCF-Potez or Potez-Centar Agreements does not mean he did not take advantage of his position as ECU Executive Director, MCF President and President of Mladost and his privileged relationship with Potez and Centar. That is proven by the facts that (i) he proposed to have MCF apply for the Competition and to have it assigned to the Potez which had been founded by people of his own chess club (Mladost), (ii) Mr. Markovic, Secretary General of MCF from 1996 to 2013 and member of Mladost, signed the MCF bid, (iii) a member of his immediate family signed the Potez-Centar Agreement, which remained secret from MCF and ECU (and not filed in the EC proceeding), (iv) he had a copy of that agreement which he did not forward to ECU administration until August 2014, (v) he continued to present Potez as the organizer of the Competition even after, as he knew, it had transferred the rights over to Centar, (vi) he sent an invoice to MCF on ECU letterhead made payable to Chess Union LLC, (vii) he does not deny the existence of that company or its Slovenian bank account, and (viii) the EC found him guilty for his conduct in his capacity as ECU official since his appointment on 13 January 2011 and, in particular, for his failure to safeguard the interest of ECU and MCF, as well as for breaching his fiduciary duties towards ECU between 2011-2014. The Appellant's statement that he never heard of Chess Plus LLC until 2014 is unreliable, as it is not credible that immediate family members who are both chess players and organizers would not speak about such matters at home.

i) The transfer from Potez to Centar of the rights to organize the Competition was unlawful and invalid. Pursuant to Article 8.1 of the ECU Tournament Rules, only a national federation, not the organizer, can *"attribute the organisation to another body"*; nonetheless, Potez directly transferred said rights to Centar. The ECU regulations and the principles of good governance required notification to, and express authorization of, the MCF Board of any assignment of transfer. Further, since Centar was not the organizer that had been approved with the acceptance of the MCF's bid, the ECU Board's approval was also necessary for such a transfer to occur. MCF and ECU would have certainly – based on the circumstances (in particular, J.S.'s role as owner of Centar) – objected to the transfer of organizing rights to Centar, if it had been made aware of the transfer.

j) The Appellant breached his fiduciary duties and acted in conflict of interest irrespective of the extent of his actual powers and responsibilities within ECU, as he was *"one of the*

few ECU and MCF officials aware of the fact that the organisation of the [Competition] had been delegated to an entity which, coincidentally, is owned by [a member of his immediate family]".

VII. JURISDICTION

85. The jurisdiction of CAS, which the Parties do not dispute, derives from Article R47 of the CAS Code, Article 13.1 of the FIDE Statutes and Article 4.5 of the FIDE Code of Ethics.

86. According to Article R47 of the CAS Code *"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 it prior to the appeal, in accordance with the statutes or regulations of that body".*

87. Article 13.1 of the FIDE Statutes provides that *"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 the 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 …".*

88. Article 4.5 of the FIDE Code of Ethics also 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".*

89. The Parties confirmed CAS jurisdiction by signing the Order of Procedure.

90. In light of the above, the Panel holds that CAS has jurisdiction to hear and decide the present dispute.

VIII. ADMISSIBILITY

91. Article 13.1 of the FIDE Statutes grants a 21-day deadline from notification of the Appealed Decision to file the statement appeal: *"The time limit for appeal is twenty-one days from receipt by the appellant of the decision appealed against …".*

92. The Panel notes that Article 4.6 of the FIDE Code of Ethics also provides that *"the time limit for appeal is twenty-one days following the communication of the decision concerning appeal".*

93. As to the timing of the appeal brief, Article R51 of the CAS Code provides as follows:

"Within ten days following the expiry of the time limit for the appeal, the Appellant shall file with the CAS Court Office a brief stating the facts and legal arguments giving rise to the appeal, together with all exhibits and specification of other evidence upon which it intends to rely. Alternatively, the Appellant shall inform the CAS Court Office in writing within the same time limit that the statement of appeal shall be considered as the appeal brief. The appeal shall be deemed to have been withdrawn if the Appellant fails to meet such time limit".

94. According to Article R31, the general rule is that parties must file their written submissions, including statement of appeals and appeal briefs, by courier: *"The request for arbitration, the statement of appeal and any other written submissions, printed or saved on digital medium, must be filed by courier delivery to the CAS Court Office by the parties in as many copies as there are other parties and arbitrators, together with one additional copy for the CAS itself, failing which the CAS shall not proceed"*.

95. However, Article R31 also provides an exception to this general rule by allowing a party to file a written submission in advance by fax or email, so long as it also files that same submission by courier by no later than the business day following the original deadline: *"If they are transmitted in advance by facsimile or by electronic mail at the official CAS email address (procedures@tas-cas.org), the filing is valid upon receipt of the facsimile or of the electronic mail by the CAS Court Office provided that the written submission and its copies are also filed by courier within the first subsequent business day of the relevant time limit, as mentioned above"*.

96. As stated above (see *supra* at para. 57), the EC notified the motivation of the Appealed Decision on 31 October 2016. Therefore, Mr. Sakotic had until 21 November 2016 to file his statement of appeal by courier, or, if he filed it in advance by fax or email, until 22 November 2016 to file the same by courier.

97. As for the appeal brief, the original deadline to file it was 1 December 2016. However, CAS extended that deadline by 10 additional days (see *supra* at para. 67), which meant that, with 11 December 2016 falling on a Sunday, the deadline to file the appeal brief by courier became 12 December 2016. Therefore, Mr. Sakotic had until 12 December 2016 to file the statement of appeal by courier, or, if he filed it in advance by fax or email, until 13 December 2016 to file the same by courier.

98. The Panel confirmed with the CAS Court Office that the Appellant sent:

- his statement of appeal by email and courier on 21 November 2012; and
- his appeal brief by email on 12 December 2016 and by courier on 13 December 2016 (the Appellant requested delivery service on 12 December 2016, the courier service picked up the appeal brief on 13 December 2016, and it arrived at CAS on 14 December 2016).

99. The Respondent contests the appeal's admissibility, arguing that the Appellant submitted the appeal brief and possibly the statement of appeal late.

100. In the Respondent's view, the appeal brief is late because it did not reach CAS until 14 December 2016, whereas it should have arrived at CAS by 13 December 2016, i.e. within the first subsequent business day of the deadline of 12 December 2016. It concludes that since the appeal brief was late, the appeal must be considered withdrawn pursuant to Article R51 of the CAS Code.

101. The Respondent also questions whether the Appellant filed his statement of appeal on time. It explains that the fact the CAS Court Office did not notify the statement of appeal to the Respondent until 28 November 2016, i.e. six days after the subsequent business day of the deadline of 21 November 2016, is suggestive of a late filing. If late, the Respondent requests

the termination of the appeal per Article R49, which reads *"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"*.

102. The Respondent's challenge to the admissibility of the written submissions seems to be rooted on its interpretation of the term *"filed"* in Article R31, which it apparently holds as synonymous with "received by" or "delivered to" CAS.

