



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 23rd - 24th of November 2019, made the following-

DECISION

Case no 6/2019: Alleged cheating at Santa Catarina tournament, March 2018

1. The ETH **confirms** that a quorum is established by the presence and participation of all 4 voting members.
2. The ETH **notes** the August 11, 2019 report of the Investigatory Chamber ("IC") of the Fair Play Commission submitted against **Mr. Nicolas Gabriel Costa Dias Matos** ("the Respondent") concerning an alleged violation of art. 2.2.5 of the FIDE Code of Ethics ("the Code of Ethics") during round 6 of the Aberto Santa Catarina Rapid tournament held in Santa Catarina, Brazil in March 2018 ("the IC report").

3. The ETH **notes** that Respondent (or his representative as referred to in par. 5.4 hereunder) did not respond to the ETH's inquiries or use the opportunity given to submit a defensive statement before the ETH. Accordingly, the facts supplied in the IC report stand uncontroverted.

4. The ETH **notes** that the FIDE Anti Cheating Commission ("ACC") was renamed the FIDE Fair Play Commission ("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 original 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.

5. The ETH **notes** the subject-matter of the complaint and defence(s):
 - 5.1 The Respondent is a minor (born on January 19, 2003) and was 15 years old during the tournament in question.

 - 5.2 On April 25, 2018, the ACC received a post-tournament complaint from IA / IO Kaiser Luiz Mafra about a cheating accident during round 6 of the Aberto Santa Catarina Rapid tournament held on March 17, 2018 in Santa Catarina, Brazil ('the post-tournament complaint'). The post-tournament complaint alleged that it was discovered that the Respondent's phone was switched on during his game and the Stockfish program was open at a position from the game.

 - 5.3 Following the FPC's meeting during 29-30 June, 2019, an Investigatory Chamber ("IC") was formed consisting of Messrs. Alexander Colovic (Macedonia - Chair), Husan Turdialiev (Uzbekistan) and Gopakumar Sudhakaran (India). The IC investigated the matter and prepared a report dated August 11, 2019. The IC report was unanimously approved by the FPC and finally referred to the ETH on October 14, 2019.

- 5.4 The IC report stated that during the investigation, the IC received a statement from Mr. Gilnei Guedes Ribeiro, President of the Itajai Chess Club, who was authorised by the Respondent's mother to serve as the Respondent's representative. The statement informed the IC that the Respondent (1) confessed the use of his mobile phone during every game of the tournament, (2) expressed regret for his actions and apologized to his teammates, coach, the participants, the directors of the Itajai Chess Club, the tournament referees, the Brazilian Chess Confederation (*sic*) and FIDE, and (3) has voluntarily ceased chess activities. A copy of the statement was provided to ETH.
- 5.5 The IC report also clarified that the Respondent was not awarded any prize at the tournament.
- 5.6 The IC report recommended that the Respondent be found guilty of cheating, and a sanction of 2 year ban be imposed, starting from the receipt date of the Post-Tournament Complaint (April 25, 2018) as the Respondent was already inactive since then.
6. The ETH **notes** that, in its view, this matter should have been referred to the Brazilian national federation upon the receipt of the post-tournament complaint or upon the conclusion of the FPC investigation. This view is expressed for the following reasons:
- 6.1 Generally, the ETH will accept a referral from the FPC when (1) the case has international implications or affects various national federations of FIDE, or (2) the case concerns a domestic matter but has not been judged, either properly or at all, at national level (according to Chapter 8 of the FIDE Statutes).
- 6.2 Without detracting from the FPC's right to investigate any FIDE rated tournament, the ETH's jurisdiction depends, in the first place, on whether the case is a "national" or "international" case. This is determined largely (but not exclusively) by whether or not all the participants are from the same country and the event takes place in that country. The mere fact that the cheating incident occurred at a local

tournament which is FIDE rated, without any real international implications, is in the view of the ETH in itself a too tenuous factor to regard the matter as an “international” case over which the ETH should exercise jurisdiction.

- 6.3 In *casu*, all the participants were Brazilians players and the event took place in Santa Catalina, Brazil. It was accordingly a “national” case which should have been investigated by the Brazilian federation in the first place.
 - 6.4 However, in view of the delay (discussed below in par. 7), ETH acknowledges that referral to the national federation in August 2019 was not practical.
 - 6.5 Failing such an investigation by the Brazilian federation, the ETH is nevertheless competent to receive and decide the case as a national disciplinary matter, which has not been judged.
7. The ETH **notes** the delay between ACC receipt of the complaint on April 25, 2018 and the ETH’s receipt of the IC report on October 14, 2019. The ETH acknowledges that the delay was partially attributed to the discharge of the former FPL members at the end of their term in 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. However, there can be little excuse for the lack of investigation by the ACC during the May 2018 through September 2018 period. The FPL is urged to complete its anti-cheating investigations with greater expedition.
8. Upon due consideration of the documents submitted and arguments advanced, the ETH, by unanimity of its members, **finds** that:
- 8.1 The ETH has residual jurisdiction to accept and adjudicate this matter because the national federation has failed to take any disciplinary steps.
 - 8.2 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 issue.

- 8.3 The sole issue to be addressed is an appropriate sanction for such violation in circumstances *inter alia* where the ACC, and then the FPC and FIDE, have unreasonably delayed the investigation of this matter.
- 8.4 This delay caused potential prejudice to the Respondent who has voluntarily refrained from playing in any FIDE rated tournaments since the cheating incident and could have believed that no disciplinary steps would be imposed by FIDE after such long time. This prejudice militates against any FIDE sanction now being imposed that would have the practical effect of excluding the respondent from participation in FIDE rated tournaments for any further period.
- 8.5 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. Matos.
9. Accordingly, taking into account the respondent's youthful age and that he is a first offender, as well as the fact that he has accepted the responsibility for his actions and has withdrawn from playing chess in official events, the ETH unanimously decides as follows:
- 9.1 The Respondent, Mr. Nicolas Gabriel Costa Dias Matos is found **guilty** of a violation of art. 2.2.5 of the Code of Ethics;
- 9.2 The Respondent is sanctioned with a worldwide chess ban against participation in any FIDE rated chess tournaments for a period of **18 months**, to take effect retroactively on April 25, 2018.
10. The ETH **notes** that the period of the ban expired on October 24, 2019 and that Mr. Matos is now again at liberty to participate in FIDE rated chess tournaments.
11. The ETH **requests** the FIDE Secretariat to communicate forthwith the decision to the Mr. Nicolas Gabriel Costa Dias Matos, the FIDE Fair Play Commission and Mr. Alexander Colovic (IC chair), as well as the Brazilian

Chess Federation, and to publish in due course the decision on the FIDE website.

DATED ON THIS THE 24th DAY OF DECEMBER 2019.

F P Strydom

CHAIRMAN
FIDE ETHICS COMMISSION