

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 Ravindra Dongre

following a review of all documents, filed in the first instance and on appeal, and deliberations between members of the Appeal Chamber, came to the following -

DECISION

In re:

CASE NO: 9/2023 (A) : INTERFERENCE WITH FIDE AND BCF INVESTIGATIONS IN CONNECTION WITH THE ALLEGED CHEATING BY ANOTHER PLAYER

Introduction

1. Mr Dimitri Logie ("**the appellant**") appeals the Decision of the EDC First Instance Chamber (per Mr Johan Sigeman as Chairperson, Mr David Hater and Mr Pedro Dominguez) which on 28 September 2023 upheld the complaint of the FIDE Fair Play Commission ("**FPL**"). The appellant was found guilty of a breach of the EDC Code and sanctioned with a 1-year ban from holding any office or position within FIDE and the Belgian Chess Federation ("**BCF**"), including its chess clubs. The sanction was wholly suspended for a period of two years on condition that the appellant is not found guilty of a similar breach of the EDC Code during the suspensive period.

2. The complaint before the First Instance Chamber related to the interventions by the appellant, the then Chairman of the *Koninklijke Antwerpse Skaak Kring (KASK)*, a chess club in Antwerp, Belgium, in separate fair play investigations conducted by the BCF and the FPL into the conduct of IM Stefan Docx, a member of the KASK chess club, at the 2022 Benidorm Chess Open. It was not in dispute before the First Instance Chamber that the appellant contacted members of the BCF Disputes Committee as well as members of the Investigatory Panel of the FPL, but the appellant claimed that his interventions were justified in his capacity as a representative of Mr Docx.
3. The First Instance Chamber rejected the appellant's defences and found that the appellant's conduct amounted to violations of the following articles of the EDC Code:
 - 3.1. harassment in the form of cyber-bullying (Article 6.5(a) of the Ethics Code; and psychological abuse (Article 6.5(e));
 - 3.2. obstructing or delaying an investigation (Article 11.4(e) of the Disciplinary Code);
 - 3.3. socially unacceptable behaviour (Article 11.9(a) of the Disciplinary Code).

Formal admissibility of the appeal

4. The decision of the First Instance Chamber was published on 28 September 2023. The appellant had a period of 21 calendar days to lodge his appeal and pay the prescribed appeal lodgement fee, that is until 19 October 2023.
5. On 17 October 2023, the appellant, legally represented by Mr Thierry L'Allemand, a lawyer practising in Antwerp, Belgium,

submitted his Statement of Appeal and proof of payment of the appeal lodgement fee.

6. In terms of Article 17.1 of the EDC Code and Rule 42.2 of the EDC Procedural Rules, any member of the FIDE family who has been found guilty of a violation of the EDC Code and sanctioned in any form, has a right of appeal against the conviction and/or the sanction imposed.
7. The appellant is a player registered in the FIDE Database under FIDE ID. 231207 and therefore a member of the FIDE family (Article 4.2(k) of the EDC Code)
8. Based on the above, the appellant has a right of appeal and has met the formal requirements for filing of such an appeal. The appellant's appeal is accordingly declared admissible.

Relevant facts

9. During December 2022, IM Stefan Docx participated in the Benidorm Chess Open in Spain. Due to a suspicion of cheating by IM Docx following a visit to the bathroom, IM Docx was requested to be scanned by a metal detector. IM Docx refused to be scanned and was expelled from the tournament.
10. The FPL received a report from the Chief Arbiter of the tournament and decided to launch an investigation into the matter. An Investigatory Panel consisting of Vincent Geeraets (NLD) as Chair, GM Aleksandar Colovic (MKD) and Richard Newman (USA) was formed in January 2023.
11. In February 2023, the BCF board decided to temporarily suspend IM Docx pending FIDE's investigation into the Benidorm incident. Subsequently, IM Docx appealed successfully to the Disputes Committee of the BCF against the interim suspension.

