



## **FIDE ETHICS COMMISSION**

Case N. 2/11

### **JUDGEMENT**

rendered by the

### **FIDE ETHICS COMMISSION**

sitting in the following composition

Chairman: Mr. Roberto Rivello

Members: Mr. Ralph Alt

Mr. Ion Serban Dobronauteanu

Ms. Margaret Murphy

Mr. Ian Wilkinson

in the case

**“French Team”**, concerning a complaint submitted by the French Chess Federation against Mr. Sébastien FELLER, Mr. Arnaud HAUCHARD and Mr. Cyril MARZOLO, and a report submitted by the FIDE Executive Director, in reference to facts allegedly committed during the 2010 Chess Olympiad in Khanty-Mansiysk (Russia), for an alleged violation of par. 2.2.5 of the FIDE Code of Ethics.

### **PROCEEDINGS BEFORE THE ETHICS COMMISSION**

On 7<sup>th</sup> of June 2011 the Executive Director of the French chess Federation (hereafter called the “FF”) sent to FIDE President, FIDE Executive Director and FIDE Secretariat a

communication concerning the players Sébastien FELLER, Arnaud HAUCHARD et Cyril MARZOLO, informing FIDE that “The Bureau Fédéral of the French Chess Federation acted as the plaintiff on December 2010, 21<sup>st</sup>. The case was heard by our Disciplinary Committee on March 19<sup>th</sup>, and the players were found guilty. The players appealed on the decision, which suspended it until the Appeal’s Committee held its hearings, on May, 19<sup>th</sup>. The final decision that has been taken is a 5-year ban for Sébastien FELLER and Cyril MARZOLO, and a 3-year ban for Arnaud HAUCHARD. On May, 24<sup>th</sup>, the players brought the case in front of the CNOSF (French Olympic Sports Committee). The CNOSF’s advice to the players was to fully accept the sanctions (imposed) by FF organs”. On this basis -these were the words of the French chess Federation- “we are expecting FIDE to extend the sanctions worldwide”.

This communication, forwarded to the FIDE Ethics Commission (hereafter called the “EC”), could immediately be considered as a complaint against Mr. Sébastien FELLER, Mr. Arnaud HAUCHARD and Mr. Cyril MARZOLO, anyway a following communication of the FF clarified their intention to submit a complaint to the EC.

On 17<sup>th</sup> of June 2011 the FIDE Executive Director informed the EC “that FIDE wishes the EC to consider the request of the French Chess Federation” “and any other questions it considers relevant”. This communication constitutes a report to the EC concerning facts committed during the 2010 Chess Olympiad in Khanty-Mansiysk by the French Team.

In accordance with EC Internal Rules and with the Guidelines to the interpretation of the FIDE Code of Ethics, the case was inscribed on the Register of cases as N. 2/2011 – “French Team”, and the EC considered the case as receivable, first of all in consideration of the submission of a report by a FIDE organ, concerning facts that could constitute a violation of par. 2.2.5 of the FIDE Code of Ethics, and in addition even for the existence of a legitimate relevant interest of the complainant FF.

In accordance with articles 4, 6 and 7 of the EC Internal Rules, on 1<sup>st</sup> July 2011 the Chairman of the EC communicated to Mr. Sébastien FELLER, Mr. Arnaud HAUCHARD, Mr. Cyril MARZOLO and to the FF, the existence of a pending case, informing them of their rights and of the EC proceeding rules, and fixed a term for the submission of memorials and documents.

Following these communications Mr. Sébastien FELLER, Mr. Arnaud HAUCHARD, Mr. Cyril MARZOLO and the FF, directly or through the assistance of their lawyers (hereafter, if not differently specified, parties’ names indicate also lawyers who assist and represent them) submitted to the EC numerous documents: copies of the acts of proceedings in front of FF Disciplinary Commissions (including statements by Mr. Laurent FRESSINET, Mr. Maxime

VACHIER-LAGRAVE, Mr. Romain EDOUARD; declarations/complaints by Mr. Jean Claude MOINGT, Mr. Laurent VERAT, Mr. Jordi LOPEZ GARCIA, Ms. Joanna POMIAN; an invoice/itemized telephone statements *-facture détaillée-* concerning the period 19-9/18-10-2010, concerning the SFR mobile telephone number *omissis*, number assigned by SFR to Ms. Joanna POMIAN but at disposal of Mr. Cyril MARZOLO in the above mentioned period; an affidavit of Mr. Kenneth W. Regan, concerning his analysis of Mr. FELLER's games, using the engine Rybka; some analyses of the same games by Mr. L. FRESSINET, using the engine Firebird; some messages exchanged between Mr. HAUCHARD and Mr. VACHIER LAGRAVE on 6-1-2011; a document written by Mr Martin FISCHER, concerning a sanction against Mr FELLER for an assumed evidence of cheating in another chess tournament played on-line in 2008) and in front of the CNOSF; acts of proceedings in front of some French Judicial Authorities (especially first instance and Appeal Court of Versailles); copies of articles published on specialised newspapers and websites (concerning Mr. MOINGT's political opposition to the FIDE President and assumed irregularities by the FF about the so called Licenses B). They also submitted memorials, many of them in French language, preliminarily prospecting various different objections, which could be summarized as follows (the most relevant paragraphs have been recopied textually - in French, when written in this language-):

Mr. Arnaud HAUCHARD:

- Applicability of the “Droit Européen”, given that both Greece (seat of the FIDE Secretariat) and Switzerland (official seat of FIDE) “signed” the European Convention on Human Rights (ECHR).
- Assumed violation of art. 6.3 of the ECHR, given that Mr. HAUCHARD received communications from EC only in English and not in French, his native language, and that the EC working language is only English, without guaranteeing him “the free assistance of an interpreter” (regarding the same point also art. 14 and Prot. 12 of the ECHR have been mentioned).
- Assumed violation of art. 6 of the ECHR, given that Mt. HAUCHARD has not had full access to all the documents of the proceeding, in his language, and has not had a reasonable time to prepare his defence and to obtain a public hearing.
- Incompetence of the EC, given an assumed exclusive competence of national chess federation, ex art. 1.2 and 2.1 of the FIDE Statute: “FIDE doit respecter une stricte neutralité dans les affaires menées en interne (au niveau national) par une Fédération d’Echecs”.

- Political reasons of the complaint submitted by the FF and by its former President, Mr. J.C. Moingt; contrasts between FF and FIDE.
- Assumed procedural violations committed by FF disciplinary organs, as stated also by French Judicial Authorities.

Mr. Cyril MARZOLO:

- same arguments of Mr. HAUCHARD, with identical motivations; in addition he denied receiving from the FIDE Secretariat any official communication concerning the current EC proceedings.

