



FIDE ETHICS & DISCIPLINARY COMMISSION

The First Instance Chamber of the Ethics & Disciplinary Commission (hereafter called “the EDC Chamber”), sitting in the following composition

Chairperson: Mr Johan Sigeman

Members: Mr David Hater
Mr Ravindra Dongre

during an exchange of correspondence and online meetings, made the following

DECISION

Case no. 5/2023: “Alleged lack of due process and natural justice in imposition of a permanent ban by the Fiji Chess Federation”.

INTRODUCTION

1. The EDC Chamber **notes** its establishment by the EDC Chairman on 6 April 2023.
2. The EDC Chamber **notes** that on 30 March 2023 the FIDE Ethics and Disciplinary Commission (EDC) received a complaint from Mr. Calvin Prasad concerning an alleged lack of due process in the imposition of a permanent ban by the Fiji Chess Federation (FCF) and requesting EDC to declare null and void the decision by FCF dated 11 February 2021.
3. The EDC Chamber **notes** that the Respondent, the FCF, has been given the opportunity to respond to the allegations in the report and that FCF has submitted defensive statements.
4. The EDC Chamber **notes** the contents of the following documents and e-mails received as part of the case file: the complaint by the Complainant mentioned above, a defensive statement by the Respondent dated 1st May 2023, an additional clarification of said statement dated 18 May 2023 in reply to pertinent questions by the EDC Chamber, a second submission by the Complainant dated 24 May 2023 and finally also a second submission by the Respondent dated 12 June 2023. Both parties have submitted enclosures in support of their respective position.



FACTUAL DETAILS OF THE CASE

- 5.1 During the 2016 World Chess Olympiad, which took place in Baku, Azerbaijan, the Complainant was the president of the FCF and a player in the FCF National team.
- 5.2 The FCF received a special report on the alleged wrongdoings of the Complainant, dated in November 2016.
- 5.3 As a result of incidents occurring in connection with the Bermuda Party at the Olympiad, a case against FCF was submitted to EDC (Case no. 6/2017) where Ms Hilda Vukikomoala raised complaints against FCF for failing to take disciplinary action against Mr Prasad for alleged wrongdoings at the Olympiad. The case was dismissed by the EDC due to the fact that there was no factual ground to assume jurisdiction in the case, as the FCF had already sanctioned Mr Prasad to a three month suspension.
- 5.4 A decision by the Fiji Association of Sports and National Olympic Committee (FASANOC) was made on 13 April 2017 whereby FCF's membership of FASANOC was declared suspended until such time that all outstanding concerns, including disciplinary issues, have been appropriately resolved at a constitutionally held AGM.
- 5.5 The above-mentioned decision by FASANOC was challenged by FCF under the leadership of the Complainant seeking *inter alia* a declaration that the suspension was unlawful. The case was decided by the Fiji High Court on 20 February 2018, whereby the summons and motions were struck off.
- 5.6 The Complainant resigned as president of the FCF in February 2018.
- 5.7 A "Special Disciplinary Report" was issued in January 2021 by the FCF, listing a number of alleged offences by the Complainant from 2016 and onwards, ending with a recommendation to permanently ban the Complainant from all forms of play in local and international chess under FCF and to de-register him from FIDE.
- 5.8 The Executive Board of FCF on 11 February 2021 decided to ban the Complainant for life from the sport as a repeat offender and to de-register the Complainant from FCF and FIDE. The Complainant was not notified of the matter and was not given



an opportunity to submit a defence. It was also decided by the Executive Board not to provide an appeals clause.

- 5.9 FCF submitted on 6 March 2021 a request for deregistration of the Complainant to FIDE. FIDE subsequently agreed to deregister the Complainant.

THE COMPLAINANT'S CASE

- 6.1 The Complainant has argued that the decision by the FCF on 11 February 2021 constitutes a clear breach of fundamental principles of law, natural justice and violates his right to a fair trial.
- 6.2 The Complainant refers to the fact that he was never notified of the ongoing process against him, nor was he given an opportunity to respond to the allegations against him.
- 6.3 The Complainant refers to the fact that there was no appeals process in place with respect to the above-mentioned decision of the FCF.
- 6.4 The Complainant also alleges that four out of six executives of the FCF were also complainants in the 2016 disciplinary process against him and that three of the executives who took the expulsion decision in February 2021 were in fact the investigators and authors of the "Special Disciplinary Report" (see 5.7 above). This is a clear indication of conflict of interest and potential bias in the decision-making process.
- 6.5 The Complainant has also stated that there are several other factors that the EDC must take into account; a lack of adequate grounds for a permanent ban on him; the reliance by FCF on false information; breach of procedural fairness, an excessive and disproportionate punishment and the occurrence of double jeopardy.

DEFENCES PROVIDED BY RESPONDENT

- 7.1 The Respondent has argued that the complaint should be declared inadmissible as the grounds on which the appeal has been made are arbitrary and that there is no legitimate basis for appeal.
- 7.2 The Respondent has as a general observation stated that it is committed to working against all forms of violence, harassment and exploitation of children, women, and athletes within the federation.



- 7.3 The Respondent has, as a background, referred to several complaints against the Complainant based on his behaviour during the 42nd World Chess Olympiad in 2016.
- 7.4 The Respondent has also stated that the decision-making process undertaken by FCF was done in a difficult environment with exceptional circumstances where due process and justice had been circumvented for 17 months and FCF had been suspended by the national sporting body. Relevant elements of the various complaints against the Complainant had already been subject to a high court ruling in Fiji where the Complainant had been actively participating. There has not been any substantial breach of procedural fairness. In addition to this, it should be noted that the Complainant had not showed any interest in participating in the chess activities within FCF for a long time.
- 7.5 The Complainant was not notified of the disciplinary case against him since the FCF believed the Complainant would have wilfully tried to drag things out, as he had done for a long time previously.
- 7.6 No appeals process was provided to the Complainant as an appeal would have made no difference to the outcome of banning him and de-registering him. The Respondent has argued that the greater collective interest of the FCF and its members outweighs that of an individual.

ADMISSIBILITY AND JURISDICTION

- 8.1 In order to be admissible, the complaint must meet the minimum requirements laid down in article 5 in the EDC Code.
- 8.2 The Complainant must have the necessary standing to submit the complaint. He is a member of the FIDE Family (see article 4.2 j). He is also directly affected by the decision of the FCF (see article 5.2 b). He has therefore the necessary standing.
- 8.3 The Respondent must be a member of the FIDE Family (see article 5.1 b). The FCF is a FIDE Member Federation (see article 4.2 a) and therefore a member of the FIDE Family.
- 8.4 The alleged misconduct must have been committed during a course of no more than three years immediately preceding the date on which the complaint is received by FIDE (see article 5.1 e). The decision of FCF was made in February 2021. The complaint was received in March 2023 and is therefore within the three-year limit.
- 8.5 The EDC Chamber confirms that FIDE member federations have principal



authority in respect of the governance of chess activities in their own countries.

The EDC shall exercise jurisdiction over the conduct of officials of national federations only in exceptional circumstances, namely in instances where the case has international implications and is not judged at national level, or instances where the national federation fails to prosecute disciplinary cases in compliance with fundamental principles of law and fair trial (FIDE Charter 26.9 and 4.7 (b) in the EDC Code).

- 8.6 The alleged misconduct has not been committed in the international sphere (see article 5.1 (d)). In accordance with article 4.7 (b), the EDC Code shall however apply also in national cases, if there is reason to believe that the national ethics process has operated in a manner that in itself is a breach of the EDC Code or fundamental principles of law and fair trial.
- 8.7 The jurisdictional requirements of article 4.7 (b) are two-fold: (i) the decision or conduct complained about must have been given or taken place in the course of a “national ethics process” and (ii) the process must have operated in a manner that in itself is a breach of the EDC Code or fundamental principles of law and fair trial.
- 8.8 The decision by the FCF was made by its Executive Board and not by a national disciplinary body *per se* (compare the EDC Procedural Rules, 77.1) and may therefore *prima facie* be regarded as an executive decision rather than a disciplinary decision. An example of non-disciplinary decisions that falls outside of the competence of EDC is Case 3/2018 (Ms Cooke vs Welsh Chess Union) concerning a complaint against a decision on the selection of players for the 2018 Batumi Olympiad.
- 8.9 A decision by a national federation, resulting in a sanction of an individual member, is often based on alleged wrongdoings by the member, which typically qualifies it as a disciplinary decision. But a ban or expulsion of an individual member may also be based on other circumstances, such as *e.g.* failure to pay a membership fee. Such decisions are not to be regarded as a disciplinary decision and the EDC has consequently no jurisdiction over it.
- 8.10 There is no designated national disciplinary body within the FCF. In order to establish if the decision of the FCF is to be regarded as a disciplinary decision or not, the EDC needs to evaluate all relevant facts. The reasons behind the decision and the sanction are of major importance.
- 8.11 The decision of the FCF has at least partly been based on the alleged misconduct of the Complainant in connection with the 2016 World Chess Olympiad and subsequent events. This is evident *inter alia* from the “Special Disciplinary Report” mentioned in 5.7 above (the title of the report also indicates that its subject-matter



concerns disciplinary matters). The FCF has in its submissions in this case referred to several alleged misconducts by the Complainant. In addition, the termination of the Complainant's membership was done with the object to punish him for the misconducts and has all the characteristics of a disciplinary sanction. The decision made by the FCF Executive Committee, being subject to the complaint must, in the opinion of the EDC, therefore be regarded as a decision in a disciplinary case in the meaning set out in the FIDE Charter and the EDC Code. This is the case despite that the fact that FCF, when determining the sanction (lifelong ban) has relied on the FCF constitution (*Article 2.23: If any member shall willfully infringe any of the clauses of this Constitution or the Regulations made under its authority, or in the opinion of the Executive Board shall be guilty of conduct unbecoming a member of the Federation, or of conduct prejudicial to the interest of the Federation, such member shall be liable to expulsion*) and not on a specific national disciplinary code.

- 8.12 The fact that the Complainant was not notified of the ongoing procedure against him and the fact that he was not given a right to appeal against the decision is *prima facie* a strong indication that the national process was not operated in accordance with fundamental principles of law and fair trial.
- 8.13 The fact that the FCF does not have a designated national disciplinary body, nor a disciplinary code, must not in the opinion of the EDC *per se* prevent a review in cases where the nature of the national case is predominantly of a disciplinary kind. The EDC Chamber concludes that the decision by the FCF is to be regarded as a national ethics process against the Complainant and that this process *prima facie* has operated in a manner that in itself is a breach of the fundamental principles of law and fair trial.
- 8.14 For all the reasons mentioned in 8.2 – 8.13 above , the jurisdiction of the EDC in the present matter and admissibility of the complaint against the Respondent are confirmed.

FINDINGS

- 9 The EDC Chamber refers to the following cases where various allegations of lack of due process have been subject to evaluation: Case 4/2015, Case 1/2016, Case 1/2019, Case 2/2019, Case 3/2019, and Case 8/2021. T
- 10 The EDC Chamber **notes** that the fundamental principles of law and fair trial includes the concept of “natural justice”, the “duty to act fairly”, “procedural fairness”, the rule of “double jeopardy” and “procedural due process”, see Rule 29 in the EDC Procedural Rules.



- 11 The EDC Chamber **notes** that the right to a fair hearing requires that individuals are not penalised by decision affecting their rights unless they have been given prior notice of the case against them, a fair opportunity to answer it, and the opportunity to present their own case.
- 12 Upon due consideration of the documents submitted and arguments advanced by the parties, the EDC Chamber **finds** that the disciplinary action taken against, and ban imposed on the Complainant by the FCF were done in violation of fundamental principles of law and fair trial considering, *inter alia*, the following:
- (i) The absence of a notification on the ongoing disciplinary case to the Complainant did deprive him of the fundamental right to defend himself. The FCF Executive Board accepted the findings of the “Special Disciplinary Report” as proven without hearing the Complainant or giving him an opportunity to controvert the findings. This offends the basic principle of “*audi alteram partem*” which is fundamental to all civilised justice systems. This failure is particularly grave if one accepts that some members of the decision-taking body were also the authors of the “Special Disciplinary Report”. These facts alone are in the view of the EDC Chamber sufficient to nullify the decision of the FCF.
 - (ii) The fact that the Respondent did not inform the Complainant of the outcome of the disciplinary process together with the absence of a right to appeal against the decision also constitute serious breaches of the concepts of “procedural fairness” and “procedural due process”. This is particularly so as Article 2.23 a and b of the FCF Constitution provides expressly for a right of appeal to the General Assembly against a decision of expulsion taken by the Executive Board. The FCF is bound to comply with his own constitution and cannot decide to frustrate a possible appeal by avoiding notification of its expulsion decision to the affected member.
 - (iii) The Complainant has already been sanctioned once for his wrongdoings in relation to the Baku Olympiad, see 5.3 above and the present sanction of a termination of membership cannot in part rely on the same misconduct (the rule against double jeopardy).
- 13 The EDC Chamber has carefully taken into consideration the other facts and circumstances brought forward by the Respondent. The EDC Chamber acknowledges *inter alia* that the FCF at the time may have been in a difficult situation, considering the pending decision of FASANOC with its negative implications for the federation. The EDC Chamber does not question that there was an infected and ongoing personal conflict between the Complainant and the FCF or at least several of its members. The EDC Chamber is however of the opinion that



the disciplinary proceedings against the Complainant nevertheless should have been carried out in accordance with the fundamental principles of law and fair trial, described above. These principles are cornerstones of legality and carries extra weight in cases where there are infected personal conflicts involved and where a severe sanction may be the result of the proceedings.

- 14 The EDC has the power to review and nullify disciplinary decisions by national federations under certain circumstances, see the FIDE Charter 26.9, the EDC Code 4.7 b ii) and the EDC Procedural Rules, Rule 77. Accordingly, and taking into account all of the above, the EDC Chamber **unanimously decides** as follows:

The decision and the sanction imposed by the FCF on Mr. Prasad on 11 February 2021 is hereby declared null and void with immediate effect.

- 15 The decision of the EDC Panel must not be regarded as it is taking any view on the allegations against Mr. Prasad which raise, by their very nature, serious matters. The conclusion of the EDC Panel is solely based upon its findings of a failure of due process, in particular that the manner in which the disciplinary decision to expel Mr. Prasad was taken, does not accord with the fundamental principles of law and fair trial.
- 16 The Respondent is referred to Rule 77.7, 77.8, 77.9 and 77.10 of the EDC Procedural Rules. The present decision of the EDC Chamber is not subject to appeal. The FCF may according to these rules, submit to the EDC a complaint against Mr Calvin Prasad, based on the same grounds and circumstances as in the national case. **Such complaint must be submitted in writing to the FIDE Secretariat within 21 days from the date upon which this decision is communicated to the FCF.** Failing to do so, the FCF is thereafter prevented from raising a new complaint against Mr Prasad based on the same facts and circumstances covered in the nullified national decision. In case the FCF submits a complaint in due time, the EDC shall handle such complaint as a *de novo* case, as stated in Rule 77.9 and 77.10.
- 17 The EDC Chamber **recommends** FIDE to re-enter Mr Calvin Prasad in the FIDE database as a player under the Fiji Chess Federation.
18. The EDC Chamber **requests** the FIDE Secretariat to communicate forthwith the decision to the Complainant, the Respondent and FIDE's Database Manager and to publish in due course the decision on the FIDE website.



DATED ON THIS THE 7th DAY OF AUGUST 2023

Johan Sigeman

CHAMBER CHAIRMAN
FIDE ETHICS & DISCIPLINARY COMMISSION