



FIDE ETHICS AND DISCIPLINARY COMMISSION

THE APPEAL CHAMBER OF THE ETHICS AND DISCIPLINARY COMMISSION

(hereinafter called "the Appeal Chamber")

sitting in the following composition –

Chairperson: Mr Francois Strydom

Members: Mr Johan Sigeman

Mr Ravindra Dongre

following a review of all documents, filed in the first instance and on appeal, and deliberations between members of the Appeal Chamber in an online meeting and e-mail correspondence, came to the following -

DECISION

In re:

CASE NO: 4/2023(A): ALLEGED FALSE ACCUSATIONS AND INSULTS MADE ON SOCIAL MEDIA

Introduction

1. This is an appeal by GM Mikhail Kobalia (RUS) against the Decision of the EDC First Instance Chamber (per Mr David Hater as Chairperson, Ms Yolander Persaud-Sammy and Mr Pedro Dominguez) under Case no. 4/2023, which upheld the complaint of GM Efstratios Grivas (GRE). In this appeal GM Kobalia is the appellant and GM Grivas is the respondent.
2. The complaint before the First Instance Chamber related to certain Facebook posts made by GM Kobalia concerning GM Grivas in January 2023. GM Kobalia criticised the appointment of GM Grivas as the secretary of the ECU Trainers Commission with reference to the fact that GM Grivas had previously won numerous awards as the Best Junior Trainer of the Year given by the FIDE Trainers Commission (TRG) at a time when GM Grivas held the position of Secretary of the TRG. The Facebook posts made it clear that GM Kobalia believed that GM Grivas' awards were mostly



undeserved and only obtained through some, unspecified manipulation of the nomination and voting process by GM Grivas.

3. The First Instance Panel judged GM Kobalia's posts as exceeding the boundaries of free speech and harming GM Grivas in his reputation and honour. Accordingly, the First Instance Chamber found GM Kobalia guilty of violating Articles 11.6(c), 11.9(d) and 11.9(j) of the FIDE Ethics and Disciplinary Code ("the Code"). GM Kobalia was sanctioned to a ban of 12 months from participating as an officeholder in any FIDE Commission, however, this sanction was fully suspended on condition that there are no further occurrences of any violation of the Code by GM Kobalia in the 12 months following the Decision.

Procedural history

4. The First Instance Chamber's Decision was dated 24 June 2023 and published to the affected parties on 28 June 2023.
5. The period allowed for noting an appeal is 21 days from the date upon which the Decision is received. GM Kobalia's appeal was received by FIDE on the morning of 17 July 2023, within the permissible appeal period. The appeal lodgment fee of €150 was paid to the FIDE accounts department.
6. On 18 July 2023, the Appeal Chamber was formed and the appeal was ruled provisionally admissible. On the same day, the Chairman of the Appeal Chamber directed an enquiry to GM Kobalia regarding the admissibility of a statement by GM Sergey Ivanov and a Facebook posting of GM Emil Sutovsky included in his appeal documents. GM Kobalia's submissions in this regard were received on 22 July 2023.
7. Thereafter GM Grivas was afforded the opportunity to answer GM Kobalia's appeal. GM Grivas' answer was received on 30 July 2023.
8. On 10 August 2023 the Chairman of the Appeal Chamber invited GM Kobalia's justification for various statements in his appeal document concerning the impartiality, independence, qualifications, competence and motives of the members of the First Instance Chamber with reference to the provisions of Rules 29.5 and 29.6 of the EDC Procedural Rules.



9. On 25 August 2023, the Appeal Chamber received an apology from GM Kobalia which is dealt with more fully hereinbelow.

Admissibility

10. The Appeal Chamber finds that GM Kobalia's appeal was filed timely and complies with the formal requirements for appeals as contained in the EDC Procedural Rules. The appeal is accordingly declared admissible.
11. GM Kobalia sought to rely in his appeal on a Facebook posting made by GM Emil Sutovsky on 28 July 2018 under the title "*Who is the world's best chess trainer?*". In this post, GM Sutovsky (these days the FIDE Chief Executive Officer, but in July 2018 a fierce critic of the previous FIDE management regime) commented on the fact that GM Grivas had been awarded the Best Junior Trainer award for 2017 (allegedly for the 6th time) and offered that as an illustration of how FIDE worked in those days.
12. Although it appears that GM Sutovsky expressed the same sentiments in 2018 (an election year) that GM Kobalia himself expressed both in 2018 and in January 2023, and that GM Sutovsky's post seems to be relevant to the subject matter of the present appeal, GM Kobalia was unable to advance a satisfactory explanation for not already including this evidence in his defence statement before the First Instance Chamber. GM Kobalia explains that due to his involvement in the Russian Youth Championships (15-30 April 2023) and as one of the lecturers in the online FIDE Trainers Seminar (21-25 April 2023) he was unable to fully concentrate on the submission of his statement of defence and entrusted same to his lawyers. The Statement of Defence was filed on 27 April 2023.
13. Rule 43.2 of the EDC Procedural Rules reads as follows:

“43.2. New evidence may only be submitted if it was not available to the Appellant at the time of filing his/her statements in front of the First Instance Panel or, if it was available at that time, the relevance of such evidence was not readily apparent. The EDC Appeal Chamber has the power to declare any new evidence as not admissible, on application of the other Party or on its own accord.”
14. The above Rule is like the discretion enjoyed by a CAS Panel to exclude evidence presented by the parties on appeal if it was available to them or could reasonably have



been discovered by them before the challenged decision was rendered (CAS Code R57).

15. The Appeal Chamber is not satisfied that GM Kobalia offers justified grounds for the late introduction of GM Sutovsky's post of 2018. GM Kobalia does not state that he was unaware of the existence of GM Sutovsky's post or failed to appreciate its relevance at the time of the proceedings before the First Instance Chamber. GM Kobalia's failure to bring this post to the attention of his lawyers at the time cannot be justified based on his busy schedule. If he needed an extension of time to file his Statement of Defence, he could have applied for this through his lawyers. Accordingly, the Appeal Chamber rules that the sought introduction of GM Sutovsky's posting for the first time during the appeal is inadmissible and is struck out.
16. Regarding the attempt to introduce on appeal the statement of GM Ivanov dated 7 July 2023, the Appeal Chamber is prepared to accept GM Kobalia's assertion that he only recently learnt about the alleged incident mentioned by GM Ivanov. This incident is said to have taken place in August 2012, some 10 years ago. In his answer before the Appeal Chamber, GM Grivas strongly disputes GM Ivanov's account.
17. It is unnecessary for the Appeal Chamber to involve itself in this dispute (or to disclose the nature of the dispute) which has nothing to do with the subject matter of the appeal. The appeal concerns the propriety of GM Kobalia's remarks on Facebook in January 2023 and is not concerned with the character of GM Grivas or whether GM Grivas was a worthy winner of the Best Trainer award in 2011, 2012 and 2017. The issue is simply whether GM Kobalia's utterances defamed GM Grivas and violated his right to dignity and honour, or were permissible free speech. Accordingly, the statement of GM Ivanov is declared inadmissible due to irrelevancy and is struck out.

Factual background

18. The controversy relates to certain posts made by GM Kobalia on the Facebook pages of the ECU Secretary General Theodoros Tsorbatzoglou and the chairman of the ECU Trainers Commission, GM Ivan Sokolov (which was also reflected on GM Grivas' Facebook page).



19. Without quoting all the relevant posts, the following bears specific mention –

“It is not the merit of the ECU, it is the shame of the ECU that E. Grivas was appointed secretary of this commission. Until 2018 he was the secretary of the FIDE Trainers commission **and thanks to this** he won SIX nominations as the best coach of the year! ... I have no personal antipathy towards Grivas, he is an experienced coach who has written quite numerous chess works. But to appoint to the same position a person who has already **become so scandalous** at his former place of work – is a shame.” (our emphasis)

“When you write about this in public [the announcement of the new ECU Trainers Commission led by GM Ivan Sokolov and which included GM Grivas as secretary] and as official face of the ECU, you need to be prepared for the fact that different opinions can be expressed. And I wrote about this back in 2018, he has the same position as he had in that commission. And it led to a total conflict of interest.”

“... It would be good commission, but without such secretary. And you didn’t give any opinion about six awards to Grivas as best coach of the year. It means that you support such practice.”

“... I considered, that **such practice is a shame** in 2018 year [referencing previous posts made by GM Kobalia on Facebook in 2018] and nowadays as well. Nothing changed from my side and I don’t have any personal interest. It is great, that ECU made such commission with well know coaches, but such secretary is a big false. ...”