12. During its investigation, the Investigating Panel of the FPL received several e-mail messages from the appellant. After sending an e-mail to IM Docx on 23 January 2023, the Investigating Panel received a reply from a different person, namely the appellant on 25 January 2023. Apart from claiming that the Investigating Panel had no jurisdiction in the case of IM Docx, the appellant made intrusive and offensive remarks suggesting that the investigation was compromised. The appellant took it upon himself to advise the members of the Investigatory Panel as to how they should perform their functions.
13. On 26 January 2023, the Investigatory Panel informed the appellant that he was not a party in the case, to which the Investigatory Panel received another e-mail from the appellant in which he claimed to be representing IM Docx. On enquiry by the Investigatory Panel, IM Docx responded that he himself would submit a declaration.
14. On 24 February 2023, the appellant contacted the Investigatory Panel by responding, again, to an e-mail that was sent to IM Docx. The appellant accused the members of the Investigatory Panel of manipulative conduct, questioned their objectivity and accused them of failing to apply the principles of a fair trial. The appellant made it clear that he expected the Investigatory Panel to stop pursuing the investigation as they did not seem to be objective.
15. On 9 March 2023, the Investigatory Panel received the statement of IM Docx on the allegations against him related to the Benidorm tournament. In his statement IM Docx denied giving the appellant any mandate to speak for him at any point in time. IM Docx added that the appellant's actions were of his own accord, and as such only he could comment on them.

16. The Investigatory Panel also received reports from the BCF claiming that the appellant, during the period March – May 2023, had contacted representatives of the BCF in an intrusive manner in relation to the BCF's own investigation into the Benidorm incident. The Investigatory Panel decided to investigate this alleged conduct by the appellant by sending out questionnaires to several representatives of the BCF to which several responses were received. The BCF officials reported that the appellant had contacted them by phone calls, WhatsApp messages and e-mail. A lot of the telephone calls and messages were made late at night and were of a threatening nature. The purpose of the contacts was to pressurise the decision-takers within the BCF not to make any adverse finding regarding IM Docx.
17. In its report to the EDC, the Investigatory Panel dealt with the appellant's intrusion into the investigations conducted by the Investigatory Panel and the BCF and concluded that the appellant had made himself guilty of several violations of the EDC Code. Attached to the IP report were, among other annexures, a copy of all the correspondence between the appellant and the Investigatory Panel (annexure 11), a copy of the correspondence received from Belgian Chess officials in response to the questionnaire (annexure 12) and a copy of a logbook of all the contacts between the appellant and BCF officials (annexure 13). The logbook shows a list of about 12 phone calls, 15 text messages, 19 e-mail messages and 1 registered letter sent by the appellant or an attorney on his behalf.
18. In the case before the First Instance Chamber, a copy of the IP report and all its annexures was sent to the appellant on 11 July 2023.

19. The appellant, who represented himself in the proceedings before the First Instance Chamber, did not file a formal defensive statement but instead sent e-mails to the First Instance Panel on 31 July, 2 August (2), and 6 August 2023 dealing with the merits of the charges against him and other e-mails dated 12 July, 29 July, 16 August, 20 August and 22 August 2023 dealing with ancillary aspects.
20. The IP report together with its annexures together and the appellant's mentioned e-mails represent the entire contents of the EDC case file and it follows that the appellant enjoyed full insight into the entire case file.

Grounds of appeal

21. In the appellant's statement of appeal of 17 October 2023, the appellant raises an *in limine* objection to the jurisdiction of the EDC and further relies on 7 separate grievances. These grievances are mostly of a legal/technical nature and, save for the last two, do not engage the facts of the matter. In summary, the grievances are the following:
 - 21.1. The appellant claims that the principle *nulla poena sine lege scripta* (no penalty without written law) has been violated as the appellant's conduct, as representative of Mr Docx, is not outlawed in the EDC Code with sufficient clarity and specificity. This is also known as "the legality principle", namely that offences and sanctions must be clearly and previously defined by the law, the sanctions must be predictable and that existing rules cannot be adjusted to situations or behaviour that the rule-makers did not clearly intend to penalise.