Mr. Sébastien FELLER:

- asked for a suspension of the proceedings in front of the EC “as far as no decision has been taken both by a trial and the decision of the French Prosecutor”, given that he has denounced to the competent French Authorities various irregularities, procedural violations and “lies” allegedly committed by the FF, and that in front of the Nancy’s “Tribunal de Grande Instance” is pending also a criminal inquiry against former Vice President of the FF, Ms Joanna Pomian, in which, “when visited by a bailiff and a police officer, she first denied and finally recognized she was a forger and had falsified her accounting and administrative documents” (concerning Mr. MARZOLO)

French Chess Federation:

- (concerning the position of Mr. Cyril MARZOLO) “Mr Cyril Marzolo asked for an ‘optional arbitration’ which is possible under the auspices of the CNOSF. This arbitration was held on August 16th and was concluded by a common document signed by FF, CNOSF and Cyril Marzolo. This document is strictly confidential and transferred to FIDE EC, as it overrules the disciplinary sanctions taken on May 19th by FFE Appeal’s Commission. The FF asks FIDE EC to reconsider its earlier charges against Cyril MARZOLO, taking into account a new sentence pronounced by the highest French Sports authority. Please note that this document is strictly confidential until the beginning of the penal enquiries”. Given the evident relevance of this document, FF seemed indirectly asking for a suspension of the proceedings “until the beginning of the penal enquiries” in front of French penal Judicial Authorities.

No one of the parties asked to appear in front of the EC in an oral hearing.

The case was discussed by the EC during its meeting in Milano, on 1<sup>st</sup> October 2011, achieving unanimity on a preliminary decision on procedural and evidential matters:

- all above mentioned submitted objections and preliminary requests by all parties were dismissed;
- English was confirmed as the only working language of the EC, otherwise the use of French language in memorials and documents submitted by the parties was authorized;
- the EC evaluated that still there was insufficient evidence for a final decision on the case;
- the FIDE Secretariat was requested to inform Mr. Sébastien FELLER, Mr. Arnaud HAUCHARD and Mr. Cyril MARZOLO that an oral hearing in front of the EC would have to be scheduled and their presence was requested, at least by phone, video or web conference;
- the FIDE Technical Commission was requested to produce expert opinion on the objective value of the analyses of Mr. K. W. Regan and Mr. L. Fressinet, and in general of this typology of analysis;
- the FIDE Secretariat was requested to contact the Chief Arbiter of the 2010 Chess Olympiad, to produce a list of match arbiters in matches where Mr. Feller was a member of the French team.

The EC's decision held on 1<sup>st</sup> October 2011 and its written motivation were promptly communicated to the parties by the FIDE Secretariat.

In November 2011 the EC received some memorials:

Mr. Arnaud HAUCHARD and Mr Sébastien FELLER: (both assisted and represented by Mr Charles Morel):

- invoked again an assumed violation of art. 6 ECHR (under different profiles: the use of English as a working language, without a translation of all the documents in French and without in alternative a reimbursement of all expenses of translation; inadequate time to prepare his defence; not authorized suspension of the proceedings till the end of the civil and criminal case in France; necessity to receive copies of all documents transmitted by the FF);
- questioned the value of the declarations of Mr. FRESSINET and Mr VACHIER LAGRAVE, given that in their opinion these persons would have received some economic advantages by Mr MOINGT, former President of the FF, and requested the creation of a "Committee of independent experts";

- declared, “if necessary”, their availability to participate in an oral hearing by web-conference, assisted by Mr Morel.

The FF: (assisted and represented by Mr Thomas Nicolas):

- asked for the hearings to be organised by web-conference;
- asked to receive copies of all documents and memorials, when available.

The oral hearing was scheduled in Lausanne (Switzerland), on 6<sup>th</sup> of April 2012, authorising the parties, as requested by them, to participate by phone or web conference. All parties were also authorised to submit memorials and documents concerning the case, in English or in French, till Thursday 5<sup>th</sup> of April 2012, addressing them to the FIDE Secretariat, and were informed that after the oral hearing the minutes of the meeting and all other documents concerning the case would have been at their disposal in due course at the FIDE Secretariat and another deadline would have been assigned for the submission of their conclusions.

Mr. HAUCHARD and Mr FELLER sent memorials before the oral hearing: both repeated their objections concerning the reception of communications in English and not in French, the requested suspension of the proceedings till the conclusion of the civil and criminal cases in France (adding this time that in their opinion the proceedings in front of the EC would be “illegal”), the request to receive copies of all documents, translated in French, before the hearing. As an additional document they sent copies of a letter addressed by Mr Antoine CANONNE to the FF. Both declared to be not available for a web-conference on the 6<sup>th</sup> of April 2012: Mr HAUCHARD having “to work” (“je travaille”) at the chess club of Evry, as a trainer of young players, adding a declaration of the President of this chess club where is reported than Mr HAUCHARD “à cette date il sera en plein stage (2. 3, 5 et 6/04/2012) avec des enfants de l'école NJ Conté à Evry, dans le cadre des stages d'initiation échecs que le club Evry Grand Roque organise auprès des jeunes Evryens depuis de nombreuses saisons. Les 7 et 8 avril il sera en stage enfants-jeunes au sein du club pour un stage de préparation aux Championnats de France Jeunes qui débutent 16 avril”. Mr FELLER declared that he could not be available having to attend a computing training on the same date (“stage informatique”).

Mr. Cyril MARZOLO participated in the oral hearing and made declarations by web-conference from Spain. He requested and was authorized to send an additional written memorial to better specify his declarations: the document was later received by the EC.

Mr Laurent VERAT, Executive Director of the FF, participated in the oral hearing and made declarations by web-conference from France, in presence of the FF's lawyer, Mr Thomas Nicholas.

Finally, the EC received the requested document from the Chief Arbiter of the 2010 Chess Olympiad and the report of the FIDE Technical Commission.

All parties were then informed that all documents concerning the case were at their disposal in the Offices of the FIDE Secretariat, in Athens, they could request copies of them, even by e-mail, when possible, to the FIDE Secretariat, and they had the possibility to submit their conclusions and additional memorials, in English or in French, till Friday 29<sup>th</sup> of June 2012, addressing them to the FIDE Secretariat.

Mr MARZOLO requested and received copies of the documents concerning the case, the same the FF.

Mr FELLER and Mr HAUCHARD on the opposite sent identical communications where they repeated again the same objections already many times rejected by the EC (suspension of the proceedings, translation in French of all the documents, assumed violation of human rights, etc.). Their communication was interpreted as a request to send them copies of the documents that could be sent by e-mail: the FIDE Secretariat sent them these copies reminding the deadline of the 29<sup>th</sup> of June 2012 for the submission of their conclusions.

All parties submitted their conclusions (Mr MARZOLO did not submit them in a formal way but submitted a final memorial):

Mr FELLER:

- asked again for a suspension of the EC proceedings, reminding that on 29 June 2011 the Court of Appeal of Versailles suspended the sanctions inflicted against him by the FF;
- invoked in any case the violation of the rights of the defence, reserving all possible appeal against any EC judgment (“... soyez certain que toutes les mesures judiciaires, tant au niveau national qu’européen, seront prises pour priver d’effet toute decision ..”).

