

**FIDE ETHICS AND DISCIPLINARY COMMISSION**  
**APPEAL CHAMBER**

The EDC Appeal Chamber, sitting in the following composition –

**Chairperson: Mr Francois Strydom**  
**Members: Ms Yolander Sammy**  
**Mr Khaled Arfa**

In accordance with Article 26(4) of the FIDE Charter, hereby renders the following:

**DECISION**

**CASE NO: 6/2023(A) : ALLEGED CHEATING AT THE 2022 BENIDORM CHESS OPEN**

1. This is an appeal against the Decision of the EDC First Instance Chamber (per Johan Sigeman (Chair), David Hater and Pedro Dominguez), rendered on 27 October 2023.
2. In the First Instance Decision, Mr Stefan Docx was found guilty of a breach of Article 11.4(d)(ii) of the EDC Code and sanctioned by a worldwide ban of 1 (one) year from taking part in FIDE-rated competitions and chess related activities as a player. The ban took effect from the date of the Decision.
3.
  - 3.1. The **appellant** in this appeal is Mr Stefan Docx (FIDE ID 200778), an International Master belonging to the Belgium Chess Federation.
  - 3.2. The **respondent** is the FIDE Fair Play Commission (“FPL”), which investigated a case of alleged cheating by the appellant during the Benidorm Chess Open in Spain in December 2022 and submitted the complaint to the EDC.
4. The appellant, through the offices of his lawyer, Mr Thomas Verstraete of the firm Lawcom in Bruges, Belgium, submitted his

Statement of Appeal on 17 November 2023 within the prescribed appeal period and complied otherwise with the requirements of admissibility for an internal appeal. Accordingly, the appellants' appeal is declared admissible.

5. A short factual synopsis of the facts of the case reveals that during his participation in the Benidorm Chess Open, the appellant, following numerous bathroom breaks, was suspected of consulting his mobile device and requested by the arbiters to subject himself to a scan by a metal detector. The appellant refused whereupon the arbiters explained to him that in the event of his continued refusal to undergo the scan, he would forfeit his game and be expelled from the tournament. The appellant nevertheless persisted with his refusal to subject himself to a scan and accepted the arbiter's decision to declare his game forfeited and his expulsion from the tournament.
6. In his defence, during the investigation by the FPL, the appellant claimed that his bathroom visits were due to a stomach flu that he suffered from and that had already considered to voluntarily withdraw from the tournament, that he did not make use of any electronic assistance in his games and his decision not to subject himself to the scan was an emotional one taken in the heat of the moment. The appellant strongly objected to any allegation of cheating.
7. The FPL investigatory panel concluded their investigation with a finding that the appellant had employed a mobile phone during round 8 of the tournament and that the appellant had infringed articles 6.10 (duty to act with the utmost integrity and honesty), 6.25 (duty to take responsibility for one's own actions and not acting in a manner likely to damage FIDE's reputation or bring

chess into disrepute) and 11.6 (b) (disparagement of FIDE's reputation and interest) of the EDC Code.

8. At the initiation of the proceedings before First Instance Chamber, the appellant was notified that he must answer a complaint of the violation of Article 11.6(b) ((disparagement of FIDE's reputation and interest) and 11.7(e)(i) (cheating in the form of using or attempting to use electronic devices of other sources of information or advice during a game).
9. In the end, having regard *inter alia* to the results of Professor Regan's statistical analysis which did not support the suspicion of cheating, the First Instance Chamber held that it was not comfortably satisfied that the appellant had consulted a mobile phone during play, therefore the appellant had to be given the benefit of doubt and was found not guilty of computer-aided cheating.
10. However, the First Instance Chamber proceeded to hold that the refusal to submit himself to the security measures in the form of a scan, as requested by the Chief Arbiter, constituted a breach of Article 11(4)(d)(ii) of the EDC Code (failure to cooperate - based upon the appellant's failure, without compelling justification, to cooperate with the arbiters and anti-cheating officials and to subject himself to anti-cheating measures during the competition). The First Instance Chamber held that as this breach was a lesser transgression than computer-aided cheating, the First Instance Chamber may sanction the appellant in accordance with Article 11.4(d)(ii) even if it was not included specifically in the charges put to the appellant at the outset of the proceedings. The First Instance Chamber did not deal with the charge based

upon a violation of Article 11.6(b)(disparagement of FIDE's reputation and interest).