103. The Panel does not agree with the Respondent's interpretation of the term "filed" in Article R31.

104. The Panel deems that said term is synonymous with "sent". This is readily evident from Article R32 of the CAS Code, which reads: *"The time limits fixed under this Code are respected if the communications by the parties are sent before midnight, time of the location where the notification has to be made, on the last day on which such time limits expire"* (emphasis added). Under Article R32 of the CAS Code, what is decisive in determining the timeliness of a written submission is the time of *sending*; the time of actual receipt or delivery at CAS is irrelevant. Article R32 of the CAS Code is thus properly understood as a "mailbox rule" for the timeliness of filing.

105. The Panel takes comfort in the fact that CAS 2015/A/4262 (to which the Respondent specifically refers) adopted this same interpretation. Indeed, in that case, the term *"filed"* was construed as meaning "shipped" or "dispatched" (see para. 104 of that award: *"if the appellant files its statement of appeal in advance by fax, it must also file that same submission by shipping a dispatch by courier within midnight of the relevant deadline (under Article R32 the 'time limits fixed under this Code are respected if the communications by the parties are sent before midnight"*).

106. For the avoidance of doubt, the Panel must remark that it is irrelevant that CAS 2015/A/4262 required that, if a written submission was faxed in advance, the hard copy be sent by courier on the original deadline. CAS 2015/A/4264 dealt with the 2013 version of Article R31 of the CAS Code which held the validity of a written submission filed in advance conditional on the party also sending it by courier *"within the relevant time limit"*. Today's Article R31, however, requires the courier to be sent *"within the first subsequent business day of the relevant time limit"*, thereby providing an extra day than the previous version of the rule.

107. The Appellant thus complied with Article R32 of the CAS Code: after having emailed the statement of appeal in advance, the Appellant sent the same by courier within the first subsequent business day (i.e. on 13 December 2016) of the relevant time limit (i.e. 12 December 2016). The Panel reaches the same conclusion with regards to the statement of appeal, which the Appellant, after having emailed it in advance, sent by courier within the first subsequent business day (i.e. on 22 November 2016) of the relevant time limit (i.e. 21 November 2016).

108. The foregoing contains the Panel's reasoning behind its decision of 2 February 2017 rejecting the Respondent's objection to the admissibility of the Appellant's appeal.

IX. APPLICABLE LAW

109. Pursuant to Article R58 of the CAS Code: *"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"*.

110. Article 13.1 of the FIDE Statutes provides that *"The CAS shall decide the dispute according to the FIDE Statutes, regulations and rules as well as according to Swiss law"*.

111. It follows that, in lack of any other choice of law, the law applicable to the merits of the present case consists of the various FIDE regulations, in particular, the FIDE Code of Ethics, with Swiss law applying additionally.

112. For the sake of completeness, the Panel notes that the Appellant claims the Appealed Decision applied the wrong edition of the ECU Tournament Rules (i.e. the 2013 edition rather than that from 2010). The Panel finds, however, that those rules only apply indirectly with relation to assessing the alleged irregularities in the transfer of organizing rights and the organization of the Competition. The ECU Tournament Rules are not central to the dispute in that they do not form the basis of a conviction or exoneration of an ethical charge. For that question, it is the FIDE Code of Ethics, as stated above, that is applicable. In any case, pursuant to Article R57 of the CAS Code, the Panel has the full power to review the law (hearing the case *de novo*) which cures the EC's flaw of using the 2013 ECU Tournament Rules.

X. EVIDENTIARY REQUESTS

A. Request during written exchange phase to introduce/strike new evidence

113. In his appeal brief, the Appellant sought to introduce certain exhibits (to which the Respondent objected on the basis that they were purportedly available to the Appellant at the time of the underlying EC case) and to strike certain exhibits that MCF introduced before the EC (as they were supposedly available to that federation at the time it filed its initial complaint before the EC). The Panel admitted all of the aforementioned evidence exercising its discretion under Article R44.3 of the CAS Code and on the understanding that the discretion to exclude evidence under Article R57 of the CAS Code should be exercised only in extreme circumstances not present here, particularly in light of the Appellant's *pro se* and generally limited participation in the proceedings below (and the adverse inferences drawn by the EC in consequence).

B. Request at the hearing to introduce new evidence

114. At the hearing of 11 April 2017, during the examination of J.S., the Appellant attempted to introduce a receipt allegedly acknowledging a cash deposit of EUR 7,500 on 29 January 2013 at the ECU offices in Belgrade. In light of the Respondent's objection, the Panel denied introduction of the new evidence on the basis of Article R56, para. 1 of the CAS Code that

reads: *"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".*

115. The receipt was in the possession of the Appellant's immediate family member (original receipt) and of the intended witness, D.A. (copy of receipt), as they explicitly confirmed in their respective witness statements submitted before the EC proceeding. However, the Appellant did not produce the receipt in the exchange of written submissions at CAS and was unable to prove exceptional circumstances warranting its late introduction at the hearing.

XI. MERITS

116. The Appellant requests the Panel to issue a new decision replacing the Appealed Decision asserting that the EC rendered it following a procedure which violated his procedural rights and erroneously concluded that he violated Article 2.2.2 of the FIDE Code of Ethics. The Respondent, on the other hand, seeks confirmation of the Appealed Decision asserting that the EC sanctioned the Appellant after a fair proceeding and correctly ruled that he violated Article 2.2.2 of the FIDE Code of Ethics.

117. In view of the Parties' submissions, the Panel must determine whether the Appellant violated Article 2.2.2 of the FIDE Code of Ethics and, if so, what is the appropriate sanction. Before doing so, the Panel needs to address a few preliminary issues.

A. The alleged procedural violations in the EC proceeding

118. Article R57 of the CAS Code provides that the *"Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance".*

119. According to long-standing CAS jurisprudence, pursuant to Article R57 of the CAS Code, a panel in an appeals proceeding hears the case *de novo* and must make an independent determination of the correctness of the parties' submissions on the facts and the merits, without limiting itself to assessing the correctness of the procedure and decision of the first instance (cf. TAS 98/211 at para. 8; TAS 2004/A/549 at para. 9; CAS 2009/A/1880-1881 at para. 146; CAS 2011/A/2426 at para. 46; TAS 2016/A/4474 at para. 223).