Mr HAUCHARD:

- (*identical conclusions of Mr FELLER*) asked again for a suspension of the EC proceedings, reminding that on 29 June 2011 the Court of Appeal of Versailles suspended the sanctions inflicted against him by the FF;
- invoked in any case the violation of the rights of the defence, reserving all possible appeal against any EC judgment (“... soyez certain que toutes les mesures judiciaires, tant au niveau national qu’européen, seront prises pour priver d’effet toute decision ..”).

Mr MARZOLO:

- did not submit formal conclusions, but a final memorial, where he definitely admitted his responsibility for having contributed to a cheating organised during the 2010 Chess

Olympiad together with Mr FELLER and Mr HAUCHARD, adding that Mr. HAUCHARD would have the main responsibility for the organisation of the cheating.

FRENCH CHESS FEDERATION:

ACKNOWLEDGING that:

- GMI Sébastien FELLER and Arnaud HAUCHARD admitted to have cheated with Cyril MARZOLO (MI), during the Chess Olympiads at Khanty-Mansiysk,
- The itemized telephone statements for the line belonging to Madame Joanna POMIAN and used by Cyril MARZOLO, demonstrate that they communicated suggested moves to GMI FELLER and HAUCHARD during the Chess Olympiads,
- Arnaud HAUCHARD admitted evidence of cheating and explained the mode of operation in its MSN conversations with Maxime VACHIER LAGRAVE,
- Cyril MARZOLO confessed the cheating during its hearing from April 6th 2012 in front of the EC,
- Cyril MARZOLO confirmed its oral statement in its written memorial submitted to the EC,
- ADJUDGE AND DECLARE that the three players are found guilty of organized cheating, which constitutes a violation of paragraph 2.2.5 of the FIDE Code of Ethics.
- PRONOUNCE consequently the penalties that please the FIDE EC.

The case was then discussed and decided during the EC meeting held in in Lausanne (Switzerland) on 30<sup>th</sup> June - 1<sup>st</sup> July 2012, achieving unanimity among the members of the EC. None of the EC members asked to deliver a separate opinion.

### **PROCEDURAL ISSUES**

All procedural objections submitted by the parties were already dismissed with the decision issued on 1<sup>st</sup> October 2011. Otherwise, given that Mr HAUCHARD and Mr FELLER have again submitted the same objections (Mr MARZOLO and the FF on the contrary have not discussed anymore procedural issues after the decision of the 1<sup>st</sup> October 2011), even if without adding some relevant new arguments, and given that their defense –at least in the memorials received after the 1<sup>st</sup> October 2011 and in their conclusions- seems mainly if not exclusively based on them, it is necessary to deal with them again, definitely confirming our previous decision.

## **EC COMPETENCE**

Mr HAUCHARD and Mr FELLER argue that the EC would have no competence, no jurisdiction on the case, in their opinion the case would be of exclusive competence of the FF and of French Authorities.

The objection has no value.

The case concerns facts allegedly committed by members of the French Team during the 2010 Chess Olympiad (the most important FIDE competition) in Khanty-Mansiysk (Russia): it seems difficult even to imagine that this could be a French “internal affair”, a question of exclusive competence of the FF, even more considering that any decision of the FF would have no direct effects for what concerns FIDE and other chess federations and that the same FF for these reasons addressed a complaint to the EC.

Chapter 2.1 of the FIDE Statute refers to national federations’ competence over chess activities “in their own countries”: it is not this case.

By the way, chapters 1.2 and 2.1 of the FIDE Statute in no case can constitute a limit to the application of FIDE Code of Ethics and to the EC competence. This is relevant even regarding the relationships between EC competence and the competence of disciplinary or judiciary organs of national chess Federations.

FIDE “observes strict neutrality in the internal affairs of the national chess federations” (1.2 FIDE Statute), “which have principal authority over chess activities in their own countries” (2.1 FIDE Statute), sure, but to become member of FIDE any national chess federation has to “acknowledge the FIDE Statutes” ( 2.1 FIDE Statute), and during all its activities any national chess federation “must acknowledge and observe the statutes, regulations, resolutions and decisions of FIDE” (2.4 FIDE Statute).

FIDE and national chess federations are independent entities, with their own internal legal systems, otherwise FIDE “unites national chess federations throughout the world” and “is the recognized international federation in the domain of chess”, “recognized by the International Olympic Committee as the supreme body responsible for the game of chess” (1.1 FIDE Statute).

Therefore every organ of sporting justice of a national chess federation member of FIDE has the right and the duty to give application to the FIDE Statute and to the CoE, but at the same time the EC has full competence on any violation of the FIDE Code of Ethics.

Other international sports federations expressly regulate the relationships between national and international sporting justice, FIDE Statutes do not regulate the point. Without a specific

regulation of the point, no limit to the respective competences can be presumed; if the same facts, discussed or under discussion in front of an organ of sporting justice of a national chess federation, are submitted to the EC, the EC may decide to wait for the national final decision, may ask the national federation to send copies of all the relevant acts, may even limit its decision to a confirm of the national decision or to an extension of the effects of the national decision, but can also decide without waiting for a national final decision and can even overrule a national decision, or, can assume a completely different decision on the same facts.

### **COMPLAINT BY THE FF AND REPORT BY FIDE ORGANS**

The objection concerning the EC competence could be formulated in a different and more interesting way.

The EC, as specified in the 2007 Guidelines to the interpretation of FIDE Code of Ethics, has not the power to investigate on the breaches of the Code of Ethics and to judge them directly, on its own motion, but only after having received a complaint by a person or by a national Federation having a relevant interest in the case, or after having received a report by a FIDE organ.

A complaint gives to the EC the jurisdiction just on the facts expressly and clearly referred to by the complainant and connected with a relevant individual interest of the complainant.

A report gives to the EC a full jurisdiction on all the facts referred to, without any other limit.

In this case the EC received a complaint by the FF, where it was requested “to extend the sanctions” imposed by their disciplinary organs. The complaint was considered as receivable by the EC, given that it concerned in any case an assumed violation of par. 2.2.5 of the FIDE Code of Ethics. Otherwise, the above mentioned sanctions have been suspended by the Appeal Court of Versailles and the case concerning the legitimacy of the FF disciplinary proceedings is still pending on the merit in front of the French first instance Judge. Therefore it could be maintained that the complaint was referred exclusively to a requested extension of sanctions that are not currently applicable for what concerns Mr. FELLER and Mr. HAUCHARD (Mr MARZOLO did not submit appeal to the Appeal Court of Versailles). The point would be interesting, but currently has not relevance.

The EC, on the same facts, received a report by the FIDE Executive Director, following a decision by the FIDE Presidential Board. This report has given to the EC a full jurisdiction on all the facts referred to French Team behaviour during the 2010 Chess Olympiad, without any

other limit; therefore the fortunes of the parallel national disciplinary case are not relevant anymore for the EC.

