

Report

ON FIDE FAIR PLAY COMMISSION ACTIVITY

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FPL Chairman: Salomeja Zaksaitė

FPL Secretary: Yuri Garrett

- 1. ONLINE SCREENING TOOL.** Since its constitution in 2013, the then joint ACP-FIDE Anti-cheating panel which subsequently evolved into the Fide Anti-Cheating Commission (ACC) and finally into the Fair Play Commission (FPL), has been working with and advocating the work of Professor Kenneth W. Regan and accordingly – the online screening tool. In an effort to ease Fide’s financial burden, FPL Chair Salomeja Zaksaitė, ACP President Alex Colovic (also FPL Councillor) and ACP Deputy President Yuri Garrett (also FPL Secretary) teamed up to file a joint request for EU funds for a total 28.000 euro that would in case of positive outcome be granted to ACP. The idea is that ACP (which, contrary to FIDE, is an EU-based entity, as are Salomeja and Yuri’s chess clubs who co-sign the application) would thereafter contribute the money to FIDE’s cause, and help setting up the On-Line Screening Tool. Results should be known later in September. Independently, it is an imperative for FIDE to set up and maintain the Online Screening Tool.
- 2. MATCH-FIXING and FIXED DRAW IN CHESS: A LANDMARK DECISION.** This year, for the first time in history an investigation on match-fixing ended up with an indictable report (i.e. a case was not dropped due to the lack of observational evidence as it used to be earlier). Accordingly, the landmark decision no. 2/2020 of the FIDE Ethics and Disciplinary Commission (dated 21 June 2020) characterised the concept of fixed draws in chess. It was stated that there are situations where arranged draws may be in violation of the concept of sportsmanship and fair competition to such an extent that it would qualify as match-fixing. One example is where one of the players is of-

ferred some kind of remuneration to agree to a draw (§ 10.5). Accordingly, now the margin between tactics and match-fixing in the context of fixed draws is much clearer.

- 3. PROPOSED NEW REGULATORY FRAMEWORK FOR TACKLING ASSUMED MATCH-FIXING.** To fight with manipulations of sport results, FPL is suggesting a new rule: “FIDE has the right to reject norms/not to rate certain tournaments unless the organisers can prove on the balance of probabilities that the tournament was not fixed”. Of course, prior to refusal to rate a tournament, there should be at least some proof/preliminary data on potential match-fixing. In the chess world, the most likely proof in such cases would be the testimonies of (anonymous) witnesses, lost score sheets or score sheets indicating that the games were inadequately short (for example, 10-15 moves), etc. In fact, the proposed new rule would allow punishment for **assumed match-fixing**. Importantly, such suggestion would also allow punishing for the most dangerous forms of fixed-draws. Importantly, proposal would be in line with disciplinary regulations found in other sports. For example, the World Anti-Doping Code establishes that the burden of proof of an anti-doping rule violation generally rests with the anti-doping organisation, but in cases where the burden of proof is transferred to the athlete (to prove certain facts and circumstances or the lack of intent to commit a violation not involving a particular substance), the standard of proof will be ‘balance of probability’. Still, despite of the modernity of the proposed regulation, it must be understood that match-fixing is very serious violation and for punishing match-fixing as such (i.e. not presumed match-fixing), more coordinated efforts are needed and FPL is hardly capable to tackle this threat alone.¹

¹ As one of many examples, it can be mentioned that a cooperation contract in Lithuania has recently been signed between 7 subjects responsible for fighting against match-fixing. These subjects are: Police Department; Ministry of Education, Science and Sport; Special Investigation Service of the Republic of Lithuania; Financial Crime Investigation Service under the Ministry of the Interior; Ministry of Interior; Gaming Control Authority under the Ministry of Finance of the Republic of Lithuania; and Prosecutor General Office.

- 4. PROPOSED NEW REGULATORY FRAMEWORK FOR ASSUMED CHEATING.** If some modern steps are to be taken to tackle match-fixing, the same can be said about computer-assisted cheating. The suggested rule might run along these lines: “a player is guilty of assumed cheating if the z-score of his play amounts to 4,5 (whether this figure should be 4,5 or 5 is debatable) unless the player can prove on the balance of probabilities that he/she was playing honestly”. Such rule would enable not to drop the cases where observational/physical evidence is lacking. The rationale behind such rule again can be explained by long-standing antidoping policy: the rule implies that an athlete is responsible for inhuman play found in his games. Analogously, strict liability rule in doping cases means that an athlete is responsible for a prohibited substance found in his body. Both rules on assumed cheating and assumed match fixing can be put under separate paragraphs in 2018 Anti-Cheating Regulations.
- 5. PROPOSED MODIFICATIONS TO THE REGULATORY FRAMEWORK FOR ANONYMOUS WITNESSES.** 2018 Anti-Cheating Regulations as well as other FIDE documents contain no clauses on the protection of whistle blowers. In practice, a whistle-blower reports some suspicious event to an official from the FIDE (for example, Director General), then the FIDE official asks FPL to initiate an investigation. Such practice is flawed since FPL loses access to the primary source of information and, accordingly, it is extremely hard to collect evidence. In this respect, Art. 47 and 48 of the 2019 UEFA disciplinary regulations where the protection of witnesses is entrenched are to be considered and adjusted to chess by stating, for example, that the witness may remain anonymous when he/she or his/her family may be in physical danger, and also when there is a perceivable risk to his/her sporting career. Such clause can be integrated into IV part of 2018 Anti-Cheating Regulations (Investigation procedure). Needless to say that ‘remaining any-