120. It is this *de novo* character of an appeals proceeding that cures any procedural violations that may have been committed in the first instance (CAS 94/129 at para. 59; CAS 2000/A/281 at para. 9; CAS 2008/A/1594 at para. 44; TAS 2016/A/4474 at para. 221 *et seq.*). On this topic, CAS jurisprudence has held:

"87. According to article R57 of the Code, the CAS has full power to review the facts and the law. The consequences deriving from this provision are described in the consistent CAS jurisprudence, according to which "if the hearing in a given case was insufficient in the first instance (…) the fact is that, as long as there is a

possibility of full appeal to the Court of Arbitration for Sport, the deficiency may be cured" (CAS 94/129 award of 23 May 1995, par. 59). Later the CAS has reaffirmed this principle, holding that "the virtue of an appeal system which allows for a rehearing before an appeal body is that issues relating to the fairness of the hearing before the Tribunal of First instance 'fade to the periphery'" (CAS 98/211, award of 7 June 1999, par. 8). More recently, the CAS has further relied on the Swiss Federal Tribunal case law, which held that "any infringement of the right to be heard can be cured when the procedurally flawed decision is followed by a new decision, rendered by an appeal body which had the same power to review the facts and the law as the tribunal of first instance and in front of which the right to be heard had been properly exercised" (CAS 2006/A/1177, award of May 2009, par. 7.3). For another recent case, see for instance, CAS 2008/A/1594 para. 109, "However, as CAS has complete power to review the facts and the law and to rule the case de novo, the procedural deficiencies which affected the procedures before FILA disciplinary bodies may be cured by virtue of the present arbitration proceedings (see e.g. CAS 2006/A/1175 paras. 61 and 62, CAS 2006/A/1153, para. 53, CAS 2003/O/486, para. 50)". This CAS jurisprudence is actually in line with European Court of Human Rights decisions, which in par. 41 of the Wickramsinghe Case concluded that "even where an adjudicatory body determining disputes over civil rights and obligations does not comply with Article 6 (1) [ECHR] in some respect, no violation of the Convention will be found if the proceedings before that body are subject to subsequent control by a judicial body that has full jurisdiction and does provide the guarantees of Article 6 (1)" (CAS 2009/A/1920 at para. 87, emphasis added).

121. Thus, the effect of the CAS appeal system, which pursuant to Article R57 of its Code, allows the Panel to conduct as second instance court a full review of the first instance decision, is that issues concerning the manner in which the lower court conducted its proceeding become marginal (TAS 2016/A/4474 at footnote 22).

122. The Panel takes note of the Appellant's contention that the EC violated his procedural rights and contravened the presumption of innocence embedded in the European Convention on Human Rights (see *supra* at para. 82a) and b)). However, due to the curing effect of CAS appellate proceedings, the Panel finds it unnecessary to rule on whether the EC committed such violations against the Appellant.

123. In full accordance with the CAS Code, the Panel has permitted the Parties to file written submissions, produce a significant number of documents (including new exhibits not introduced in the first instance, see *supra* at para. 71), present what appears to be the entirety of the voluminous EC file (including witness statements), call and examine/cross-examine witnesses, and orally plead their cases. The Parties both confirmed at the hearing that in the present CAS appeals arbitration proceeding, their right to be heard has been fully respected and that no procedural violations have occurred. Therefore, even assuming the existence of procedural violations or irregularities in the EC proceeding, the present appeals arbitration proceeding has rectified them, as the Panel is hearing the case *de novo* and making an independent determination without affording any deference to the Appealed Decision.

B. Burden of proof

124. The burden of proof is allocated in accordance with the rules of law governing the merits of the dispute (CAS 2016/A/4501 at para. 110). As determined *supra* at para. 109 *et seq.*, the rules of law applicable here are the various FIDE Statutes, regulations and rules, with Swiss law

applying additionally. The FIDE regulations do not allocate the burden of proof; therefore, the Panel turns to Swiss law to determine how to allocate it.

125. Swiss law applies the principle of *"affirmanti incumbit probatio"*. Indeed, Article 8 of the Swiss Civil Code stipulates that *"Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact"*. Therefore, the burden of proof falls on the Respondent to prove that the Appellant violated Article 2.2.2 of the FIDE Code of Ethics, and each party shall have the burden of proving the facts that it alleges.

C. Standard of proof

126. The Parties dispute the standard of proof applicable to the present case. At the hearing, the Appellant made several references to the principle of *in dubio pro reo* as the applicable standard of proof, to which the Respondent objected.

127. The Panel notes that neither the FIDE regulations (including the FIDE Code of Ethics and the EC Procedural Rules) nor the CAS Code stipulates what is the standard of proof. However, it is well-established under CAS jurisprudence that when the governing sports body regulations do not provide the applicable standard of proof, the Panel must determine it (see RIGOZZI/QUINN, *"Evidentiary Issues Before the CAS"* in *International Sports Law and Jurisprudence of the CAS*, Bern 2014, p. 26).

128. It is widely-accepted at CAS that when dealing with disciplinary cases, the Panel must apply the standard of "comfortable satisfaction" (CAS 2012/A/2699 at para. 89). This standard falls between "beyond reasonable doubt" and "balance of probabilities" on the standard of proof spectrum (CAS 2015/A/4163 at para. 72). CAS has in fact consistently held that criminal law principles (including the presumption of innocence until proven guilty beyond a reasonable doubt – *in dubio pro reo*) do not apply in sports disciplinary cases; only civil law standards are relevant (CAS 2010/A/2268 at para. 99).

129. Taking into consideration that the present case is an appeal of a disciplinary sanction, the Respondent must, in accordance with the abovementioned CAS jurisprudence, prove to the "comfortable satisfaction" of the Panel that the Appellant violated Article 2.2.2 of the FIDE Code of Ethics.

D. Violation of Article 2.2.2 of the FIDE Code of Ethics

a) Competence to sanction Mr. Sakotic in his capacity as ECU Executive Director

130. Preliminarily, the Panel notes that CAS has already decided – in CAS 2015/A/4062 *S. Danailov & Sakotic & Stoisavlevic v. World Chess Federation* – that Mr. Sakotic may be sanctioned in his capacity as ECU Executive Director. In that CAS award, the panel ruled that the EC had jurisdiction over the conduct of Mr. Sakotic as an *"official of an association"*.

131. In reaching its decision, the panel analyzed Article 8.1, para. 3 of the FIDE Statutes, which states *"The Ethics Commission shall have jurisdiction over the conduct of officials of member federations,*

associations, leagues and clubs as well as players, players' agents and match agents if the case on which the alleged violation is based has international implications or affects various national federations of FIDE and is not judged at national level".

132. It concluded that the EC had competence over Mr. Sakotic under Article 8.1, para. 3 because (i) he – as an ECU Executive Director – acted as an official of an association, (ii) the alleged violations had international implications since the alleged violations could potentially affect the fifty-four ECU member federations and, moreover, the Competition was international in nature (with 1045 chess players from forty-eight European federations participating), and (iii) the case was *"not judged at national level"* because no disciplinary proceeding at MCF or ECU was pending.

b) Article 2.2.2 of the FIDE Code of Ethics

133. Article 2 of the FIDE Code of Ethics stipulates that the Code *"shall be breached by a person or organization who directly or indirectly … 2.2 in other respects acts contrary to this Code"*. According to Article 2.2.2 this includes *"Office bearers who through their behavior no longer inspire the necessary confidence or have in other ways become unworthy of trust"*.

