



Arbitration CAS 2015/A/4062 Silvio Danailov & Vladimir Šacotić & Sava Stoisavlević v. World Chess Federation (FIDE), award of 21 December 2015

Panel: Mr Romano Subiotto QC (United Kingdom); Mr Hans Nater (Switzerland); Mr Michele Bernasconi (Switzerland)

Chess

Disciplinary suspension for misconduct and mismanagement

International implications as a prerequisite for ETH to have jurisdiction under the FIDE Statutes

Limits of the CAS Panel in addressing the merits of the dispute when the first instance was limited to procedural claims

Conditions for a joinder of cases in CAS and parties' right to be heard

1. 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. Alleged violations occurred in the context of a tournament organized by the ECU under the auspices of FIDE, relating to the approval of a contract with a local organizer without the necessary permission, as well as an alleged financial mismanagement of the tournament, could potentially affect the fifty-four member federations of the ECU, and therefore have international implications.
2. According to CAS case law, 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 [...]”*.
3. A joinder of cases does not require the same respondents or identical legal reasoning. A joinder is justified when it is deemed to be in the interest of the proper conduct of proceedings and the complaints are sufficiently related. Further, a joinder should not affect the parties' position and not preclude a separate examination of each complaint.

I. THE PARTIES

1. Mr. Silvio Danailov (“Danailov”), the First Appellant, is a European Chess Union (“ECU”) honorary president. Mr. Danailov previously served as President of the ECU.
2. Mr. Vladimir Šacotić (“Šacotić”), the Second Appellant, is a former ECU Executive Director. Mr. Šacotić was also President of the Montenegro Chess Federation (“MCF”).

3. Ms. Sava Stoisavlević (“Stoisavlević”), the Third Appellant, is a former ECU Secretary General and a FIDE Arbiter. The First, Second, and Third Appellants are collectively referred to as the “Appellants”.
4. The World Chess Federation (“FIDE”), the Respondent, is the international governing body of the sport of chess, with its seat in Lausanne, Switzerland, responsible for the organization of that sport and its global championships. The Appellants and the Respondent are collectively referred to as the “Parties”.

II. FACTUAL AND PROCEDURAL BACKGROUND

5. On October 30, 2014, the MCF filed a request for suspension against Mr. Šacotić and Ms. Stoisavlević before the FIDE Ethics Commission (“ETH”). On November 10, 2014, the ECU filed a request for suspension before the same body in relation to all three Appellants. Both submissions concerned alleged misconduct and mismanagement of the European Youth Championships, held in Budva, Montenegro, on October 9, 2013.
6. The First Appellant allegedly contravened the ECU Statutes and Tournament Rules by signing a contract with a new local organizer without the required authorization of the ECU Board. The Tournament Rules prescribe that such act is valid only where the bidder transfers the deposit fee within two months after the decision is notified. The appointed organizing chess federation must also sign a contract with the ECU relating to the organization of the event. According to the requests for suspension, the First Appellant failed to disclose to the ECU Board that the MCF had removed all rights and obligations for the Budva Tournament and that the originally approved organizer had assigned the contract to a new local organizer, legally represented by the Second Appellant’s wife. The ECU did not receive the deposit fee.
7. The Second Appellant allegedly took unfair advantage of his roles as MCF President and ECU Executive Director to profit from at least one local entity that acted as the local organizer of the Budva Tournament. The MCF filed a criminal complaint in this regard.
8. The Third Appellant allegedly mismanaged financial transactions in the Budva Tournament. This included misusing the ECU stamp in issuing invoices, and authorizing the MCF to make a deposit of EUR 7,500 to a bank account which, although appearing to belong to the ECU, was registered under another name.
9. The ECU and MCF contended that the acts of the Appellants represented a breach of the FIDE Code of Ethics and that they have no other legal remedies to investigate the allegations.
10. Following complaints by the ECU and MCF, the ETH commenced two cases – case No. 13/2014 based on the ECU complaint addressed to all three Appellants, and case No. 14/2014 based on MCF’s complaint addressing the Second and Third Appellants.
11. On November 24, 2014, the ETH invited the Appellants to present their positions before December 8, 2014. The ETH informed the First Appellant that it would first rule on the

admissibility of the case and the jurisdiction of the ETH to hear the matter. In relation to complaints filed by the MCF and the ECU, the letters addressed to the Second and Third Appellants set out the same guidelines and clarified that all three Appellants will be able to further file written submissions on the merits of the case if FIDE's jurisdiction is established.

