



FIDE ETHICS & DISCIPLINARY COMMISSION

The First Instance Chamber of the Ethics & Disciplinary Commission (hereafter called “the EDC Chamber”), sitting in the following composition -

Chairperson: Mr. Johan Sigeman

Members: Mr. Khaled Arfa
Mr. Ravindra Dongre

during an exchange of correspondence and online meetings during the period 23 January – 5 March 2023, made the following

DECISION

Case No 1/2023 “Alleged obstruction of and/or failure to cooperate in FPL investigation”

1. The EDC Chamber **notes** its establishment by the EDC Chairman on 23 January 2023.
2. The EDC Chamber **notes** that on 13 January, 2023 the FIDE Ethics and Disciplinary Commission (EDC) received from the Fair Play Commission (FPL) a report, generated by its Investigatory Panel of a matter concerning alleged violation of the FIDE Ethics & Disciplinary Code (“the EDC Code”) by IA Nebosja Radosavljevic (FIDE ID 929298) (“the Respondent”), relating to actions during the “GM ASK MIX” tournament in March 2022, held in Arandjelovac, Serbia, see the EDC Code, **art 11.4 e and/or 11.4 d**.
3. The EDC Chamber **notes** that the Respondent has been given the opportunity to respond to the allegations in the report and has, after a reminder, submitted a brief mail wherein he admitted a mistake and argued against the length of the sanction proposed by the FPL.
4. The EDC Chamber **notes** the contents of the following documents and e-mails received as part of the case file: the report mentioned above with annexures, and mail by the Respondent, dated 22 February 2023.
5. The EDC Chamber **notes** the subject-matter of the complaint and defence:
 - 5.1 The Respondent is an IA and was chief arbiter in the “GM ASK MIX” tournament, being responsible for the pairings.
 - 5.2 The allegations towards the Respondent in the present case are related to his failure to give proper explanations and information to the FPL on the suspected irregularities during the GM ASK MIX tournament, raised by the FPL. The

- Respondent's responsibility for alleged forbidden pairings during said event is under evaluation by the FIDE Arbiter's Commission and not by the EDC.
- 5.3 The FPL mentions that the Respondent in his reply to the FPL did explain the reason behind the forbidden pairing in the last round of the event but failed to explain the irregularities in several previous rounds in the same event.
 - 5.4 In the report from FPL to the EDC, it is stated that there is a strong suspicion of match-fixing in the GM ASK MIX tournament but that the investigation has not been able to establish this.
 - 5.5 The Respondent has, as mentioned above, submitted a brief statement to the EDC wherein he admits a mistake (presumably related to the last round pairings) but contains no explanation in relation to the allegations raised in the FPL report with respect to the other rounds. The Respondent also stated that "*the research on my case was not well done, as no patterns of my error were discovered. You need an investigator who knows well the happenings in Serbian chess, as well as life here*".
6. Upon due consideration, the EDC Chamber, by unanimity of its members, **finds** regarding the admissibility of the complaint that:
- 6.1 The alleged breach of the EDC Code is a referral by a FIDE organ regarding a matter concerning FIDE's interests specifically related to fair play, match fixing etc; see article 5.2 d in the EDC Code;
 - 6.2 The Respondent is registered in the FIDE database as a player and an IA and as such part of the FIDE Family, over which the EDC exercises jurisdiction;
 - 6.3 The statements *prima facie* has the potential to constitute a violation of conduct prohibited in article 11.4 e or, alternatively, 11.4 d of the EDC Code and:
 - 6.4 The potential transgression took place in the international sphere as there were foreign players participating in the event, see article 5.1 d) read with 4.7 a);
 - 6.5 The EDC Chamber finds therefore that it has jurisdiction to investigate a violation of the EDC Code.
7. Upon due consideration, the EDC Chamber, by unanimity of its members, **observes** and **finds** regarding the issue of the Respondents' guilt as follows:
- 7.1 The EDC Chamber notes that the FPL investigation of the GM ASK MIX tournament not only concerned forbidden pairings but also and foremost concerned suspicions of match-fixing. Match-fixing is a serious problem in every sport and therefore, the investigation had an important scope and focus. Investigations into the matter of potential match-fixing are often hampered by problems to obtain evidence and clarifications from parties involved in or connected to such activities.
 - 7.2 Article 11.4 e in the EDC Code reads:

Obstructing or delaying any investigation: Any person who knowingly obstructs or delays any investigation that may be carried out by FIDE or other sports organization in relation to a possible violation of this Code, including without limitation concealing, tampering with or destroying any documentation or other information that may be relevant to the investigation.

