



## **FIDE ETHICS COMMISSION**

The Ethics Commission (hereafter called the ETH), sitting in the following composition -

Chairman: Mr Francois Strydom  
Members: Mr Rajesh Hari Joshi  
Ms Yolander Persaud  
Mr Ravindra Dongre

during the meeting held in Lausanne on 23<sup>rd</sup> - 24<sup>th</sup> of November 2019, made the following-

### **DECISION**

#### **Case n. 4/2019: “Allegations of cheating at the 2018 European Youth Championship”**

1. The ETH **confirms** that a quorum is established by the presence and participation of all four (4) of its voting members.
2. The ETH **notes** the report of the **FIDE Presidential Board** (“the PB”), as represented by the FIDE President, submitted against **Mr. Marc Morgunov** on 26 August 2019 (“the complaint”), concerning alleged violations of art. 2.2.5, 2.2.10 or 2.2.11 of the FIDE Code of Ethics (“the Code of Ethics”).

3. The ETH **notes** that the Austrian Chess Federation (“ACF”) represented the respondent, a minor, in the ETH proceedings on the strength of a power of attorney given by the respondent’s father.
4. The ETH **notes** the facts supplied and arguments advanced in the defensive statement of the respondent’s representative (18 September 2019), the replying statements of the PB (24 September 2019) and FIDE Fair Play Commission (“the FPL”) (26 September 2019), and the final replying statement by the respondent’s representative (7 October 2019). The ETH **expresses its appreciation** for the high quality of the submissions by the PB, FPL and the ACF.
5. The ETH **notes** the subject-matter of the complaint and defence(s):
  - 5.1 The respondent (born on 22 January 2005) was a participant in the U/14 open section of the 2018 European Youth Chess Championship (EYCC) which took place in Riga, Latvia from 19 - 30 August 2018.
  - 5.2 In the 7th round of the tournament, an arbiter discovered a mobile phone hidden in the men’s restroom. The mobile phone was locked, but was nevertheless identified as belonging to the respondent. The respondent was asked to unlock the phone, but did not initially succeed. On the following day, the respondent unlocked the phone, and the arbiters discovered that there was chess software installed on the phone. In addition, a chess position was shown on the digital chess board displayed on the screen. The respondent then admitted to the arbiters that he had used the phone for analysing his game on the previous day, but claimed that this violation occurred only in the 7th round.
  - 5.3 A disciplinary meeting of the ACF Legal and Appeals Committee was held on 16 September 2018. This resulted in the suspension of the respondent for all events organized by the ACF and its regional organizations, as well as for all rated events with Austrian tournament chess or speed chess until 30 April 2019.
  - 5.4 The ACF decision accepted that the respondent had used the phone twice before the 14<sup>th</sup> move in the 7<sup>th</sup> round of the 2018 EYCC in

order to check the variation he had played. The ACF considered the recommendations of the FIDE Anti-Cheating Guidelines in effect at that time (up to a one year-suspension for players under 14 years of age in the case of a first offence) and deemed a limited suspension for 8 months (from the end of August 2018) as sufficient.

- 5.5 A copy of the ACF decision was sent to FIDE and the ECU on 26 September 2018.
- 5.6 The respondent, in agreement with the ACF, voluntarily subjected himself to non-participation in all FIDE rated tournaments worldwide (outside the ACF's jurisdiction) during the period of the suspension. Accordingly, the respondent did not play a chess game in any tournament between the date of the incident and the end of his suspension on 30 April 2019. The respondent again started playing in FIDE rated events in May 2019.
- 5.7 The current proceedings before the ETH was formally initiated only on 29 August 2019 after ETH's receipt of the PB report.
- 5.8 The PB motivates its *locus standi* to submit a report in the present case and further submits that an appropriate sanction for the respondent would be a world-wide ban against participating as a player in any FIDE rated chess competition, which shall take effect, in conjunction with the suspension imposed by the ACF, from 16 September 2018. The length of the ban is to be determined by the ETH at its own discretion.
- 5.9 The FPL points out that the respondent did not immediately confess his guilt upon his mobile phone being discovered and further doubts the sincerity of his alleged regret as expressed in the defensive statement filed with the ETH. It also questions the ACF's decision, despite the ban imposed for nearly 8 months, not to exclude the respondent from the national team during the period of suspension.
- 5.10 The respondent's representative challenges the right of the PB to bring an individual cheating case to the ETH, referencing the FIDE Anti-Cheating Guidelines, which provide for investigations by the

Anti-Cheating Commission (“the ACC”) and a referral to the ETH for final decision.

