



# **FIDE ETHICS AND DISCIPLINARY** **COMMISSION**

**Case 2/2023: "Alleged unfounded accusations of cheating and disparagement of the interests and good name of chess as a sport".**

## **DECISION**

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

Chairperson: Mrs Yolander Sammy

Members: Mr. Khaled Arfa  
Mr Pedro Dominguez

### *Introduction*

1. The EDC Chamber **notes** its establishment by the EDC Chairman on 20<sup>th</sup> February 2023.
2. The EDC Chamber **notes** that on 20 February 2023 the Ethics and Disciplinary Commission (EDC) received a Report concerning the Respondent GM Magnus Carlsen, prepared by the Investigatory Panel (“IP”) of the Fair Play Commission (FPL), alleging unfounded accusations and other misconduct in relation to the Hans Niemann affair, in potential violation of the FIDE Ethics & Disciplinary Code, more particularly a possible breach of *Articles 11.7(f) or 11.9(j), and 11.6(b) and 11.9(b)* of the Disciplinary Code.
3. It is important to note that it is FIDE (through the FPL), which pursues the Respondent for violations of the Disciplinary Code. GM Niemann was not the complainant nor a party to these proceedings.
4. The EDC Panel **notes** that on 22 February 2023 the Respondent was given the opportunity to file his written submissions in answer to the allegations contained in the IP Report by the deadline of 15 March 2023. On 2 March 2023 Mr Craig Reiser of the legal firm Axinn, Veltrop & Harkrider LLP of New York came on record as the legal representatives for Mr Carlsen in the present EDC proceedings.



5. The EDC Panel **notes** that on 15 March 2023 Mr Carlsen's lawyers submitted an *in limine* application requesting the EDC Panel to declare the IP Report as inadmissible and close the EDC proceedings; alternatively to grant a stay of the EDC proceedings until 31 December 2023 to allow for further developments in the civil suit instituted by GM Niemann against GM Carlsen in the Eastern Missouri District Court, USA in October 2022.
6. The EDC Panel **granted** a temporary stay of proceedings on the 18<sup>th</sup> April 2023 for a period of 6 months, i.e., until 18<sup>th</sup> October 2023. The stay was granted, in accordance with Procedural Rule 17.2, on the basis that special and compelling circumstances were found to be present. The motivation for the ruling will be uploaded simultaneously with this decision on the FIDE Ethics & Disciplinary Commission website.
7. Following the ultimate settlement of the civil litigation suit between Niemann and Carlsen in August 2023, the stay of proceedings was lifted, and the Respondent was given the chance to file his answer on the merits of his case, which he did on 22<sup>nd</sup> September 2023.
8. The EDC Chamber **notes** the contents of the following documents and e-mails received as part of the case file: the IP Report, the notification to the respondent, the e-mails from Henrik Carlsen to the FIDE Secretariat dated 22<sup>nd</sup>, 24<sup>th</sup> and 26<sup>th</sup> February 2023, EDC letter to GM Carlsen dated 23-02-2023, e-mail from Mr. Craig Reiser (Lawyer representing GM Magnus Carlsen) to the EDC dated 2<sup>nd</sup> March 2023, EDC letter to Mr. Reiser dated 8<sup>th</sup> March 2023, letter by Mr. Reiser to EDC dated 15<sup>th</sup> March 2023, EDC letter to Mr. Reiser dated 20<sup>th</sup> March 2023, letter by Mr. Reiser to EDC dated 25<sup>th</sup> March 2023, EDC decision on stay of proceedings dated 18<sup>th</sup> April 2023, EDC motivation on the stay of proceedings dated 25<sup>th</sup> April 2023, e-mail by Mr. Reiser to EDC dated 27<sup>th</sup> June 2023, letter by Mr. Reiser to EDC dated 1<sup>st</sup> August 2023, letter by Mr. Reiser to EDC dated 22<sup>nd</sup> September 2023, EDC letter to Mr. Reiser dated 8<sup>th</sup> August 2023, e-mail by Mr. Reiser dated 29<sup>th</sup> August 2023, EDC letter to Mr. Reiser dated 30<sup>th</sup> August 2023, Defensive statement dated 22<sup>nd</sup> September 2023, Statement by FIDE President to EDC dated 30<sup>th</sup> September 2023.