“Dear Ivan, could you express your opinion on the fact that your friend E. Grivas, being the secretary of the FIDE Trainers Commission for many years, won six times in various nominations as the best coach of the year? Taking into account the fact that in the new ECU Trainers commission, where you are appointed Chairman, Grivas also took the position of secretary. Do you think that Grivas is the best coach of the beginning of the century, or **could he used the administrative resource during voting procedure?** I note that until 2018 (after which Grivas left the FIDE Trainer commission, the representatives of India, for example, did not win a single nomination.” (our emphasis)

20. The First Instance Chamber held that GM Kobalia had made himself guilty of the violation of Articles 11.6(c), 11.9(d) and 11.9(j) of the Code. It is necessary to quote the text of these provisions:

“11.6(c) **Potential harm of reputation:** Any conduct likely to improperly injure or discredit the reputation of FIDE, its events, organisers, participants, sponsors or that will enhance the goodwill which attaches to the same; provided constructive and founded criticism of FIDE, its events, organisers, participants or sponsors



are permitted as an expression of the freedom of speech.”

“11.9(d) **Acts of misbehaviour:** All acts of misbehaviour including but not limited to abusive, violent conduct in a disturbing, ugly or provocative manner, unjustified interference including disobedience with obstruction of the orderly conduct of any chess event within or outside of the venue(s), malicious alteration, damage or destruction of property or infliction of physical or mental harm on others.”

“11.9(j) **Attempt to undermine honour:** Any person who attempts to undermine the honour of another person subject to this Code in any way, especially by using offensive language, gestures or signs.”

Grounds of appeal

21. The pillars on which GM Kobalia’s appeal rests are as follows:
 - 21.1. GM Kobalia complains about the composition of the First Instance Chamber and contends that its members were unqualified and displayed a bias towards him based upon his nationality.
 - 21.2. GM Kobalia criticises the Decision of the First Instance Chamber as one-sided and disregarding the facts put forward by himself.
 - 21.3. Regarding the merits of the appeal, GM Kobalia re-asserts his views about GM Grivas having won six awards and submits that his remarks merely represented his personal opinion and fell within the ambit of his right to free expression.
22. The attack on the objectivity and competence of the First Instance Chamber’s members is unfortunate and completely baseless. We shall deal more fully with this aspect hereinbelow. Suffice it to say at this stage that there is no merit in GM Kobalia’s first two grounds of appeal. It is also pointed out that GM Kobalia was represented by lawyers during the First Instance proceedings and could have requested the recusal of any member suspected of not being impartial and independent, but no such request was made.
23. The issue of substance in the appeal is whether GM Kobalia’s comments concerning GM Grivas amounted to constructive and founded criticism of the FIDE Awards



selection process or are otherwise permissible as a fair expression of his personal opinion within the freedom of speech.

24. In the understanding of the Appeal Chamber, based upon the Trainer Award Regulations, the FIDE-TRG awards process was indeed less than perfect. Nominations were invited from national federations, FIDE officials and the TRG. GM Grivas as secretary of the TRG would receive the nominations, the TRG would compile a short-list of 5 nominees for each category and forward it to an Experts' Panel (approved by the FIDE General Assembly or Presidential Board) for a secret vote. GM Grivas as TRG secretary was then involved in the dissemination of the results. It is understandable that GM Kobalia and others may feel that GM Grivas was exposed to a conflict of interest in the years that he was one of the candidates for the awards. It is, however, a far cry from deducing, from these circumstances, that GM Grivas had dishonestly made himself guilty of a manipulation of the process merely because he was selected as the winner or the fact that he won the Best Junior Trainer award in three years (not 6 times as alleged by GM Kobalia).
25. The requirements for defamation are largely the same in all major legal systems, including the Russian legal system. In order to constitute defamation the following elements have to be present:
 - 25.1. False statement: the statement in question must be false or untrue. If the statement is accurate or if it constitutes an opinion that can be reasonably defended as such, it generally cannot be considered defamatory.
 - 25.2. Publication to third parties: the false statement must have been communicated to third parties, that is people other than the person the statement is about or the person who made the statement.
 - 25.3. Harm to reputation: the false statement must have the potential to damage the reputation of the person it is about, that is his image in the eyes of the public.
 - 25.4. Fault requirement: The false statement must have been made with malicious intent or ill motive, meaning the person making the statement knew it was false or was reckless regarding its truthfulness.



