



Arbitration CAS 2015/A/4223 Ignatius Leong v. World Chess Federation (FIDE), award of 10 November 2016

Panel: Mr Klaus Reichert (Ireland), President; Judge Carole Barbey (Switzerland); Prof. Massimo Coccia (Italy)

Chess

Presidential election

Admissibility of appeal

Breach of FIDE Code of Ethics

Ne ultra petita

1. Neither the CAS Code nor the FIDE Code of Ethics preclude a party from appealing a mere ruling (the so-called “operative part” of the decision) while waiting for the full grounds of that ruling. Provided a decision by the FIDE Ethics Commission is final and not reviewable within FIDE it prompts the concerned parties’ right of appeal before the CAS under Article R47 of the CAS Code. Any subsequent document setting out the full grounds of the decision does not need to be separately appealed as it is a mere completion of the decision already issued. In any event, as the CAS appellate jurisdiction entails a *de novo* procedure, an appeal before the CAS against a decision including only the operative part may proceed even if no grounds are ever issued by the sports body whose decision is appealed.
2. An elector of an upcoming election who sells its vote to one of the election’s candidates and in exchange receives a personal or at least indirect benefit irrespective of the outcome of the election is committing a breach of the FIDE Code.
3. A party who wishes to have the sanction imposed on it by a first instance decision to be reduced by the CAS has to seek any variation of the sanction imposed already in its prayers for relief contained in the Statement of Appeal; put differently, a CAS panel cannot grant anything which has not been asked.

I. PARTIES

1. Mr. Ignatius Leong (the “Appellant”), a Singapore national, was the first President of the Singapore Chess Federation, and has been active on the international chess stage for thirty years.
2. The World Chess Federation or Fédération Internationale des Échecs (the “Respondent” or “FIDE”) is the international governing body for chess.

II. FACTUAL BACKGROUND

A. Background Facts

3. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.
4. The Appellant and Garry Kasparov entered into a contract (the "Agreement") dated 5 September 2013. The Agreement's recitals state as follows:

"Whereas, Mr. Garry Kasparov, former World Chess Champion and founder of the Kasparov Chess Foundation, has declared his intention to run for FIDE President in the 2014 election, and

Whereas, Mr. Ignatius Leong, General Secretary of FIDE and founder of ASEAN Chess Academy Pte Ltd has declared to actively support and work on behalf of GK during the pendency of the campaign and election,

Now, therefore, the Parties have decided to enter into this Agreement of cooperation in order to secure the best election campaign possible, and to further develop chess in East Asia".
5. For present purposes, the Panel notes two clauses of the Agreement.
6. Clause 3 of the Agreement references three projects to which the Appellant and Garry Kasparov agreed, namely, the FIDE elections 2014, a FIDE office in Singapore, and the Kasparov Chess Foundation Asia. Under the sub-heading of "FIDE elections 2014" there is a reference to the intended receipt by the Appellant of USD 500,000.00. There is also a reference to Appellant being responsible for the delivery of "10 + 1" votes in that election. Secondly, under the sub-heading of "FIDE Office in Singapore" there is a reference to the intended establishment of a new FIDE office in that city with responsibility for the administration and oversight of all Federation Commissions. Finally, under the sub-heading "KCF Asia", there is a reference to an intended opening of an academy in Singapore with the involvement of ASEAN Chess Academy Pte Ltd ("ACA") which is stated to be founded and owned by the Appellant.
7. Clause 4 of the Agreement references "Monies and Funding" with an agreement to sign a separate contract between ACA and KCF Asia (being Kasparov Chess Foundation Asia). The intention is stated that KCF Asia will allocate USD 250,000.00 for each of the four years 2013, 2014, 2015 and 2016. The first instalment was to be made by 10 November 2013, and the second instalment was to be made by 10 July 2014. The third and fourth instalments were stated to be contingent on Garry Kasparov being elected as FIDE President.
8. In January 2014, an article in *The New York Times* commented upon Garry Kasparov's campaign to become FIDE President, and, in particular, discussed the Appellant's intentions. The author

of the article had sight of a draft of the Agreement, and comments on what he considered to be its implications. A few days later Garry Kasparov and Morten Sand, Attorneys at Law in Oslo, released the Agreement and the draft which preceded it, into the public domain.