### *Chronology*

9. The EDC **notes** the chronology of events which are the subject-matter of the complaint and defence:
  - 9.1 During the Sinquefeld Cup (St. Louis, Missouri, USA) in September 2022, a controversy arose between GM Magnus Carlsen and GM Hans Niemann when GM Carlsen withdrew unceremoniously from the Tournament after losing the match against GM Niemann in Round 3. He tweeted a simple announcement of his withdrawal alongside a video of Jose Mourinho saying *'I prefer really not to speak. If*



- I speak, I am in big trouble.* This aroused suspicion in the chess world that GM Carlsen was insinuating that Niemann had made himself guilty of cheating.
- 9.2 After the 5<sup>th</sup> Round of the Sinquefield Cup, on September 6, 2022, GM Niemann gave an interview where he admitted to cheating in unrated online chess in the past when he was younger, but denied cheating in the match against GM Carlsen, or in any over-the-board game. Three weeks after this interview, GM Carlsen released a statement, stating that GM Niemann's behaviour during their Sinquefield Cup game, taken together with earlier suspicions, had convinced him to withdraw from the tournament. GM Carlsen expressed the belief that *Niemann had cheated more often and more recently than he had admitted*.
- 9.3 In the next tournament match between GM Carlsen and GM Niemann, the Julius Baer Generation Cup (from 18 to 25 September 2022), an online rapid tournament, GM Carlsen resigned after one move and switched off his webcam.
- 9.4 On September 26, Carlsen posted his official statement regarding the controversy on Twitter. He confirmed that he had considered withdrawing from the Sinquefield Cup due to Niemann's last-minute inclusion. Carlsen stated that he believed that Niemann cheated more often and more recently than he had publicly admitted, and that Niemann's unusual over the board progress coupled with him "not being tense or even fully concentrating" during their Sinquefield Cup game had convinced him to withdraw from the tournament. He stated that he was limited in what he could say openly without "explicit permission from Niemann" but went on to say that he does not want to play against people who have repeatedly cheated in the past, and that his actions make it clear that he is not willing to play chess with Niemann.
- 9.5 Following GM Carlsen's withdrawal from the Sinquefield Cup, Chess.com removed GM Niemann from their platform, and released a report on the 4<sup>th</sup> October 2022 summarising their evaluation of GM Niemann's games and their estimation on his online cheating on their platform. It alleged that GM Niemann had likely cheated in more than 100 online games, including prize money events and games when he was live-streaming, and against multiple top players. The report concluded that he had likely cheated online as recently as August 2020, shortly after he turned 17, contradicting his statement during his Sinquefield Cup interview that he had cheated when he was 12 and 16. The report claimed that GM Niemann had privately confessed to cheating to Rensch and was banned from the platform for a time.
- 9.6 On September 29, FIDE announced an investigation into Carlsen's claims of alleged cheating and Niemann's response, with the intention of clarifying these allegations as this controversy has gained considerable attention in the chess world, and internationally.
- 9.7 On October 20, 2022 GM Niemann filed a lawsuit against GM Carlsen, his company Play Magnus Group, Chess.com, Chess.com Chief Chess Officer Daniel Rensch and GM Hikaru Nakamura for defamation and unlawful collusion and requested at least US \$100 million in damages. This lawsuit was eventually dismissed on June 27, 2023 whereafter Niemann filed an appeal.



- 9.8 The Respondent, in his public announcements and motivation for a stay of proceedings to the EDC suggested he had knowledge of some relevant information regarding cheating by GM Niemann, which he was not at liberty to disclose because of the lawsuit.
- 9.9 On 28<sup>th</sup> August 2023 a settlement agreement was reached regarding Niemann's appeal which was withdrawn. The agreement meant that GM Niemann will be able to play on the Chess.com platform again.

