



FIDE ETHICS COMMISSION

Case N. 2/07

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. Nigel Short” (Complaint of Mr. Zurab Azmaiparashvili)

concerning the following facts

- Giving an interview to the Indian journalist Vijay Tagore, published on 30th January 2007 by the newspaper “DNA”, to have defamed Mr. Zurab Azmaiparashvili and Mr. Georgios Makropoulos, damaging their honour and reputation, and the FIDE reputation, saying that: “FIDE deputy president Georgios Makropoulos and vice-president Zurab Azmaiparashvili spent more time in San Luis at their hotel 16 km away than they did in the tournament hall

despite being paid thousands of dollars, plus considerable expenses, to do their job on the Appeal's Committee. It came as absolutely no surprise to me that these dunderheads would flunk the first crisis that they were presented with i.e. Elista toiletgate. I might add that Azmai is singularly inappropriate for such work having, by his own admission, cheated in winning the 2003 European Championship”.

Facts that could constitute a violation of par. 2.2.10, 2.2.11 of the FIDE Code of Ethics.

PROCEEDINGS BEFORE THE ETHICS COMMISSION

On 17th February 2007 Mr. Zurab Azmaiparashvili filed to the FIDE Ethics Commission (hereafter called the “EC”), through the FIDE Secretariat, a complaint against Mr. Nigel Short, 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. 2/2007 – “Mr. Nigel Short (Complaint Mr. Zurab Azmaiparashvili)”.

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

On 26th April 2007, Mr. Nigel Short presented a request for an extension of the deadline for the submission of memorials and documents until 15th June 2007.

On 30th April 2007, the Chairman of the EC granted an extension of the time limit until 15th June 2007.

On 30th April 2007, Mr. Nigel Short lodged a response to the EC, joining some written statements issued by Mr. Frederic Friedel, Mr. Dirk Jan ten Geuzendam, Mr. Ian Rogers and Mr. Peter Svidler, and some other documents (copies of: a letter of Mr. V. Tukmakov to New in Chess, an interview with Mr. Zurab Azmaiparashvili in New in Chess, an interview with Anatoly Karpov in Sport Express). On 12th June 2007, Mr. Nigel Short addressed to the EC an addendum to this response, joining the statements of Mr. Suat Atalik and Mr. Ivan Sokolov, and some other documents (copies of: a communication of the Organization of Calvia Chess Olympiad, an open letter of Ms. Anna Matnadze and Ms. Lela Javakhishvili).

On 8th May 2007, Mr. Martin Regan and Mr. Peter Sowray of the U.K. Chess Federation addressed to the EC a letter, named “formal complaint”, which may be regarded as a statement in support of the position of Mr. Nigel Short.

Mr. Nigel Short 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.

On 28th July 2007, Mr. Ian Wilkinson, Member of the EC, asked to be excused from his functions regarding this case, in consideration of his personal and professional relationship with Mr. Nigel Short. 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. Laurence Ball, Mr. Dirk J.A. De Ridder, Mr. Nouredine Tabbane).

Mr. Roberto Rivello 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. 2/07 was originated by a complaint presented by Mr. Zurab Azmaiparashvili, in which it was specified that the words used by Mr. Nigel Short allegedly discredited and damaged Mr. Zurab Azmaiparashvili’s reputation and FIDE and its officials’ reputation as well.

In Nigel Short’s interview the name of Mr. Georgios Makropoulos was mentioned, thus the charges against Mr. Nigel Short were formulated as comprehensive of a violation of FIDE and Mr. Georgios Makropoulos’ interests.

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

The same Mr. Zurab Azmaiparashvili has filed his complaint as an individual and not as a FIDE Vice-President, and in any case a FIDE Vice-President has not any specific competence on these subject-matters, differently from the FIDE Presidential Board.

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 FIDE and to Mr. Georgios Makropoulos' reputation, the complaint is not admissible nor receivable. Therefore the charge concerning the violation of par. 2.2.10 of the FIDE Code of Ethics has to be dismissed.

On the opposite, in the part concerning the alleged damage to Mr. Zurab Azmaiparashvili reputation, the complaint is receivable and the EC is competent to judge on the facts.

Mr. Nigel Short, in his written response, submitted that EC would not have jurisdiction, because in giving an interview to a journalist he was not acting as a player or as a FIDE officer or as a member of a affiliated organisation, thus the FIDE Code of Ethics cannot be applied.