B. Proceedings before the FIDE Ethics Commission

9. By letter dated 5 May 2014, the FIDE President, Kirsan Ilyumzhinov, made a complaint to the FIDE Ethics Commission against the Appellant and Garry Kasparov. The Tunisian Chess Federation made a similar complaint. The complaints revolved around the arrangements as between the Appellant and Garry Kasparov.
10. By letter dated 8 June 2014, the FIDE Ethics Commission notified the Appellant that complaints had been made against him. Thereafter correspondence took place as between the then Counsel for the Appellant (who also held instructions from Garry Kasparov) and the FIDE Ethics Commission debating a number of procedural matters. The FIDE Ethics Commission decided to hold a hearing in Tromsø, Norway (at the same time as the FIDE Congress taking place in that city) on 8 August 2014.
11. By email dated 8 August 2014, the then Counsel for the Appellant withdrew the request (which was also in the name of Garry Kasparov) for a hearing, and submitted a Memorial.
12. Further correspondence emanated from the FIDE Ethics Commission to the then Counsel for the Appellant in February and April 2015.
13. On 5 September 2015, at the same time as the FIDE Congress in Abu Dhabi, the FIDE Ethics Commission found the Appellant and Garry Kasparov guilty of breaching Article 2.1 of the FIDE Code of Ethics (the “FIDE Code”). On 20 October 2015, the FIDE Ethics Commission imposed a two-year ban on the Appellant and on Garry Kasparov. The reasons for the decision of the FIDE Ethics Commission are contained in a document dated 21 October 2015.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

14. On 28 September 2015, the Appellant filed his Appeal pursuant to Article R47 *et seq.* of the Code of Sports-related Arbitration (the “CAS Code”) against the decision of the FIDE Ethics Commission dated 5 September 2015. In its Statement of Appeal, the Appellant nominated Judge Carole Barbey as arbitrator.
15. On 7 October 2015, the Appellant retracted his nomination of Judge Barbey and suggested that this procedure be referred to a Sole Arbitrator.
16. On 8 October 2015, the Appellant designated his Statement of Appeal as his appeal brief in accordance with Article R51 of the CAS Code.
17. On 12 October 2016, the Respondent objected to the Appellant’s suggestion that this procedure be referred to a Sole Arbitrator.

18. On 27 October 2015, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, informed the Parties that this procedure would be referred to a three-member Panel in accordance with Article R50 of the CAS Code.
19. On 28 October 2015, the Appellant re-appointed his nomination of Judge Barbey as arbitrator.
20. On 12 November 2015, the Respondent filed its Answer pursuant to Article R55 of the CAS Code.
21. On 18 December 2015, the CAS informed the Parties of the formation of the Panel, with Judge Barbey designated by the Appellant, Prof. Coccia designated by the Respondent, and Mr. Reichert SC, President.
22. On 11 January 2016, the CAS informed the Parties, on behalf of the Panel, that a hearing was deemed necessary, directed a further round of written submissions, made specific enquiries on a number of matters, and also determined, in accordance with Article R57 of the CAS Code, that a witness statement of Mr. Sand (the Attorney in Oslo noted in paragraph 8 above) which accompanied the Appeal was admitted without prejudice to any subsequent argument as to weight. The Respondent had, in its Answer, objected to the admissibility of that witness statement as it had not been presented to the FIDE Ethics Commission.
23. On 25 February 2016, the Appellant filed his Reply, as directed pursuant to Article R56 of the CAS Code.
24. On 14 April 2016, the Respondent filed its Reply, as directed pursuant to Article 56 of the CAS Code.
25. On 17 June 2016, a hearing was held at the CAS premises in Lausanne, Switzerland. The Panel was joined by Mr. Brent J. Nowicki, Counsel to the CAS. At both the outset, and at the conclusion, of the hearing no objection was made by the Parties to the constitution of the Panel, or the procedure adopted. However, the Respondent maintained its objection to the admissibility of the testimony of Mr. Sand.
26. The Appellant attended in person at the hearing, and was represented by Ms. Fanny Margairaz, Attorney.
27. In attendance for the Respondent was Mr. Nigel Freeman, FIDE Executive Director and Mr. François Strydom, Chairman of the FIDE Ethics Commission. The Respondent was represented by Mr. Jean-Marc Reymond and Ms. Delphine Rochat, Attorneys.
28. On 24 June 2016, the Appellant filed his statement of costs.
29. On 27 June 2016, the Respondent filed its statement of costs.