### **SWISS LAW AND ART. 6.1 ECHR (EUROPEAN CONVENTION ON HUMAN RIGHTS)**

Mr. HAUCHARD and Mr. FELLER argue that the EC proceedings would constitute a violation of the Swiss legal order and of art. 6.1 ECHR.

FIDE, as many other international sports federations, is a Swiss association and must comply with Swiss law –the location in Athens of FIDE offices is not relevant here-.

Otherwise Swiss law grants to associations a wide discretion to regulate their own affairs (v. Art. 63 Swiss Civil Code). The freedom of associations to regulate their own affairs is limited only by mandatory law.

In Swiss law, it is generally accepted that an association may impose disciplinary sanctions upon its members if they violate the rules and regulations of the association. The jurisdiction to impose such sanctions is based upon the freedom of associations to regulate their own affairs. The association is granted a wide discretion to determine the violations which are subject to sanctions, the measure of the sanctions and all procedural rules.

In order to impose a sanction an association must satisfy the following conditions (cfr. Swiss Federal Supreme Court 90 II 347 E. 2):

- The violator must be subject to the rules and regulations of that association.
- There must be a sufficiently clear statutory basis for a penalty in the statutes or bylaws of the association.
- The sanction procedure must guarantee the right to be heard.

Nothing less, nothing more. It's important to underline immediately that the FIDE Statute and the EC procedural rules satisfy all these conditions.

Of course the ECHR is a mandatory source of law and it could be even possible to argue that Swiss Law concerning associations violate art. 6.1 ECHR, but this is not the case. Swiss Law and EC Procedural Rules do not deny the right of a public hearing, on the contrary art. 6 of EC Procedural rules states that "Each party has the right, within the limits provided by art. 8, to ask to appear in front of the EC in an oral hearing".

In the current proceedings no one asked to appear in front of the EC in an oral hearing, but even in absence of a request of an oral hearing, the EC scheduled it, to give additional defensive possibilities to all parties.

There is not at all any violation of art. 6.1 ECHR or of the Swiss legal order.

**RIGHT TO A FAIR TRIAL - ART. 6.3 ECHR – DISCRIMINATION – ART 14 ECHR**

Mr. HAUCHARD and Mr. FELLER argue that the EC proceedings, using English as a working language and given insufficient time and possibilities to prepare their defence would have violated art. 6.3 ECHR, the right to a fair trial, and would constitute also a discrimination against them violating art. 14 and Prot. 12 of the ECHR.

Art. 2 of the EC Procedural Rules states that “The working language of the EC is English”. “The EC shall, at the request of any party, authorize a language other than English to be used by the parties involved. In that occurrence, the EC may order any or all of the parties to bear all or part of the translation and interpreting costs”.

In the current case the EC confirmed English as the only working language, but authorized the parties to use the French language in memorials, documents, conclusions and declarations, specifying that all documents in French will be considered for the decision.

Mr. HAUCHARD and Mr. FELLER asked to obtain, free of charge, a translation in French of all documents and communications written in English: a request that was not conform to the EC procedural rules, could not be accepted and that was dismissed by the EC.

Mr. HAUCHARD and Mr. FELLER argue that this would constitute a violation of art. 6.3 ECHR, of the right of a fair trial and also of art. 14 and Prot. 12 of the ECHR.

About the conditions for a “fair trial”, preliminarily it is necessary to stress clearly and once more the nature of the current proceedings and of the EC jurisdiction: this is not a criminal case; this is a case in front of the competent organ of an international sports federation concerning the violation of its rules and of the sports law.

Art. 6.3 ECHR concerns only criminal cases (“Everyone charged with a criminal offence has the following rights”), it cannot have application in civil, administrative, disciplinary cases, and even less in sports proceedings.

Many years ago the point was clarified by the **European Commission of Human Rights, 9 December 1997, Kenneth Conrad Wickramsinghe against the United Kingdom, decision as to the admissibility of case n. No. 31503/96**, specifying that: “Article 6 para. 3 (Art. 6-3) of the Convention applies to criminal cases but not to civil cases”, “professional disciplinary matters are essentially matters which concern the relationship between the individual and the professional association”, they are not criminal cases.

Jurisprudence from the Court of Arbitration for Sports (“CAS”) has also acknowledged and recognized that many times (regarding much more crucial principles of criminal law, as “*in dubio pro reo*”): cfr. **Arbitration CAS 2001/A/317 A. / Fédération Internationale de Luttes Associées (FILA), award of 9 July 2001**, “The legal relations between an athlete and a federation are of a civil nature and do not leave room for the application of principles of criminal law. This is particularly true for the principles of *in dubio pro reo* and *nulla poena sine culpa* and the presumption of innocence as enshrined in Art. 6 ECHR” (see also Swiss Federal Tribunal, ASA Bull. 1993, p. 398, 409 et seq. [G. v/ FEI] and Swiss Federal Tribunal judgment of March 31, 1999 [5P. 83/1999], unreported, p. 12); **Advisory opinion CAS 2005/C/976 & 986 Fédération Internationale de Football Association (FIFA) & World Antidoping Agency (WADA), 21 April 2006**, “Swiss law grants an association a wide discretion to determine the obligations of its members and other people subject to its rules, and to impose such sanctions it deems necessary to enforce the obligations. Disciplinary sanctions imposed by associations are subject to the civil law and must be clearly distinguished from criminal penalties. A sanction imposed by an association is not a criminal punishment”.

The reference to art. 14 and Prot. 12 of the ECHR is even less pertinent: the use of a working language in an international organisation or association does not constitute a discrimination against anybody, it is sufficient to remember that the same Council of Europe establishes the use of some working language, the CAS too and so on.

In addition it can be reminded that no one international court and no one justice or disciplinary organ of any other international sporting association admits all languages as working language in their proceedings: for what concerns the same European Court of Human Rights judgments shall be given either in English or in French and in no other languages (and all communications with and oral and written submissions by applicants or their representatives in respect of a hearing, or after notice of an application has been given to a Contracting Party, shall be in one of the two Court’s official languages), there are only two official languages for the International Court of Justice, two are the working languages of the CAS and so on.

Therefore using English as a working language in the proceedings does not constitute at all a violation of the ECHR or of any other international source of law.

Mr. HAUCHARD and Mr. FELLER argue that they received copies of the documents collected by the EC only immediately before the conclusion of the proceedings, incomplete and not listed in a specific order, in their opinion this would constitute a violation of art. 6.3 ECHR and of the right of a fair trial.

About art. 6.3 ECHR, first of all it has to be repeated that it cannot have application, but even if it would had application there will be no violation at all.

All documents sent by the FF, except the declarations made by Mr Cyril MARZOLO in front of the CNOSF, were well known by Mr. HAUCHARD and Mr. FELLER even before the beginning of the case in front of the EC, being the same of the cases in front of FF Disciplinary Commissions and French Judicial Authorities.

The new evidence gathered directly in front of the EC is constituted by the oral and written declarations made by Mr MARZOLO, the declarations made by Mr Laurent VERAT, the document from the Chief Arbiter of the 2010 Chess Olympiad and the report of the FIDE Technical Commission: no more than 10 pages in all.

There was full disclosure of evidence: all documents were at disposal of the parties in FIDE offices two weeks before the deadline assigned for the submission of their conclusions. Mr. HAUCHARD and Mr. FELLER decided to not exercise their right to examine the documents in the due offices (as it would be usual practice in front of any judicial authority) but to just send letters asking to receive copies of all documents translated to French. Even in front of their incorrect and already rejected requests the FIDE Secretariat sent them copies of all the above mentioned documents.

The Chairman of the EC fixed many different and perfectly adequate deadlines for the submission of documents, memorials and conclusions, in particular before each one of the EC meetings and the proceedings lasted more than one year. The proceedings would have been perfectly correspondent to the standards requested for a criminal case, even if, it has to be repeated again, those standards are not requested at all for the current proceedings, without any violation of any international or national source of Law.

Mr. HAUCHARD and Mr. FELLER initially submitted memorials focused also on the merit of the case, but in the following months decided to submit only their objections on the procedural issues: it has been their choice, but it is clear than it has not been influenced at all by a violation of their defensive rights.

**ASSUMED PROCEDURAL VIOLATIONS BY FF ORGANS AND REQUESTED SUSPENSION OF THE PROCEEDINGS – LIS PENDENS**

Mr. HAUCHARD and Mr. FELLER argue that the EC would have to suspend its decision, waiting for a judgment by French Judicial Authorities on pending civil case (concerning the legitimacy of FF sanctions) and criminal cases (all parties, for different reasons, declared to

have submitted complaints the one against the other in different criminal offences: fraud, subornation of witnesses, etc.).

It has been already clarified that the EC has full competence on the case and, being an organ of an international sports federation and not a concurrent civil or criminal jurisdiction, it is not limited nor can be directly influenced by any national disciplinary or judicial decision.

There is no *lis pendens* within the meaning of Article 186 (1bis) of the Swiss Private International Law Act and, even in the case of the same proceedings pending before the national State courts and the EC, the EC has to have “considerable reasons” in order to suspend its proceedings. Moreover a suspension does not follow from the Lugano Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial matters from 16 September 1988 or the Council Regulation (EC) No 44/2001 of 22 December 2000 on the Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters, since both sets of rules do not deal with the competence and jurisdiction of arbitral and sports tribunals (cfr. also **Arbitration CAS 2008/A/1639 RCD Mallorca v. The Football Association (FA) & Newcastle United, award of 24 April 2009**).

Therefore for sure there is no duty to suspend the decision. Nevertheless, in some circumstances a suspension could be opportune: exactly for this reason in the decision held on 1<sup>st</sup> October 2011 the EC invited the parties to produce copies and updated information on the above mentioned national cases.

No one produced additional documents In the occasion of the oral hearing, on 6<sup>th</sup> April 2012, these points were the object of many questions addressed to Mr Laurent VERAT.

Mr VERAT made the following declarations:

About the disciplinary and the civil cases: “*the sport case in front of the FF and French Olympic Committee organs is concluded*”, Mr Feller, Mr Hauchard and Mr Marzolo have been banned for a given period of time: 5 years for Mr Feller and Mr Hauchard, this period was reduced for Mr Marzolo after his declarations in front of the competent organ of the French Olympic Committee and the conciliation in front of this organ. Mr Feller, Mr Hauchard and Mr Marzolo brought an action to the civil judge asking for an annulment of the decision and also for its suspension, the first instance judge did not suspend the sanction, Mr Feller and Mr Hauchard submitted an appeal and the Appeal Court decided to suspend the decision”, with a “provisional measure”. The case concerning the legitimacy of the decision to ban the players is still pending. The procedure is back to the first instance judge and currently it concerns only Mr Feller and

*Mr Hauchard. They introduced last month another sue regarding the procedure. Reasonable time for the 1st instance judgment is 18-24 months but it depends much on the lawyers. The decision of the appeal court was only a preliminary decision, concerning the provisional measure”*

About the conciliation in front of the CNOSE: *After the conciliation, for Mr MARZOLO the sanction was reduced at 9+9 months (9 months plus 9 months under condition), started in 26 of May 2011 since he did not play. Since February 25-2012 he was allowed to play. This situation, that he is not banned anymore, is official and public, but without public reasons or any explanations published by the FF. The FF is still obliged to not make it public until Marzolo is heard by the competent French judiciary authority. This was a decision of the Olympic Committee to which the FF agreed.*

About a criminal case against Mr Feller, Mr Hauchard and Mr Marzolo: *“A criminal procedure started about last July 2011, following a complaint by the FF. In October it was appointed an investigative judge”, “in French legal order there is no time limit regarding investigative procedure. The case concerns Mr Feller, Mr Hauchard and Mr Marzolo. The criminal offence object of the accusation is “escroquerie” as in French criminal/penal code [art. 313-1]”. The French Judge can be competent, according to the French legal system, even if the facts are committed abroad”. “The current situation of the criminal case is not public, we cannot comment, the case is pending”, “after the complaint submitted by the FF the Prosecutor did not taken any initiative” “the FF requested and could obtain the appointment of an investigator judge because in three months (the first complaint was in April 2011 – and after 3 months on July it was submitted a second complain) the prosecutor did not take any decision”.*

About a civil and a criminal case against the Vice-President of the FF, following a complaint by Mr Marzolo: *“the civil case is closed with an agreement between the parties and a real criminal case was never pending”, “the Office of the Prosecutor (le Parquet) decided there were no sufficient elements, anyway we have no direct knowledge about the case, the FF was not and isn’t interested in the case”.*

About one or more criminal case against the former President of the FF and other representatives of the FF, following complaints by Mr Feller: *“we have no idea of the existence of another criminal case”, “we have not received any communication, nor an investigative judge has been appointed, or at least we do not know anything more”, “probably Mr Feller submitted a lot of complaints, but we have not received other official documents about other civil or criminal complaints”.*

That's the current situation: there are no reasons of opportunity to suspend the proceedings.

The Office of the Prosecutor in France has never taken any initiative concerning these facts, nor gathered additional evidence. One or more criminal cases are probably pending, following the complaints submitted by the FF and by Mr FELLER, and will be probably pending for a long time, but it is quite common than the decisions of the sport authority anticipates the decisions of the judicial authorities.

The assumed confidentiality of the conciliation of Mr MARZOLO in front of the CNOSF is not applicable in front of the EC and the document can be used.

Finally, as already mentioned, the proceedings in front of the EC are not an appeal against a disciplinary decision of a national chess Federation, even if it is true that the EC can, in some cases, confirm or not such decisions. In any case the EC has the power to review the facts and the law and to rule the case ex novo, for this reason the assumed procedural violations by the FF during the disciplinary case are not relevant (for a similar conclusion concerning CAS see **Arbitration CAS 2007/A/1396 & 1402 World Anti-Doping Agency (WADA) and Union Cycliste Internationale (UCI) v. Alejandro Valverde & Real Federación Española de Ciclismo (RFEC), award of 31 May 2010**, and **CAS 2009/A/1920 FK Pobeda, Aleksandar Zabrcanec, Nikolce Zdraveski v/ UEFA**, "the procedural deficiencies which affected the procedures before (national) disciplinary bodies may be cured by virtue of the present arbitration proceedings") and there is no reason to wait the end of the civil case to know if the FF disciplinary decisions will be confirmed or not.

## MERITS

The elements set out below are summary of the main relevant facts, as established by the EC on the basis of the written submission of the Parties, the evidence produced, and the hearing held on 6 April 2012.

The French Team participated in the Chess Olympiad held in Khanty-Mansiysk (Russia) from 21<sup>st</sup> September to 3<sup>rd</sup> October 2010.

Mr Sébastien FELLER, a French GM, was a member of the French Team, played 9 games against Slovenia (Sebenik), Israel (Mikhalevski), Serbia (Markus), England (Howell), Austria (Kreisl), Spain (Alsina Leal), Russia 2 (Timofeev), Georgia (Gelashvili), Ukraine (Efimenko), with quite excellent results and also won a prize of 5,000 euro for the best result on the 5<sup>th</sup> board.

Mr. Arnaud HAUCHARD, a French GM, was the captain and coach of the French Team.

Mr. Cyril MARZOLO, a French IM, was in France in that period, engaged in a working relationship with Ms Joanna POMIAN, vice-president of the FF; for these working reasons Mr MARZOLO in those days had received on loan for temporary use a SIM SFR correspondent to the mobile phone number *omissis*, number assigned by SFR to Ms POMIAN.

On 27<sup>th</sup> September 2010, while in Khanty-Mansiysk the French team was playing a match against Austria, Cyril MARZOLO was visiting Ms. POMIAN at her home in NANCY. While he momentarily left the room, Mr. MARZOLO received an SMS text message that appeared on his cell phone screen, left in evidence on the table, in view of Ms. POMIAN who read it. It was a message apparently sent by Mr. Arnaud HAUCHARD, although he was supposed to be acting as captain during the FRANCE-AUSTRIA match, inviting Mr. MARZOLO to “send moves on the cell” (“filer les coups sur le portable”). Ms POMIAN did not immediately react. As soon as he became aware of the message, Mr. MARZOLO took leave of Ms. POMIAN.

Ms. POMIAN knew existing ties between Mr MARZOLO, Mr FELLER and Mr HAUCHARD, suspected an illegal behavior of cheating by them and informed Mr. Jean Claude MOINGT, then President of the FF.

Mr. MOINGT in the next days was present in Khanty-Mansiysk and monitored Mr HAUCHARD and Mr FELLER during the FRANCE-UKRAINE match: He remarked that Mr. HAUCHARD frequently entered and exited the playing area in order to consult his cell phone.

Mr. MOINGT informed Mr HAUCHARD about the suspicions of cheating and requested that Mr FELLER not play the French team's last match, against Armenia. Mr. HAUCHARD immediately accepted this decision.

After the return of the team in France, Mr FELLER and Mr HAUCHARD were invited to participate in a meeting in front of Mr. Jean Claude MOINGT, President, Mr. Laurent VERAT, Executive Director and National Technical Director of the FF and Mr. Jordi LOPEZ GARCIA, assistant National Technical Director of the FF. The meeting was held on 11<sup>th</sup> October 2010 and Mr MOINGT, Mr VERAT and Mr LOPEZ GARCIA declared that on that occasion Mr. FELLER and Mr HAUCHARD admitted to having cheated in in Khanty-Mansiysk during the Olympiads and also in other 2 previous tournaments (the Paris Championship and the Bienne Open, in July 2010), jointly with Mr MARZOLO (adding that “they were acting under pressure from Mr. MARZOLO”). Mr. MARZOLO followed FELLER's Olympiad matches live on the internet, analyzed them using a chess engine and sent his suggestions via SMS to the mobile phones of Mr. HAUCHARD and of Mr FELLER, during the games both used by Mr

HAUCHARD outside the playing area. Then HAUCHARD transmitted the suggested moves to Mr. FELLER, into the playing area.

Mr VERAT, in the oral hearing in front of the EC, confirmed this point: “I was present and I listen at the beginning a confession by all of them. FELLER and HAUCHARD admitted in front of us that they cheated, in October 2010, they spoke for 2 hours. HAUCHARD said this also in a telephonic discussion from Khanty-Mansyisk, that he made a mistake by cheating. FELLER admitted in front of the three leaders of the FF. There were not many details about the way they cheated. After that, they did not mention this meeting. At the hearings [of the FF disciplinary Commission] they talked about consequences and then Feller should talk to his father about the situation. After the meeting and apparently after the discussion with his father, FELLER changed his position”.

During the following phases of the FF disciplinary proceedings and in the civil case in France Mr FELLER, Mr HAUCHARD and Mr MARZOLO denied all responsibility never participating in the hearings.

During the FF disciplinary three other members of the French Olympic Team made declarations affirming that Mr HAUCHARD in front of them had confessed to cheating.

Mr Maxime VACHIER-LAGRAVE declared that: “During the Olympiad the behavior of Arnaud HAUCHARD was pretty strange ... he was clearly more interested in Sébastien FELLER’s results ... was very tense ... was walking out of the playing hall very frequently ...”, “On the 5th of January 2011, when training at home for Wijk Aan Zee with Arnaud HAUCHARD, I suddenly got a call from Jrodi LOPEZ from the FF who, learning I was currently with Arnaud HAUCHARD, asked me to call him back later. When learning that, Arnaud HAUCHARD suddenly told me that the most likely reason for this call was to inform me that a cheating had taken place in Khanty-Mansiysk, and he admitted that it really happened. As he told me, Cyril MARZOLO was sending the moves by text according to a phone code, including the number of the move, departure square and arrival square, and Sébastien FELLER was receiving them. He denied having taken part in the cheating, saying that he was only aware of it and covered it”.

Mr Maxime VACHIER-LAGRAVE produced also a copy of the print script of some messages that would be exchanged between him and Mr. HAUCHARD on 6-1-2011, where Mr HAUCHARD admitted that MARZOLO and FELLER were cheating and explained the code used by MARZOLO for sending the suggested moves, using numbers that could seem similar to phone numbers.

Mr Laurent FRESSINET declared that: “Afterward, the 6th of January 2011, Maxime VACHIER-LAGRAVE told me, on the evidence of confidences which beforehand delivered him Arnaud HAUCHARD, of an affair of cheating during the Olympiads involving a member of the French team, Sébastien FELLER. I am stunned, shocked, by this piece of news. According to these assertions, FELLER would have, during the Olympiads, played his games on the basis of instruction that Cyril MARZOLO, from FRANCE, gave him”. “That very evening, I receive Arnaud HAUCHARD’s phone call, which, in answer to my request of qualification, confirms me that a system of cheating organized between FELLER and MARZOLO would have effectively been in work during the Olympiad.”

Mr Romain EDOUARD declared that, after being informed by the FF of the assumed cheating, together with VACHIER LAGRAVE and FRESSINET they decided to request Mr HAUCHARD to have a meeting with them: “... on 11th of January (2011), Arnaud HAUCHARD arrived to the meeting (in the “Atlantic” restaurant close to Montparnasse in PARIS) once again on the verge of a nervous breakdown. He said he needed to make his “*mea culpa*” and explained us the whole cheating system (exactly the same that the federation described me one day earlier): Cyril MARZOLO was analyzing the games with a powerful computer, and sending the moves on Sébastien FELLER’s mobile phone according to a coding system”, “we also asked Arnaud HAUCHARD why Sébastien FELLER had lost two games in spite of his computer assistance. He answered that the cheating system was not well set up at the beginning, and that even later Sébastien FELLER was sometimes lacking time after move 30-35”.

The invoice/itemized telephone statements *-facture détaillée-* concerning the period 19-9/18-10-2010, concerning the SFR mobile telephone number *omissis* received by Ms. Joanna POMIAN from SFR, shows that Mr MARZOLO systematically sent tens of SMS to the phone numbers used by Mr. HAUCHARD *omissis* and Mr FELLER *omissis*, exactly during the matches played by Mr FELLER.

The FF in February 2011 requested the civil judicial Authority to be authorised to obtain by SFR copies of the content of all these messages, but the Tribunal de Grande Instance de Nanterre dismissed the request, clarifying that in absence of an intervention by the Public Authority, Mr MARZOLO had the right to keep the secret on his correspondence.

The FF requested an expert opinion to Mr. Kenneth W. Regan, a researcher of the State University of New York who was developing a statistical model for detecting chess cheating comparing the moves played with the choices of chess engine Rybka 3: applying that model, Mr. FELLER’s games during the 2010 Chess Olympiad would be suspected of cheating. Mr. L.

FRESSINET realized a similar, more empirical analysis on Mr. FELLER's games, using the engine Firebird, with similar conclusions, given that it seems that Mr FELLER systematically played the best moves suggested by the engine. Otherwise the FIDE Technical Commission has underlined that this kind of analyses currently would have no objective value.

On 16 August 2011, in front of the CNOSF, following a procedure of conciliation, Mr MARZOLO admitted his responsibility in the cheating, without adding any details, and obtained a reduction of the disciplinary sanction against him.

During the hearing in front of the EC Mr MARZOLO more clearly confessed his responsibility: he admitted his role in the cheating organised in cooperation with Mr FELLER and Mr HAUCHARD, he followed FELLER's Olympiad matches live on the internet, analyzed them using various different chess engines and sent his suggestions via SMS to Mr. HAUCHARD. He added that he received money for this: "I did it just for money, just for money, not for friendship but for money. I was paid"; he needed money because he was in a difficult economic situation.

Finally Mr MARZOLO confirmed again his confession in two written memorials, adding many relevant details: he was contacted by M. HAUCHARD et M. Sébastien FELLER, he did not immediately understand that they intended to organize a cheating, he was surprised because he knew very well M. Sébastien FELLER, FELLER worked very hard on chess with M. DORFMAN and by himself, but M. HAUCHARD strongly insisted, he was tempted and he accepted. MARZOLO participated in the cheating sending the moves by sms to M. HAUCHARD who transmitted them to M. Sébastien FELLER. Not all the moves, just some moves in some games: he remembers in the game against Mikalevski quite a lot of moves starting from 12. ... h5, till the zeitnot; against Markus more or less 10 moves; against Howell quite a lot of moves starting from 15. ... Qa5; against Kreisl some moves, but HAUCHARD and FELLER had problems in the communication of the moves; against Alsina some moves in the middle game and at the end; against Timofeev practically all moves starting from 12... Rc8; against Gelashvili no more than 5 moves in the middle game; against Efimenko starting from 11.Qf4 till the draw. About the method for the communication of the moves by HAUCHARD to FELLER in the playing hall in Khanty-Mansiysk, he declares that he is not sure about what exact method they employed, because there were many different methods of communication, linked to the position of the playing hall, behind some chessboards or some players, in the rows also ("il y a différent moyen de communication, cela dépendait de la position de la salle, cela pouvait être derrière des échiquiers ou joueurs, dans les rangées aussi, je ne sais pas lequel ils ont mis en application sur place"), he says it would be difficult to explain by words the cheating

method, but he declares to be available to show it, adding other details. MARZOLO remarks that after the lost game against Austria, Sébastien FELLER contacted him, FELLER wanted to stop the cheating, because HAUCHARD made mistakes in the transmission of the moves .... but the next day MARZOLO received a sms ... they had to continue M. HAUCHARD continuously reminded (“avait pris la tête à”) M.Sébastien FELLER the high phone expenses, therefore they needed to continue. MARZOLO adds also that they cheated in the same way during the Paris Championship and in Bienne, before the Chess Olympiad. More than once he specifies that M.HAUCHARD was the main instigator, he convinced Sébastien FELLER ... (lui avait monté le cerveau) .. he did not hesitate to propose the cheating to FELLER, a young man who had a great future as a player, and in his opinion this would not be no an isolated case (“Il faut bien comprendre que M.HAUCHARD n’a aucun scrupule puisqu’il a demandé de triché à une personne –FELLER- qui était promis à un bel avenir et de plus il n’hésite pas à triché avec même des élèves”, “Il a exercé de fortes pressions sur FELLER, car malgré tous les sacrifices que celui-ci a fait, en travaillant très dur ... il a subi la tentation. Mr HAUCHARD n’a eu aucun scrupule puisqu’il a demandé de tricher à un jeune homme promis à un bel avenir dans les échecs, et selon moi ce n’est pas un cas isolé”).

On the opposite in the memorials submitted at the beginning of the proceedings Mr FELLER and MR HAUCHARD denied their responsibility and, as an explication of the declarations of various different witnesses against them, they referred the following reasons: Mr FELLER would have denounced irregular behaviour by the FF and its President J.C. MOINGT, and during the 2010 campaign for the election of the FIDE President FELLER would have supported the current FIDE President while the FF supported a different candidate. Relationships between MOINGT and FELLER would have been very bad. All witnesses would have to be accused of perjury. MARZOLO would have obtained a reduction of the sanction and remunerative advantages, VACHIER LAGRAVE and FRESSINET too would be strictly linked to the FF and would have obtained some advantages. The others are the officers of the FF. For Ms POMIAN perjury would be a habit. Ms POMIAN would have falsified other documents, in occasion of a dispute against Mr MARZOLO. The dispute concerned Mr MARZOLO’s working contract with her and her company, a part time contract that expired in November 2010, but Mr MARZOLO continued to work for her company till the first months of 2011, without a regular contract. During the dispute Ms POMIAN produced a contract, dated November 2010, but Mr MARZOLO accused her to have manipulated the date of this contract (writing November 2010 at the place of January 2011). Following an order of the President of the Tribunal de Grande Instance de Nancy and an expertise on the computer of Ms POMIAN, she admitted the manipulation.