mous' should mean anonymity for the public, but not for the disciplinary bodies themselves. In this respect, CAS jurisprudence in case CAS 2009/A/1920 is relevant. In this case, CAS considered the testimony of witnesses given anonymously and found that the use of anonymous witnesses' statements was admissible yet at the same time subject to strict conditions. The right to be heard and to a fair trial must be ensured through other means, namely by cross examination through 'audiovisual protection' and by an in-depth check of the identity and the reputation of the anonymous witness by the court (CAS 2009/A/1920 § 55, 72). A similar position has been presented by the European Court of Human Rights: an anonymous witness could be questioned in a room away from the hearing room, with an audio and video link enabling the accused to ask the witness questions. In other words, all necessary measures must be taken to avoid false accusation which is called 'witch-hunting' in the chess world.

- 6. PROPOSED MODIFICATIONS TO THE ANTI-CHEATING REGULATIONS FOR POWERING UP INVESTIGATIVE PANELS.** To facilitate and improve the investigation process, the 2018 Anti-Cheating Regulations should be supplemented by the following rule: "The Chairperson and Secretary of FPL are *ex officio* members any investigative panel with voting rights". Please note that this is over and above the three standard members of the IP. Thus, the IV. 4 of the 2018 Anti-Cheating Regulations should read: "The IC will consist of three FPL members, nominated by the FPL Chairman, based on rotation system. The nominated IC members then select an IC Chairman. The Chairperson and Secretary of the FPL are *ex officio* members of the panel with voting rights."
- 7. ONLINE CHESS.** FPL tends to separate online chess from OTB chess. Sadly, one of the members of the FPL has recently resigned because of recognising that too much attention is paid to the online chess as such. Conceptually,

sport and e-sport fall under different definitions. Esport is described as a game, competition or activity, based on the electronic simulation of an actual sport, needing reduced physical movement but equivalent skill that is played or done according to rules, for enjoyment and/or as a job. Different definitions imply different handling. Online chess and OTB chess cannot be treated as the same activity. However, considering what was stated above, this does not mean that e-chess cannot be integrated into the existing structure/laws of FIDE. We can take the example of FIFA which has an eFootball department. Accordingly, FPL tends to think that within FIDE there should be a separate Department/Commission devoted for online chess or even e-FIDE.

- 8. Online Olympiad:** Three FPL members joined the Fair Play Panel at the most recent Online Olympiad. While this was a very fruitful experience, many critical areas were identified: the lack of a clear legal/operational framework (internal procedures and powers of the FPP), late appointment, bad interaction with platforms, uncertainties as to player eligibility to play, low remuneration. Also, the experience touched on other critical aspects of a wider scope such as the lack of the Online Screening Tool, the ultimate decisional power resting not with Fide but with the platform, the role of FIDE in e-chess.
- 9. Investigations.** The flood of new cases continues and has now expanded to the new area of FIDE e-chess. The Commission is also increasingly being addressed by players and/or officials seeking action on non-Fide related matters. This causes the Commission to spend time to approve the line of conduct and to draft a replay, which is not helping efficiency. Speaking of efficiency, it should be noted that EDC is putting quite some pressure on the Commission to deliver in shorter periods of time. Unfortunately, on most occasions proceeding swiftly is not feasible in practice due to a wide number of reason (unavailability of IP members, difficult communication with interested parties, necessary procedures and difficulties in collecting evidence, other unpredictable

reasons for stalling including new situations that require resourceful legal thinking). In actual practice, this means that investigations hardly take less than six months to complete and can easily span over a year. This should be reflected in the regulations, so as not to create unrealistic expectations. The Commission has suffered two recent withdrawals, has a number of *de facto* inactive members and is constantly in lack of human capital and knowledge. This is, among other things, due to heavy underfunding, which does not allow to compensate members for their ungrateful task, which is unique in FIDE. Simply put, in order to function, FPL needs more funding and more human resource, couple with more political support.

10.Liability insurance. Although the question was addressed informally, it is unclear whether at present FPL members enjoy insurance on their activity. This should be addressed and formally solved asap.

Chairman

Salomeja Zaksaitė

Secretary

Yuri Garrett