### *The IP Report*

10. The Investigating Panel of the FPL made the following observations and conclusions:
- 10.1 The IP Report examined the Sinquefield Cup, and particularly the fair play (anti-cheating measures) which were in place during the entire tournament. These included daily inspections of the playing area; players being scanned with metal detectors before entering the playing area; as well as random searches after the games finished; players were not allowed to bring electronics, watches, pens; onsite arbiters observing players during play; the entire playing area was covered by cameras used for live broadcast, no spectators were allowed in the playing area, with limited access to external VIPs and media; all games were analyzed by Professor K. Regan using his statistical algorithm. After round 3, live broadcast was delayed, and radio frequency scanners were used, as a response to GM Carlsen's withdrawal from the tournament.
- 10.2 After the Respondent's loss, and before his withdrawal, he met with the Chief Arbiter Chris Bird, accompanied by his father H. Carlsen, his second GM Peter Heine-Nielsen, GM Ian Nepomniachtchi and GM Peter Svidler. The Chief Arbiter informed the IP that the Respondent stated he was going to withdraw from the event because he believed that GM Niemann had cheated in their game. Both GM Nepomniachtchi and the Respondent were advised that they could use the tournament complaint form to report a fair play violation, which would lead to an investigation by the Fair Play Commission. Neither player opted to lodge a complaint. It is important to note that GM Nepomniachtchi voiced concerns of GM Niemann to the event organizer when he learned of his participation prior to the commencement of the tournament.
- 10.3 During the tournament, the arbiters did not observe suspicious behaviour on Niemann's part, and Professor Regan did not detect any cheating or anything of concern from a statistical point of view.
- 10.4 The IP Report addressed statistical analysis of 13 over-the-board tournaments within the past 3 years, as well as the Sinquefield Cup. The investigation of the selected games did not yield any statistical evidence to support GM Niemann cheating in over-the-board games. Additionally, it was determined that GM Niemann's overall results in the Sinquefield Cup showed no statistical basis for cheating. The Report goes further to state that GM Niemann's performance through the years is characterized by peaks and troughs, consistent with his expected level of play.



- 10.5 The Report noted that rating development has been widely addressed in similar cases where cheating allegations have been made in the past. The speed of rating development is not recognized as an indicator of cheating, unless supported by evidence of cheating with z-score. The Report stated that although GM Niemann did accomplish quite an achievement with rating development, it did not strike the IP as an anomaly. The Intrinsic Rating Progress results showed that GM Niemann's level of play reached 2500+ earlier than his rating development suggests, for instance. This finding does not correlate with the Chess.com Report, however.
- 10.6 The Chess.com Hans Niemann Report was also discussed in the IP Report. Chess.com is primarily concerned with games played on their website. GM Niemann referred to games played on the website in his interview after Round 5 of the Sinquefield Cup (6<sup>th</sup> September 2022), where he admitted to having cheated on this website in the past when he was 12 and 16 years old. The Respondent, in his Twitter statement of 26 September 2022 responded by expressing his belief *'that Niemann has cheated more-and more recently-than he has publicly admitted.'*
- 10.7 The authors of the Chess.com indicated that GM Niemann was being untruthful, stating that he cheated *'more than his public statement suggest.'* They stated that their findings show that GM Niemann *'has likely cheated in more than 100 online chess games, including several prize money events,'* and that he was already 17 while playing some of these matches.
- 10.8 Professor Regan analysed some of the games mentioned in the Chess.com Report, and his statistical analysis showed fewer instances of cheating in comparison with the Report, bringing the range down to 32-55 games cheated in. The analysis of the Chess.com Report revealed discrepancies in GM Niemann's statement- he claimed the cheating took place when he was 12 and 16 years old, but games of 2017 and the games against Bok in August of 2020 occurred after he turned 17 in June. Another important discrepancy is that the cheating took place in rated online games.
- 10.9 The IP Report also included two anonymous GM analysis ('super GMs), to ascertain, in their opinion, whether cheating could have occurred in the games. Neither GM believed cheating occurred, as the games were 'normal for a GM level player'. However, one GM did remark that some of the games were 'somewhat suspect'.
- 10.10 When GM Niemann was asked by the IP to comment on the cheating allegations against him, he responded through his lawyers referring to his (untested and not confirmed under oath) allegations in his statement of claim in the then pending lawsuit against GM Carlsen.
- 10.11 The Respondent, in his letter to the IP on the 13<sup>th</sup> October 2022, stood by his statement of September 26<sup>th</sup>, and stated that the Chess.com Report supported his opinion. He went further to state *'In my statement I did not accuse Niemann of cheating in the game against me in the Sinquefield Cup, as I was only expressing my personal impression of the game.'* He also made the distinction that no accusations were made as to Niemann's over-the-board games. The IP opined that no evidence was provided by the Respondent, making his accusations not factually sound.