- 7.3 Article 11.4 e is addressing acts of actively obstructing or delaying investigations of the kind mentioned in 7.1 above.
- 7.4 Article 11.4 d in the Ethics Code reads:
Failure to cooperate: The failure of a person or national federation, without compelling justification, to cooperate - (i) with any investigation carried out in relation to a possible breach of this Code, including, without limitation, failing to provide accurately, completely and without undue delay any information and/or documentation and/or access or assistance requested by FIDE, the EDC or its Fact-finding Committee, or other competent officials as part of such investigation without prejudice to the right of a party suspected of an offence under this Code not to be compelled to incriminate him/herself; (ii) with arbiters and anti-cheating officials, or to subject himself to official anti-cheating measures, during or at a competition.
- 7.5 Article 11.4 d in the EDC Code is aimed at preventing unwillingness to cooperate with investigations carried out in relation to possible breaches of the EDC Code, e.g. by failing to provide timely, accurate and complete information. The article contains a clarification to the effect that the rule is without prejudice to the right of a party suspected of an offence under the EDC Code not to be compelled to incriminate him/herself.
- 7.6 The Respondent was, in his capacity as chief arbiter of the tournament, responsible for the pairings. The Respondent has admitted guilt only with respect to the pairings in the last round of the GM ASK MIX tournament. The Respondent has argued that he, by using a forbidden pairing, merely wanted to make it possible for one of the participants, IM Ramoutar Alan Safar, to obtain a GM norm and that he tried to ensure that everyone concerned did not have any objections to this. The Respondent has not been able or even tried to explain why other pairings in the tournament also have been forbidden, as pointed out by the FPL in its report.
- 7.7 The Respondent has not provided the FPL with any substantial information on the alleged irregularities in the GM ASK MIX tournament, apart from what happened with the pairing in the last round.
- 7.8 The Respondent has hinted at underlying problems in the Serbian chess community ("*You need an investigator who knows well the happenings in Serbian chess, as well as life here*"). Without taking a standpoint with respect to the internal workings of the Serbian chess community, the EDC Chamber finds that external factors do not *per se* relieve the Respondent from his duties as member of the FIDE Family to adhere to the EDC Code, e.g. cooperating in investigations.
- 7.9 As mentioned above, article 11.4 d states that a party suspected of an offence under the EDC Code has the right not to incriminate him/herself. This is a

fundamental and widely accepted principle in criminal law, meaning that a respondent in cases such as the present one may make use of this privilege. This right must however, in the opinion of the EDC Chamber, be invoked by the respondent in his/her defence statement to the FPL and/or the EDC. It is therefore not a right that the EDC Chamber has a duty to take into consideration *ex officio*.

- 7.10 The Respondent has not invoked the above-mentioned privilege. The EDC Chamber therefore assumes that his refusal to cooperate with the FPL has other reasons than the ones mentioned in 7.8.
- 7.11 The EDC Chamber finds that the Respondent without justification has failed to cooperate with the FPL and has consequently breached article 11.4 d in the EDC Code. The EDC Chamber does not find that the Respondent has breached article 11.4 e in the EDC Code, as this article is aimed at sanctioning active obstruction or delaying investigations.

Appropriate sanction

8. Upon due consideration, the EDC Chamber, by unanimity of its members, **finds** regarding the matter of an appropriate sanction that:

- 8.1 In determining the sanction, the EDC Chamber must take into consideration all relevant aspects of the case.
- 8.2 The Respondent is taken as first offender.
- 8.3 The Respondent has committed the offence in his capacity as an International Arbiter, thus being responsible for the pairing of the players.
- 8.4 The FPL investigation also concerned suspicions related to match-fixing which is a serious and problematic issue. By failing to cooperate in this investigation, the Respondent has made FPL's important task more difficult.
- 8.5 Taking the above into consideration, the EDC Chamber finds that a ban of ten months from acting as an arbiter, whereof five months is suspended, is an appropriate sanction in this case. As follows from article 15.3 in the EDC Code, *If the person benefiting from a suspended sanction commits another breach during the probationary period, the suspension shall automatically be revoked and the original sanction completely applied and added to the sanction imposed for the new breach.*
- 8.6 The effective part of the sanction will apply immediately (i.e., for the 5-month period from 6 March until 5 August 2023). The conditions of the suspension of the half of the imposed sanction are that the Respondent does not make himself guilty of a new failure to cooperate in an investigation during a probationary period of 24 months commencing immediately after the expiry of the effective ban of five months, namely on 6 August 2023.

9. Accordingly, and taking into account all of the above, the EDC Chamber **unanimously decides** as follows:

- 9.1 The Respondent is found guilty of breach of article 11.4 d (i) of the EDC Code.
- 9.2 The Respondent is **sanctioned** to a worldwide ban of ten (10) months from acting as an arbiter, whereof five (5) months is suspended, taking effect from the date of this decision.
10. The Respondent is referred to Chapter 7 of the new EDC Procedural Rules and **advised** that this decision may be appealed to the EDC Appeal Chamber by giving written notice of such appeal to the EDC Chairman (ethics@fide.com) within 21 days from the date upon which this decision is received. The notice of appeal must clearly state all the grounds for the appeal. An appeal lodgement fee of 150 EUROS must at the same time be paid to the FIDE Financial Department. Failing the due exercise of this right of appeal, the EDC Chamber's decision will become final.
11. The EDC Chamber **requests** the FIDE Secretariat to communicate forthwith the decision to the Respondent, the Fair Play Commission, the Arbiter's Commission and the Serbian Chess Federation and to publish in due course the decision on the FIDE website.

DATED ON THIS 6th March 2023

Johan Sigeman

CHAMBER CHAIRMAN
FIDE ETHICS & DISCIPLINARY COMMISSION