

VII. LEGAL ANALYSIS

83. The Parties disagree as to (A) the ETH's jurisdiction, (B) whether the alleged conduct constitutes a violation of Clauses 2.2.2, 2.2.3, and 2.2.11 of the FIDE Code of Ethics. The Appellants furthermore raise (C) procedural objections on the joinder of cases and

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an alleged violation of the right to be heard and the right to a fair trial. The Panel will examine these issues in turn.

A. **THE ETH HAS JURISDICTION OVER COMPLAINTS OF THE ECU AND MCF**

84. Article 8.1 of the FIDE Statutes provides as follows:

“Objectives and Competencies

The Ethics Commission shall consider any alleged breaches of FIDE Code of Ethics as specified in the FIDE Code of Ethics and in accordance with the Ethics Commission Procedural Rules.

The Ethics Commission shall have competence over cases that come under the jurisdiction of FIDE and over the conduct of FIDE officials.

The Ethics Commission shall have jurisdiction over the conduct of officials of member federations, associations, leagues and clubs as well as players, players’ agents and match agents if the case on which the alleged violation is based has international implications or affects various national federations of FIDE and is not judged at national level.

The Ethics Commission shall also have jurisdiction over national cases if the competent organs of the national chess federations fail to prosecute such infringements or fail to prosecute them in compliance with the fundamental principles of law. National chess federations may attribute to the Ethics Commission an appeal competence over decisions of corresponding national organs when cases have international implications.

The Ethics Commission may give an advisory opinion on the interpretation of the FIDE Statutes or on any linked legal question on any ethical matter at the request of any FIDE organ authorized by or in accordance with the FIDE Statutes.”

85. Mr. Danailov was the ECU’s incumbent president at the time of the alleged offences. Mr. Danailov was thus a FIDE official under Article 3.1(h) of the FIDE Statutes. The Panel finds that the ETH has direct competence over Mr. Silvio Danailov on the basis of the second paragraph of Article 8.1, which provides that “[t]he Ethics Commission shall have competence over cases that come under the jurisdiction of FIDE and over the conduct of FIDE officials.”

86. Contrary to the Appellants’ assertion, the Panel finds that the fact that Mr. Danailov did not act within his capacity as FIDE official but as a manager who signed a contract does not impact the ETH’s jurisdiction. The fact that he was a FIDE official at the time of the alleged violation suffices.

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87. With regard to the ETH's jurisdiction over the alleged conduct of the Second and Third Appellant, the Panel will analyse, in turn, the three conditions of Article 8.1(3) of the FIDE Statutes.

(i) The alleged offence is committed by an official of a member federation, association, league or club, or by a player, players' agent or match agent

88. According to Article 8.1 of the FIDE Statutes, in order for the ETH to have jurisdiction, "the alleged offense must be committed by an official of a member federation, association, league or club, or by a player, players' agent or match agent".

89. Article 2.1 of the FIDE Statutes states that:

"Members of FIDE are national chess federations which have principal authority over chess activities in their own countries and which have been admitted to FIDE as member-federations if they acknowledge the FIDE Statutes and develop activities not contrary to those statutes."

90. The Panel is of the view that the MCF is a member federation within the meaning of Article 2.1 of the FIDE Statutes. The MCF is a national chess federation and FIDE's website explicitly lists the MCF as a member federation.

91. Article 2.8 of the FIDE Statutes, within the chapter "Membership", provides as follows:

"Affiliated international chess organisations are:

a. organisations which represent the interests of regions or other groupings consisting of affiliated FIDE federations.

b. other chess related organisations

Affiliations of international chess organisations are decided by the General Assembly. They have a right to attend the Annual Congress as observers but with no voting rights."

92. The Panel finds that the ECU is an affiliated organization within the meaning of Article 2.8 of the FIDE Statutes. FIDE's website explicitly lists the ECU as an "affiliated organization".

93. In addition, Article 6.1 of the FIDE Statutes, provides that:

"The Continental Associations (hereinafter referred to as CA) are established under FIDE for chess development in each Continent. Africa, America, Asia, and Europe have each established an operating organisation to strengthen ties between countries and establish mutual goals and representation. The CA will be responsible for the organisation of Continental championships under the

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auspices of FIDE. The organisation of these Associations, elections of their representatives and the regulations of continental events shall be consistent with FIDE rules and regulations. A copy of the CA statutes should be lodged with FIDE.”