- 10.12 Taking into consideration the facts laid down in its Report, the fair play (anti-cheating) measures in place during the entire tournament, the analysis of GM Niemann's best tournaments, statistical analysis by Professor Regan, multiple anonymous GM analysis, analysis of the Chess.com reports, statements made by GM Niemann and GM Carlsen, compounded with no evidence of cheating found at the Sinquefeld Tournament or other over-the-board tournaments analysed, the IP concluded that the accusation against GM Niemann was unfounded as they concern over-the-board chess. The IP also concluded that the accusations by the Respondent against GM Niemann are likely to have brought chess into disrepute in the public eye.
- 10.13 The IP Report touched on critical considerations when investigating an accusation of cheating. There was heavy reliance on Professor Regan's statistical analyses as he is recognized as the leading expert in detecting cheating in chess. Statistical analysis of the selected FIDE Rated games of GM Niemann did not yield evidence of a claim of cheating in over-the board games. However, the EDC Chamber agrees with the Respondent's argument that at the level of high-performing Grandmasters, it is highly unlikely that this methodology can detect cheating which may have occurred at the time of a single move.
- 10.14 An essential discovery of the IP investigation was the veracity of GM Niemann's confession, which was disputed by the Chess.com Report. Professor Regan's analysis of some of the games mentioned in the Chess.com Report, showed instances of cheating to the range of 32-55 games, some in rated games and after the age he admitted to cheating. The EDC finds this finding somewhat underplayed in the Report, as it reveals a greater affinity to cheating than what was admitted.

### *Admissibility*

- 11.1 Admissibility of Complaints and Reports are premised on Article 5 of the Code, particularly 5.1 (a)-(e).
- 11.2 At the stage of opening the present disciplinary proceedings, the EDC Chairman ruled the matter as provisionally admissible, with the final decision regarding admissibility to be taken by the EDC Chamber.
- 11.3 Upon due consideration, the EDC Panel, by unanimity of its members, finds regarding the admissibility of the complaint that:
- (a) The alleged breach of the FIDE Code is a referral by a FIDE organ regarding a matter concerning FIDE's interests. The Fair Play Commission (FPL) is the relevant body within FIDE concerning anti-cheating matters, with the requisite *locus standi*.
  - (b) The Respondent is a FIDE titled player, registered in the FIDE database and as such is part of the FIDE Family, and the EDC exercises jurisdiction over him as person.
  - (c) The conduct and subsequent statements *prima facie* have the potential to



constitute a violation of the Code in the international sphere, prohibited under or constitutes a breach of:

- (i) Article 11.7 (f), alternatively Article 11.9 (j) of the Disciplinary Code;
- (ii) Article 11.6 (b) of the Disciplinary Code read with Article 6.10 and 6.25 (a) and (b) of the Ethics Code.
- (iii) Article 11.9 (b) of the Disciplinary Code.

- 11.4 The question of the admissibility of the IP Report is foremost in the discussion of this case. Admissibility is challenged by the Respondent, on the main premise that the IP's investigation and subsequent report was incomplete, since the Respondent was constrained to fully respond due to the then ongoing legal actions.
- 11.5 The first argument launched by the Respondent contends that the Report stems from an improper investigation with findings that derived from an incomplete understanding of the relevant facts, making its conclusion unsupportable. The Respondent's position has been that the then ongoing US litigation brought by GM Niemann constrained him from providing the IP, and the EDC, a complete and accurate understanding of the relevant facts.
- 11.6 The Respondent also gave contextual background as to how his (and other GMs) became suspicious of GM Niemann, having played against him several times, with the opportunity of observing his play.
- 11.7 The IP's composition was also called into question by the Respondent. It is alleged that FIDE protocol was breached by the premature disclosure of this investigation against the Respondent's conduct by an IP member, before FIDE officially confirmed such an investigation. The Respondent also alleges bias against by two of the IP members, from previous conflicts with the Respondent. This in turn lead to the appearance of bias against the Respondent in the investigation, according to the Respondent.
- 11.8 The Respondent went further to challenge the cherry-picking nature of the IP methodology in interviewing persons involved in the Sinquefield Cup, and those who made comments regarding GM Niemann's play, resulting in a one-sided investigation.
- 11.9 The Respondent criticised the IP for only reviewing tournaments from the last 3 years, when GM Niemann publicly admitted to cheating that occurred before 2019. The Respondent pointed out that the IP failed to account for the Memorial Niksic tournament in June 2021 where GM Niemann gained 20.5 Elo- the fourth highest gain listed in the IP's own annex.
- 11.10 In evaluating the Respondent's above arguments, the EDC Chamber regards the issue surrounding the IP Report as one of inadmissibility vs incompleteness. The question of admissibility is premised on the Code. The EDC Chamber is inclined to believe that the IP Report holds a degree of incompleteness as both parties, particularly the Respondent, at the time of the IP's investigations, were constrained in their ability to co-operate and respond properly because of the US Court system's discovery process, compounded with the US \$100 M damages claim against the



Respondent for defamation by GM Niemann. Both parties indicated that the ongoing litigation was a hindrance to their ability to respond to the IP's enquiries. GM Carlsen should therefore be precluded from complaining that the IP Report was not as comprehensive as it would have otherwise been. The task of the IP is to investigate the facts of the matter to facilitate the enquiry before the EDC. The IP must ensure their investigations are thorough and fair, as the EDC is not an investigatory body. An incomplete IP Report does not make it inadmissible; however, it merely affects the weight of its reliance by the EDC Chamber and the persuasiveness of the Report.