IV. OVERVIEW OF THE SUBMISSIONS OF THE PARTIES

30. The Appellant's Request for Relief, as articulated in the Statement of Appeal, is as follows (the numbering is replicated exactly):

"For the reasons stated above, we hereby request the Tribunal to:

Primarily

1. *annul the decision of the FIDE Ethics Commission in case No. 5/2014 dated 5 September 2015; and*

Once done

2. *decide that Mr. Ignatius Leong is not guilty of breaching the par. 2.1 of the Code of Ethics.*
3. *Condemn the FIDE Ethics Commission to pay a contribution to Mr. Ignatius Leong towards its legal fees and other expenses in connection with the proceedings.*

Alternatively

1. *annul the decision of the FIDE Ethics Commission in case No. 5/2014 dated 5 September 2015; and*

Once done

4. *refer the case back to FIDE Ethics Commission for a new decision.*
5. *Condemn the FIDE Ethics Commission to pay a contribution to Mr. Ignatius Leong towards its legal fees and other expenses in connection with the proceedings".*

31. The Respondent's Prayer for Relief, as articulated in the Answer is as follows:

"In view of the foregoing, Respondent [...] respectfully requests that the Panel issue an award:

- I. *Dismissing entirely any and all Requests for Relief made by the Appellant Ignatius Leong;*
- II. *In all events, ordering the Appellant Ignatius Leong to pay all the costs of the arbitration, including all reasonable expenses incurred by FIDE in defending the case in accordance with Article 13.6 of the FIDE Statutes".*

32. In summary, the Appellant makes particular criticism of the approach of the FIDE Ethics Commission, and, in particular, its reliance for the purposes of interpretation upon the draft document which preceded the Agreement. The Appellant further takes issue with the interpretation by the FIDE Ethics Commission of the arrangements as between him and Garry Kasparov, and as to its evaluation of the evidence. Secondly, the Appellant criticises the manner by which the burden of proof was allegedly reversed. Thirdly, the Appellant is unhappy with

the interpretation and application of Article 2.1 of the FIDE Code by the FIDE Ethics Commission. Fourthly, the Appellant alluded to a political conspiracy.

33. In summary, the Respondent's position is that the FIDE Ethics Commission was entitled to rely upon the draft document for the purposes of interpreting the Agreement. The Respondent, further, disagrees with the Appellant's criticisms of the evaluation by the FIDE Ethics Commission of the evidence before it. Thirdly, the Respondent says that the complaint as regards approach to the burden of proof by the FIDE Ethics Commission is not a factor in this case. Such a question only arises if there is a factual dispute, rather than the position here which involves a legal issue to the proper interpretation of contractual arrangements. Fourthly, the Respondent says that Article 2.1 of the FIDE Code is wider in scope than that advanced by the Appellant.

V. JURISDICTION

34. Article R47, first paragraph, of the CAS Code provides as follows:

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

35. The Appellant relies on paragraph 13.2 of Chapter 13 (Final Settlement of Disputes) of the FIDE Handbook as conferring jurisdiction on the CAS. The jurisdiction of the CAS has been confirmed by the Respondent in its response submissions. The jurisdiction of the CAS has been further confirmed by the Parties by the signatures of Counsel for each side on the Order of Procedure (signed on 2 May 2016 on behalf of the Appellant; signed on 3 May 2016 on behalf of the Respondent).

VI. ADMISSIBILITY

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

“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders his decision after considering any submission made by the other parties”.

37. Articles 4.5 and 4.6 of the FIDE Code provide as follows:

4.5 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.

4.6 The time limit for appeal is twenty-one days following the communication of the decision concerning appeal. All recourse to ordinary courts is excluded.

38. The Respondent, at paragraph 72 of its Answer, challenges the admissibility of the Appeal filed against the decision dated 5 September 2015 (which did not contain reasons, nor did it impose a sanction, but was confined to declaring the Appellant guilty). The Respondent criticises the Appellant for filing the Statement of Appeal when he did not know the full reasons for the guilty verdict.