12. On December 8, 2014, the First Appellant submitted written objections to FIDE's jurisdiction, arguing that the ETH's jurisdictional requirements of Chapter 8 of the FIDE Code of Ethics had not been met. The First Appellant also contested the arbitration clause of the ECU's Articles of Association, arguing that any disputes are to be resolved by the CAS, and not by FIDE.
13. On the same date, the Second and Third Appellants filed a submission arguing that the ETH lacks jurisdiction over the ECU and its officials, and that they are not subject to the FIDE Code of Ethics.
14. From December 12 to December 15, 2014, the ETH met in Athens, Greece. On December 15, 2014, it rendered its decision. The ETH considered that the ECU's and the MCF's complaints for breach of the FIDE Code of Ethics Clauses 2.2.2, 2.2.3 and 2.2.11 were admissible. It considered inadmissible the complaint alleging a breach of Clause 2.2.1.
15. On April 16, 2015, the FIDE Secretariat sent a reasoned decision of the ETH, dated April 15, 2015 ("the ETH Decision") to the Appellants.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

16. The Appellants filed their appeal against the ETH Decision by a Statement of Appeal of May 7, 2015, in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the "CAS Code"), in which FIDE was identified as the Respondent.
17. On May 18, 2015, the Appellants wrote to the CAS in accordance with Article R51 of the CAS Code that the Statement of Appeal should be considered as Appeal Brief and that all exhibits and evidence have been submitted.
18. The Appellants Statement of Appeal and Appeal Brief contains the following Request for Relief:

"a. CAS has jurisdiction over the dispute and the parties to this arbitration;

b. The Appeal is upheld and the appealed Decision of 15 December 2014 of FIDE Ethics Commission to admit the complaints of European Chess Union and Montenegro Chess Federation against the Appellants and that ETH has jurisdiction on them is set aside and declared invalid for all purposes;

c. To determine that FIDE Ethics Commission has no jurisdiction to decide the complaints submitted by European Chess Union and Montenegro Chess Federation against the three Appellants all together or each of them separately;

d. The Respondent is ordered to pay all the costs of the arbitration, including without limitation the fees and expenses of the Panel and Appellants' legal fees and expenses".

19. On May 26, 2015, the Respondent submitted its comments on the Appellants' request that the present case be submitted to a Sole Arbitrator, and asked in view of the complexity of the matter to submit the present case instead to a Panel of three arbitrators.
20. On May 28, 2015, the Respondent filed a submission to the CAS by which the ETH agreed to suspend the investigation of ECU's and MCF's complaints until a final award has been rendered by the CAS in the pending arbitration.
21. By letter dated May 25, 2015, the ECU confirmed to the CAS that it did not wish to participate as an interested party in the proceedings, but reserved its right to participate in future proceedings before the CAS on the merits of ECU's complaint to the ETH.
22. By letter dated May 28, 2015, the MCF wrote to the CAS to confirm that it did not wish to participate as an interested party in the proceedings, but reserved its right to participate in future proceedings before the CAS on the merits of MCF's complaint to the ETH.
23. On May 29, 2015, the CAS confirmed the stay of execution of the ETH Decision, and that the Parties would be granted a time limit within which to nominate an arbitrator in the event that the arbitration would be submitted to a three-member Panel.
24. On June 11, 2015, the Respondent filed its Answer in accordance with Article R55 of the CAS Code, which contained the following Request for Relief:

"I. Dismissing entirely any and all Request for Relief made by the Appellants Silvio Danailov, Vladimir Šacotić, and Sava Stoisavlević;

II. In all events, ordering the Appellants Silvio Danailov, Vladimir Šacotić, and Sava Stoisavlević, jointly and severally, to pay all the costs of the arbitration, including without limitation the fees and expenses of the Panel as well as all reasonable expenses incurred by FIDE in defending the case in accordance with Article 13.6 of FIDE Statutes".

25. On June 15, 2015, the CAS notified the Parties that the Division President had decided, pursuant to Article R50 of the CAS Code, to submit the arbitration to a Panel of three arbitrators and invited the Appellants to nominate an arbitrator from the CAS list of arbitrators within ten days of receipt of this letter.
26. On June 19, 2015, the Respondent submitted a request for a hearing in the matter. On the same date, the Appellants stated that they did not deem a hearing on the matter to be necessary, and would accept that the Panel render an award based solely on the Parties' written submissions. The Appellants nominated Dr. Hans Nater as arbitrator.
27. On June 22, 2015, the CAS invited the Respondent to nominate an arbitrator from the list of CAS arbitrators within ten days of receipt of this letter.

28. On July 2, 2015, the Respondent submitted their appointment of Mr. Michele Bernasconi as arbitrator.
29. On August 26, 2015, the Parties were informed that the Panel had been constituted in the case and that the file was transferred to the Panel on that same date. The CAS also advised the Parties that the President of the CAS Appeals Arbitration Division appointed Mr. Romano Subiotto QC, as President of the Panel.
30. On September 22, 2015, the Parties were informed that a one-day hearing in this case would be held on November 26, 2015.
31. On October 19, 2015, the Parties were informed that a one-day hearing in this case would be held on December 7, 2015.
32. By letter dated November 27, 2015, the Appellants requested the President of the Arbitration Panel to authorize the submission of new evidence under Article R56 of the CAS Code. On December 2, 2015, the President of the Panel decided to reject the request save for one exhibit, which has been added to the file.
33. The Respondent returned a signed copy of the Order of Procedure on December 3, 2015. On December 4, 2015, the Appellants returned a signed copy of the Order of Procedure.
34. A hearing was held in Lausanne on December 7, 2015 before the President of the Panel, Mr. Romano Subiotto QC, and the Arbitrators Dr. Hans Nater, and Mr. Michele Bernasconi, assisted by the *ad hoc* clerk Ms. Aude de Crayencour.
35. During the hearing, the counsel of each of the Parties, as well as the Appellants themselves, submitted oral arguments and both Parties confirmed that their right to a fair hearing had been respected.

IV. JURISDICTION, ADMISSIBILITY AND APPLICABLE LAW

A. Jurisdiction

36. Article R47 of the CAS Code provides as follows:

“An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the player has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body”.

37. According to Article 13.1 of the FIDE Statutes:

“Notwithstanding any provisions to the contrary in these Statutes, any final decision taken by a FIDE organ may be disputed exclusively before the Court of Arbitration for Sport, Lausanne (CAS)

acting as an appeals arbitration body, to the exclusion of any ordinary court or any other court of arbitration. Only parties directly affected by a decision may appeal to the CAS. FIDE has the right to initiate arbitral proceedings before the CAS in Lausanne against a member federation or any of its officials, player, organizer, arbiter or FIDE official or affiliated organisation in respect of a matter arising out of the FIDE Statutes, Regulations or agreements between these persons and/or entities”.

38. Article 13.2 of the FIDE Statutes requires:

“An appeal before the CAS may only be brought after FIDE’s internal procedures and remedies have been exhausted. The decisions of the Ethics Commission, Electoral Commission and General Assembly relating to matters falling within their respective competencies are final. The General Assembly will be the internal appellate organ for all decisions of FIDE organs and officials other than the decisions falling within the respective competencies of the Ethics Commission and the Electoral Commission. An aggrieved party may appeal against the decision by the Executive Board directly to CAS if, and only if, that party’s interest will be irreparably harmed by having to wait for a final decision by the next General Assembly”.

39. The FIDE Statutes require that an appeal may be brought before CAS only where it is brought against a “final decision” and only where FIDE’s “internal procedures and remedies have been exhausted”.

40. Although in the Respondent’s view the ETH Decision is not a final decision and not all internal procedures and remedies have been exhausted, the Respondent stresses the importance of obtaining a ruling from the CAS on the jurisdiction of the ETH. For that reason the Respondent does not challenge the jurisdiction of CAS.