- 11.11 At the time of the settlement between the parties, GM Carlsen conceded that there was no evidence of OTB cheating by GM Niemann. This concession dilutes to some degree the attack on the insufficiency of the IP report in these proceedings.
- 11.12 The settlement between the two protagonists does not mean that FIDE's interest and responsibility to pursue offenders of the Code disappear. However, the EDC Chamber believes that the settlement of the dispute between the Respondent and GM Niemann by mutual agreement has nevertheless caused FIDE's general interest to subside as the true affected parties have brought their disagreement to finality. This, is supported by the FIDE President's statement to the EDC regarding any possible sanction, where the EDC Chamber must be cautious not to cause harm to the organizers and followers of FIDE events and tournaments where the strongest chess player in the world and the current World Cup winner should be present, and by not sending wrong messages to the large public that the top level is full of violations of fair-play.
- 11.13 Accordingly, the EDC Chamber declares the IP report and the complaints against GM Carlsen as represented by the Report as admissible and fit for adjudication.

#### *The Respondent's Arguments*

- 12 The EDC **notes** the arguments of the Respondent:
  - 12.1 As discussed above, the Respondent challenged the IP Report, predominantly because it failed to reflect critical facts which could not be disclosed at the time of the IP's investigation, it minimized GM Niemann's misrepresentations about his history of cheating, its arbitrary selection of tournaments analyzed and its reliance on an impartial expert. The IP Report was also criticized for ignoring key events in its examination of the two players' history against each other in previous tournaments.
  - 12.2 The Respondent asserted that the IP Report unfairly penalized him for his inability to fully participate in the investigation. Both the Respondent and GM Niemann informed the IP of their inability to participate substantively in their investigation due to the then ongoing civil litigation. The Respondent was concerned that any response might be unfairly weaponized by way of further accusations of defamation, to bolster the lawsuit against him. The Respondent felt that he was unfairly criticized for not being forthcoming, whereas GM Niemann was not.



- 12.3 The Respondent, in his arguments, named a few other Grandmasters who voiced concerns about GM Niemann's play in other tournaments. This is corroborated by the IP Report itself, as it cited two Grandmasters who voiced similar concerns about GM Niemann, such as GM Niemann's explanations of his chess moves not correlating to his level of play.
- 12.4 The Respondent declared that he has never made a public accusation that GM Niemann cheated against him in Round 3 of the Sinquefield Cup, nor has he stated he has evidence to that effect. The comments were limited to the Respondent's own personal beliefs and opinions, which the Respondent claimed the IP Report contains findings which correlate. The Respondent argued that these opinions and beliefs were formed from personal experience from his knowledge from previous games against GM Niemann in several tournaments, both over-the board and online. The Respondent described several tournaments in which he played against GM Niemann, which allowed him to critically analyze his play and demeanour during over-the board games, as well as online game. The Respondent has even identified games where he 'lost graciously' to GM Niemann. The Respondent claims that the post-game analysis and comments by GM Niemann made to him about his moves during the game did not correspond to his Elo rating. The Respondent also claims there is a huge disparity between GM Niemann's highest level of play and lowest.
- 12.5 The Respondent gives an analysis of Round 3 of the Sinquefield Cup game, where he states that GM Niemann made a series of good moves, which were not expected of him, given observation from past games. The Respondent also states that GM Niemann chose a much more complicated line to win when Grandmasters of his level would have readily found the obvious line to win. The Respondent also addressed the disposition of GM Niemann, where he claims Niemann did not show signs of nerves, which were usually exhibited in their previous games. There were also no signs of exerting himself or actual thinking. The reservations held by the Respondent were compounded after their Round 3 game, when Niemann in his post-game commentary apparently referenced a non-existent game the Respondent supposedly played against another Grandmaster and provided as nonsensical explanation as to how he was able to exploit a rare opening line the Respondent used in their game.
- 12.6 The Respondent claims that the information learned about GM Niemann's play through his own experiences playing him in online and over-the-board games has led him to question the integrity of GM Niemann's play, compounded with the concerns shared by other top players.
- 12.7 Professor Regan's methodology was also challenged in the Respondent's response, where the important point was made that Professor Regan himself has acknowledged that his methodology is imperfect to the point that it cannot 'catch cheating on one move per game.' Rather, by Professor Regan's own rough estimate, a cheater would need to cheat on three moves per game in a six to nine round tournament to have a fair chance for him to be caught using his methodology. Therefore, it is argued by the



Respondent that in a game involving high-performing grandmasters that could be decided based on a single move, Professor Regan's methodology is highly unlikely to detect cheating.