- 5.11 On behalf of the respondent it is submitted that the FPL had ample time, since notification of the ACF ban, to investigate the matter on its own and send it to the ETH for a final decision. In the circumstances, it is submitted that the FPL must be taken to have given its tacit approval for disciplinary steps taken by the ACF. The respondent’s representative therefore asked ETH to formally extend the ACF decision to apply internationally for the same period and not to impose any further sanctions.
6. The ETH **notes** that the ACC was renamed the FPL and new Anti-Cheating Regulations were approved by the FIDE General Assembly in Batumi, October 2018. The suggested periods of suspension for different categories of offenders in the Anti-Cheating Guidelines were replaced merely with a reference to the sanctioning options available to the ETH in terms of art. 3 of the FIDE Code of Ethics. In any event, the former Guidelines or the recommendations of the FPL can never operate to restrict the ETH’s discretion to impose a just sanction.
  7. The ETH **notes** that although an admission of guilt is usually a mitigating factor in the determination of an appropriate sanction, in the present case the respondent did not admit his guilt on the day his mobile phone was found, but only on the following day when his guilt became apparent and incontrovertible upon the unlocking of the phone.
  8. The ETH **notes** the delay between FIDE’s notification of the ACF decision on 26 September 2018 and the ETH’s receipt of the PB report on 26 August 2019. The ETH acknowledges that the delay was partially attributed to the discharge of the former FPL members at the end of their term by September 2018 and difficulties experienced within FIDE as organisation to properly reconstitute the FPL for the 2018 - 2022 term. The FPL only became fully active again after June 2019.
  9. Upon due consideration of the documents submitted and arguments advanced by the parties, the ETH, by unanimity of its members, **finds** that:

- 9.1 The 2018 EYCC was an international event and the ETH has jurisdiction to investigate a violation of the Code of Ethics, which occurred at the event, independently from the national federation's jurisdiction to take disciplinary steps against their own player for such a violation. Accordingly, the prohibition against double jeopardy is not applicable in the instant matter.
- 9.2 The PB, as organ of FIDE, is authorised, in terms of its residual powers under Chapter 7 of the FIDE Statutes as the general managing body within FIDE, to submit a report to the ETH regarding violations of the Code of Ethics. This applies also to a complaint of cheating where the accused player admits guilt and/or where the player's national federation has already fully investigated the matter and all relevant facts are known;
- 9.3 In the present case, the respondent's guilt in regard to a violation of art. 2.2.5 (Cheating or attempts at cheating during games and tournaments) is not disputed or otherwise in contention.
- 9.4 The sole issue to be addressed is an appropriate sanction for such violation in circumstances *inter alia* where FIDE was notified of the incident and the ACF suspension at an early stage, the respondent had complied with the ACF suspension as if it was a global one, and the period of suspension had already been fully served by the time of institution of the FIDE disciplinary steps.
- 9.5 In the present case, it is obvious that FIDE had unreasonably delayed to commence with an investigation into the incident with a view to review the ACF decision and to ask the ETH to extend the ACF sanction, or impose a different sanction, with world-wide effect. It is not necessary, for the purposes of this decision, to apportion the blame for the delay between the FPL and other FIDE bodies, what matters is that the substantial delay had unfortunately occurred.
- 9.6 This delay caused potential prejudice to the respondent who had fully served his suspension by the end of April 2019, believed that no further disciplinary steps would be imposed by FIDE and had

fully returned to competitive chess participation in international events for about 4 months by the time of initiation of the FIDE disciplinary steps. This prejudice militates against any FIDE sanction now being imposed that will have the practical effect of excluding the respondent from participation in FIDE rated tournaments for any period.

- 9.7 The offence was nevertheless of a serious nature as cheating by electronic means remains perilous for chess in the modern era, and previous sanctions imposed by the ETH on others clearly did not have a sufficiently deterrent effect for Mr. Marc Morgunov. The offence was committed at an official FIDE event (the Continental championship for Youth players) by a titled player (FIDE Master) with a rating-strength above ELO 2350.
10. Accordingly, taking into account the respondent's youthful age and that he is a first offender, as well as the fact that he voluntarily obeyed the ACF ban in the international sphere, the ETH unanimously **decides** as follows:
- 10.1 Mr Marc Morgunov is found guilty of a violation of art. 2.2.5 of the Code of Ethics;
- 10.2 Mr Marc Morgunov is sanctioned with a worldwide ban of **24 months** from participating as a player in any FIDE rated chess competition, taking effect retrospectively from 16 September 2018 (the commencement date of the ACF sanction);
- 10.3 a period of **17 months** of the above sanction is **suspended** for a period of 2 years from the date of this written decision on condition that Mr. Morgunov does not commit any act of cheating or dishonest behaviour on any date within the period of suspension.
11. For the sake of clarity, the ETH **notes** that:
- 11.1 the effective part of the ban, namely a period of **7 months**, expired on 15 April 2019;
- 11.2 by the ETH suspending enforcement of part of the sanction, Mr Morgunov is subjected to a probationary period of two years. If Mr. Morgunov commits another breach during the probationary

period, the suspension shall automatically be revoked and the unserved part of the original sanction applied and added to the sanction imposed for the new breach;

11.3 ordinarily the probationary period would start immediately at the end of the effective part of the sanction, but in the present case it cannot start before Mr. Morgunov has been advised of the sanction and the probationary period; hence, the start of the probationary period of two years will be from the date of this written decision.

12. The ETH **requests** the FIDE Secretariat to communicate forthwith the decision to the FIDE President, members of the FIDE Presidential Board, FIDE Fair Play Commission and Austrian Chess Federation, and to publish in due course the decision on the FIDE website.

DATED ON THIS THE 18<sup>th</sup> DAY OF DECEMBER 2019.

*F P Strydom*

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CHAIRMAN  
FIDE ETHICS COMMISSION