134. The Parties dispute whether Mr. Sakotic breached Article 2.2.2 of the FIDE Code of Ethics.

135. The Appellant argues that he did not violate Article 2.2.2 of the FIDE Code of Ethics, because (i) he did not send the email of 15 March 2013 nor the invoice no. 79/13 (which were forged), (ii) he was not the "mastermind" nor played any role whatsoever in the transfer from MCF to Potez and then to Centar of the rights to organize the Competition or in the purported scheme to make secret profits, nor could he have played any role in those acts given his limited powers and responsibilities as ECU Executive Director, (iii) no conflict of interest occurred, (iv) the actions of others (including Mr. Dragasevic and the Appellant's immediate family member) cannot implicate him, and (v) neither MCF nor ECU suffered any damages (see *supra* at paras. 82e)-i)).

136. The Respondent, on the other hand, believes that Mr. Sakotic did violate Article 2.2.2 of the FIDE Code of Ethics, because (i) Mr. Sakotic sent the email of 15 March 2013 and the invoice no. 79/13, (ii) regardless of the powers and responsibilities Mr. Sakotic held as ECU Executive Director, he took advantage of his positions as ECU Executive Director, MCF President and Mladost President and his privileged relationship with Potez and Centar, (iii) Mr. Sakotic breached his fiduciary duties and acted in conflict of interest as he did not disclose that the Competition had been delegated to an entity owned by a member of his immediate family, and (iv) Article 2.2.2 of the FIDE Code of Ethics does not require a finding of damages, but, in any case, MCF and ECU did suffer damages (see *supra* at paras. 84f)-i)).

137. In order for the Panel to determine whether, in light of the applicable burden and standard of proof, Mr. Sakotic violated Article 2.2.2 of the FIDE Code of Ethics, the Panel must review the facts and circumstances surrounding the Competition. It must also consider whether the conduct in question can properly be captured within the terms of Article 2.2.2, the drafting of which is so broad and vague as to, at least potentially, constitute a veritable Pandora's Box or

catch-all that could give rise to sanctions on the basis of conduct difficult or impossible to measure or evaluate except on a purely subjective basis.

c) Lack of transparency surrounding the transfer of organizing rights to Centar

138. It is undisputed that the rights to organize the Competition were transferred first from MCF to Potez and then from Potez to Centar.

139. The transfer to Potez was made by way of an exchange of emails between 20 and 30 June 2011 (see *supra* at para. 7). This transfer was disclosed to ECU in the bid form (in which MCF designated Potez as the *"organizer"*), as well as more directly in a letter to ECU from Mr. Dragasevic (MCF President) on 23 September 2011 (see *supra* at para. 11). Mr. Dragasevic admits not consulting the MCF Board on the transfer to Potez.

140. Thereafter, on 30 September 2012, allegedly because of the delay of more than one year caused by the Turkish Chess Federation's appeals to the CAS and then to the SFT against ECU's bid award to MCF, Potez assigned to Centar the rights to organize the Competition.

141. This transfer, however, was not publicly disclosed. On the contrary, the Panel finds that there was a considerable degree of lack of transparency surrounding the transfer of the organizing rights to Centar.

142. Such lack of transparency is readily apparent from the very wording of the Potez-Centar Agreement which called for Centar to remain behind the scenes, hidden from MCF, the ECU and the public. The Panel refers to Article 3 of the agreement which stipulates: *"Centar undertakes to allow Potez to keep the entire communication with third parties, with the Montenegro Chess Federation and the European Chess Union before all"*.

143. The lack of transparency is also evident from the facts surrounding the transfer. The only communication concerning the transfer was between Mr. Prijovic of Potez and Mr. Danailov (former ECU President) on 14 October 2012, in which Mr. Prijovic explained the circumstances that had forced Potez to transfer to Centar the rights to organize the Competition (see *supra* at para. 15). There is no evidence that Mr. Danailov shared this information about, or sought approval for, the transfer with the ECU Board, the General Assembly or anyone else at ECU; rather, the evidence supports that the transfer of rights was kept secret. The Panel observes, for instance, that on 23 and 24 January the ECU Board Meeting discussed moving the site of the Competition, but did not discuss the ECU-Centar Agreement set to be signed the next day between Mr. Danailov and J.S. or, more generally, the transfer of organizing rights to Centar. According to Ms. Stoisavljevic, the chair of that board meeting, the ECU Board was kept in the dark about the ECU-Centar Agreement (see *supra* at para.18). The Panel also observes that MCF-Potez Settlements of Financial Obligations I and II both name Potez as the *"organizer"* and make no mention of Centar, notwithstanding the fact that Centar was already the organizer of the Competition (see *supra* at paras. 24-30).

144. The Potez-Centar Agreement seems to have remained publicly unavailable until Mr. Sakotic forwarded it to the ECU administration on 13 August 2014, nearly a year after the conclusion

of the Competition and at which point ECU was already conducting an investigation into the Competition.

145. The Panel considers the lack of transparency surrounding the Potez-Centar transfer highly disturbing and inconsistent with basic principles of good governance. At minimum, the transfer should have been disclosed, all the more where the Appellant's immediate family member was the principal of the transferee entity and given the inevitable aroma of inappropriate conflict of interest when contracts are awarded or assigned (or permitted to be awarded or assigned) to friends and family or entities owned or controlled by friends or family. The Appellant's efforts to distance himself from the relevant decisions and actions are not persuasive.

146. In this respect, the Panel notes that under Article B.8.1 of the ECU Tournament Rules 2010, only a federation had the right to attribute the organization of a competition to another entity: *"Each of the ECU competitions is organised by one of the ECU Chess Federations. Every ECU Chess Federation is entitled to organise an ECU competition itself or attribute the organisation to another body, e.g. a club or a private organisation …"*. Moreover, under the bid procedure set forth in the ECU Tournament Rules 2010, the ECU Board or the ECU General Assembly depending on the particular circumstances were the bodies responsible for awarding the event: *"The organisation of an ECU competition is appointed by the ECU Board based on bid applications received by a due date set by the specific tournament regulations or the ECU Board"* (Article 8.2; see also Article 2.5). Additionally, the actual bid form, annexed to the ECU Tournament Rules 2010, required the bidding chess federation to provide the organizer.

147. Based on said rules, it seems untenable that a third party (Centar), unbeknownst to ECU (the body in charge of granting the organization of an ECU competition to a national federation) and the hosting federation (the only body with the right to attribute its organizing rights to a club or a private organization), could acquire rights to organize the Competition directly from the organizing company (Potez). This would essentially undermine the bid procedure and the respective powers of the ECU and the national federation with regard to the transferring of organizing rights, and open the door for conflict of interest situations. In the present case, for example, due to the lack of transparency involved, neither MCF nor the ECU had an opportunity to evaluate the appropriateness of the transfer of organizing rights to a company owned or controlled by an immediate family member of Appellant.