- 12.8 The EDC notes its disappointment with the lack of evidence provided by the Respondent. Throughout the communication in the initial stage of this matter, when the Respondent pressed for a stay of proceedings because he was unable to provide the evidence he possessed, the Respondent held out to the EDC that he had some concrete evidence he could provide after the US litigation was settled or decided upon. This was never provided to the EDC.

### *Accusation of Cheating*

- 13.1 Article 11.7(f) of the Disciplinary Code prohibits the following conduct:  
*Reckless or manifestly unfounded accusation of chess cheating: Any player or official who, or National Federation which, makes public or private allegations of cheating against another player or official without acceptable grounds existing for a reasonable suspicion of cheating; provided that a player is not precluded from reporting in private an arbiter or anti-cheating official during a competition any suspicion of cheating by another person for the purposes of monitoring the behaviour of such person.*
- 13.2 Article 11.7 (f) of the Disciplinary Code prohibits reckless or manifestly unfounded accusations of chess cheating; and prohibits the expression of opinion if they are not based on acceptable grounds.
- 13.3 *EDC Case 3/2015* is the main precedent upon which the legal principles and standard of care are relied. As laid down in *3/2015*, the EDC considers that for an accusation to be justified, it is not sufficient that the accuser subjectively believes that the accused person might be cheating (subjective standard). It is necessary that a neutral, reasonable observer would believe so as well (objective standard) based on information available to him at the time he/she makes the respective complaint/accusation. Such objective grounds would typically, but not exclusively exist in case of abnormal behaviour during or before the game, possession of devices or any kind of equipment that could be used for the transmission of information to and/or from the accused chess player during the game, such factors being usually combined with extraordinary play that can be technically and reliably proven in accordance with the standard of comfortable satisfaction to result from or be associated with computer or external assistance. It was underscored however, in *Case 3/2015*, that a finding that a complaint was well-founded, i.e., based upon reasonable grounds/substantial evidence, is not dependent on the accused person ultimately being found guilty of cheating. There is an in-between situation where sufficient grounds for a reasonable suspicion of cheating exist, but a full inquiry nevertheless shows that there had in fact been no cheating. See also *EDC Case 5/2017*.



- 13.4 An examination of the chronology of events lends the question of what may be considered an accusation of cheating; is a mere withdrawal from the tournament tantamount to an accusation of cheating without any express words to that nature? When the Respondent withdrew from Round 3, his only public comment was an announcement of his withdrawal alongside a video of Jose Mourinho saying *'I prefer really not to speak. If I speak, I am in big trouble'*. His actions provoked speculation of cheating on Niemann's part. The EDC believes that a withdrawal in itself is not tantamount to an accusation of cheating, especially when nothing was expressly stated to support an accusation. It was Niemann on his own accord that made the public confession after Round 5 in an interview. Three weeks *after* this confession the Respondent released a statement which gave reasons for his withdrawal and expressed the belief that *'Niemann had cheated more often and more recently than he had admitted'*.
- 13.5 The present case can be distinguished from *Case 3/2015* on its facts; however, the legal principles and standard of care are relied upon. Using the objective standard, the EDC Chamber believes that after a public confession of cheating by GM Niemann, a neutral person may be of the belief that GM Niemann has cheated, and that he has also possibly cheated more than he admits. An assumption that is vindicated by the Chess.com Report, and Professor Regan's conclusions of a review of that Report.
- 13.6 Although there was no statistical evidence of GM Niemann cheating in an over-the-board game from the games analyzed, the EDC Chamber believes that the peculiar facts of this case can qualify as the 'in-between situation' referred to in *Case 3/2015*, where a complaint can be well-founded without the suspected person not found guilty of cheating. The Respondent's statement regarding Niemann being a cheater was made *after* Niemann's confession. In the Chamber's opinion, this mitigates his comment from being reckless, or manifestly unfounded as Niemann himself admitted to cheating.
- 13.7 The question arises whether the Respondent extended the label of Niemann being a cheater, to over the board games, and not in the confines of online chess, as was admitted. It can be surmised that the comment was meant to include over the board games as the Respondent referenced the Sinquefield Cup game and his withdrawal. The EDC Chamber finds it unnecessary however to make a distinction between different forms of cheating. Whether it be over-the-board cheating, or online cheating in chess, it does not make one lesser of an offence than the other; it is still an assault on the integrity of the sport.
- 13.8 The Respondent is accordingly **not guilty** of a charge of Article 11.7 (f).