- 21.2. The appellant claims that his right to a fair trial was violated in that the First Instance Chamber relied on statements without citation of the source and without giving the appellant an opportunity to see his legal file. It appears that the appellant may be aggrieved by the fact that he did not have access to original witness statements or copies of the e-mail statements from the BCF officials relied upon.
- 21.3. The appellant claims that the First Instance Chamber's decision was not based on an adequate and objectively apparent factual basis by relying upon elements, persons and testimonies that have not been subject to contradiction and debate.
- 21.4. The appellant claims that the First Instance Chamber did not follow the EDC's own rules and principles and therefore breached the principle of *patere lege quam ipse fecisti* (suffer the consequences of your own law).
- 21.5. The appellant claims that he was not given the benefit of a fair hearing as it was impossible for the appellant to be present at the hearing of 26 August 2023.
- 21.6. The appellant claims that his freedom of speech and expression (as spokesman for and in defence of Mr Docx) was not respected.
- 21.7. The appellant claims that the sanction imposed was grossly excessive and disproportionate to the gravity of the offence of which he was convicted as he was a first offender and only sought to defend IM Docx.

22. Unfortunately for the appellant, none of his appeal grounds find favour with the Appeal Chamber. A brief summary of our motivation is provided hereunder.

Discussion

The preliminary objection

23. Regarding the objection against the EDC's jurisdiction, the appellant argues that there ought first to have been an exhaustion of the national resources and opportunities in the field of discipline before the EDC as disciplinary body was engaged. This argument overlooks the fact that the Benidorm tournament was an international event with multi-national participation and took place in another country than the appellant's home country. In other words, the alleged offence by IM Docx fell within the international sphere and directly engaged FIDE's jurisdiction.
24. The appellant stood accused of interference and obstruction of the Docx investigation conducted by the FPL. This interference and obstruction took place at two levels: an interference with the work of the Investigatory Panel and an intimidation of the BCF officials involved in the local investigation against Mr Docx. The contacts between the appellant and the BCF officials had the potential to jeopardise the IP investigation as the BCF officials could have felt intimidated and therefore hesitant to cooperate with the IP in its Docx investigation. The preliminary objection is accordingly rejected.

Legal/technical or procedural defences

25. The Appeal Chamber finds that the appellant's reliance on the principle *nulla poena sine lege* is ill-founded. The appellant was found guilty of a breach of Articles 6.5(a), 6.5(e), 11.4(e) and

11.9(a) of the EDC Code. The first three Articles (bullying, psychological abuse and obstructing of an investigation) proscribes in definite and clear language the nature of the conduct which may lead to a conviction.

26. Harassment as used in the EDC Code refers to systematic, hostile and repeated acts intended to isolate or ostracise a person or group and affect the dignity of a person or group.
27. The appellant was charged with bullying and psychological abuse as forms of prohibited harassment. Bullying, including cyber-bullying may include unwanted, repeated and intentional, aggressive behaviour. Psychological abuse means any treatment that may diminish the sense of identity, dignity or self-worth and may include without limitation any unwelcome act such as, *inter alia*, verbal assault or humiliation. The offence of obstructing or delaying any investigation is explained in the EDC Code to apply to any person who knowingly obstructs or delays any investigation that may be carried out by FIDE or another sports organisation in relation to a possible violation of the EDC Code. There can be no doubt that the “predictability test” formulated in *Anderson et al v IOC* (CAS 2008/A/1545) at paragraph 30 has been satisfied.
28. The offence of “socially unacceptable behaviour” is perhaps more widely drawn and subjective. It is described as misbehaviour of a personal nature which is generally unacceptable by normal social standards, or a failure to comply with normally accepted standards of courtesy and chess etiquette. However, despite its potential application in a wide-ranging set of circumstances, in the view of the Appeal Chamber it nevertheless proscribes with sufficient clarity the nature of the prohibited conduct. It meets the legality test. In the *George Yerolimpos'* case, the CAS Panel

accepted that disciplinary provisions are not vulnerable to the application of the principle of legality merely because they are broadly drawn. Generality and ambiguity are different concepts. (See: CAS 2014/A/3516 *George Yerolimpos v WKF*).