In other words, everything would have been an organized falsification with the intent to damage Mr FELLER.

**VIOLATION OF PAR. 2.2.5 OF THE FIDE CODE OF ETHICS**

The confession by Mr MARZOLO constitutes direct evidence of the violation of par. 2.2.5 of the FIDE Code of Ethics by Mr. FELLER, Mr HAUCHARD and Mr MARZOLO. Mr MARZOLO obtained as a consequence of his confession a reduction of the disciplinary sanction against him, but this is quite common in all disciplinary proceedings (as in the criminal proceedings too) and does not affect his value.

All other elements confirm the credibility of his confession. Mr. Laurent FRESSINET, Mr. Maxime VACHIER-LAGRAVE, Mr. Romain EDOUARD, Mr. Laurent VERAT, Mr. Jordi LOPEZ GARCIA are all fully independent witnesses who made reliable declarations. Mr. Maxime VACHIER-LAGRAVE seemed also to be a close friend of Mr HAUCHARD, nor VACHIER-LAGRAVE nor the other witnesses had reasons to made false declarations. Ms POMIAN informed Mr MOINGT of her suspects before any debate with Mr MARZOLO concerning his working contract.

The same assumed conflict between Mr. MOINGT and Mr FELLER has not been proved but in any case can not constitute a credible reason for the organization of a conspiracy against Mr FELLER. Many persons would have had to be corrupted by Mr MOINGT, among them three members of the French Team, and the same interests of the FF and of their Olympic Team would have had to be sacrificed just to damage Mr FELLER for his criticism against Mr MOINGT, and this after having selected the same Mr FELLER as a member of the French Olympic team. It is not credible, but what is decisive is that there is no evidence at all as a support of this defensive thesis.

The invoice/itemized telephone statements concerning the SFR mobile telephone number *omissis* constitutes also a relevant circumstantial evidence.

It has to be added that par. 2.2.5 of the FIDE Code of Ethics sanctions “Cheating or attempts at cheating during games and tournaments”, in the same way: therefore it is not relevant to consider if the cheating was accomplished, as it seems, or if, at least in relationship to some games, there was just an attempted cheating: even if Mr FELLER had no profit or advantage from the suggestions and the communications by Mr MARZOLO and Mr HAUCHARD, nothing would have changed. Mr. Sébastien FELLER, Mr. Arnaud HAUCHARD and Mr. Cyril MARZOLO are responsible for the violation of par. 2.2.5 of the FIDE Code of Ethics.

## SANCTIONS

Par. 3.2 of the FIDE Code of Ethics states that: “Anyone acting in contravention of this code can be excluded from participation in all FIDE tournaments or from specific types of tournaments for a period of up to 3 years. Weight shall be given to the type of violation and to any previous violations in decided upon the length of the exclusion period”.

The violation committed by Mr. Sébastien FELLER, Mr. Arnaud HAUCHARD and Mr. Cyril MARZOLO is particularly serious: it was committed during the most important FIDE competition, the Chess Olympiad, by members of a national representative, using sophisticated methods, to gain remunerative advantages.

Mr. Arnaud HAUCHARD was the captain of his national team. The role of the captain is fundamental in a Chess Olympiad, the captain has particular responsibilities. His behaviour was clearly in contrast with all sport and Olympic values. He has to be sanctioned with the exclusion from the participation in all FIDE tournaments (that means all FIDE rated tournaments), as a player or as a member of a national delegation, for a period of 3 (three) years, starting from the 1<sup>st</sup> of August 2012.

Mr. Sébastien FELLER obtained the main advantages from the cheating and he was playing in a chess Olympiad as a member of a national team. Otherwise he was very young, just 19 years old, and he was instigated by the captain of the team. He has to be sanctioned with the exclusion from the participation in all FIDE tournaments (that means all FIDE rated tournaments), as a player or as a member of a national delegation, for a period of 2 (two) years and 9 (nine) months, starting from the 1<sup>st</sup> of August 2012.

Mr Cyril MARZOLO was not a member of the Olympic team, he confessed his responsibility and he accepted the sanction imposed by the FF and by the CNOSF, the exclusion from the participation in chess tournaments, for a period of 1 (one) year and 6 (six) months, with a suspension of the sanction for the last nine months. It is reasonable, in accordance with CNOSF’s decision, to sanction him for the same period, but for what concerns the effects of the present decision it has to be affirmed the competence of the FIDE EC regarding the evaluation of the period of probation, starting from 27 February 2012 till 27 November 2012, and the French Chess Federation has to be requested to send the FIDE Secretariat a report on the behaviour of Mr. Cyril MARZOLO during the above mentioned period of nine months.

FIDE Secretariat and FIDE Presidential Board have to be informed of the present decision for all possible consequences related to the results of the games played by Mr Sébastien FELLER during the 2010 Chess Olympiad, concerning ratings, rankings and prizes.

## **ON THESE GROUNDS**

the EC rules that:

- all submitted objections and preliminary requests have to be dismissed;
- Mr. Sébastien FELLER, Mr. Arnaud HAUCHARD and Mr. Cyril MARZOLO are responsible for the violation of par. 2.2.5 of the FIDE Code of Ethics;
- Mr. Arnaud HAUCHARD has to be sanctioned with the exclusion from the participation in all FIDE tournaments, as a player or as a member of a national delegation, for a period of 3 (three) years, starting from the 1<sup>st</sup> of August 2012;
- Mr. Sébastien FELLER has to be sanctioned with the exclusion from the participation in all FIDE tournaments, as a player or as a member of a national delegation, for a period of 2 (two) years and 9 (nine) months, starting from the 1<sup>st</sup> of August 2012;
- Mr. Cyril MARZOLO has to be sanctioned with the exclusion from the participation in all FIDE tournaments, as a player or as a member of a national delegation, for a period of 1 (one) year and 6 (six) months, with a suspension of the sanction for the last nine months, under probation, in accordance with the decision of the CNOS (Comité National Olympique et Sportif Français); for what concerns the effects of the present decision, the validity of the already executed suspension since 27 May 2011 can be confirmed, but it has to be affirmed the competence of the FIDE EC regarding the evaluation of the period of probation, starting from 27 February 2012 till 27 November 2012, and the French Chess Federation has to be requested to send the FIDE Secretariat a report on the behaviour of Mr. Cyril MARZOLO during the above mentioned period of nine months;
- FIDE Secretariat and FIDE Presidential Board have to be informed of the present decision for all possible consequences related to the results of the games played by Mr Sébastien FELLER during the 2010 Chess Olympiad, concerning ratings, rankings and prizes;
- a written motivation will follow and will be communicated to the parties by the FIDE Secretariat.

Lausanne, 1<sup>st</sup> July 2012

The Chairman of the FIDE Ethics Commission  
Roberto Rivello