#### *Undermining Honour*

- 14.1 Article 11.9 (f) of the Disciplinary Code reads as follows:-



*Attempt to undermine honour: Any person who attempts to undermine the honour of another person subject to the Code in any way, especially by using offensive language, gestures or signs.*

- 14.2 The EDC Chamber was not provided with evidence which showed an undermining of GM Niemann's honour using offensive language, gestures or signs.
- 14.3 It cannot be found with comfortable satisfaction that GM Carlsen acted with any malicious intent or motive; there is no evidence to suggest that he deliberately and falsely branded GM Niemann as a cheater whilst knowing the opposite to be true.
- 14.4 The Respondent is therefore found to be **not guilty** of this charge.

#### *Disparagement of Reputation*

- 15.1 Article 11.6(b) of the Disciplinary Code prohibits the following:

*Disparagement of FIDE's Reputation and Interest: Any action which is held by the EDC to have adversely affected the reputation or interests of FIDE, its Continents or National Federations, either internally amongst its National Federations and Continents or externally amongst the general public or which has harmed the image of chess generally.*

- 15.2 This includes any action which is held by the EDC to have adversely affected the reputation or interests of FIDE, or which has harmed the image of chess generally is considered an offence causing reputational harm.
- 15.3 The Respondent's withdrawal from the Sinquefeld Cup and the events to follow gained considerable media attention in the chess world, and internationally. It took on a life of its own, bearing similarity to what was described in case 3/2015- 'the intrigue rising from a case of purported cheating, especially among high level players attracts instant publicity, goes viral within a few days and leaves tracks in the media for a long time, even if the cheating case in the end dismissed as groundless and unjustified.'
- 15.4 Having regard to the distinctive feature of the present case, which lies in the fact that the involved player is a young rising star and the accusations were levelled by the then world chess champion and current strongest player in the world, the EDC particularly considered the impact that accusations of cheating may have on both and the high standard/duty of care expected to be observed regarding FIDE's general interest that must be protected.
- 15.5 Media attention should not only be perceived as negative. The coverage of this matter made chess a wide and popular topic of discussion. Cheating is a sore topic in every sport, and chess is not peculiar in this manner. Therefore, the EDC Chamber does not believe that the attention this case has gained has harmed the reputation and interests of FIDE. On the contrary, the EDC Chamber believes that it may have piqued the interests and awareness of many persons, now desirous of learning how cheating can actually occur in chess.



15.6 The Respondent is found **not guilty** of this violation.

*Withdrawal from Tournament*

16.1 Article 11.9(b) of the Disciplinary Code makes the following an offence:

*Withdrawal from tournaments: Players withdrawing from a tournament without valid reason or without informing the tournament arbiter.*

16.2 Under Article 11.9 (b) it is considered an offence for players to withdraw from a tournament without valid reason. This offense is independent and separate from the discussion point above that the withdrawal from the tournament may be regarded as a tacit allegation of cheating. Valid reasons for a withdrawal can be, for example, illness, death of close family members, pandemic, war.

16.3 The Respondent withdrew from the Sinquefield Cup as a protest because he believed that GM Niemann cheated in the game. However, he failed/ refused to use the proper procedural means available to players, which is to file a tournament complaint form to report the possible Fair play violation and a possible cheating incident.

16.4 FIDE has developed procedural means to investigate cheating suspicions without causing unnecessary attention and harm to the accused player. This helps to maintain the *status quo* of a player's reputation and allows for the smooth running of tournaments. If the Respondent had filed an objection, only upon a finding of guilt would there be communication of such transgression with the outside world. Similarly in *Case 3/2015* the Respondent disregarded the applicable FIDE Regulations.

16.5 The Sinquefield Cup is a single round-robin event with 10 players using the classical time control. This means that each participant plays every other participant once. The EDC Chamber believes that there was no valid reason for the withdrawal as the Respondent was not at risk of playing GM Niemann again after Round 3 and nothing could be achieved by his withdrawal save for casting aspersions on the sufficiency of fair play mechanisms employed by the organisers.

