



FIDE ETHICS COMMISSION

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

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

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

DECISION

Case n. 3/2019: “Alleged unlawful disciplinary action taken by the NCF against Mr. Austin Apemiye”.

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 complaint of **Mr. Austin Apemiye**, a Nigerian chess player, against the **Nigerian Chess Federation** (“NCF”) and its President, **Mr. Olalekan Adeyemi** in his personal capacity, submitted on 25 July 2019 and supplemented on 27 August 2019 (“the complaint”). The complaint arose from the two year ban imposed upon the Complainant and others by the NCF on 27 June 2019 pursuant to their participation in the 2019 Zone 4.4 individual chess championship without the NCF’s consent.

3. The ETH **notes** the complaint against the NCF (the First Respondent) consists of allegedly taking disciplinary action and imposing bans on the Complainant in violation of the fundamental principles of fairness and justice.
4. The ETH **notes** the complaints against the Second Respondent, the President of the NCF, for a possible violation of Art. 2.2.2, 2.2.3 or 2.2.10 of the FIDE Code of Ethics by the alleged abuse of his office in the performance of his official duties in a biased and *mala fide* manner.
5. The ETH **observes** that according to its Guidelines to the Interpretation of the FIDE Code of Ethics, complaints are receivable by the ETH only from individuals who are personally and directly affected by the alleged misconduct complained about. Accordingly, the present Complainant cannot complain on behalf of other banned players as well. If the other banned players feel aggrieved, they must submit their own complaints to the ETH.
6. The ETH **notes** the contents of the defensive statement of the Respondents received on 11 October 2019 by the ETH, as well as the Respondents' replies to ETH enquiries on 8 November 2019.
7. The ETH **notes** subject-matter of the complaint and the defences raised:
 - 7.1 The Zone 4.4 Individual Chess Championship ("the championship") was scheduled to take place (and indeed took place) in Accra, Ghana during the period 20 - 29 April 2019;
 - 7.2 The championship was open to all players from federations within the Zone 4.4 region which are affiliated to FIDE, subject to a maximum of 5 players from each federation in each category. The host federation could field 8 players in each category. In addition, the Africa Continental President may nominate additional participants for the championship;
 - 7.3 The Complainant was not one of the players nominated by his federation (NCF) to participate in the championship, but secured a

nomination from the Continental President, dated 7 April 2019, subject to the Complainant paying the required registration and tournament fees and cover his own board and lodging at the official hotel and further subject to his compliance “*with the relevant regulations of the Nigerian Chess Federation regarding participation in international events*”;

7.4 Prior to the start of the championship, the Complainant was urged by the Second Respondent in a phone call not to make use of the nomination obtained from the Continental President. It was stated in a general message to all Nigerian chess players on 16 April 2019 that it is illegal to participate in the championships without the approval of the NCF and the Ministry of Youth and Sports;

7.5 The Complainant decided otherwise, without notice to the NCF, and used his own funding to participate in the championship and attained a score of 6/9. This apparently qualified the Complainant for the FIDE Master (FM) title, but the NCF refused to recognize this;

7.6 Subsequently, the Complainant was invited by a “Letter of Invitation” from the NCF Assistant Secretary General dated 31 May 2019 to a disciplinary meeting of the NCF on 6 June 2019 in the following terms:

“I am directed to invite you for a meeting of the disciplinary committee of NCF on Thursday, 6 June 2019 by 10 am at Nigeria Chess Federation office, National Stadium, Surulere, Lagos.”

7.7 The Complainant replied to the NCF as follows:

“I am not available for a disciplinary meeting with NCF on Thursday 06/06/2019 due to prior engagement and office related assignments. Thank you for your understanding - Apemiye Austin.”

7.8 The Complainant confirmed in his statement to the ETH that he had to go to work on the relevant day as he was on a special “out of station”

assignment for his employer. He did not expressly ask for his attendance at the disciplinary meeting to be rescheduled.

- 7.9 The NCF Ethics Committee proceeded with its meeting in the Complainant's absence on 6 June 2019. The committee comprised of Mr. Mohammed Bawa (chairman), Dr. Raymond Ogunade, Mr. Adu Oladapo, Ms. Rachael Edward-Dappa and Ms. Atinuke Adeshina;
- 7.10 The ETH **notes** that according to the NCF letterhead the NCF Board includes, amongst others, NCF Ethics Committee members Mr. Mohammed Bawa, Dr. Raymond Ogunade, Mr. Adu Oladapo and Ms. Rachael Edward-Dappa;
- 7.11 Thereafter the Complainant received a Letter of Ban from the NCF, dated 27 June 2019, advising him that a meeting of the disciplinary committee took place on 6 June 2019 and the recommendations of the disciplinary committee were approved by the NCF Board on 22 June 2019. The decision of the NCF Board was to ban the Complainant for a period of two years with immediate effect from participating in all chess related activities at all levels for undermining the NCF by contravening its rules regarding participation in international competitions and failing to honour the invitation of the disciplinary committee;
- 7.12 According to the Complainant, he did not lodge an appeal as there was no appeal committee and all of those who tried to lodge an appeal got no response from the NCF;
- 7.13 The Complainant alleges that prior to June 2019 the NCF Board had not met in two years. It is further alleged that the Second Respondent initiated the disciplinary proceedings against the Complainant and others, without consultation, as a personal vendetta against the beneficiaries of the Continental President's nominations and because of personal differences between the Second Respondent and the African Chess Confederation ("ACC") President, Mr. Lewis Ncube;