This argumentation cannot be accepted: Mr. Nigel Short is both a very famous chess player, who participates to many FIDE rated tournaments, and the President of the Commonwealth Chess Association, an organization affiliated to FIDE. The interview he gave to the Indian journalist Vijay Tagore exclusively concerned his opinions about some FIDE events and activities, and it was asked to him exactly because he is a very famous player and the President of the Commonwealth Chess Association. In accordance with article 1.4 of FIDE Code of Ethics, the EC is competent to judge on the case.

FACTS AND LAW

The case concerns an interview given by Mr. Nigel Short to the Indian journalist Vijay Tagore, published on 30th January 2007 by the newspaper "DNA".

Mr. Nigel Short has never cast any doubt on the fact that he gave the interview and the journalist correctly recorded his words. Thus, the facts are clear.

In the interview Mr. Nigel Short expressed some critical considerations regarding the work of the plaintiff as a member of the Appeal's Committee of the World Championship held in San Luis in 2005 (" ... vice-president Zurab Azmaiparashvili spent more time in San Luis at (his) hotel 16 km away than (he) did in the tournament hall despite being paid thousands of dollars, plus considerable expenses, to do (his) job on the Appeal's Committee ... ", "Azmai is singularly inappropriate for such work having, by his own admission, cheated in winning the 2003 European Championship").

These considerations may be regarded as a harsh criticism, but in fact they are just mere critiques, an expression of his opinion on a matter of public interest, and a criticism directed against a public figure –as a FIDE vice President – is justified by the right to freedom of

expression and of criticism. This justification constitutes a general principle of law and has to be considered, giving application to art. 2.11 of FIDE Code of Ethics. Mr. Nigel Short, in particular as a President of the Commonwealth Chess Association, but as any other player, arbiter, organizer, member of the “FIDE *gens*”, has the right to criticize the operate of FIDE officers.

Therefore on this part the complaint has to be dismissed, because with his critiques against Mr. Zurab Azmaiparashvili the defendant did not violate the FIDE Code of Ethics.

But of course the public interest to guarantee the right to criticism has to be balanced with the right to the respect and protection of honour and reputation: a critique must not exceed the limit of what it is necessary and reasonable to express an opinion or a consideration, and the right to criticism cannot justify needless insults.

In the interview Mr. Nigel Short defined Mr. Zurab Azmaiparashvili as a “dunderhead”. The meaning of the word “dunderhead” is “stupid person”. This was meant to be an insult against Mr. Zurab Azmaiparashvili, not connected to and not justified by the right to criticism.

Mr. Nigel Short, in his written response, submitted that “the law of defamation is not the same in all jurisdictions” and “under English Law calling someone a ‘dunderhead’ would not be actionable as it would be treated as mere vulgar abuse”.

Of course the law of defamation is different in the different various legal orders and it is even possible to add that in many legal orders there is not a distinction between defamation and vulgar abuse, but this point is not relevant here. The EC has just to give application to art. 2.11 of FIDE Code of Ethics.

The use of the word “dunderhead” was a needless insult, integrating a “conduct likely to injure or discredit the reputation” of the plaintiff and a violation of the FIDE Code of Ethics.

Mr. Nigel Short is a worldwide famous and respected chess player and President of the Commonwealth Chess Association, his words have a great impact on the FIDE world, he has the right, may be even the moral duty of expressing his opinions and critiques, but he has even the responsibility not to abuse of his position, using words likely to injure or discredit the reputation of other people.

In any case, Mr. Nigel Short’s behaviour has to be evaluated as a minor violation of the FIDE Code of Ethics: a warning is a sufficient sanction to it.

ON THESE GROUNDS

the EC rules that:

- in the part concerning an alleged damage to FIDE and to Mr. Georgios Makropoulos reputation, the complaint filed by Mr. Zurab Azmaiparashvili is not admissible nor receivable and the charge concerning the violation of art. 2.2.10 of the FIDE Code of Ethics has to be dismissed;
- criticising Mr. Zurab Azmaiparashvili in an interview, Mr. Nigel Short exercised his right to criticism and did not violate the FIDE Code of Ethics, thus on this part the complaint against him has to be dismissed;
- using the word “dunderhead” Mr. Nigel Short exceeded in the expression of his opinions, abusing of the right to criticism and committed a conduct likely to injure or discredit Mr. Zurab Azmaiparashvili’s reputation, thus violating art. 2.2.11 of the FIDE Code of Ethics;
- Mr. Nigel Short is sanctioned with a warning.

Done in Athens, 29 July 2007.

The Chairman of the FIDE Ethics Commission
Roberto Rivello