148. The Panel finds to its comfortable satisfaction that the Appellant, although he neither signed the Potez-Centar Agreement nor held the position of MCF President at the time of the transfer, played a material role in the lack of transparency surrounding the transfer of organizing rights to Centar. This cannot be considered consistent with his obligations of an ECU official. Indeed, the Appellant did not disclose Centar's involvement, despite the fact that he was an immediate family member of J.S. and also MCF President from 9 February 2013 until 24 February 2014, i.e. pre, during and post-Competition, and, as such, must have known that the Competition – being held under the auspices of MCF and ECU – was organized by his immediate family member's company (in this regard, the Panel finds not credible the testimony of JS that they did not talk about chess business together). The Panel notes that the Appellant was not truthful about who was the organizer of the Competition. The Panel refers to the MCF Board of Directors Meeting on 21 August 2013, at which he declared that Potez was the organizer of the

Competition, even though the truth was that Potez had transferred those rights to Centar seven months prior on 24 January 2013. It seems that the Appellant actually waited until 13 August 2014 – long after the conclusion of the Competition and at which time the ECU investigation into the regularity of the event had already commenced – to disclose the Potez-Centar Agreement to the ECU administration. Finally, the Panel notes that the Appellant does not dispute that the Potez-Centar Agreement remained undisclosed; he only claims that it was a valid agreement (since it was signed by the ECU President) and that, as such (and in particular, as an agreement advantageous to the ECU), did not need to be disclosed to the ECU Board.

149. The Panel accordingly finds to its comfortable satisfaction that FIDE has established that, in connection with the Appellant's conduct involving the organization rights of the Competition, he has acted in violation of Article 2.2.2 of the FIDE Code of Ethics.

d) The Delaware corporations

150. European Chess Union LLC and Chess Plus LLC are Delaware limited liability companies (LLCs) incorporated on 4 May 2011 and 8 July 2013, respectively, as is undisputed by the Parties and confirmed by the entity details submitted as evidence.

151. According to the testimony of Mr. Sakotic and J.S., neither of them created nor know who created European Chess Union LLC. Both claim to have been unaware of the company's existence and of its Slovenian bank account until October 2014, when ECU initiated an investigation into the Competition.

152. Even though it bears the exact name of the ECU, the record reflects that this Delaware company has absolutely no connection to that association. In fact, neither of the Parties claims that European Chess Union LLC or its Slovenian bank account are somehow affiliated with ECU, and, actually, on 6 November, ECU confirmed that no such link existed between them (see *supra* at para. 36).

153. As for Chess Plus LLC, J.S. and D.A. denied creating or knowing who created or managed the company. J.S. also expressed complete disinterest in the company's place of incorporation or location of its bank accounts. J.S. admitted using Chess Plus LLC's services (see *supra* at para. 27). J.S. testified that J.S. came to know about the company through third-party reference, specifically a Russian woman whose full name J.S. could not remember. J.S. explained that J.S. retained Chess Plus LLC to provide financial and consulting services in connection with the Competition (more specifically, to create a portal for online registrations, to process registration data, to deliver invoices to participants, to accept payments from Russia, and to make payouts in accordance with Centar's instructions; see *supra* at para. 26). D.A. confirmed Centar's cooperation with Chess Plus LLC.

154. The Panel finds J.S.'s explanation on the use of Chess Plus LLC to be very vague and unsatisfactory, in particular since it does not make clear why, if that company was a necessary hire for Centar, various invoices required payments to be made to other entities, including Centar itself (see *infra* at para. 156 *et seq.*). The origin, ownership and management of these companies (not directly the subject of evidence or put at issue in this proceeding) remain

shrouded in mystery. While on the one hand, the Panel cannot credit the testimony of Mr. Sakotic and J.S. to the effect that they had nothing to do with the creation and operation of the Delaware companies, it cannot conclude to the contrary to the requisite comfortable satisfaction that they were (as FIDE insinuates) responsible for or instrumental in their creation and operation.

155. Accordingly, while remaining suspicious about the Appellant's (and his immediate family member's) role involving the Delaware corporations that clearly exist, on the basis of the evidence made available, the Panel cannot conclude that a violation of Article 2.2.2 of the FIDE Code of Ethics has been established in this respect.

e) The inconsistent and suspicious manner of invoicing payment for accommodation, organization and ECU entry fees

156. The Panel observes that the manner of invoicing players and federations for accommodation, organization and ECU entry fees in connection with the Competition was indeed irregular, inconsistent and incomprehensible. A considerable amount of the invoices requested payment to various entities, including Chess Plus LLC, the MCF, *Hoteleska Grupa "Budvanska Rivijera"* (i.e. the hotel where the Competition took place) and Centar. No adequate explanation has been provided (i) for this inconsistency or (ii) as to why and on what basis Centar deviated from:

- the ECU Financial Regulations which clearly require that payments be made directly to the hosting federation and not to the organizer. The Panel refers to Article 4.3 of the Financial Regulations (*"Distribution of fees"*), which stipulates unequivocally that *"The collected entry fees will be distributed to ECU and the organising federation according to annex 1 as soon as possible. It is up to the organising federation to give its share or part of it to the organizer"*; and
- the Competition's invitation sent out to the federations as an annex to ECU's Circular Letter no. 1/2013, which informed the federations that they must pay ECU fees to the Swiss bank account of the European Chess Union (*"ECU fees must be paid until the end of the second round to the account of the European Chess Union"*) and provided the information of ECU's Credit Suisse bank account in Zug, Switzerland.

157. The Panel is of the opinion that even if MCF relinquished its rights to the entry fees, the parties still had to comply with the aforementioned Article 4.3 and Article 9.1 of the ECU Tournament Rules 2010 (*"each ECU Chess Federation has the final responsibility for all financial matters with the ECU for each ECU competition organised within its Federation"*). Thus, the organizer could only obtain its share of the entry fees from MCF. Payment of entry fees were not permitted to be paid directly to organizer, or, even more so, to off-shore entities like Chess Plus LLC, as the organizers did.

158. The inconsistent and indeed suspicious manner of invoicing to different entities including Chess Plus LLC for receipt of accommodation, organization and ECU entry fees, which was impermissible, and the lack of a clear explanation from the Appellant or his witnesses for those irregularities, raise considerable suspicion that a siphoning-off of funds may have occurred, but does not convince the Panel to a comfortable satisfaction of that fraud. The Panel does not find to its comfortable satisfaction that such a fraud was actually committed or that the Appellant

was materially implicated therein. Indeed, there is insufficient evidence on file to prove to the comfortable satisfaction of the Panel that the Appellant benefitted directly or indirectly from the payments made to Chess Plus LLC. Accordingly, the Panel cannot conclude that a violation of Article 2.2.2 of the FIDE Code of Ethics has been established in this respect.

f) The email of 15 March 2013 and accompanying invoice no. 79/13

159. According to Article 8.4.1 of the ECU Tournament Rules 2010, Article 4.5 and Annex 2 of the ECU Financial Regulations and the ECU-Centar Agreement (see *supra* at para. 19), the organizer had to pay a deposit fee of EUR 7,500 to ECU.

160. The Appellant submits that said deposit fee was paid by D.A. on 29 January 2013 at the ECU office in Belgrade. Further, the Appellant submits that he did not send the email of 15 March 2013 or the accompanying invoice no. 79/13, and that the EUR 7,500 payment to ECU Chess Union LLC was not a deposit fee, but rather related to the MTEL Sponsorship.