94. The Panel finds the ECU qualifies as a continental association under Article 6.1 of the FIDE Statutes.
95. Therefore, the Panel is satisfied that, according to Article 8.1 of FIDE Statutes, FIDE has jurisdiction over the ECU.
96. At the time of the alleged violations, Mr. Šacotić was an official of an affiliated organization because he was the ECU Executive Director.
97. Ms. Stoisavlević was, at that time of the alleged offenses, an official of an affiliated organization because she was the ECU General Secretary.
98. As the Second and Third Appellant were acting as officials for an association, the Panel concludes that the first condition of Article 8.1(3) of the FIDE Statutes is satisfied.

(ii) The case has international implications or affects various national federations of FIDE

99. According to Article 8.1 of the FIDE Statutes, in order for ETH to have jurisdiction, the case must have international implications or affects various national federations of FIDE.
100. The alleged violations occurred in the context of a tournament organized by the ECU under the auspices of FIDE, and relate to the approval of a contract with a local organizer without the necessary permission, as well as an alleged financial mismanagement of the tournament. Consequently, the alleged violations could potentially affect the fifty-four member federations of the ECU, having caused financial damage to the ECU and its members.
101. Moreover, international implications can be inferred from the 1045 chess players from forty-eight European federations that participated in the championship. The organization of the tournament was not a national internal matter that would fall outside the scope of the ETH's jurisdiction.
102. The Panel finds that the second condition is therefore fulfilled.

(iii) The case is not judged at national level or the competent organs of the national chess federations fail to prosecute or fail to prosecute in compliance with fundamental principles of law

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103. Article 8.1 of the FIDE Statutes further requires that the case “*is not judged at national level*” for the ETH to have jurisdiction.
104. Article 8.1 of the FIDE Statutes further provides that:
- “[...] *the Ethics Commission shall also have jurisdiction over national cases if the competent organs of the national chess federations fail to prosecute such infringements or fail to prosecute them in compliance with the fundamental principles of law*”.
105. The ECU stated in its complaint that it did not have a disciplinary organ equivalent to the ETH.
106. The Respondent states that, to the best of its knowledge, the MCF does not have a disciplinary body to deal with the alleged offenses either.
107. The Appellants’ argue that the MCF could have sanctioned by addressing national courts or by removing the accused from office.
108. The Panel notes that none of the Parties mention that the MCF has an internal disciplinary body. The Panel is of the view that if the sanctions raised by the Appellants would suffice, any national chess federation or continental association could potentially prosecute the infringement, rendering this part of Article 8.1 of the FIDE Statutes redundant.
109. In addition, contrary to the Appellants’ allegation, Article 8.1 of the FIDE Statutes does not require that issues cannot be resolved on a national level; it merely requires the case not to be judged at national level. It is therefore irrelevant if the ECU or MCF would have been able to consider the alleged violations. What matters is if adjudication by the ECU or MCF is pending.
110. Currently, no case on infringement of the FIDE Code of Ethics are on-going within the national member federations or continental organizations. Although national criminal investigations are pending against Mr. Šacotić and Mr. Danailov, these do not involve infringements of the FIDE Code of Ethics dealt with by national member federations or continental associations.
111. The Panel finds that the third condition is thus satisfied.
112. The Appellants further relied on the Guidelines to the interpretation of FIDE Code Ethics to reject the ETH’s jurisdiction in this matter. During the hearing, the Appellants relied on cases from the ETH according to which the ETH states that “*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*

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interests of the complainant”.¹ However, the Panel finds that these Guidelines provide for rules in order to avoid that the ETH decides “*ultra petita*”, i.e., beyond the request. This is not at issue here.

