



GENS UNA SUMUS

# FÉDÉRATION INTERNATIONALE DES ÉCHECS

Recognized by the International Olympic Committee (1999)

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## FIDE ETHICS AND DISCIPLINARY COMMISSION

### APPEAL CHAMBER

The EDC Appeal Chamber, sitting in the following composition -

Chairperson: Mr Francois Strydom

Members: Mr Khaled Arfa

Mr Johan Sigeman

in accordance with Article 26.4 of the FIDE Charter, hereby renders the following:

## DECISION

### CASE NO: 10/2021(A) : UNDERMINING AND DISCREDITING OF NATIONAL FEDERATION BY FIDE OFFICIAL

#### Introduction

1. This matter concerns the limits of FIDE's authority *vis-a-vis* its National Federation members. More particularly, it is about finding the right balance between respecting the autonomy of National Federations regarding their domestic affairs, on the one hand, and FIDE's right and duty to enforce good governance by National Federations as a prerequisite for FIDE membership, on the other hand.
2. The Appeal Chamber is required to deal with both an appeal and a cross-appeal:
  - 2.1. The appellant in the main appeal is Mr Nigel Short, a FIDE Vice-President and the respondent in the original proceedings under case number 10/2021 before the EDC First Instance Chamber. The respondent was found guilty of a breach of Article 2.2.10 of the Code of Ethics and sanctioned by a warning.

- 2.2. The appellant in the cross-appeal is the US Virgin Islands Chess Federation, who was the complainant in the original proceedings. The appellant is dissatisfied with certain findings made by the EDC First Instance Chamber and the sanction imposed.
3. For the sake of convenience, the parties in the appeal will be referred to in their original capacities:
  - 3.1. The USVI Chess Federation as “**the complainant**”; and
  - 3.2. Mr Short as “**the respondent**”.
4. On 8 December 2021, the FIDE Ethics and Disciplinary Commission (“**EDC**”) received a complaint from the USVI Chess Federation relating to certain incidents which occurred during Mr Short’s visit to the US Virgin Islands during the period 26 October - 2 November 2021, alleging a violation of Articles 2.2.2, 2.2.10 and/or 2.2.11 of the FIDE Code of Ethics.
5. The EDC Chairman, pursuant to his powers in terms of Article 26.5 of the FIDE Charter, ruled that the complaint was provisionally admissible (subject to the final decision by the First Instance Chamber on the issue of admissibility) and nominated a First Instance Chamber to decide the case.
6. On 5 April 2022, the First Instance Chamber (Y Persaud-Sammy, D Hater and R Dongre) delivered the following unanimous decision:
  - 6.1. The respondent is found guilty of a violation of Article 2.2.10 of the FIDE Code of Ethics;
  - 6.2. The respondent is sanctioned to a warning not to unduly interfere with the politics of Member Federations, and to take it upon himself to pronounce publicly on matters pending before the FIDE Council.

### **Procedural history**

7. In addition to having access to the full case file of the First Instance Chamber proceedings, the Appeal Chamber received the following documents during the appeal proceedings:
  - 7.1. The respondent delivered his notice of appeal with motivated grounds on 9 April 2022.

- 7.2. The complainant delivered its notice of appeal with motivated grounds on 22 April 2022.
- 7.3. The Appeal Chamber was constituted on 23 April 2022 which was the formal commencement date of the appeal proceedings.
- 7.4. On 23 April 2022, a statement was received from the FIDE President, Mr Dvorkovich, in support of the respondent's appeal.
- 7.5. On 27 April 2022, the Chairman of the Appeal Chamber invited both parties to respond to each other's appeals.
- 7.6. A first response was received from the complainant on 10 May 2022, and a supplementary response on 12 May 2022.
- 7.7. A first response was received from the respondent on 12 May 2022, and a supplementary response on 23 May 2022.