16.6 Former world champion Garry Kasparov has pointed out that Carlsen's withdrawal from the tournament had "no precedent in the past 50 years". Although the Respondent's withdrawal was an unprecedented move, it does not negate the aggravating circumstances and scandal which erupted from his actions. It shows bad sportsmanship on his part, by circumventing the measures in place to properly address these concerns confidentially. As the current World Champion at the relevant time, and the highest rated player in the world with a considerable influence and following, the Respondent is expected to lead by example, and not to set a bad example especially in the eyes of young chess players,

16.7 The Respondent is found **guilty** of a violation of Article 11.9 (b).



*Appropriate sanction*

17. Upon due consideration, the EDC Chamber, by unanimity of its members, **finds** and regarding the matter of an appropriate sanction that:
- 17.1 In determining the sanction, the EDC Chamber must take into consideration all relevant aspects of the including the gravity of the infringement, the degree of the Respondent's culpability and any harm caused.
- 17.2 The Respondent is a first-time offender.
- 17.3 Representing the interests of FIDE at large, the FIDE President has submitted a statement to the EDC Chamber concerning the suitable sanction in the event that GM Carlsen is found guilty of any offence of the FIDE Code. The FIDE President acknowledged that although he is not entitled to discuss the facts or merits of the case, he is of the opinion that the conclusions and recommendations presented by the FIDE Fair Play Commission were not sufficiently founded. One aspect of the EDC's mandate is to protect the interest of chess and chess players, which includes promoting peaceful settlements of disputes. Since the parties have come to an amicable agreement, the President believes that it would be counterproductive to impose any severe punishment on the Respondent. Such a punishment would have the potential to cause severe damage to the development of chess and can give the impression that top-level chess is full of violations of fair-play, which can have a severe financial impact when considering the attraction of sponsors and partners.
- 17.4 The Respondent is a professional chess player, the former World Champion and the highest-ranking player in the World. The EDC agrees with the FIDE President that a sanction (such as a ban) which prevents the Respondent from playing in FIDE rated chess competitions would severely harm the interests of chess, its organizers, the development and following of the game and reopen a previously resolved dispute and old wounds for the parties involved. A lesser sanction is supported by the fact that the grievance between the two players has been resolved and has therefore diluted the transgressions under examination.
- 17.5 In *Case 4/2022* the Respondent was also found guilty of violating *Article 11.9 (b)* of the Code for improperly withdrawing from the tournament. However, in that case the withdrawal was less disruptive as it occurred even before the start of the tournament. The Respondent was fined 500 Euros in that case. GM Carlsen's offence is of a more serious nature. In addition, any fine to be imposed should take account of the ability of the offender to pay the fine and the deterrent effect of the fine to discourage the offender from repeating the offensive conduct. The EDC believes that a fine similar to the one imposed in *Case 4/2022* would be too lenient for the Respondent in the present case, considering his financial standing. It would not act as a sufficient deterrent to him to repeat such a transgression, or for others. A fine in a significant value is called for in the present circumstances. The EDC Chamber is empowered to impose a fine up to a maximum of 50,000 Euros (Art. 13.1(c) of the Code).



### *Conclusion*

- 18 Accordingly, and taking into account all of the above, the EDC Chamber **unanimously decides** as follows:
- 18.1 The Respondent GM Magnus Carlsen is found **not guilty** of a breach of Articles 11.7(f) and 11.9(f) of the FIDE Disciplinary Code.
  - 18.2 The Respondent is found **not guilty** of a breach of article 11.6(b) of the FIDE Disciplinary Code.
  - 18.3 The Respondent is found **not guilty** of a breach of article 11.9(j) of the FIDE Disciplinary Code.
  - 18.4 The Respondent is found **guilty** of Article 11.9(b) of the FIDE Disciplinary Code.
  - 18.5 The Respondent is **fined 10,000 (ten thousand) Euros** payable to FIDE's financial department within 30 days of the date of this decision.
- 19 The Respondent GM Magnus Carlsen is **advised** that this decision may be appealed to the Appeal Chamber of the EDC by giving written notice of such appeal to the FIDE Secretariat 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 and an appeal lodgment 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.
- 20 The EDC Chamber **requests** the FIDE Secretariat to communicate forthwith the decision to the Respondent, the FPL and the FIDE Council and to publish in due course the decision on the FIDE website.

DATED ON THIS 12<sup>th</sup> December 2023

***Yolander Persaud-Sammy***

**Panel Chair**

**Deputy Chair- FIDE Ethics & Disciplinary Commission**