113. During the hearing, the Appellants also argued that the ETH acted as both a prosecutor and judge. The Panel finds first that, following *Menarini*, this does not raise any legitimacy issues. In *Menarini*, the European Court of Human Rights held that the role of the Italian competition authority—which similarly acted as prosecutor and judge—does not infringe the right to a fair trial as encapsulated in Article 6 of the European Convention on Human Rights, among other reasons, because its decisions were subject to judicial review.² Second, it is not unusual, in the world of organized sport, that a body of a sport federation acts both as investigative and adjudicative body. In fact, disciplinary proceedings under the auspices of a sporting body are of civil, but not criminal, law nature. As a result, the Panel is satisfied that this fact alone means that the argument raised by the Appellants cannot put the validity of the disciplinary procedures before the ETH into question.
114. Likewise, under Article 13.1 of the FIDE Statutes, decisions of the ETH are appealable to the CAS. According to Article R57 of the CAS Code, the CAS has full power to review the facts and law of the case *de novo*. Therefore, the Panel’s view is that the role of the ETH does not give rise to any procedural issues.
115. The Panel accordingly holds that the ETH was correct in deciding that it has jurisdiction to rule over the alleged conduct of all three Appellants.

B. THERE ARE SUFFICIENT ALLEGATIONS FOR A CLAIM OF ALLEGED VIOLATION OF CLAUSES 2.2.2, 2.2.3, AND 2.2.11 OF THE FIDE CODE OF ETHICS

116. The Appellants argue that violations of Clauses 2.2.2, 2.2.3, and 2.2.11 of the FIDE Code of Ethics are not admissible.
117. The ETH requires that the complaints provide a “*prima facie*” case. The Appellants argue that there is no “*prima facie*” case.
118. The ETH stressed in paragraph 7.20 of the ETH Decision that the question on admissibility of the claims of Clauses 2.2.2, 2.2.3, and 2.2.11, only involves a cursory look on whether there are sufficient allegations:

“It must be emphasised that the test to be applied at this stage of the proceedings is not as onerous as the test to be applied at the end of the matter when the guilt

¹ Cases 1/2007 and 2/2007, available at <http://www.fide.com/images/stories/NEWS/download/Judgement02-07.pdf>, <http://www.fide.com/images/stories/NEWS/download/Judgement01-07.pdf>.

² ECtHR judgment of September 27, 2011, *Menarini Diagnostics S.R.L. v Italy*, no. 43509/08.

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or otherwise of the respondents [i.e., the Appellants in the present arbitration] is finally decided. At this stage the inquiry is whether or not there is sufficient allegations (taking them at face value and assuming they will be proved in due course) linking each of the respondents with the alleged wrongdoing or to draw a reasonable inference of probable wrongdoing on his or her part also taking into account the likely present of the requisite fault.”

119. This means that admissibility does not require looking into the specific conditions of Clauses 2.2.2, 2.2.3, and 2.2.11 – admissibility solely determines whether a claim is ready for substantive consideration.
120. This is in line with CAS case law. In CAS 2012/A/2977 it was for instance held that no alternative path to the CAS is given to decide on the merits of any dispute when the issue at first instance merely addresses procedural issues. Otherwise *“it would allow a party to convert its purely procedural claim (brought before the first instance) into a substantive claim, addressed for the first time before the CAS [...]”*
121. The Appellants rely on the substantive wording of the FIDE Code of Ethics to argue that the alleged violations do not fall under the mentioned clauses and that the ETH thus lacks jurisdiction. Addressing the arguments raised by the Appellants would be tantamount to deciding on the merits of the case, which falls outside the scope of the ETH Decision. The arguments shall therefore be rejected in their entirety.

C. RIGHT TO BE HEARD

122. The Appellants argue that the joinder of cases by the ETH was arbitrary and that the right to be heard and the right to a fair trial have been infringed.
123. The Panel follows the Respondent’s observation that a joinder of cases does not require the same respondents or identical legal reasoning. The ETH enjoyed a margin of appreciation for the joinder of complaints. In any event, the present joinder can be deemed to be in the interest of the proper conduct of proceedings and the complaints are, given the connection to the Budva Championship, sufficiently related. Further, a joinder in no way affects the Parties’ position, as it does not preclude a separate examination of each complaint.
124. The Panel is of the view that procedural rights have not been infringed by the ETH. The fourteen-day period was necessary to rule on the complaint within a reasonable time considering the infrequent meetings of the ETH. Moreover, the joinder of cases does not imply that Mr. Danailov has to defend himself against the MCF complaint. That complaint is addressed to Mr. Šacotić and Ms. Stoisavlević only, and does not bear upon any alleged conduct on the part of Mr. Danailov.
125. The Panel therefore dismisses the procedural issues alleged by the Appellants.