29. It is not correct, as the appellant argues, that the EDC Code governs only conduct expected from parties involved in FIDE tournaments and events and that the conduct of the appellant, acting in the capacity as a representative of IM Docx, is not clearly proscribed. The EDC Code governs all actions of chess actors in the chess sphere and it does not matter whether the appellant acted in a personal capacity or a representative capacity. In particular, the EDC has jurisdiction over all members of the FIDE family as defined in Article 4 of the EDC Code.
30. The appellant further contends that there has been a violation to his right to a fair trial as he was not given the opportunity to see his legal file under case no. 9/2023. This is not correct. The First Instance Panel relied solely on the IP Report and the appellant's e-mails to judge the case. The IP Report had several annexures, notably annexes 11, 12 and 13 that made it clear to the appellant the detail of the allegations against him. The appellant's interference in the IP investigation is apparent from the correspondence exchanged between the appellant and the chairman of the IP which had been reproduced in full in annexure 11. The reports by the Belgian chess officials regarding the appellant's interference in their investigation had been documented in annexure 12 by way of quoted extracts of their replies to the questionnaire sent out by the chairman of the IP. Annexure 12 makes clear the identity of each of the Belgian chess officials and the nature of their accusations.

31. Annexure 13 provides a detailed list of the various contacts made by the appellant with representatives of the BCF, including the dates, person contacted and form of contact (telephone, text message or e-mail). It was not prejudicial to the appellant not to have been provided with copies of the actual e-mails received by the IP from the Belgian officials and such e-mails did not form part of the case file before the EDC First Instance Chamber.
32. In any event, if the appellant had doubted the veracity of any of the accusations of interference or alleged contacts made by him, it was open to him to request a copy of the relevant e-mails from the First Instance Panel (which would have directed the IP to make them available). The appellant did not seek to exercise such a right.
33. There is also no basis for the appellant's grievance that the First Instance decision did not rest on an adequate and objectively apparent factual basis. The disciplinary proceedings against the appellant were opened based on a report received from the FIDE FPL. This report was the culmination of the investigation undertaken by the FPL. The facts of the appellant's alleged wrongdoing clearly appear from the IP report and its annexures. The EDC Code and Procedural Rules provide for disciplinary proceedings to be instituted upon the receipt of a report from a FIDE organ. The nature of the disciplinary proceedings is not that of a criminal trial. The accused person does not have a right of interrogation of the witnesses, unless an oral hearing takes place. The disciplinary proceedings are conducted in terms of FIDE's Rules and Regulations to which the appellant, as a member of the FIDE family, is subjected and deemed to have accepted.

34. There is also no foundation for the appellant's grievance that the EDC did not follow its own rules, principles and procedures. The alleged "errors, infringements, mis-judgments and shortcomings" are not clearly identified in the appellant's statement of appeal, alternatively overlap with the appellant's other grounds which have been rejected by the Appeal Chamber herein.
35. The appellant complains of the absence of a fair hearing and states it was impossible for him to be present at the hearing. There was no oral hearing as part of the proceedings before the First Instance Chamber. Although an accused may ask for an oral hearing to be held, the decision to do so rests with the First Instance Panel. In the present case there was no motivated request by the appellant for an oral hearing. The usual manner of disposing of disciplinary cases before the EDC is by way of an exchange of written statements. This is the procedure that applied in the case of the appellant.
36. The appellant's reference to a hearing of 26 August 2023 is not understood.