#### **Admissibility of the appeals**

8. The new Ethics and Disciplinary Code ("**the New Code**") took effect on 1 April 2022. At the time of the relevant incidents for which Mr Short was found guilty of misconduct, the old Code of Ethics ("**the Old Code**") applied.
9. Nevertheless, in accordance with the principle of *tempus regit actum*, procedural matters are governed by the Rules in force at the time when the procedural action occurs, i.e. the New Code, even if the proceedings related to facts which occurred before the effective date of the New Code and in relation to misconduct governed by the Old Code.
10. In terms of Article 17.1 of the New Code there shall be a right of appeal to the Appeal Chamber by the unsuccessful party, whether complainant or respondent, and/or any other directly affected member of the FIDE Family against the final decision of the First Instance Chamber. According to Article 17.4 of the New Code, such right of appeal must be exercised within 21 calendar days from the date on which the appealable decision is communicated to the party concerned.
11. In the present case the Decision of the First Instance Chamber was published on 5 April 2022, and it follows that the period for lodging an appeal expired on 26 April 2022.

12. The Appeal Chamber accordingly finds that both the appeal and the cross-appeal were filed timeously and were otherwise formally in order.
13. Regarding the right of appeal, it is self-apparent that the respondent must be regarded as an “unsuccessful party” in the first instance proceedings as he was convicted and sanctioned. On the facts of the present case, the complainant must also be regarded as an “unsuccessful party” for two reasons:
  - 13.1. firstly, the respondent was in effect acquitted of violations of Articles 2.2.2 and 2.2.11 of the Old Code by the First Instance Chamber; and
  - 13.2. secondly, the First Instance Chamber overlooked the respondent’s previous conviction and regarded him as a first offender and possibly imposed a lighter sanction than it would otherwise have done.
14. According to Article 14.1 of the New Code, the First Instance Chamber shall decide in its discretion the type and duration of any sanction it believes appropriate to the offence committed, subject to the factors mentioned in Articles 14.2 and 14.3 of the New Code and the guidelines to be included in the new EDC Procedural Rules, once approved.
15. It follows that the Appeal Chamber shall not lightly interfere in the exercise by the First Instance Chamber of its discretion but may reduce or increase the sanction if the original sanction is clearly disproportionate or founded upon a materially incorrect finding.
16. In the premises, both the appeal and the cross-appeal are found to be admissible.

#### **The core facts of the matter**

17. On 13 August 2021, the FIDE President received a complaint from a group of chess players who had organised themselves under a constitution with the name of *United States Virgin Islands Chess Association* (“**the Association**”). They claimed to be disenfranchised (by choice) from the official Federation, the USVI Chess Federation, due to the latter’s undemocratic structures, unrepresentivity and dysfunctionality. They asserted that the total Federation membership consisted for 4 board members and a handful of other individuals and that the same person has held the office of President of the Federation for the last 26 years without the holding of proper elections. They further claimed that the constitution of the USVA Chess Federation did not comply with the requirements of FIDE and the Virgin Islands Olympic

Committee (VIOC). In a follow-up letter of 9 September 2021, the Association expressly sought affiliation with FIDE as the official federation for the US Virgin Islands.

18. The complaint described the USVI Chess Federation as a “charade of a federation” and the object of the Association was made clear as seeking recognition by FIDE as the official federation for the US Virgin Islands and admittance to FIDE membership (in the place of the USVI Chess Federation). The leading persons in the Association are Mr John Dempsey and his wife, Ms Gail Widmer.
19. The receipt of the complaint led to some correspondence being entered into between the FIDE legal adviser, Mr Alexandr Martynov, on behalf of the FIDE Management Board and Ms Margaret Murphy, the President of the USVI Chess Federation during August and September 2021.
20. The conclusion reached by FIDE was that there were indeed serious problems with the chess governance in the US Virgin Islands and that the Federation, on the face of it, did not satisfy the requirements for FIDE membership as contained, *inter alia*, in Article 11 of the FIDE Charter.
21. As a result, an Extra-ordinary meeting of the FIDE Council was convened for 2 October 2021 with a single discussion point on the Agenda, namely to consider the possible suspension of membership or exclusion of the USVI Chess Federation upon receipt of an advisory opinion from the FIDE Constitutional Commission. Ms Murphy was invited to and did address the Council meeting in recognition of the Federation’s right to be heard before any decision is taken by the Council, as recognised by Article 13.4 of the Charter.
22. At the end of the meeting of 2 October 2021, the FIDE Council resolved that the USVICF should be given a 3-week period to amend its Constitution to include a democratic procedure for the admission of new federation members and the re-election of the governing body of the USVI Chess Federation, including officers. These amendments had to comply with general principles enunciated in the FIDE Charter. It was made clear in the resolution that if the USVI Chess Federation failed to cooperate, the FIDE Council would consider such behaviour for possible application of Article 13 of the FIDE Charter which deals with suspension or expulsion.
23. It is against the above background that the respondent, Mr Short, decided to visit the US Virgin Islands in the period 26 October - 2 November 2021 as part of a Caribbean