41. As both Parties have agreed to the CAS’s jurisdiction over the present matter, and the Order of Procedure has been duly signed without any reservations, the Panel consequently finds that the CAS has jurisdiction over the Appeal in this instance.

42. It must be emphasised that the jurisdiction of the CAS only involves the ETH Decision, which deals with the competence of the ETH, and does not extend over the merits of the case.

B. Admissibility

43. Article R49 of the CAS Code provides as follows:

“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late”.

44. With respect to final decisions of FIDE, Article 13.3 of the FIDE Statutes states:

“The time limit for appeal to the CAS shall be 21 days from the date that the appellant becomes aware, or reasonably should have been aware, of the decision in question”.

45. The Decision was notified to the Appellants on December 15, 2014. The reasoned decision of April 15, 2015, was communicated to the Appellants only on April 16, 2015.
46. As the Appellants became aware of the substance of the decision on which an appeal could be filed on April 16, 2015, the deadline for the filing of an appeal was May 8, 2015. The appeal having been filed in due time on May 7, 2015 and in conformity with the FIDE Statutes and the CAS Code is therefore admissible.

C. Applicable Law

47. Article R58 of the CAS Code provides:

“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

48. Article 13.3 of the FIDE Statutes states:

“The CAS shall decide the dispute according to the applicable FIDE Statutes, regulations and rules, as well as according to Swiss law. The language of the arbitration will be English. The decision of the CAS shall be final and binding on the parties”.

In addition to applicable FIDE Statutes, regulations, and rules, Swiss law is therefore applied both substantially and procedurally.

V. INTERLOCUTORY PROCEDURAL ISSUES

49. The Appellants requested the production of 24 exhibits that the ECU submitted in the proceedings before the ETH. According to the Appellants, these exhibits, which have never been presented to them, would be necessary to consider all facts of the case. The Appellants indicated in correspondence that they would reiterate this request once the Panel was formed. The Appellants never repeated the request.
50. In any event, Article R44.3 of the CAS Code grants the CAS the power to order the production of documents:

“A party may request the Panel to order the other party to produce documents in its custody or under its control. The party seeking such production shall demonstrate that such documents are likely to exist and to be relevant.

If it deems it appropriate to supplement the presentations of the parties, the Panel may at any time order the production of additional documents or the examination of witnesses, appoint and hear experts, and proceed with any other procedural step. The Panel may order the parties to contribute to any additional costs related to the hearing of witnesses and experts”.

51. Since the Panel’s review of the ETH Decision is limited to the question of the ETH’s jurisdiction, the Panel finds that the production of the documents is not appropriate.

VI. THE SUBMISSIONS OF THE PARTIES

52. The summary below refers to the substance of the Parties’ main allegations and arguments, without listing them exhaustively in detail. In considering and deciding upon the Parties’ claims in this award, the Panel has taken into account and carefully considered all of the submissions made and evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the award or in the discussion of the claims below.

A. Mr. Danailov, Mr. Šacotić & Ms. Stoisavlević’s Appeal

53. The Appellants argue that the ETH lacks jurisdiction, that the FIDE Code of Ethics is inapplicable in the present case, and that other bodies have jurisdiction to resolve the complaints. According to the Appellants, the joined cases fall exclusively within the jurisdiction of the ECU and MCF. The Appellants further allege that the ECU’s and the MCF’s complaints constitute mere forum shopping.
54. The Appellants stress that none of the Appellants was a FIDE official at the time of the alleged violations.
55. The Appellants rely on Article 8.1 of the FIDE Statutes, which sets out the jurisdiction of the ETH on the basis of the following conditions:
- i. the alleged offence must have been committed by an official of a member federation, association, league or club or by a player, players’ agent or match agent;
 - ii. the case must have international implications or affect various national federations of FIDE; and
 - iii. the case must not be judged at national level.
56. According to the Appellants, actions not taken in the specific role of a FIDE official fall outside the jurisdiction of the ETH. In any case, the ETH would lack jurisdiction if the issue can be resolved through other procedures, remedies, or sanctions that can lead to a justified and legally compliant solution.