161. On the issue of the email, the Appellant testified at the hearing that the email was forged by someone at MCF from an email he sent approximately ten days prior. In support, the Appellant pointed out that the supposed recipients of the email – Mr. Dejan, Milosevic and Mr. Zoran Perunicic – attested in their written statements submitted before the EC that they never received the email of 15 March 2013. As for the accompanying invoice, the Appellant and D.A. testified that the latter personally submitted the invoice for EUR 7,500 to MCF, but that it is not the same one exhibited in the CAS and EC proceedings, which must thus be forged.

162. As to the deposit payment, the Appellant testified that D.A. paid it in cash on 29 January 2013 at the ECU office in Belgrade, and that the ECU clerk accepted it and transferred the sum to him because, as ECU Executive Director, he was responsible for the safekeeping of cash deposits (but not for issuing receipts and invoices). D.A. confirmed that he – as Tournament Manager – was responsible for and did make the cash deposit at the ECU office in Belgrade on that day, at which time he obtained a receipt from the administrative officer that D.A. kept a copy of and gave the original to Centar. The Appellant testified that D.A. turned over the cash deposit receipt to him. The Appellant also submits in his appeal brief that the wire payment of EUR 7,500 was not the deposit sum but rather part of the first installment payment of EUR 19,500 MCF received from the MTEL Sponsorship. J.S. and D.A. testified that the EUR 7,500 was a loan repayment from Chess Plus LLC who had supposedly loaned Centar that amount in January 2013.

163. Preliminarily, the Panel notes that it is undisputed and confirmed by a wire transfer receipt (see *supra* at para. 34) that MCF paid EUR 7,500 to European Chess Union LLC on 2 April 2013. The Panel finds this to be disconcerting given that European Chess Union LLC, despite bearing the name of ECU, lacked any affiliation to that association.

164. The only dispute between the Parties is (i) whether Mr. Sakotic sent the email of 15 March 2013 requesting payment of the disbursement of the deposit fee of EUR 7,500 per invoice no. 79/13 (see content of email *supra* at para. 31) and (ii) what purpose did the EUR 7,500 payment to European Chess Union LLC serve.

165. The Panel rejects the Appellant's allegation of forgery. To begin, the Appellant did not provide more than conclusory affirmation (without any concrete accusations supported by evidence) as to who is asserted to have forged the document. Second, the Appellant did not bring up the alleged pre-existing email from which the forgery was supposedly made until the hearing and never actually produced that email. Furthermore, the explanation of the Appellant and D.A. that the latter submitted a different version of the invoice personally is not convincing, particularly because such invoice was not produced either before the present arbitration or at the EC. Then, the fact that the recipients, Messrs. Dejan Milosevic and Zoran Perunicic (who the Appellant did not call to testify in the present arbitration), claim not having received the emails, is insufficient to overcome the undisputed fact that MCF paid EUR 7,500 to European Chess Union LLC making explicit reference in the wire transfer to *"/RFB/INVOICE NO 79/13"* under *"Remittance Information"*. If the email of 15 March 2013 had been forged, as the Appellant contends, then why does the wire transfer payment of EUR 7,500 executed only eighteen days later make explicit reference to that invoice? Finally, the fact that the email is printed from a non-official address of MCF only proves that the email was forwarded to this unofficial address before printing, but does not tend to prove a forgery.

166. The Panel also rejects that the payment of EUR 7,500 did not correspond to the deposit.

167. First, the documents support that the EUR 7,500 payment was a deposit. Both the email of 15 March 2013 and invoice no. 79/13 very clearly indicate that the payment demanded was for the *"deposit fee"* and request EUR 7,500, which is the is the exact amount listed as the payable deposit fee under Annex 3 of the ECU Tournament Rules. Moreover, the wire transfer executed just eighteen days later made explicit reference to invoice no. 79/13, and its refund on 18 November 2013 makes reference not only to that same invoice but also to being the *"Return of the Deposit Fee"*. The Panel further notes there is no proof that the transactions (deposit and refund) of EUR 7,500 were not recorded in MCF's account at *Crnogorska komercijalna banka*. The Appellant has not produced the relevant bank statements.

168. Second, there is no convincing alternative explanation for the payment of EUR 7,500.

169. The Panel is not convinced that the payment corresponded to sponsorship money due to the organizer (i.e. Centar) pursuant to the MTEL Sponsorship and MCF-Potez Agreement. Centar's share of the first installment MTEL paid MCF under the MTEL Sponsorship was EUR 9,750 (50 percent of EUR 19,500). Yet there is no explanation as to (i) why MCF paid only EUR 7,500, and (ii) why MCF made the transfer to European Chess Union LLC, as opposed to Centar. Moreover, this explanation flies in the face of the equally inconsistent and unsubstantiated testimony of J.S. and D.A. that the payment was a loan reimbursement. There is no evidence that Chess Plus LLC had loaned Centar the deposit amount of EUR 7,500 in January 2013 and, moreover, no explanation as to why the repayment of that loan would be from MCF to European Chess Union LLC.

170. The Panel is equally not convinced that MCF had already paid the deposit in cash at the ECU office in Belgrade on 29 January 2013. While D.A. testified that he obtained a receipt for the cash deposit from the ECU office clerk, no such receipt has been produced before the present arbitration or the EC proceeding (see *supra* at para. 114). Mr. Burstein's declaration – made in

an email response on 11 March 2016 to a list of questions from Mr. Sakotic – that he *"was notified by the ECU office that the deposit had been paid in cash"* is unreliable hearsay. In any case, his testimony seems to be in contradiction of the ECU Financial Regulations which only provide wire transfers and bank guarantees as forms of paying the deposit (see Article 4.5, Deposit fees: *"Instead of transferring the money for the deposit fee to the ECU account the organiser can send a bank guarantee to the ECU office"*; see also Article 20 of the Centar Agreement: *"at the moment of the signing of the contract the organiser has to transfer the deposit fee of 7,500 € to the ECU account"*).

171. As is confirmed by the *"Cash payments in the ECU office from 15 December 2012 to May 2013"* (the "Cash Payments Log") and the testimony of Mr. Gretener (ECU bookkeeper), there is no ECU record of the alleged cash deposit. Mr. Gretener testified at the hearing that he, as ECU bookkeeper, was generally informed of payments (including those made in cash) made to ECU and would, upon receipt of that information, record the relevant transactions into the ECU books. Notwithstanding, he declared that no cash deposit of EUR 7,500 ever emerged. The Appellant's claim that the Cash Payments Log do not include deposit fees because they are returnable securities is also not convincing. The Appellant has not provided the *"Off-balance sheet deposits"* document in which he claims deposit fees were supposed to be recorded. In this respect, the Panel notes that while he may have requested that document from ECU on 23 February 2016 without success, he never sought an order for its production in the present arbitration proceeding. The Panel thus cannot rely on such document or draw an adverse inference against the Respondent for not submitting it.