- 7.14 The Complainant submits that the NCF does not have the power to ban players pursuant to the National Sports Federations Code of Governance (“Code of Governance”) issued by the Nigerian Federal Ministry of Youth and Sports Development. He complains further that he was given insufficient notice to honour the invitation by the disciplinary committee to attend its meeting on 6 June 2019 and suggests that he should have been given the opportunity to select a suitable date within a given period of time to honour the invitation. Lastly, he submits that the NCF should not sanction a player who acted in accordance with the nomination of the Continental President as this would amount to a major setback in the development of chess in Africa. According to him, the disciplinary steps taken by the NCF against the Complainant and other players in a similar position amount to a form of intimidation and oppression of chess players.
- 7.15 The Respondents in their statements point out that the Complainant was not selected by the NCF as one of the Nigerian players at the championship. The Complainant is ranked number 58 amongst active players in Nigeria and stronger players than him were selected. The NCF regards the nomination of the Complainant by the ACC President (one of 12 such nominations of Nigerian players) as a trespass and inappropriate and contrary to a previous FIDE ruling in a similar matter. It maintains that as long as a player is playing under the Nigerian flag, the NCF must be aware and approve of who is representing it at any competition.
- 7.16 The Respondents further contend that the Complainant, in participating in the championship without the NCF’s clearance, disobeyed the NCF’s express instructions.
- 7.17 The Respondents state that the “NCF Ethics and Disciplinary Committee” is one of the mandatory sub-committees of the NCF as provided for in the Code of Governance. The Respondents submit that banning errant players, whether temporarily or permanently, is part of

the functions of this sub-committee. The Respondents were unable, apart from the Code of Governance (which is in the nature of a standardised Constitution or Statutes), to refer the ETH to any disciplinary code or other document within the governance of the NCF, which prescribes the conduct that will be regarded as a breach of ethical principles and the sanction(s) that the offender may face;

7.18 The Respondents submit that, if the meeting date of the NCF Ethics Committee was truly unsuitable for the Complainant, the onus was on him to request an alternative date and he had failed to do so. It is submitted that it was clear from the Complainant's and the other affected players' postings in social media that they willingly refused to acknowledge the authority of the NCF and to attend the meeting of the disciplinary committee, whilst knowing the subject-matter of the disciplinary committee's inquiry;

7.19 The Respondents aver that the complainant was not banned so much for taking part in the championship, but for disregarding the directives of the NCF, for undermining the NCF and for failing to appear before the disciplinary committee;

7.20 The Second Respondent stated that, as NCF President, he was not involved at any stage in the Complainant's disciplinary proceedings. The Board of the NCF passed unanimously the recommendation of the disciplinary committee. The NCF President is not permitted to cast votes at Board meetings unless there is a tie.

8. The ETH **confirms** that FIDE member federations have principal authority in respect of the governance of chess activities in their own countries. The ETH shall exercise jurisdiction over the conduct of officials of national federations only in exceptional circumstances, namely in instances where the case has international implications and is not judged at national level, or instances where the national federation fails to prosecute disciplinary cases in

compliance with fundamental justice (FIDE Statutes, Chapter 8, Ethics Commission - Objectives and Competencies).

9. The ETH **notes** that the principles of fundamental justice demand that the relevant procedures as prescribed by the organisation's statutes and disciplinary code be respected. Fundamental justice further includes (albeit not necessarily as their equivalent) the concepts of "natural justice", the "duty to act fairly", "procedural fairness" and "procedural due process". The principles of natural justice ensure a fair decision is reached by an objective decision-maker. Natural justice is based on two fundamental rules, *nemo iudex in causa sua* (no person may judge their own case) and *audi alterem partem* (hear the other side). A person is barred from deciding any case in which he may be, or may fairly be suspected to be, biased. Bias may be actual, imputed or apparent.

10. The ETH **notes** that the right to a fair hearing requires that individuals are not penalised by decision affecting their rights unless they have been given (i) prior notice of the case against them, (ii) a fair opportunity to answer it, and (iii) the opportunity to present their own case. The requirement of a fair hearing affords a person the right to adequate notification of the date, time and place of hearing as well as detailed notification of the case to be met. This information allows the person adequate time to effectively prepare his own case and to answer the case against him.

