



Arbitration Newsletter Switzerland

CAS held in Check

The latest decision of the Swiss Federal Supreme Court rendered on March 17, 2011¹ in conjunction with the annulment of a CAS award is straight forward and raises no special issues which would need to be further addressed. However, following our commitment to comment on CAS awards which were successfully annulled at the Federal Swiss Supreme Court², we shall, nevertheless, briefly touch thereupon.

1 Facts of the Case

At the heart of a case presented to the CAS and brought forward by five national chess federations, all being member federations of the World Chess Federation (FIDE), plus a company called Karpov 2010 Inc. (altogether "**Claimants**") against FIDE was Claimants' claim that Mr Ilyumzhinov's nomination for president of FIDE was invalid. In its Award of September 27, 2010³ the CAS panel ruled, *inter alia*, that it does not have jurisdiction over Karpov 2010 Inc., dismissed the claims of the Claimants and ordered Claimants to pay FIDE CHF 35'000 as a contribution to its legal fees and other expenses.

It was this last order which then was appealed by FIDE at the Swiss Federal Supreme Court arguing that its right to be heard, as stipulated in Art. 190 para. 2 lit. d PILA, was violated. What happened?

In their submissions both Parties requested the CAS panel to allow them to produce their submissions on costs at a later stage of the proceedings. Accordingly, the CAS panel requested on September 24, 2010 both Parties to submit their cost submissions within a given deadline. However, before said deadline elapsed and hence before the Parties produced their cost submissions, the CAS panel rendered its Award,

which included its order that Claimants shall pay FIDE CHF 35'000.

2 The Findings

The Swiss Federal Supreme Court first noted that a CAS panel is most likely not obliged to specifically request the Parties to submit their submissions on costs and arguments as to the cost allocation prior to the close of the proceedings. Rather, the Swiss Federal Supreme Court holds that it is sufficient if the Parties, in the course of the proceedings, are allowed to develop their cost arguments and to produce the pertaining evidence.

However, in the case at hand the CAS panel explicitly requested the Parties to submit their cost submission within a given deadline but nevertheless rendered the Award before elapse of that deadline and hence without that the Parties had filed their submissions on costs. The Swiss Federal Supreme Court therefore held that this constitutes a violation of the Parties' right to be heard and, consequently, annulled the cost order.

3 Conclusion

The ruling of the Swiss Federal Supreme Court is to be welcomed: if a Tribunal invites the Parties to produce their cost submissions it creates a *bona fide* expectation that the Tribunal will not issue an Award allocating the costs of the proceedings before the Parties' cost submissions have been filed. Accordingly, if a Tribunal issues such a "premature" Award its behaviour violates the parties' right to be heard and hence qualifies as a ground for the annulment pursuant to Art. 190 para 2 lit. d PILA.

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Attachments:

- CAS 2010/O/2166
- BGE 4A_600/2010

¹ BGE 4A_600/2010.

² So far five; see our previous newsletters of January 5, February 2, July 5 and August 11, 2010 as well as of April 20, 2011 published on our firm's website www.thouvenin.com.

³ CAS 2010/O/2166.