57. The Appellants further argue that Article 1.4 of the FIDE Code of Ethics—which according to the Appellants describes the scope of application and the jurisdiction of the ETH—implies that the jurisdiction only covers the member federation, and not additionally the officials acting for that same member federation. Consequently, the Appellants submit that the conduct of officials of member federations falls outside the competence of the ETH, and should be resolved by the national member federation.
58. The Appellants suggest this also follows from the wording of Article 3.2 of the FIDE Code of Ethics which lists sanctions, such as return of awards, fines, and a ban to take part in competitions that logically can be applied to participants of a tournament, but not to officials acting for a member federation.
59. The Appellants argue that the ETH’s lack of jurisdiction regarding disputes between member federations and officials is supported by the Guidelines to the Interpretation of the FIDE Code of Ethics and Procedural Rules of the ETH.
60. More specific to the alleged violations of Clauses 2.2.2, 2.2.3, and 2.2.11 of the FIDE Code of Ethics, the Appellants raise several arguments relating to the scope of application of this code.
61. As regards to Clause 2.2.2, the conduct amounting to a breach of ethics is only addressed to FIDE office bearers, which implies that the ETH has no jurisdiction on disputes and actions involving non-FIDE officials or *ad hoc* officials in FIDE events.
62. The Appellants assert that Clause 2.2.3 refers to failure to perform a person’s function in an impartial and responsible manner, and is thus inapplicable to the alleged violations that did not affect the organization of the tournaments.
63. The alleged violations neither fall under Clause 2.2.11, which concerns actions that are likely to injure or discredit the reputation of FIDE, its events, organizers, participants, sponsors, or goodwill, since it is merely the Appellants, ECU, or MCF, that are discredited; not the FIDE.
64. According to the Appellants, the foregoing provisions imply that the ETH lacks jurisdiction on the internal relations between the ECU and MCF with its officials.
65. Further, the Appellants oppose the joinder of the two complaints by the ETH, stating that this is arbitrary. Although referring to one occasion—the European Youth Championship in Budva—the complaints of the MCF (referring only to the misconduct of Mr. Šacotić and Ms. Stoisavlević), and the complaint of the ECU (which referred to all three Appellants) have different respondents, factual reasoning, and allegations.
66. In the Appellants’ view, the combination of both complaints breaches the Appellants’ right to be heard and right to a fair process. Mr. Danailov was not informed of the MCF complaint, yet the ETH’s decision was based on the combined two complaints. Moreover, the ETH Decision is alleged to be erroneous as it contains several motivational flaws.

67. During the hearing, the Appellants referred to ETH Cases 1/2007 and 2/2007 and argued that similarly, ETH does not have jurisdiction in this case. The Appellants additionally argued that the Guidelines to the Interpretation of the FIDE Code of Ethics and Procedural Rules of the ETH prevented the ETH from assessing facts when receiving complaints. The Appellants further objected against the role of the ETH as investigator and prosecutor. The Appellants also insisted on the long duration of the reasoning of the ETH Decision alleging that it was for political reasons.
68. The Appellants therefore request the Panel to (i) set aside the ETH Decision, (ii) declare the ETH to have no jurisdiction on complaints submitted by the ECU or MCF, and (iii) order the Respondent to pay all costs of the arbitration.

B. FIDE's Response

69. The Respondent contends that the ETH has jurisdiction to rule on the joined cases.
70. The Respondent argues that Mr. Silvio Danailov was the ECU's incumbent President at the time of the alleged offences, making him a FIDE official under Article 3.1(h) of the FIDE Statutes. The ETH would thus enjoy direct competence over his alleged conduct on the basis of Article 8.1 of the FIDE Statutes.
71. The Respondent submits that the ETH has indirect competence over the conduct of Mr. Šacotić and Ms. Stoisavlević. Although they were not FIDE officials at the time, the three cumulative conditions of Article 8.1 of the FIDE Statutes are satisfied.
72. As to the first condition, the Respondent notes that at the time of the alleged offences, the Second and Third Appellants were officials of a member federation, association, league, or club: Mr. Šacotić as the ECU Executive Director and as President of the MCF, and Ms. Stoisavlević as the ECU General Secretary. The Respondent points out that the MCF is a member federation of FIDE under Article 2.1 of the FIDE Statutes, and the ECU is an affiliated international organization as the Continental Association for Europe under Article 6.1 of the FIDE Statutes.
73. According to the Respondent, the second condition is satisfied because the case has international implications and affects various national federations of FIDE. The Appellants' alleged violations occurred in the context of the Championships in Budva. Organized by the ECU under the auspices of FIDE, these championships attracted 1045 young chess players from forty-eight European federations, which shows the international implications of the event within the meaning of Article 8.1 of the FIDE Statutes. In addition, as the alleged offences caused financial damage to the ECU as a whole, it affected all its fifty-four member federations.
74. The Respondent argues that the case is not judged at national level, thus satisfying the third condition. Article 8.1 of the FIDE Statutes applies to the ECU as a Continental Association, meaning that the case should neither be judged at continental level. The Respondent notes that "*at national level*" in Article 8.1 of FIDE Statutes only refers to national chess structures,

