



FIDE ETHICS COMMISSION

GUIDELINES TO THE INTERPRETATION OF FIDE CODE OF ETHICS

FIDE Ethics Commission: Jurisdiction - Competence Limits – Sanctions

Chapter 15 of the FIDE Statute and the FIDE Code of Ethics (hereafter called the “CoE”) regulate the sporting justice in FIDE and the activity of the FIDE Ethics Commission (hereafter called the “EC”).

Bearing in mind the increasingly relevant role of the sports law in the International Olympic Committee and in all the International Sports Federations, the EC deems very important to assure a uniform interpretation and application of the CoE. Therefore, during the meeting which took place in Athens from 27th to 29th July 2007, the first meeting held by the EC after its election in 2006 Turin FIDE Congress, the EC decided to approve some Guidelines to the interpretation of the CoE.

These Guidelines concern three very general procedural issues: the EC competence and its limits, the relationships between the EC jurisdiction and the competence of the sporting justice organs of national chess federations, the sanctions EC may impose.

The Guidelines are addressed, first of all, to the EC itself: before taking any decision on the cases submitted to its competence, the EC discussed and agreed on the interpretation of some general rules, due to be applied to the generality of the cases, and decided to keep on following this interpretation in its next decisions, even if the interpretation given by the EC has not the value of a binding precedent.

These Guidelines have to be considered even as a preliminary part of all EC judgments on the cases decided in Athens: they integrate the motivations of EC decisions and the points, that are dealt with in the Guidelines, are not repeated in the motivations.

Besides, these Guidelines aim at being useful to all interested FIDE members and organs, by mean of a broader knowledge of the CoE and of its interpretation by the EC.

The EC approved this interpretation of the CoE, giving application to the common juridical criteria of interpretation -literal, systematic and teleological approach- and taking into particular account the purpose of CoE rules, but tried to privilege a restrictive approach, whenever possible and reasonable, considering that the CoE will probably need an actualisation, as it happened in many other international sports federations, and received in the past quite an infrequent application.

THE EC COMPETENCE AND ITS LIMITS

In the CoE there are no clear rules about the limits of EC jurisdiction: as a consequence, it could seem that EC has a full competence and power to act directly, on its own motion, without any complaint or report, investigating and judging on all the breaches of the CoE.

Nevertheless, art. 4.2 of the CoE states that “breach of the regulations of this code ... shall be reported to” the EC, and art. 4.1 and 4.2 of the CoE operate a distinction between violations that have to be reported just to the EC and violations that have to be reported even to the FIDE Secretariat, concerning National Federations or FIDE organs.

Any breach of the CoE constitutes a violation of general interests of the chess international community, but this differentiation could be connected to the distinction between breaches of the CoE that constitute even a violation of the individual interests of a person –which could be the object of a complaint- and breaches of the FIDE general interests –which could be the object of a report by a FIDE organ-.

It is even necessary to consider that, according to the present FIDE Statute, the EC cumulates both the power to investigate and the power to judge on the breaches of the CoE. In many other systems of sporting justice there are two different organs: one acts as a Prosecutor and the other as a Judge, and in these systems the Judicial Organ has the power to decide on the cases submitted to it by the Prosecutor. In the present FIDE system, the EC has both the power to investigate and the competence to judge.

All this considered, the EC holds that it is possible and necessary to individuate a limit to its own jurisdiction, with a restrictive interpretation of the CoE, as it follows:

- the EC has not the power to investigate on the breaches of the CoE and to judge them directly, on its own motion;
- the EC has the power to open a case and to investigate and judge on it, after receiving a complaint by any person or a report by a FIDE organ;
- a complaint gives to the EC the jurisdiction just on the facts expressly and clearly referred to by the complainant and connected with a relevant individual interest of the complainant;
- a complaint that refers facts unconnected with a relevant individual interest of the plaintiff is not receivable by the EC, and the EC cannot judge on these facts;
- all FIDE organs to which the FIDE Statute attributes a specific competence (i.e. the General Assembly, the President, the Executive Board, the Presidential Board, the Commissions, ...) have the right to address a report to the EC, representing the general interests of FIDE;
- a report gives to the EC a full jurisdiction on all the facts referred to, without any other limit.

**THE RELATIONSHIPS BETWEEN EC JURISDICTION AND THE COMPETENCE OF SPORTING
JUSTICE ORGANS OF NATIONAL CHESS FEDERATIONS**

Other international sports federations expressly regulate the relationships between national and international sporting justice, the FIDE Statute does not regulate the point.

FIDE and national chess federations are independent entities, with their own internal legal systems. Anyway, FIDE “unites national chess federations throughout the world” and “is the recognized international federation in the domain of chess”, “recognized by the International Olympic Committee as the supreme body responsible for the game of chess” (Art. 1.1 FIDE Statute).

FIDE “observes strict neutrality in the internal affairs of the national chess federations” (Art. 1.2 FIDE Statute), “which have principal authority over chess activities in their own countries” (Art. 2.1 FIDE Statute), but to become member of FIDE every national chess federation have to “acknowledge the FIDE Statutes” (Art. 2.1 FIDE Statute), and during all its activities every national chess federation “must acknowledge and observe the statutes, regulations, resolutions and decisions of FIDE” (Art. 2.4 FIDE Statute).

Therefore every organ of sporting justice of a national chess federation member of FIDE has the right and the duty to give application to the FIDE Statute and to the CoE.

In the contemporary world the relationships between national and international legal orders are normally regulated by some general principles, as the principle of subsidiarity or the principle of complementarity, recognising some competences to the national organs.

All this considered, the EC hold that the relationships between FIDE and national organs of sporting justice may be delineated as follows:

- without a specific regulation of the point, no limit to the respective competences can be presumed;
- if the same facts, discussed or under discussion in front of an organ of sporting justice of a national chess federation, are submitted to the EC, the EC may decide to wait for the national final decision, may ask the national federation to send copies of all the relevant acts, may even limit its decision to a confirm of the national decision or to an extension of the effects of the national decision.

THE SANCTIONS EC MAY IMPOSE

Chapter 3 of the CoE details some sanctions EC may impose: the temporary exclusion from membership or office, the exclusion from participation to all FIDE tournaments or to some specific types of tournaments for a period of up to three years, the loss of the authorization to arbiter or to supervise FIDE tournaments for a period of up to three years, the loss of the rights to organise FIDE events for a period of up to three years, a fine up to twenty five thousand U.S. Dollars, the forfeit of a game or of a match.

In the great majority of the administrative, disciplinary and sporting systems of justice the prevision of severe punishments is combined with the prevision of less severe sanctions, such as warning, reprimand and fine, and the judicial organs have the power to graduate the sanctions in relationship with the seriousness of the violations to punish. It is true that in some other subject-matters, particularly in criminal law, some legal orders provide, even for the minimum sanctions, that the judicial organs cannot derogate from a list of sanctions, but this is not connected with the principle *nullum crimen, nulla poena sine lege*, and in any case this is not a general principle in administrative, disciplinary and sports law.

The purpose of Chapter 3 of the CoE is to empower the EC to punish the breaches of the CoE with sanctions adequate and proportioned to the seriousness of the breaches.

All this considered, the EC holds that:

- Chapter 3 of the CoE provides for the most severe sanctions EC may impose;
- EC has always the power to impose less severe sanctions, adequate and proportioned to the seriousness of the accomplished violations of the CoE;
- EC may always impose the following sanctions, in ascendant hierarchic order of seriousness:
 - warning;
 - reprimand;
 - fine (up to twenty five thousand U.S. Dollars or up to the sum stated by a specific FIDE regulation, if existing).

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' followed by a flourish and 'Roberto'.