172. In light of the foregoing, Panel finds that Mr. Sakotic did send the email of 15 March 2013 and the accompanying invoice demanding MCF to make a payment of EUR 7,500 to European Chess Union LLC and that it corresponded to the ECU deposit fee.

g) Violation of Article 2.2.2 of the FIDE Code of Ethics

173. Preliminarily, the Panel notes that the Appellant contends he did not cause any damages to MCF or ECU and, therefore, there cannot be a violation of Article 2.2.2 of the FIDE Code of Ethics (see *supra* at paras. 82e). The Panel observes, however, that a violation of Article 2.2.2 does not presuppose the existence of damages. Article 2.2.2 does not indicate that damages are necessary to find an office bearer as no longer inspiring the necessary confidence of becoming unworthy of trust. Therefore, it is irrelevant whether the Appellant has inflicted damages to ECU and MCF. Along the same lines, it is irrelevant whether the siphoning-off of funds is proven (as opposed to being a mere suspicion), as Article 2.2.2 does not require that a fraud exist. While a finding of damages and/or siphoning off would essentially guarantee the finding of a violation of Article 2.2.2, it is still possible to find a violation of Article 2.2.2 without those elements.

174. To find a violation of Article 2.2.2, of the FIDE Code of Ethics it is sufficient if the Appellant has directly or indirectly (i) acted in a way that is no longer inspiring the *"necessary confidence"* or (i) if he has *"in other ways become unworthy of trust"*.

175. In assessing whether the Appellant violated Article 2.2.2, the Panel first considers that the Competition was riddled with improprieties and suspicious activity from the lack of

transparency surrounding the transfer of organizing rights to Centar (see *supra* at para. 138 *et seq.*), to the unexplained, inconsistent manner of invoicing to different entities including the Delaware-incorporated Chess Plus LLC (see *supra* at para. 156 *et seq.*), to the use of European Chess Union LLC, also incorporated in Delaware, to obtain a deposit fee payment of EUR 7,500 (see *supra* at para. 159 *et seq.*).

176. Based on the evidence made available, the Panel is not comfortably satisfied that the Appellant was the *"mastermind"* in a scheme to make secret profits at the expense of MCF and ECU – a conclusion that the Panel notes the EC reached by, principally, drawing severe adverse inferences against the Appellant for his absence at the hearing and his decision to not submit a rejoinder to the replies of complainants. Having heard the Appellant's case and thus without relying on adverse influences, and as indicated above, the Panel considers that there is insufficient evidence to prove to its comfortable satisfaction that the Appellant orchestrated the signing of the MCF-Potez and Potez Agreement or the alleged siphoning-off of funds for his or others' personal benefit.

177. The Panel is nonetheless comfortably satisfied that the Appellant requested through the email of 15 March 2013 and the accompanying invoice no. 79/13 payment to European Chess Union LLC and played a significant role in the lack of transparency surrounding the transfer of organizing rights to his immediate family member's company (i.e. concealed a conflict of interest). The Panel considers that each of these behaviors is, in and of itself, serious enough to manifest a loss of the *"necessary confidence"* or the status of being *"unworthy of trust"* in contravention of Article 2.2.2 of the FIDE Code of Ethics. The conduct at issue is sufficiently striking as to render inapt any eventual assertion that the language of Article 2.2.2 is insufficiently precise as to capture it other than on an impermissibly subjective basis.

178. Moreover, the Panel finds that even if (i) the Appellant had proven (*quod non*) that he did not send the aforementioned email and accompanying invoice and that the deposit fee had been paid in cash, and (ii) the dealings of J.S. with Chess Plus LLC and the wrongful actions of others do not directly implicate the Appellant, the cumulative effect and impact of all the facts and circumstances surrounding the Competition mentioned above, are such as to render the whole question of the transfer of organizing rights to Centar and the organization of the Competition sufficiently suspect and indicative of, at minimum, conflict of interest to merit a finding that the Appellant no longer can be considered to inspire the *"necessary confidence"* or has *"in other ways become unworthy of trust"* and, thus, equally violated Article 2.2.2 of the FIDE Code of Ethics.

179. The Panel finds it of little or no relevance, in determining the existence of conflict of interest, whether the Appellant had a direct hand in (or, to use the EC's language, was the *"mastermind"* behind) transferring the Competition's organizing rights to Potez or later to Center, or what was the extent of the Appellant's power as ECU Executive Officer. What matters is that the Appellant, as the MCF President, ECU Executive Director and immediate family member of the owner or controller of the organizer (Centar) of the Competition – which was held under the auspices of MCF and ECU – was in the position to benefit personally from his position as a fiduciary. Furthermore, it is irrelevant that the FIDE or the ECU rules do not make explicit reference to conflict of interest. Office bearers in sports federations and associations have a fiduciary duty to act in the best interest of that body and, thus, to refrain from putting

themselves in situations of important conflict of interest, which may, as in other international sports federations, have been far from exemplary (the Panel takes note of the series of EC proceedings filed in recent years reflecting at best, a severe split in the family of the chess world). Furthermore, the Panel cannot accept that past practice of the ECU limits the breadth of the principle of conflict of interest. That is, the Panel finds it of little of no relevance that in the past ECU may have transferred organizing rights to FIDE and ECU board members and office bearers, as the Appellant alleges. This only shows that there may have been other instances of conflict of interest in the past that, unlike the present incident, remained undiscovered and unpunished; nonetheless, even admitting such "practice", this does not grant a "license" for conflict of interest to pervade in the future. Finally, the Panel rejects the Appellant's contention that there cannot be conflict of interest in the present case given that Centar also organized the European Individual Women's Chess Championship in Belgrade, Serbia on 22 July 2013 to 4 August 2013 without giving rise to conflict of interest. It has been proven that Centar's involvement in the competition in Serbia was made public. Indeed, the general regulations of that tournament declare that the organizers are the *"Serbian Chess Federation and 'Centar za razboj saha' Belgrade under the auspices of the European Chess Union"*.

180. In light of the foregoing, the Panel finds that the Appellant violated Article 2.2.2 of the FIDE Code of Ethics and is thus subject to sanction under Article 3.1 of the Code of Ethics.

E. Applicable sanction

181. It is standing, well-recognized CAS jurisprudence that whenever an association uses its discretion to take a decision, CAS shows reservation or restraint when "re-assessing" this decision (CAS 2012/A/2824, at para. 127; CAS 2012/A/2702, at para. 160; CAS 2012/A/2762, at para. 122; CAS 2009/A/1817 & 1844, at para. 174; CAS 2007/A/1217, at para. 12.4.). Furthermore, based on long-standing CAS jurisprudence, CAS shall only interfere in the exercise of this discretion of the previous instance where the sanction imposed is *"evidently and grossly disproportionate to the offence"* or where CAS comes to a different conclusion on the merits of the case than did the previous instance (CAS 2009/A/1817 & 1844, at para. 174, with references to further CAS case law; CAS 2012/A/2762, at para. 122; CAS 2013/A/3256 at paras. 572-572; CAS 2016/A/4643 at para. 100).