11. In his appeal, the appellant relies principally on the following six grounds of appeal –
  - 11.1. The appellant was found guilty of an offence he was not charged with (*the first ground*).
  - 11.2. The appellant was refused the right to be heard during the proceedings (*the second ground*).
  - 11.3. The Decision was not rendered within the self-defined reasonable timeframe (2 months) for finalising the proceedings (*the third ground*).
  - 11.4. The Decision was not signed by the Panel Chairman as required by Procedural Rules 40 and 70 (*the fourth ground*).
  - 11.5. The appellant was already sanctioned for his refusal to undergo a metal scan (*non bis in idem*) (*the fifth ground*).
  - 11.6. Subsidiarily, the sanction was disproportional to the offence (*the sixth ground*).

#### *The first ground*

12. It is indeed so that the appellant was found guilty of an offence he was not explicitly charged with but the appellant's behaviour at the tournament (including his refusal to be subjected to the scan) formed part of the same episode and was fully covered by the report / complaint of the FPL investigatory panel which the appellant was called upon to address, and did address in his defensive statement. Accordingly, in the view of the Appeal Chamber, on the facts of the present case there was no prejudice to the appellant for being found guilty on an alternative basis having regard to the principle that the greater includes the lesser.

13. In terms of Rules 8.3 and 8.4 of the EDC Procedural Rules, the Complainant's complaint shall comprise of a written statement, setting out *inter alia* details of the relevant act or incident, the nature of the alleged misconduct and the evidence in support thereof. It is not essential for the Complainant to identify in his complaint the specific article in the EDC Code, which is alleged to have been breached, as this is the task of the EDC Chairman on determining the admissibility of the complaint,
14. In the notification sent to the appellant of the initiation of the disciplinary proceedings, dated 11 July 2023, the appellant was informed that the purpose of the proceedings was to consider the possible imposition of a sanction by FIDE based on the appellant's alleged violation of the EDC Code, more particularly articles 11.6(b) and 11.7(e)(i). He was invited to file written submissions dealing with his guilt or innocence of a violation of the mentioned articles and further to consider the contents of the investigatory panel report (the complaint) and to indicate any allegation and/or statement of fact contained therein with which the appellant did not agree with. The appellant was also warned that in the absence of written submissions by him, the First Instance Chamber would decide the matter based solely on the allegations made in the IP report.
15. The appellant exercised his right to file a defensive statement. Even if he had been called upon the answer a complaint of the violation of article 11.4(d)(ii), it is not conceivable that the appellant would have been able to present additional relevant evidence or advance further argument in support of his claim of innocence, save possibly the argument based upon the rule *non bis in idem* – see paragraph 11.5 above. This argument is dealt fully with hereunder as part of the appeal proceedings.

16. Had the Appeal Chamber come to a different conclusion regarding the first ground of appeal, it would have been quite competent and appropriate for the Appeal Chamber to substitute the appellant's conviction with a conviction of the violation of article 11.6(b) ((disparagement of FIDE's reputation and interest) – a charge which the appellant indeed faced, but on which no finding was made by the First Instance Chamber.
17. In the result, the Appeal Chamber holds that the appellant's first ground of appeal must be rejected.

*The second ground*

18. It is correct that the appellant requested an oral hearing, and this request was refused by the First Instance Chamber for the reasons stated in paragraph 15 of the Decision. According to Procedural Rule 62.1 of the EDC Procedural Rules an oral hearing takes place only if the EDC deems it “*appropriate and necessary*” in the exercise of its discretion. The usual procedure is a decision by the Panel simply on a consideration of the written statements filed, unless the presence of factual disputes arising from the statements which cannot be otherwise decided, demands an oral hearing and the opportunity for examination of witnesses.
19. In the present case the appellant was found guilty of a failure to cooperate with the arbiters based upon common cause facts and/or his own factual version. An oral hearing would not have contributed to a better understanding of the facts or facilitated a final decision in any way. Accordingly, the First Instance Chamber did not err in refusing the appellant's request for an oral hearing and the second ground of appeal must fail.