and not to national courts or national prosecution authorities. Although national criminal investigations are on-going against Mr. Šacotić and Mr. Danailov, these do not involve infringements of the FIDE Code of Ethics as Article 8.1 requires.

75. For completeness, the Respondent points out that even in the absence of international implications, the ETH would still have jurisdiction. Neither ECU nor the MCF have disciplinary bodies to prosecute in accordance with the FIDE Code of Ethics, and Article 8.1 provides that the ETH has jurisdiction *“over national cases if the competent organs of the national chess federations fail to prosecute such infringements”*.
76. The Respondent argues that the wording of the FIDE Statutes does not suggest that violations should be committed in a specific role for the ETH to have jurisdiction. Even if such a requirement would exist, the alleged violations were committed in the exercise of their duties as officials.
77. The Respondent adds that the jurisdiction of the ETH and the scope of application of the FIDE Code of Ethics are distinct. Jurisdiction comes down to the power to make legal decisions and judgments, whereas the scope of application of a text is a question of applicable law, not jurisdiction. Respondent therefore opposes Appellants’ claim that the elements of the FIDE Code of Ethics, which concerns the scope of application, should be addressed.
78. Moreover, the Respondent refutes Appellants’ contention that only the member federation, and not the official acting on its behalf, shall be submitted to the ETH’s jurisdiction. The Respondent maintains that it is contradictory to first argue that a ‘specific role’ is required and subsequently stating that only the member federation is subject to the ETH. This contention is according to Respondent also against the ETH’s case law and the wording of Article 8.1, which includes individuals. Further, the Respondent notes that the alleged violations should be resolved by FIDE rather than within the internal management of the ECU or MCF.
79. As to the joinder of the complaints, the Respondent points out that the Appellants have never objected in their written submissions when the ECU suggested to join cases. According to the Respondent, the counsel in fact filed his observations on both complaints in a single document before the cases were joined. The Respondent contends that, by now changing their approach towards the joinder, the Appellants violate the general principles of procedural fairness and the prohibition of contradictory actions.
80. The Respondent maintains that while the joinder of cases is not expressly provided by the FIDE Statutes or the FIDE Code of Ethics, it is justified by procedural efficiency, which is a general principle of Swiss law. In any case, the joinder of two complaints does not require that the different complaints be directed at the same individuals and have identical legal reasoning.
81. In the Respondent’s view, the short period of the Appellants to prepare for the case does not amount to a violation of the right to be heard. The fourteen-day deadline to file observations was necessary as the ETH only meets infrequently and if no meeting had taken place in December, this would have led to an unreasonable delay in the processing of the complaints.

It is noted that the Appellants never raised the issue or sought extension in their written submissions.

82. The Respondent therefore requests the Panel to (i) dismiss the Appeal, and (ii) order the Appellants to pay all costs of the arbitration.

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 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.

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 offence 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 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*

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 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 review². 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 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

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.

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.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal against the decision of the FIDE Ethics Commission dated April 15, 2015 is dismissed.
2. The decision of the FIDE Ethics Commission dated April 15, 2015, dealing solely with the competence of the Ethics Commission to hear the merits of the complaints, is confirmed.
3. (...).
4. (...).
5. All other or further claims are dismissed.