tour to take in two aspirant federations, Saint Vincent and the Grenadines, and Dominica - both of which subsequently joined FIDE at the December 2021 General Assembly - but also to visit two problematic federations, namely the British and US Virgin Islands.

24. According to a reply by FIDE to the enquiries of the First Instance Chamber, the initiative for the visit came from Mr Short and neither the FIDE President nor the FIDE Council had instructed him, although the FIDE President and Managing Director were aware of the trip and there was no objection to the visit aimed at mainly at educational and promotional activities. At the same time, Mr Short's first-hand observations regarding the political and chess development situation in the US Virgin Islands was welcomed, including his proposed discussion with the VIOC President.
25. In his statement submitted to the Appeal Chamber, the FIDE President confirmed his support for the core activities implemented Mr Short during his visit to Caribbean islands and thereafter in relation to the USVI Chess Federation. He expressed his full agreement with the finding of the First Instance Chamber that Mr Short had acted *bona fide* and with the intention of performing FIDE's duties under the Charter by seeking to improve the chess governance situation in the US Virgin Islands. The President noted that, due to Mr Short's efforts, wrongdoings and weak corporate governance in the USVI Chess Federations were exposed which had caused a low level of chess development in the country and which are now in the process of being addressed.
26. During the respondent's visit to the US Virgin Islands, he was hosted by members of the Association, in particular Mr Dempsey and Ms Widmer. On 27 October 2021, whilst in the US Virgin Islands, Mr Short attended the third quarter meeting of the Fide Council via Zoom link and made an oral report. The respondent met with groups of chess players on St. Thomas and St. Croix and gave a simultaneously exhibition of chess. He gave interviews to journalists and partook, with Mr Dempsey and two other gentlemen, in a radio discussion on 28 October 2021. Mr Short met with Mr Angel Morales, the President of the VIOC who had previously sent to FIDE letters of support of Ms Murphy and the USVI Chess Federation. However, notably, Mr Short had no meeting or formal contact with Ms Murphy or the board members of the USVI Chess Federation.
27. At its 27 October 2021 meeting, the FIDE Council reiterated FIDE's willingness to help the USVI Chess Federation in changing their constitution and election

procedures. The FIDE Council was prepared to explore all the ways to improve the situation and reminded itself of the duty to remain impartial and not to take sides. Accordingly, the Federation was given more time to prepare an updated draft in full cooperation with FIDE Constitutional Commission by 17 November 2022 and the FIDE President was entrusted to evaluate further steps after this deadline in accordance with the previous FIDE Council's decision.

28. Mr Short provided a detailed oral report to the FIDE President personally and a brief oral report to the Council. There was no criticism from the FIDE President and the Council. However, this fact needs to be qualified by stating that they were not necessarily aware of the details of Mr Short's activities in in the US Virgin Islands. The outcome was that the USVI Chess Federation was afforded even more time to amend its Constitution and get its house in order. The FIDE Council properly acted in terms of its duty under the Charter to encourage and support any effort aimed to improve good governance in all chess organisations.
29. Over the following months, the USVI Chess Federation submitted several drafts of a proposed new USVI Chess Federation constitution which were reviewed by FIDE. This culminated in a letter by the FIDE Managing Director on 22 March 2022 thanking Ms Murphy for her cooperation and the notable steps that have been made in order to improve the management of the USVI Chess Federation. FIDE confirmed that, within the territory of the US Virgin Islands, the USVI Chess Federation was recognised as the only chess authority and the only administration having all rights that FIDE membership status implies. Furthermore, FIDE supported the draft of the new USVI Chess Federation constitution as being generally in line with the FIDE Charter and FIDE principles. FIDE noted that there were nevertheless a few other issues which still warranted attention but supported the USVI Chess Federation's willingness to comply with all democratic principles, including the holding of elections.

## GROUNDS OF APPEAL

30. The respondent raises in effect two grounds in his appeal against his conviction. As his primary argument, Mr Short reasons that, in order to be convicted of a breach of Article 2.2.10 of the Old Code, one's conduct must have caused the game of chess, FIDE or its federations to appear in an "*unjustifiable*" unfavourable light. Mr Short concedes that he has portrayed, in a live radio interview, the USVI Chess Federation in an unfavourable light, namely as an undemocratic, nepotistic and dysfunctional

chess federation, but argues that his comments were indeed justifiable because they were not only the truth, but it was in the public interest to expose the gross irregularities of the USVI Chess Federation to a wider audience.

31. By way of a secondary argument, Mr Short draws attention to the limitations, as he sees it, of the formal procedure available to FIDE to address problems in delinquent federations. He concedes that, in an ideal world, it would not be necessary to air a federation's deficiencies on a radio program and that this should be something of a last resort. But, he argues, this is not an ideal world and the USVI Chess Federation is not a normal federation. When an autocratic president is uncooperative and resists FIDE's efforts to ensure proper governance and does not abide by the FIDE Regulations and recommendations, Mr Short believes that a different approach should be adopted as the preferred diplomatic approach will bring "zero results".
32. For these reasons, Mr Short asks the Appeal Chamber to overturn the original verdict and set aside the sanction imposed.
33. The cross-appeal of the USVI Chess Federation is also, on proper analysis, confined to two main grounds of appeal. Regarding the merits of the conviction, the USVI Chess Federation strongly challenges the finding of the First Instance Chamber that Mr Short had acted in good faith and with the intention to fulfil FIDE's duties by seeking to improve the chess governance situation in the US Virgin Islands (a finding made in motivating the sanction of a warning imposed). It is argued that Mr Short's conduct did not display good faith as he came to the US Virgin Islands without engaging the official Federation and spent a week engaged in activities with the rival association. Mr Short never asked for a meeting with the official Federation to discuss any ideas to improve the chess governance situation in the US Virgin Islands. It is submitted that it could never have been a *bona fide* fact-finding mission if only one side of the story was considered. Mr Short was also engaged in a negative public relations campaign, using radio and newspapers to discredit the USVI Chess Federation. His real objective with the visit, it is argued, was to give support to the rival association in their attempts to overthrow the government structures in US Virgin Islands Chess and to be recognised by FIDE as the governing body for chess in the US Virgin Islands.
34. Regarding the sanction of a warning imposed by the First Instance Chamber, the USVI Chess Federation points out that the First Instance Chamber had overlooked a previous conviction suffered by Mr Short in 2007 when he was convicted of a violation

of Article 2.2.11 of the Old Code by making an unnecessary insult against and violating the reputation of a chess official during an interview with a journalist. In the present case, Mr Short's damaging comments regarding the USVI Chess Federation were communicated to 10 000 Virgin Island radio listeners and 25 000 newspaper readers and further disseminated on Mr Short's Twitter account to his 40 000 followers. The USVI Chess Federation submits that in such circumstances a warning is not a severe enough punishment.

35. The Appeal Chamber shall deal with the above arguments in its discussion of the merits of the appeal and cross-appeal below.

### **The relevant provisions of the Charter**

36. FIDE is the international federation in the domain of chess and the supreme body responsible for the sport of chess, its championships and events (Charter, Article 2.4).
37. FIDE is in essence an Association of national federation members (with an equal right to vote) and affiliated organisations (without any voting rights).
38. On the other hand, member federations are national chess associations or corresponding organisations which have principal authority over chess activities in their own countries or territories and which have been admitted to FIDE as a FIDE member (Charter, Article 9.1 and definition of "Member Federation").
39. FIDE membership bestows on member federations certain rights (Charter, Article 10.1) and imposes certain obligations (Charter, Article 11). For present purposes, it is important to highlight a few of the obligations of Member Federations. They must:
- 39.1. observe all rules, regulations and decisions of FIDE and ensure that their members and various bodies, including leagues and clubs, also comply with them (Charter, Article 11(a)).
- 39.2. ensure that their statutes and rules fully comply with FIDE rules and regulations (Charter, Article 11(b)).
- 39.3. comply with their own statutes, rules and regulations, and refrain from taking discriminatory decisions or actions (Charter, Article 11(c)).

- 39.4. maintain full control and governance of chess in their country including, without limitations, control over their national competitions, excluding unofficial and unrated events (Charter, Article 11(d)).
  - 39.5. develop chess activities, chess culture and chess education in their country or territory (Charter, Article 11(e)).
  - 39.6. ensure the participation of the players and teams in the most relevant international competitions, in the limits of their possibilities (Charter, Article 11(f)).
  - 39.7. recognise FIDE's authority and position (Charter, Article 11(i)).
  - 39.8. regularly organise general assemblies and elections, in accordance with their statutes and national legal order (Charter, Article 11(q)).
40. In the context of good governance, it is important to point out that FIDE subscribes to the "Basic Universal Principles of Good Governance of the Olympic and Sports movement" adopted by the IOC, and all member federations are compelled, by virtue of their membership of FIDE, to follow and implement the same principles of good governance. Although it may be more difficult for smaller Federations to comply, given their lack of human and financial resources, it is undeniable that the state of governance in the US Virgin Islands Chess fell far short of the required standard in October 2021, at the time of the FIDE Council's enquiry.
41. FIDE's mission and role include, *inter alia*, the following:
- 41.1. the promotion of chess activities, in all their forms (Charter, Article 2.1).
  - 41.2. to act as the supreme governing body of chess internationally (Charter, Article 2.4).
  - 41.3. the diffusion and development of chess among all nations of the world, as well as the raising of the level of chess culture and knowledge (Charter, Article 2.5).
  - 41.4. to support close international cooperation of chess devotees in all fields of chess activities (Charter, Article 2.6).
  - 41.5. to take action to strengthen unity of national and regional chess federations throughout the world (Charter, Article 2.7).
  - 41.6. to encourage and support, *inter alia*, any effort aimed to improve good governance in all chess organisations (Charter, Article 2.11).

- 41.7. to promote chess solidarity aimed to carry out development programs and to bridge socio-economic divides amongst individuals and countries regarding access to chess activities (Charter, Article 2.12).
42. By applying for FIDE membership, a national federation subscribes to and subject themselves to the FIDE Charter, which is in the nature of a contract between FIDE's members. This means also that member federations subject themselves to FIDE's oversight in terms of their compliance with their duties in terms of the FIDE Charter.
43. Fundamental to the decision of the present appeal is Article 4.10 of the FIDE Charter which reads as follows:
- "4.10. FIDE observes strict neutrality in the internal affairs of its members but has the right and duty to evaluate their compliance with FIDE principles and their obligations towards FIDE."
44. This Article seeks to strike a balance between member federations' autonomy regarding chess activities in their own countries and FIDE's right and duty to ensure good chess governance by its member federations. FIDE's efforts to ensure good governance must be performed, in the words of Article 4.10, by maintaining "*strict neutrality*" in the domestic chess affairs of its members. The use of the word "*strict*" indicates that the principle permits no deviation or relaxation and requires rigid enforcement.
45. How then should Article 4.10 of the Charter be applied in practice? The Appeal Chamber suggests that in a case where there is a need for FIDE to investigate a member federation's compliance (as distinct from an evaluation performed on an inspection of documents), and there is the need to send a FIDE representative to the country represented by the member federation, the following general guidelines should apply to such FIDE representative (envoy/emissary):
- 45.1. The FIDE representative should have a clear mandate in terms of a resolution adopted by the FIDE Council or General Assembly.
- 45.2. The affected National Federation should be officially notified in advance of the proposed visit by the FIDE representative and the purpose of the visit.
- 45.3. The FIDE representative should consult the complainants and determine the facts and obtain evidence in support thereof.

- 45.4. The FIDE representative should consult the National Federation and in particular its Executive, in order to determine the facts and obtain supporting evidence.
  - 45.5. If deemed necessary, the FIDE representative should consult representatives of the local Olympic Committee and the sports authorities of the National Government.
  - 45.6. The FIDE representative may consult members of the chess community at large to test perceptions regarding the Chess Federation's performance.
  - 45.7. The FIDE representative should always act in an objective and neutral manner and not be seen to be taking sides in any internal disputes, or between rival groups.
  - 45.8. The FIDE representative should refrain from making any public comment, except about the nature of his mission if required, and always maintain neutrality.
  - 45.9. The FIDE representative should ideally prepare a written report of his findings as the General Assembly, FIDE Council or FIDE Management will have to rely on these findings in their decision-taking.
  - 45.10. The FIDE representative should ideally not be part of the decision-taking body, but if he is, he should recuse himself from any voting on a resolution pertaining to the matter he investigated.
46. The above approach is necessary in order to give due weight to the requirement that FIDE, even in the investigation of its members' compliance, should respect the member's autonomy and observe the utmost neutrality in the internal affairs of the member.

#### **The merits of the respondent's appeal**

47. To be reminded, the respondent's main argument was that his comments in the live radio interview were justified as being entirely accurate and in the public interest to expose. This argument relies on a well-known defence in the law of defamation, recognising that it is lawful to publish a defamatory statement which is true, provided the publication is for the public benefit.

48. In the view of the Appeal Chamber, the respondent's defence can be rejected on at least two grounds:
- 48.1. The reach and ambit of Article 2.2.10 of the Old Code stretches further than the making of any public statement; it refers to any "*occurrence*" which has caused the game of chess, FIDE or its federations to appear in an unjustifiable, unfavourable light.
  - 48.2. Even if Mr Short's conduct under scrutiny is limited to the statements made during the radio broadcast, it was not in the public interest to make such statements (assuming their truth) in the public domain amongst members of the general public (not confined to the chess community) in circumstances where there was a pending FIDE enquiry and a possible VIOC enquiry to follow.
49. Measuring all of Mr Short's conduct (and not only his utterances during the radio broadcast) against the standards of the hypothetical reasonable FIDE representative acting in accordance with the requirements of Article 4.10 of the Charter, as set out above, the Appeal Chamber finds as follows:
- 49.1. Mr Short was remiss in not notifying the USVI Chess Federation in advance of his proposed visit and not meeting with the Executive of the USVI Chess Federation during his visit.
  - 49.2. Mr Short unduly associated himself with the cause of the rival Association and their efforts to gain recognition by FIDE in the place of the official Federation. There is some evidence to suspect that Mr Short was in contact with representatives of the rival Association even before their letters to FIDE of 13 August and 9 September 2021. At the very least, he was actively involved in FIDE's enquiries to the USVI Chess Federation, consulted by the FIDE President in the decision to call an Extra-ordinary meeting of the FIDE Council and one of the promoters of the motion placed before the FIDE Council which sought the suspension of the existing Federation.
  - 49.3. In the radio interview, Mr Short not only described USVI Chess Federation as a "*bad federation*" but unnecessarily disparaged Ms Murphy and the other executives of the Federation. Whatever the shortcomings in the governance of the Federation, there was no need for washing its dirty linen in public and cause embarrassment for the sport of chess in the eyes of the general public.

49.4. Mr Short published the following “tweet” on his Twitter account:

“The US Virgin Islands Chess Federation - run for 26 years with complete control by one individual - has zero Black members (despite them representing 76% of the population) and no players at all from St. Thomas.”

Also in an interview with a local journalist, Mr Short pointed out that one of his greatest concerns was the fact that in a territory where the majority of the population is Black, there is not a single Black member in the US Virgin Islands Chess Federation. These claims, which are strongly disputed by the USVI Chess Federation, were unnecessarily inflammatory and divisive and were made by the respondent in his capacity as FIDE Vice-President.

50. There can be little doubt that Mr Short’s above-described actions unjustifiably caused the game of chess, FIDE and the Federation concerned to appear in an unfavourable light and in this way, damaged their reputations:

50.1. the image of chess as a sport was tarnished in the eyes of the general public.

50.2. the image of FIDE was diminished in the eyes of the USVI Chess Federation and possibly other FIDE member federations because, overtly, it addressed the problems in the USVI Chess Federation in a manner not respectful of its own duties under the FIDE Charter.

50.3. the image of the USVI Chess Federation was severely damaged in the way they were depicted in public, a fact acknowledged by Mr Short in his appeal.

51. Mr Short’s secondary argument that his actions were justified because the USVI Chess Federation at that stage has shown little willingness to comply with its FIDE membership obligations and has given evasive and inconsistent replies to FIDE’s enquiries, can be described as a “*desperate times call for desperate measures*” approach. This argument can be swiftly disposed of on the basis that Article 4.10 of the Charter requires “strict neutrality” in a Federation’s domestic affairs by FIDE (and hence also FIDE officials) and it was neither for Mr Short to decide whether the constitutional measures in the FIDE Charter to ensure compliance by Member Federations were adequate or could ensure success or not, nor for him to resort to taking the law into his own hands. This conclusion is particularly valid in the light of the fact that the constitutional enquiry in front of the FIDE Council was still pending and not completed at that time.

52. From the above analysis of the facts, the only reasonable conclusion is that Mr Short exceeded the boundaries of FIDE's authority in terms of Article 4.10 of the Charter, and he did so to a relatively serious degree causing significant reputational damage for the sport of chess, FIDE and the USVI Chess Federation.
53. The Appeal Chamber is comfortably satisfied, by unanimity of its members, that the respondent's conviction of a breach of Article 2.2.10 of the Old Code by the First Instance Chamber should be maintained and the respondent's appeal be dismissed.

#### **The merits of the complainant's cross-appeal**

54. The USVI Chess Federation submits that the evidence shows Mr Short did not act in good faith and with the intention to fulfil FIDE's duties of investigation and evaluation. Put differently, the complainant contends that Mr Short's actions were *mala fide* and undertaken with the intention to discredit and undermine the official Federation and support the cause of the rival Association.
55. In the view of the Appeal Chamber, the evidence does not sufficiently support such a conclusion according to the necessary standard of proof, namely that the decision-takers must be convinced and comfortably satisfied with the inference sought to be drawn.
56. Even if there is some evidence pointing to Mr Short's engagement in a common purpose with the rival Association, the probability cannot be discounted that Mr Short acted according to his conscience and conviction that the existing Federation is a defunct organisation and that drastic intervention by FIDE was urgently required. It seems that Mr Short was convinced that his actions were justified, and he did not consciously seek to abuse his powers as a FIDE official. However, it is equally clear that Mr Short lost his sense of objectivity and sound judgment in pursuing the USVI Chess Federation and Ms Murphy with much vigour and determination. The Appeal Chamber agrees with the finding of the First Instance Chamber that Mr Short showed an over-zealousness in the matter.
57. In the judgment of the Appeal Chamber, Mr Short is thus guilty of having exceeded his powers in a negligent manner, rather than deliberately.
58. It is indeed surprising that FIDE permitted Mr Short at all to embark on his fact-finding mission to the US Virgin Islands given the fact that Mr Short was a promoter of the resolution before the FIDE Council for the suspension of the USVI Chess Federation

and the evidence of existing animosity between Mr Short and Mrs Murphy. It must have been obvious that Mr Short's objectivity was compromised from the outset, before he even put a foot on US Virgin Islands soil.

59. The Appeal Chamber however agrees with the finding of the First Instance Chamber that the evidence does not support any finding that Mr Short no longer inspires the necessary confidence or has in other ways become unworthy of trust (Article 2.2.2 of the Old Code). Furthermore, in the view of the Appeal Chamber, Article 2.2.11 of the Old Code is not applicable to the present situation as that Article is aimed at conduct injuring or discrediting the reputation of FIDE in the context of a specific event or tournament.
60. As regards the sanction imposed by the First Instance Chamber, it is indeed correct that Mr Short was found guilty in case no. 2/2007 by the former FIDE Ethics Commission and sanctioned by a warning. However, very little weight can be given to this previous conviction given the fact that the conviction was one of a different (albeit similar) Article of the Old Code, namely Article 2.2.11, but more importantly considering that the decision was rendered 15 years ago. In most criminal law systems, a person's criminal record is expunged after a passage of a certain time, for example ten years. There is no reason in the present case to hold Mr Short's previous conviction of a minor violation of the Old Code against him after such a long lapse in time in the determination of a suitable sanction for his present misconduct.
61. An aggravating factor in the present case (and an element absent in the 2007 conviction) is the fact that the conduct took place in Mr Short's capacity as FIDE Vice-President, a position not only of high honour but also of high responsibility. The actions of a FIDE Vice-President, who is *ex officio* a member of the FIDE Council, are readily identified as the actions of FIDE itself. In the present case, the conclusion is that a senior FIDE official, and therefore FIDE itself, exceeded their powers under the FIDE Charter, being the agreed basis of cooperation between FIDE as the international governing body and its National Member Federations.
62. As FIDE Vice-President, the respondent has a particular responsibility to lead by example and his conduct created a precedent for others who may be inclined to follow suit.
63. In mitigation, it is permissible to consider the respondent's service to FIDE as FIDE official over the past four years and his huge contribution to the development and popularisation of chess worldwide during his chess-playing career. On all accounts,

Mr Short has been a valuable member of the FIDE Council and a very active participant in the debates within the Council. He has been at the forefront of making significant proposals, such as the FIDE's Council recent resolutions concerning Russia and the Ukraine. As a Grandmaster, Mr Short is one of the most well-travelled sportsmen in the sport of chess and a well-known personality. These positive aspects militate against the imposition of a severe sanction for the present aberration. Compare also Ethics case 2/2018 - FIDE Presidential Board v Kirsan Ilyumzhinov, for a similar approach.

64. Although a discretion vests in the First Instance Chamber to decide about an appropriate sanction, it is manifest that the Appeal Chamber cannot leave a clearly disproportionate sanction undisturbed. In the present case, a warning is clearly an inappropriate sanction. This is perhaps best illustrated by a comparison with Ethics case no. 2/2021(A) where a FIDE Official (a Commission Chairman) was found guilty of having failed to perform his functions in an impartial and responsible manner by the unlawful exclusion of an interested participant from a FIDE Commission meeting. In that case the respondent was sanctioned to a warning by the First Instance Chamber, which sanction was maintained on appeal by the Appeal Chamber. Clearly, Mr Short's misconduct in the present case is far more serious than that of the respondent in case no. 2/2021(A).
65. Given the harm caused to the Federation concerned, FIDE and the game of chess in general by Mr Short's relevant actions, the Appeal Chamber is of the view, by unanimity of its members, that a ban of three (3) months from acting as a FIDE official, suspended in whole on certain conditions, would be the appropriate sanction in the present case. Such a suspended ban would not operate to disqualify Mr Short from occupying his office, but at the same time would hopefully deter Mr Short and other FIDE officials from exceeding their powers in the future.
66. In the circumstances, the complainant's cross-appeal succeeds in part and the sanction imposed by the First Instance Chamber is substituted with the following:
- The respondent, Mr Nigel Short, is sanctioned with a 3-month ban from acting as a FIDE official, which ban is wholly suspended for a probationary period of 2 years on condition that Mr Short does not commit a breach of Article 11.6(a), (b) or (c) of the FIDE Ethics and Disciplinary Code (2022) within the probationary period.**
67. The mentioned Article 11.6 of the New Code deals with offences causing reputational harm and is to some extent the successor of Article 2.2.10 of the Old Code.

68. In accordance with Article 17.2 and 17.4 of the New Code, this final Decision is appealable to the Court of Arbitration for Sport (CAS) within twenty-one (21) days following communication of this decision.
69. The FIDE Secretariat is requested to communicate this Decision forthwith to the complainant and the respondent and to publish the Decision on the FIDE website in due course.

DATE: 21 June 2022

*F P Strydom*

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FRANCOIS STRYDOM  
APPEAL CHAMBER CHAIRMAN:  
FIDE ETHICS AND  
DISCIPLINARY COMMISSION