### *The third and fourth grounds*

20. The third and fourth grounds are formalistic or technical defences which are not very helpful and can be easily dismissed.
21. Rule 41 requires the EDC Panel “to endeavour” to complete the proceedings within two months of registration of the case. It is a procedural rule that promotes administrative efficiency. Depending on the peculiar circumstances of the case and the availability of the Panel members, it sometimes takes longer. In the present case, the Decision was published 10 weeks after the appellant had filed his defensive statement. In any event, any delay in the finalisation of the case is not a ground upon which an appellant can rely to seek a setting aside of the Decision on appeal. Furthermore, the appellant has not shown that he has suffered any prejudice because of such delay.
22. Procedural Rules 40 and 70.1 indeed require the decision of the First Instance Chamber to be issued in written form and signed by the Panel Chairperson. It is a procedural rule aimed at authentication of the document, namely, to verify that it genuinely emanates from the First Instance Chamber. Non-compliance is not a ground upon which an appellant may seek a setting aside of the Decision. Moreover, the appellant has not shown that he has suffered any prejudice in circumstances where the Decision was sent to him from the FIDE Office and the Decision was published on the EDC website and there can be no doubts about its authenticity.

### *The fifth ground*

23. The appellant submits that he was already punished by an expulsion from the tournament for his refusal to undergo a metal scan and that it is against the principles of law to be punished

twice for the same offence. The basic legal principle of *non bis in idem* generally states that one cannot be judged for the same charges again after a legitimate judgement in the first place. For this principle to be fulfilled, three requirements need to be given: an identity of the parties, of the facts and of the object (CAS 2018/A/5500). The principle of *non bis in idem* is also known as “double jeopardy” in common law countries and it is trite that this principle also applies in the field of sports disciplinary law.

24. In terms of article 4.10 of the EDC Code disputes arising during a game or tournament shall be resolved in accordance with the Laws of Chess and with the tournament regulations. In terms of article 12.9 of the FIDE Laws of Chess an arbiter may impose a penalty in the form of an expulsion from the competition for transgression of the tournament regulations or the Fair-Play Rules. A punished player may appeal such a decision of the arbiter to the Tournament Appeal Committee.
25. In terms of article 3.9 of the EDC Code, the EDC shall decide complaints and reports of any alleged breach of the Code and impose a sanction or grant other measures as specified in the Code, acting in accordance with the FIDE Charter and EDC Procedural Rules. A decision of the First Instance Chamber is appealable to the EDC Appeal Chamber.
26. It is clear from the above analysis that the appellant was not punished twice for the same transgression or offence. In the one instance he was penalised by the arbiters for a violation of the tournament rules. In the second instance the appellant was sanctioned by the EDC for a breach of the EDC Code. The two regimes have different objectives. The expulsion from the tournament was a short-term solution to ensure an orderly and fair



conduct of the tournament and to protect the interests of other players in the tournament. On the other hand, the aim of disciplinary proceedings under the EDC Code is to prosecute serious violations of the Code and to impose potentially longer-range sanctions for the protection of the integrity of the sport of chess and the chess community at large. There is no identity of object between the two procedures as required. The expulsion was also not a judicial sanction which could bring the rule *non bis in idem* into play. Accordingly, the fifth ground of appeal must fail.

*The sixth ground*

27. Lastly, the appellant is aggrieved by an alleged disproportionality of his sanction of a one-year ban as a player.
28. Had the appellant been found guilty of computer-aided cheating, he could have expected a sanction of at least a 3-year ban (EDC Case no. 7/2015 *Nigalidze*). An appropriate sanction for refusing to subject oneself to anti-cheating control measures should consist of a ban of some length to have any deterrent effect. Otherwise, every cheater would refuse to cooperate and escape the likelihood of a much more severe sanction. In EDC Case no. 1/2021 *Fang*, the offender was convicted of a similar offence (under more serious circumstances) and sanctioned to a worldwide ban of 24 months from participating as a player in any FIDE rated chess competition, of which 18 months were effective and 6 months suspended.
29. In the view of the Appeal Chamber the sanction imposed on the appellant was fair, proportionate with the serious nature of the offence and appropriate in all circumstances.
30. It follows that all the appellant's grounds of appeal fail, and his appeal is dismissed.

31. In accordance with Article 17.2 and 17.4 of the EDC Code, and Procedural Rule 73.1, this final decision of the Appeal Chamber is appealable to the CAS within twenty-one (21) days following communication of this Decision.
32. The FIDE office is requested to communicate this Decision forthwith to the appellant and the respondent and to cause publication of the Decision on the FIDE website in due course.

DATE: 20 September 2024

*F P Strydom*

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FRANCOIS STRYDOM  
APPEAL CHAMBER CHAIRMAN: