



FIDE ETHICS COMMISSION

Case N. 1/07

JUDGEMENT

rendered by the

FIDE ETHICS COMMISSION

sitting in the following composition

Chairman: Mr. Roberto Rivello

Members: Mr. Ralph Alt

Mr. Laurence Ball

Mr. Dirk J.A. De Ridder

Mr. Noureddine Tabbane

Mr. Ian Wilkinson

in the case

“Mr. Jackie Ngubeni” (Complaint of Mr. Arthur Kogan)

concerning the following facts

- Acting as organiser of chess tournaments and chess events in South Africa, to have invited Mr. Arthur Kogan to participate to a tournament in South Africa in the period from 23rd September to 6th October 2006, offering him the payment of travel and accommodation expenses and an appearance fee of \$ 1.110,00, and, after the cancellation of the tournament, to have invited Mr. Kogan to lecture in South Africa the same period acting as a chess trainer, but then refusing both to pay to Mr. Kogan the appearance fee and what promised for his work and to compensate him for the travel expenses.

Facts that could constitute a violation of par. 2.2.3, 2.2.4, 2.2.10, 2.2.11 of the FIDE Code of Ethics (hereafter called CoE).

PROCEEDINGS BEFORE THE ETHICS COMMISSION

On 31st December 2006 Mr. Arthur Kogan (hereafter called “the Complainant”) filed to the FIDE Ethics Commission (hereafter called the “EC”), through The Association of Chess Professionals (ACP) and the FIDE Secretariat, a complaint against Mr. Jackie Ngubeni (hereafter called “the Accused”), concerning the above mentioned facts.

In accordance with article 1 of the EC Internal Rules, the case was inscribed on the Register of cases as N. 1/2007 – “Mr. Jackie Ngubeni (Complaint Mr. Arthur Kogan)”.

In accordance with articles 4, 6 and 7 of the EC Internal Rules, on 23rd April 2007 the Chairman of the EC communicated to the Accused the existence of a pending case against him, informing Mr. Jackie Ngubeni of his rights and of the EC proceeding rules, and fixed a term of twenty days for the submission of memorials and documents.

The Accused was invited by the EC to put forward an answer or a defence to the complaint in various ways including in person and/or by a representative, legal or otherwise but did not respond to the said invitation or to the complaint/charge.

The Accused did not ask to appear in front of the EC in an oral hearing, nor the EC deemed it necessary to have an oral hearing regarding the discussion of the case.

The case was discussed and decided by the EC during its meeting in Athens, on 28th- 29th July 2007.

The EC was aware that arising from the same facts forming the basis of the instant complaint, the Complainant, on or about the 23rd October, 2006, had lodged a complaint against the Accused with Chess South Africa Federation, the governing body for chess in South Africa (hereafter called “CHESSA”) and the Ethics Committee of CHESSA had found the Accused guilty of the charges or allegations against him and imposed the punishment it thought suitable.

On 28th July 2007, Mr. Laurence Ball, Member of the EC, asked to be excused from his functions regarding this case, having acted as a member of the Ethics Committee of CHESSA that found the Accused guilty and punished him accordingly. The request was accepted before the opening of the discussion on the case.

After the discussion, the EC decided the case achieving unanimity (Mr. Roberto Rivello, Mr. Ralph Alt, Mr. Dirk J.A. De Ridder, Mr. Noureddine Tabbane, Mr. Ian Wilkinson).

Mr. Ian Wilkinson was charged with the draft of the judgement. None of the EC members asked to deliver a separate opinion.

According to articles 4.5 and 4.6 of the FIDE Code of Ethics: “any decisions made by the Ethics Commission may be the object of appeal arbitration proceedings in accordance with the Code of sports-related arbitration of the Court of Arbitration for Sport in Lausanne, Switzerland”, “the time limit for appeal is twenty-one days following the communication of the decision concerning appeal. All recourse to ordinary courts is excluded”.

ADMISSIBILITY AND JURISDICTION

The case n. 1/07 was originated by a complaint presented by Mr. Arthur Kogan. In the description of the facts, as delineated by the complaint, the violations allegedly committed by the Accused even damaged FIDE and CHESSA, thus the charges against Mr. Jackie Ngubeni were formulated as comprehensive of a violation of par. 2.11 of the CoE.