39. The Appellant asserts that the Statement of Appeal is admissible because the decision dated 5 September 2015, finding him guilty, comes within the meaning of Article R47 of the CAS Code.

40. The Panel finds the appeal to be fully admissible because no rule in the CAS Code or in the FIDE regulations precludes a party from appealing a mere ruling (the so-called operative part of the decision) while waiting for the full grounds of that ruling. The FIDE Ethics Commission's decision of 5 September 2015 declaring the guilt of Mr. Leong was final and not reviewable within FIDE; it thus prompted Mr. Leong's right of appeal before the CAS under Article R47 of the CAS Code. The subsequent document setting out the full grounds (which the FIDE Ethics Commission issued on 21 October 2015) did not need to be separately appealed as it was a mere completion of the decision already issued on 5 September 2015. In any event, as the CAS appellate jurisdiction entails a *de novo* procedure, an appeal before the CAS against a decision including only the operative part may proceed even if no grounds are ever issued by the sports body whose decision is appealed.

VII. APPLICABLE LAW

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

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

42. The Parties have agreed that the applicable substantive law is the FIDE Handbook and, subsidiarily, Swiss law.

VIII. MERITS

43. The Appellant has confirmed, during the course of his oral testimony before the Panel, that he signed the Agreement. No question of proof, therefore, arises in that regard.
44. The essential question is, thus, whether the terms of the Agreement, properly interpreted, transgress the provisions of Article 2.1 of the FIDE Code.
45. The Panel has decided to look solely to the terms of the Agreement, and is paying no regard to the draft document, or the testimony of Mr. Sand as the attorney who drew it up. The Panel is adopting this approach in order to resolve every possible doubt in favour of the Appellant in light of the profound consequences for him of this case.
46. The Panel, first, turns to the proper interpretation of the Agreement.
47. The Parties debated at length whether the Appellant benefited personally in the sense of a payment directly to him by reason of clause 3, fourth bullet point:

“IL will receive a total amount of \$ 500,000 to be paid in agreed tranches between the signing of this Agreement and 1 month before the opening of the FIDE General Assembly in August 2014 as described in 4.1”.
48. While these words, on a particularly strict reading, do potentially implicate the Appellant in a personal receipt of monies, the Panel does see that the arrangement of the words at the end, namely, “as described in 4.1” gives rise to an alternative interpretation. That alternative interpretation is that the reference to “4.1” renders all of what goes before as dependent on or subservient to the contents of clause 4.1. Thus, as the Panel is resolving any doubts in favour of the Appellant, it interprets clause 3, fourth bullet point, of the Agreement as being linked in whole to clause 4.1.
49. The Panel now turns to clause 4.1 of the Agreement (noting that clause 4 and clause 4.1 appear to be one in the same). This clause has already been described in paragraph 7 above, and references an intention that an entity, apparently and quite obviously connected with Garry Kasparov (KCF Asia), will sign an agreement with ACA (which the Appellant confirmed before the Panel in his testimony to be the sole shareholder thereof). Such an agreement was to provide for the payment of four tranches of USD 250,000.00 per annum from 2013, but, as already noted, the first two tranches were to be paid come what may, but the third and fourth were entirely contingent upon Garry Kasparov winning the FIDE presidency.
50. Reading clauses 3 and 4 together, the Panel interprets the Agreement as providing for monies to go from KCF Asia to ACA, and not to the Appellant personally.
51. The Appellant confirmed to the Panel, in his oral testimony, that the monies (being USD 500,000.00) were indeed paid to ACA. Further, the Panel has before it a document entitled “Grant Agreement” which appears to be the implementation of the intentions recorded in clause 4 of the Agreement.