The merits

37. Regarding the merits of the appellant's conviction, the appellant's sole defence is that his interventions were justified as an expression of his freedom of speech and expression, and limited in scope only in order to defend IM Docx's best and legal interests. It is argued that such a freedom of speech entitled the appellant, in support of IM Docx, to express a contrary opinion. The appellant's statements did not exceed the limits to freedom of speech as the appellant argued (in the words of his lawyer), "*possibly in an emphatic, repetitive and persistent, but always very*

polite, respectful and therefor correct manner” the elements of IM Docx’s case.

38. It is noteworthy that the appellant was the self-appointed spokesman for IM Docx. Also relevant to the appeal is that the appellant seeks to justify his interventions on the basis that he was seeking to defend IM Docx’s interests. The appellant did not claim an interest, as a third party to the proceedings, as a representative of the KASK club of which IM Docx was a member and which club may have been adversely affected by any decision to suspend IM Docx.
39. The appellant was warned by the IP that he was not a party to the case against IM Docx and that the matter could not be further discussed with him. Despite this warning, the appellant persisted in sending e-mails to the IP and the Belgian chess officials. Had the appellant been able to offer a witness testimony of the events surrounding IM Docx’s expulsion from the Benidorm tournament, his input may have been appreciated by the Investigatory Panel. Instead, his interventions were aimed at questioning the procedures employed by the Investigatory Panel, contending that FIDE lacked jurisdiction because the Benidorm tournament was not a FIDE-rated tournament and making other procedural objections.
40. The appellant insisted that the Investigatory Panel answer him on his objections and accused the Investigatory Panel of a lack of objectivity and an inability to perform a legitimate and objective investigation. Moreover, the appellant’s interactions with the BCF officials were disrespectful, threatening and interfering. The appellant criticised the Belgian investigation in the Docx matter

and attempts to dissuade the BCF officials from continuing with the investigation at all.

41. In spite of the evidence in the IP report of the appellant's various interventions in the IP and BCF investigations, the appellant did not seek to deny that such interventions had taken place. As stated, his only defence is that justification exists for such intervention as "*any person is entitled to have someone represent him*".
42. The Appeal Chamber has no hesitation in finding that the appellant was not entitled to interpose himself in the investigations into IM Docx's conduct as a self-appointed representative and even if there had been a basis for the appellant's intervention, the object, nature and manner of his interventions constituted harassment and an obstruction. Furthermore, the appellant's conduct in contacting the BCF officials late at night and outside of business hours in a persistent and harassing manner, satisfy the requirements for the offence of socially unacceptable behaviour.
43. The appellant's right to freedom of speech does not find expression in the context of a private enquiry conducted by a sports organisation in which he has no right of involvement, and in any case, the appellant's conduct amounted to an abuse of any right of freedom of speech that may have applied in the situation.

Sanction

44. Regarding the sanction imposed, the appellant argues that it is excessive and disproportionate. The Appeal Chamber disagrees. The frequency and repetitive nature of the appellant's relevant misconduct is an aggravating factor. Even in front of the EDC First Instance Panel the appellant continued with his unconstrained interactions, sending no less than 9 e-mails to the First Instance

Panel and disregarding the formal procedure laid out by the EDC Procedural Rules.

45. It is clear that in such circumstances a suspended ban of the appellant would operate as a deterrent for him not to repeat such conduct in the future. The fact that the ban has been suspended in its entirety also means that there are no immediate consequences for the appellant save for possible reputational effects following upon the fact of his conviction.
46. In any event, the imposition of an appropriate sanction falls within the discretion of the First Instance Panel and the Appeal Chamber will only interfere if such sanction is grossly disproportionate to the proven guilt of the offender. The Appeal Chamber is unable to make such a finding in the present case; on the contrary the Appeal Chamber is of the view that the imposed sanction is imminently reasonable, fair and appropriate in the circumstances of present case.
47. Accordingly, the appeal falls to be dismissed on all aspects.
48. 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 21 (twenty-one) days following communication of this decision.
49. A copy the Appeal Chamber's decision will be published on the EDC website.

DATE: 12 September 2024

FRANCOIS STRYDOM
APPEAL CHAMBER CHAIRMAN