26. In the present case, GM Kobalia offered no evidence of any actual wrongdoing on the part of GM Grivas. Instead, GM Kobalia relies on conjecture, that is to say he supposes and holds out to the world that something is true without having any evidence to confirm it. Put in different words, GM Kobalia guessed, imagined, presumed, suspected, and speculated about, dishonesty on the part of GM Grivas without any proof.
27. It is no defence for GM Kobalia to state that this is his opinion and was not held out as the objective statement of fact. This distinction would not necessarily be made by the reasonable reader as the statements are presented as the truth and not just GM Kobalia's opinion or comment. A subjective belief or opinion would be acceptable on a matter like whether the winner of the award was indeed the best candidate. This is a subjective matter in which the critic is free to differ from the evaluation of the judges. However, when the belief relates to a matter of objective fact, namely whether or not GM Grivas had dishonestly influenced the award process, it is not acceptable for GM Kobalia to express in public any personally held belief without a reasonable factual foundation. The onus is also not on GM Grivas to disprove the allegation, it is for GM Kobalia to establish a reasonable factual basis for his opinion. The mere fact that GM Grivas is a multiple winner of the award is not a reasonable basis for any conclusion that the process was affected by manipulation. For example, it all depends on the number of nominations received in a particular year. If only a few nominations of relative weak quality are received, and the independent judges decide to give the award to GM Grivas as the most meritorious candidate, there is little basis for any inference of an undue influence.
28. If GM Kobalia had only complained about GM Grivas being awarded several awards (arguing that there were others, more deserved winners), that would have been totally fine. And if GM Kobalia had limited himself by pointing out that the process of nomination and awarding titles can be improved upon, for example by not allowing members of the TRG to be involved in the process, this would also be perfectly acceptable. The Appeal Chamber is mindful not to sanction or stifle criticism against FIDE *per se*. There must indeed be a lot of room for the voicing of different opinions.



29. However, in the judgment of the Appeal Chamber, GM Kobalia's posts went too far. He writes that it is a **shame** of the ECU that GM Grivas was appointed Secretary. He also writes that GM Grivas has become "so **scandalous** at his former place of work", suggesting not that GM Grivas was the innocent beneficiary of a faulty awards process, but hinting about corruption within the TRG and that GM Grivas had manipulated nominations and/or results in a dishonest and self-serving manner. This is now confirmed by GM Kobalia in his appeal where the following is stated:
- "Yes, that's exactly what I'm guessing. That thanks to the fact that Mr Grivas was the Secretary of Trainers Commission, knew all the applications, friendly relations with the judges, controlled the counting of votes – that is why he won SIX awards. And I am sure that if Mr Grivas had not been the Secretary of Trainers Commission, he would not have won so many awards."
30. In his further submissions of 25 August 2023 GM Kobalia stated the following:
- "Therefore, I do not change my position in relation to GM Grivas, like many grandmasters and coaches (including GM Sutovsky), I express my doubts about the honesty of the six FIDE awards he won."
31. In the absence of any evidence of dishonesty by GM Grivas in the awards process, or an otherwise reasonable basis for GM Kobalia's beliefs, his remarks exceed the bounds of fair comment and are harmful of GM Grivas' good reputation in the chess world. The remarks also disparage the image of the judges serving on the Experts' Panel who were high-ranking and well-known FIDE personalities. The remarks also harmed the image of chess generally by holding out that a "*favours for friends*" culture prevailed. GM Kobalia's remarks discredited the reputation of FIDE, its TRG awards and the participants in the awards competition like GM Grivas. In the circumstances, the Appeal Chamber finds that the appeal against the conviction of the offence in Article 11.6(c) of the Code must fail.
32. Apart from the reputational harm suffered by GM Grivas because of GM Kobalia's posts, GM Grivas' right to dignity and honour has also been infringed. This infringement consists of the insulting and humiliating words used by GM Kobalia concerning GM Grivas. The posts had the effect, in GM Grivas's mind, to belittle his achievements as Best Junior Trainer of the Year. In the view of the Appeal Chamber,



GM Kobalia is clearly guilty of a breach of Article 11.9(j) of the Code and his appeal in this regard is dismissed.

33. Regarding the appeal against the conviction of a breach of Article 11.9(d), the Appeal Chamber regards this Article as *prima facie* not of application on the present facts despite its wide scope and inclusion of the infliction of mental harm on others. It seems that this article is directed against physical acts rather than defamatory words, but it is unnecessary for the Appeal Chamber to rule on this in the light of GM Kobalia's conviction on two other articles of the Code. Based upon this *prima facie* interpretation, GM Kobalia's appeal against his conviction of the offence set out in Article 11.9(d) is upheld and the conviction set aside.