182. According to the applicable Article 3.1 of the Code of Ethics, *"FIDE federations, officials and affiliated organizations acting in contravention to this code can be temporarily excluded from membership or office"*. While said article does not explicitly set a maximum period of exclusion, it is safely implied, by Articles 3.2, 3.3, and 3.4 of the same code, which set a three-year sanction as the limit, that the maximum period of sanction under Article 3.1 is also three years.

183. The Panel observes that pursuant to Article 3.1 of the FIDE Code of Ethics, the EC imposed the maximum ban of three years against the Appellant in the Appealed Decision. In reaching that conclusion, the EC took into consideration that: (i) the conduct for which he was found guilty was of a *"very serious"* and *"fraudulent"* nature, (ii) he was the *"mastermind"* behind the scheme to make secret profits, (iii) he also violated his fiduciary duties to the MCF, (iv) he was suspended by the MFC, (v) he faced possible further criminal prosecution, and (vi) he lacked remorse for his wrongdoing (see *supra* at para. 65). The EC admitted that it would have

considered imposing an even longer sanction had the Code of Ethics permitted it, as it does today in the amended version which allows a fifteen-year maximum sanction (*Idem*).

184. The Appellant seeks a new decision replacing the Appealed Decision and that it be free to hold any office or position within FIDE, to participate in any meeting of FIDE as a delegate or in another capacity, and to represent any organization connected with FIDE (member federations, continental associations and other affiliated international organizations; see *supra* at para. 80). Accordingly, the Panel may issue a new decision and impose no sanction or a sanction anywhere up to the three-year maximum under the FIDE Code of Ethics.

185. While the Panel, as did the EC, concluded that the Appellant violated Article 2.2.2 of the FIDE Code of Ethics, the Panel, in its *de novo* review, did not reach the same conclusion as to the Appellant's responsibility for the irregularities observed in connection with the Competition and did not reach the requisite level of comfortable satisfaction in respect of certain of the actions or conducts which the EC had concluded to have been sufficiently established. Indeed, the Panel did not conclude that the Appellant was the proven *"mastermind"* of the alleged scheme to make secret profits; the Panel found the Appellant's proven impropriety to be of a lower degree. Nor did the Panel conclude that his boycotting of the proceeding below and failure to appear at the FIDE hearing derived inescapably from his inability to answer the arguments of the ECU and MCF.

186. The Panel, in analyzing the appropriate length of the sanction, considers it irrelevant (i) that MCF suspended the Appellant, and (ii) whether there is, was or may be a criminal complaint or prosecution pending against the Appellant (which, as established *supra* at para. 41, seems not to be the case at present). The Panel also finds the Appellant's level of remorse irrelevant since he has always adamantly denied any culpability.

187. Additionally, the Panel views as essentially irrelevant the length of the sanctions the EC imposed on Mr. Danailov (eighteen months) and Ms. Stoisavljevic (six months) in the Appealed Decision. Mr. Danailov and Ms. Stoisavljevic were sanctioned for violating a different rule, i.e. Article 2.2.3, which reads: *"Organizers, tournament directors, arbiters or other officials who fail to perform their functions in an impartial and responsible manner"*. In this respect, the Panel does not consider that Article 2.2.2 is necessarily a more serious offense than Article 2.2.3, as there is no indication in FIDE Code of Ethics that the sequence in which the violations are listed fixes their level of seriousness. Even the EC seems to be unsure of the very notion it suggested (*"Some indication is given by the sequence in which the various types of misbehaviour have been arranged, with clause 2.2.1 arguably the most serious and the following clauses arranged in a descending order of seriousness or specificity …"*, emphasis added). Moreover, the Panel is in no way prevented from imposing on the Appellant a sanction lower than that which the EC imposed on Mr. Danailov and Ms. Stoisavljevic, as, theoretically, the Panel could have even exonerated the Appellant in this proceeding (and, of course, Mr. Danailov and Ms. Stoisavljevic could have appealed against their sanctions).

188. In light of the Panel's finding to its comfortable satisfaction that the Appellant violated Article 2.2.2 on the grounds of lack of transparency/conflict of interest and diverting the deposit fee to European Union Chess LLC, but not the other specific charges brought, the Panel holds it is appropriate to suspend him for a period of eighteen months, i.e. one-half of the sanction

originally imposed by the EC, from holding any office or position within FIDE, from participating in any meeting of FIDE as a delegate or in another capacity, and from representing any organisation in its relations with FIDE (with the reference to FIDE including its member federations, continental associations and other affiliated international organisations).

189. As undisputed among the Parties, this sanction shall not preclude the Appellant in any way from performing activities as a chess arbiter, chess organizer or FIDE lecturer. The prohibition from participating in any meeting of FIDE (including its member federations) precludes the Appellant from being a club delegate at meetings of a national chess federation. The suspension from representing any organization in relation with FIDE (including its member federations) prohibits the Appellant from signing a bid form on behalf of a national chess federation or on behalf of the organizer if the latter is an organization, but not from signing a bid form as the organizer provided that he is the organizer in his personal capacity.

190. As to the period of ineligibility, as the Appellant did not request to stay the execution of the Appealed Decision pending the conclusion of the present appeal arbitration proceeding, he has effectively been suspended without interruption since 10 October 2016. Therefore, the eighteen-month ban shall run from 10 October 2016 until 9 April 2018.

F. Concluding remarks

191. In the interest of avoiding misunderstandings of this award, the Panel wishes to clarify that its sole task in the present arbitration was to adjudge whether the Appellant committed one or more ethical violations under Article 2.2.2 of the FIDE Code of Ethics and, if so, to establish an appropriate sanction for the violation or violations. With its decision, the Panel is not exonerating the Appellant, for example, of having created and operated the Delaware companies, siphoned-off funds, and/or benefited directly or indirectly from the payments made to Chess Plus LLC. The Panel merely concludes that on the basis of the evidence made available in this arbitration, it is not comfortably satisfied that the Appellant engaged in such actions. To its comfortable satisfaction, the Panel (after having heard and carefully evaluated the Appellant's case in full) only found such a violation on the grounds of lack of transparency/conflict of interest and the diverting of the deposit fee to European Union Chess LLC. In other words, this award should in no way be viewed or treated as an exoneration of the Appellant on any level; it must be regarded for what it is – a finding against the Appellant under Article 2.2.2 for having committed ethical violations, albeit fewer and of lesser magnitude than found by FIDE.

192. In view of the above conclusion, all other or further requests or motions submitted by the Parties shall be dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr. Vladimir Sakotic on 21 November 2016 is partially upheld.

2. The FIDE Ethics Commission decision of 9 September 2016 is set aside and replaced by the present arbitral award as follows:
   - Mr. Vladimir Sakotic violated Article 2.2.2 of the FIDE Code of Ethics.
   - Mr. Vladimir Sakotic is sanctioned for 18 (eighteen) months, starting from 10 October 2016, from holding any office or position within FIDE, from participating in any meeting of FIDE as delegate or another capacity, and from representing any organisation in its relations with FIDE. The reference to FIDE herein includes its member federations, continental associations and other affiliated international organisations.

3. (…).

4. (…).

5. All other or further requests or motions submitted by the parties are dismissed.