Nevertheless, no FIDE organ has ever presented a report addressed to the EC about this case, nor CHESSA has filed a complaint.

Taking into account the interpretation of the FIDE Statute on this point, given by the EC in the *Guidelines to the interpretation of FIDE Code of Ethics* (which have to be considered as a part of this judgment and are joined to it as an *addendum*), if no report by a FIDE organ has been presented, but just a complaint, the EC has not a full general jurisdiction on the referred facts, but just a competence limited to the relevant legitimate interests of the complainant.

Thus, in the part concerning an alleged damage to the reputation of FIDE and CHESSA, the complaint is not admissible nor receivable. Therefore the charge concerning the violation of par. 2.2.11 of the FIDE Code of Ethics has to be dismissed.

On the opposite, in the part concerning the alleged damage to Arthur Kogan, the complaint is receivable and the EC is competent to judge on the facts.

The Ethics Committee of CHESSA has already judged the same case. Nevertheless, taking into account the interpretation of the FIDE Statute on this point, given by the EC in the *Guidelines to the interpretation of FIDE Code of Ethics*, there is no limit to the respective competences, but the EC may decide to limit its decision to a confirm of the national decision or to an extension of the effects of the national decision.

THE FACTS

The following facts were established by the evidence or material before the EC:

- (a) The Accused was the organiser of an exclusive round-robin chess tournament, called the *Jo'burg Masters*, which was to be held in Johannesburg between 23rd September, 2006 and 6th October, 2006. The field was limited to 12 players and included overseas Grandmasters and International Masters, as well as a number of top South African players. The first prize was \$3.000,00.
- (b) The Accused invited the Complainant to participate in the tournament and offered to cover his accommodation and meal costs. In addition, a cash allowance based upon the Complainant's rating in the amount of \$1.860,00 was promised, from which a compulsory entrance fee of \$750,00 was payable.
- (c) The Accused also promised the Complainant that his costs of travelling to South Africa would also be reimbursed.
- (d) The Complainant accepted the terms, confirmed his participation in the tournament and made the necessary flight arrangements.
- (e) It transpired that the tournament met with some difficulty as the Accused had some problems with the sponsorship. The Accused advised the Complainant that the tournament would be postponed indefinitely.
- (f) Although the tournament was derailed the Accused nevertheless persuaded the Complainant to visit South Africa to earn money through, *inter alia*, teaching and simultaneous exhibitions.
- (g) Email messages from the Accused to the Complainant confirmed that in exchange for the Complainant performing the said functions the Accused promised to cover the Complainant's airfare, appearance fee and expenses such as hotel accommodation and meals.
- (h) The Complainant went to South Africa and discharged his obligations under the contract but in spite of requests by the Complainant, the Accused refused to honour his financial obligations to the Complainant.

FINDINGS

The EC having considered, and deliberated on, the material before it made the following decisions:

- (a) The EC acknowledged and accepted the above-mentioned decision of CHESSA.
- (b) There was no evidence that the Accused had paid the Complainant what had been promised.

(c) the Accused violated par. 2.2.3, 2.2.4 and 2.2.10 of the CoE.

PUNISHMENT

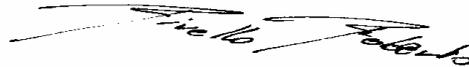
In relation to the complaint under art. 2.2.3 of the CoE, the EC decided to accept and confirm the punishment handed down to the Accused by CHESS, extending its effects to the FIDE events, namely that for a period of three (3) years the Accused, Jackie Ngubeni, is banned from organizing, or in any manner being associated with, any FIDE rated international tournament in South Africa or FIDE events everywhere.

The decision of the EC is to take effect immediately, is extended to all FIDE events and is to end on the 31st December, 2009.

Done in Athens, 29 July 2007.

The Chairman of the FIDE Ethics Commission

Roberto Rivello

A handwritten signature in black ink, appearing to read 'Rivello Roberto', written over a horizontal line.