52. Next, the Panel returns to clause 3 of the Agreement, but the first and second bullet point thereof. The first bullet point is unambiguous and provides that the Appellant was joining Garry Kasparov on a “Presidential Ticket” for the 2014 FIDE Elections. That is unremarkable. The second bullet point is rather different. This contractual provision is at the very heart of the quid pro quo of the Agreement, and demonstrates exactly what the Appellant was to do for Garry Kasparov. He was to secure “10 + 1” votes in the election. The Appellant confirmed to the Panel that the “+1” was his vote.
53. Whatever else the Agreement sought to achieve, even if the Appellant’s efforts to secure the prescribed ten votes fell flat, he was committed to voting for Garry Kasparov. He sold his vote. There can be no finessing that conclusion no matter how indulgent an interpretation is taken of the Agreement.
54. The Appellant sold his vote to Garry Kasparov, and while he did not take personal benefit, clause 4 of the Agreement sets up the indirect benefit for him through the funding of ACA. What is most peculiar, and strongly indicative of a “sold vote” is that the funding of ACA was not contingent on the outcome of the election, but that monies were funnelled through beforehand. No matter what one might say about promises of future largesse after a successful election (which in popular parlance might be described as Pork Barrel Politics), insofar as they are made known to a wide cross-section of voters, no possible legitimate purpose could be served by a confidential agreement providing for prior payment of monies to a corporate vehicle controlled by one elector.
55. The confidentiality of the Agreement is reflected in its own terms (clause 5) and the Appellant confirmed this for practical purposes during his testimony before the Panel when he stated that his local federation board in Singapore were not made aware of his intentions.
56. Finally, the fact that this was all meant to be kept under wraps was dealt a blow when the draft document escaped into the public domain and was the subject of adverse comment in the media. This was the prompt for the Agreement to be released into the public domain, and not any demonstration of disinterested or unencumbered enthusiasm for the development of chess in East Asia. The Appellant’s conspiracy theories as to a nefarious or darker political purpose behind the leaking of the draft document are unavailing. In no sense do they absolve responsibility for what the Appellant undertook in the Agreement, and simply cast him in an unfavourable light as someone looking to deflect attention from having been found out. Political conspiracy theories, advanced at the hearing by Counsel, notwithstanding stated scepticism expressed by the Panel as to their evidential value, can form no part of any rational articulation of a decision in this matter.
57. Turning to the applicable standard from the FIDE Code, Article 2.1 states:

The Code of Ethics shall be breached by a person or organization who directly or indirectly offers, or attempts to offer or accepts any consideration or bribe with a view of influencing the result in a game of chess or election into FIDE office.

58. The Panel notes that no discretion is given by the text of the FIDE Code by reason of the threshold use of the word “shall”. Thus, if the circumstances provided for in Article 2.1 of the FIDE Code are triggered or engaged, a finding of breach is a mandatory outcome.
59. The next question revolves around to whom is Article 2.1 of the FIDE Code addressed. That is answered in wide terms, namely, a person or organization. The word “person” is not qualified in any way, whether wearing an official hat or otherwise.
60. The scope of the article is cast in wide terms by the phrase “directly or indirectly” so as to avoid hiding behind men of straw or corporate vehicles.
61. Next, the Panel reads the core words which form the prohibition relevant for present purposes, namely, “*accepts any consideration*”. These words are also cast in wide terms so as to avoid debate about what is being offered, as “any consideration” is practically anything of value.
62. Finally, the object of “any consideration” is defined as being “with a view” (which is most open-ended) to influencing (again, in wide terms) an election.
63. In application of Article 2.1 of the FIDE Code to the facts of this case: (a) the Appellant is a person; (b) the Appellant indirectly accepted consideration from Garry Kasparov (or an entity connected to him, the difference is meaningless in the present context) as the direct recipient of the consideration was an entity controlled by the Appellant; and (c) the consideration was with a view, stated in unambiguous terms in the Agreement, to influencing the pending FIDE election as, at a minimum, the Appellant sold his vote. As a direct result of the foregoing three points, the mandatory triggering of a breach is engaged and the Appellant’s appeal is lost.
64. The Appellant’s prayers for relief in the Statement of Appeal do not seek any variation of the sanction imposed upon him, even if he later, in his Reply, “*agrees that the Panel may consider the proportionality of the sanction*” (to which point the Respondent took objection). The Panel cannot grant to the Appellant something for which he has not asked. The appeal is therefore dismissed in all respects.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr. Ignatius Leong against the World Chess Federation with respect to the decision of the FIDE Ethics Commission dated 5 September is dismissed.
2. The decision of the FIDE Ethics Commission dated 5 September is upheld.
- (...)
5. All other motions or prayers for relief are dismissed.