Attack of First Instance Chamber

34. Rule 29.6 of the EDC Procedural Rules reads as follows:

“29.6. Without prejudice to the right of reasonable criticism of an EDC Decision, a Member of the FIDE family may not engage in any actions that may bring disrepute to FIDE or to the sport of chess in one or more of the following ways: public ridicule of an EDC decision; personal attacks against, or threatening, insulting or vulgar language directed toward the EDC as a body or of an individual member of the EDC. A member of the FIDE family who engages in any such conduct will be liable to a summary investigation and sanctioning in accordance with the Code by the EDC *ex officio*.”

35. In his appeal GM Kobalia staged an attack on the members of the First Instance Chamber:

35.1. by accusing them of bias simply based on their nationality, the fact that the members hail from the USA, Guyana and the Dominican Republic respectively (all part of the Americas) and the hostile long-term relationship between the United States and Russia. GM Kobalia further suggested that a US representative as head of the panel raised questions about his influence on the panel members from Guyana and the Dominican Republic and compromised their objectivity;

35.2. By contending that the representative of Guyana received the trainer's title of Developmental Instructor from the TRG during the time of GM Grivas'



- incumbency as secretary and that this fact would render her partial to GM Grivas' case;
- 35.3. By doubting the competence of the First Instance members on the basis that they have no chess player or trainers titles and were therefore ill-equipped to assess the conflict between GM Kobalia and GM Grivas;
- 35.4. By suggesting that the Decision of the First Instance panel was a joke and further describing it as “unfair, incompetent and humiliating” and a discredit to the whole chess community;
- 35.5. By being unremorseful, despite the findings of the First Instance Chamber and stating that he will not retract any of his words against GM Grivas.
36. To his credit GM Kobalia offered an apology on 25 August 2023 after being given an opportunity to explain his harsh and *prima facie* disrespectful comments. He stated that the Appeal Chamber may have thought that he was overly emotional in his appeal against the distinguished members of the First Instance Panel. GM Kobalia assured the Appeal Chamber that he had no personal, political, national or any other antipathy or doubts about their professionalism and that he is sure that they are all persons who make a huge contribution to the development of chess in the world. He concludes that if it seemed that he was biased towards the judges of the First Instance Chamber, he was ready to offer his sincere apologies for this.
37. In the assessment of the Appeal Chamber, GM Kobalia's comments about the members of the First Instance Chamber concerning their impartiality, independence, qualifications, competence and motives were completely unreasonable and unwarranted. GM Kobalia *prima facie* deserves to be censured for this.
38. However, the Appeal Chamber considers that the remarks were made as part of confidential legal proceedings and, to the knowledge of the Appeal Chamber, not repeated outside these proceedings by GM Kobalia. At least, we are prepared to give GM Kobalia the benefit of any doubt in this regard. This would limit the impact and reach of GM Kobalia's words and the ability of his words to bring disrepute to FIDE, its judicial commission or to the sport of chess.



39. The Appeal Chamber is also mindful of the need to allow an aggrieved appellant who acts unassisted by a lawyer and expresses himself in a language that is not his native tongue, ample room to express his dissatisfaction with the Decision appealed against. GM Kobalia's apology is further seen as a sign of a more mature reflection when the errors of his ways were pointed out to him.
40. Taking all of the above into account, the Appeal Chamber is not of the mind to convict GM Kobalia of a violation of Procedural Rule 29.6 and to impose a suitable sanction at this stage. However, GM Kobalia should appreciate that if he again conducts himself in this manner towards the EDC members or make himself guilty of any public slander of the EDC members, the EDC shall take prompt action against him not only for the new occurrence, but also for GM Kobalia's conduct in the present matter.

Conclusion

41. In the result, GM Kobalia's guilty verdict in respect of Articles 11.6(c) and 11.9(j) of the FIDE Ethics and Disciplinary Code is confirmed, as well as the sanction of a ban of 12 months from participating as an office holder in any FIDE Commission, fully suspended. As stated above, the appeal against the conviction in respect of Article 11.9(d) succeeds and that conviction is set aside.
42. In accordance with Article 17.2 and 17.4 of the Code, this final Decision is appealable to the Court of Arbitration for Sport (CAS) within twenty-one (21) days following communication of this Decision.
43. The FIDE Secretariat is requested to communicate this Decision forthwith to the appellant and the respondent and to publish the Decision on the FIDE website in due course.

DATE: 15 February 2024

F P Strydom

APPEAL CHAMBER CHAIRMAN:
FIDE ETHICS AND
DISCIPLINARY COMMISSION