11. The ETH **notes** the principle of legality also finds application in the present case, namely that offences and sanctions must be clearly and previously defined, the sanctions must be predictable and that existing rules cannot be adjusted to situations or behaviour that the legislating body did not clearly intend to penalise. In *George Yerolimpos'* case (CAS 2014/A/3516) the Panel stated in its decision that it is axiomatic that before a person can be found guilty of a disciplinary offence, the relevant disciplinary code must proscribe the misconduct with which he is charged - *nulla poena sine lege* (no punishment without law). It is not merely sufficient to identify a duty, it is also

necessary to stipulate that breach of such duty will attract disciplinary sanctions. In other words, offences and sanctions must be provided by clear rules enacted beforehand.

12. The ETH **confirms** that, according to Chapter 8 of the FIDE Statutes, in cases where the ETH finds that the national federation has failed to prosecute disciplinary cases in compliance with fundamental justice, the ETH shall be entitled to assume jurisdiction itself over the national case and conduct an enquiry *de novo* in regard to the alleged violation(s). The ETH **refers** to ETH case no. 4/2015 as a precedent.

13. Upon due consideration of the documents submitted and arguments advanced by the parties, the ETH **finds** that the disciplinary action taken against and ban imposed on the Complainant by the NCF were done in violation of fundamental principles of fairness and justice in light of, *inter alia*, the following:
 - 13.1 The inadequate Letter of Invitation issued to the Complainant to attend the meeting of the disciplinary committee, which failed to state the nature of the investigation to be undertaken and the charges faced by the Complainant, as well as the possible sanctions if he were to be found guilty;

 - 13.2 The refusal to accept the Complainant's written explanation for not attending the 6 June 2019 meeting of the Ethics Committee in circumstances where the meeting was scheduled at 10 am on an ordinary working day; the Ethics Committee could not be reasonably sure that the Complainant was not genuinely prevented by his work obligations from attending the meeting. Proceeding in his absence and without rescheduling the Complainant's appearance was unfair, unreasonable and constituted a violation of the Complainant's due process rights;

- 13.3 The Complainant was sanctioned without prior notice that attendance at the disciplinary committee meeting was compulsory and a failure to attend would result in further penalty for non-attendance;
- 13.4 The Complainant was further sanctioned in violation of the principle of legality - no code of conduct existed which defined the offences and permissible sanctions beforehand. The sanction accordingly suffers from arbitrariness and may even be potentially disproportionate.
- 13.5 The participation in the NCF Board decision by individuals who were members of the disciplinary committee and who made the recommendation of disciplinary action against the Complainant to the NCF Board created the appearance of bias. These members neglected to recuse themselves in the final decision-making process and defeated the whole purpose of the sub-committee making a recommendation for separate reflection and consideration by the Board.
14. Upon due consideration of the evidence, the ETH **finds** further that there is no proof that the Second Respondent partook in the formal disciplinary steps taken against the Complainant or that he acted in any way in a manner inconsistent with the duties of his office or the *bona fide* advancement of the interests of the NCF, even if he was wrong in his belief that the NCF was entitled to institute disciplinary proceedings against the Complainant in the manner it did. In coming to this conclusion, the ETH **accepts** that it is competent to exercise jurisdiction over the Second Respondent on the basis that he is an official of a national federation, the case has international implications (to the extent that it concerns participation in the Zonal championships) and was not judged at the national level.
15. Upon due consideration of the arguments advanced by the parties, the ETH by unanimity **decides** that:

- 15.1 the jurisdiction of the ETH in the present matter and admissibility of the complaints against the First Respondent (NCF) and the Second Respondent (Mr. Olelekan Adeyemi) are confirmed;
 - 15.2 the sanctions imposed by the NCF on Mr. Austin Apemiye on 27 June 2019 is hereby nullified with immediate effect. This means, pending the disciplinary proceedings before the ETH referred to hereunder, the Complainant is free to exercise all his competitive, judicial, organising, club and coaching rights within the NCF with effect from the date of publishing of this written decision.
 - 15.3 in the circumstances the ETH is entitled and does assume jurisdiction over the NCF's complaint against Mr. Austin Apemiye and will conduct an enquiry de novo in regard to possible violations of the FIDE Code of Ethics in accordance with the procedural directives to be given by the ETH chairman to the parties;
 - 15.4 the ETH does not express itself on the merits of the disciplinary complaint brought by the NCF against the Complainant as this would form the subject-matter of the *de novo* enquiry to be conducted by the ETH;
 - 15.5 The Second Respondent (Mr. Olelekan Adeyemi) is found not guilty of the alleged violation of art. 2.2.2, 2.2.3 or 2.2.10 of the FIDE Code of Ethics and the case against him is dismissed.
16. The ETH **requests** the FIDE Secretariat to communicate forthwith the decision to the Mr. Austin Apemiye, Mr. Lekan Adeyemi, the Nigerian Chess Federation, as well as the African Chess Confederation, and to publish in due course the decision on the FIDE website.

DATED ON THIS THE 23rd DAY OF DECEMBER 2019.

F P Strydom

CHAIRMAN

FIDE ETHICS COMMISSION