



Arbitration CAS 2011/A/2446 Croatian Chess Federation (CCF) v. European Chess Union (ECU), award of 25 October 2011

Panel: Prof. Petros Mavroidis (Greece), Sole Arbitrator

Chess

Organization of a competition

Time limit for appeal

Validity of an extension of the deadline to pay a bid fee

- 1. For the purposes of calculating the time limit for appeal, the relevant provision of the CAS Code is Article R49 which provides that the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. Article R49 deals “exhaustively” with the time limit for appeal and there is no need to have regard to Swiss law, which is the underlying subsidiary law.**
- 2. The applicable regulations of a continental federation may provide a legal basis for the extension of the original deadline for a national federation to pay its bid fee to host an event. The granting of a short deadline constitutes a reasonable exercise of its discretion by the continental federation. Therefore, a bid fee payment made within the extension of time granted may be lawfully considered.**

The Croatian Chess Federation (“CCF” or the “Appellant”) is the national governing body of chess in Croatia; it is a member of the European Chess Union.

The European Chess Union (“ECU” or the “Respondent”) is the association of national chess federations of European countries and has its seat in Hünenberg See, Switzerland; it is the only organization which is entitled to organize various European Chess Championships.

This Award summarises the main relevant facts and allegations based on the parties’ written submissions and evidence. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. The Sole Arbitrator has considered all the factual allegations, legal arguments and evidence submitted by the parties in the present proceedings, but refers in this Award only to the submissions and evidence he considers necessary to explain his reasoning.

By circular letter dated 30 April 2011, the ECU informed all European Federations that the Extraordinary ECU General Assembly held on 29 March 2011, decided to award the hosting of the European Club Cup 2012 (the “Event”) to the city of Eliat, Israel.

The Appellant had also tendered a bid to host the Event and disputes that Israel should have been awarded the Event, as the Israeli bid allegedly did not comply with the European Chess Union Tournament Rules 2010 (the “Tournament Rules”).

On 20 May 2011, the Appellant filed an appeal at the CAS against the decision of the ECU to award the Event to Eliat, Israel (the “Decision”). The Appellant submitted the following requests for relief:

- The Appeal filed by the Croatian Chess Federation against the decision of the European Chess Union of 29 March 2011 relating to the organization of European Club Cup (men and women) 2012 is allowed.
- The decision of the Respondent that the European Chess Union rendered by the Extraordinary General Assembly held on 29 March 2011 relating to the organization of European Club Cup (men and women) 2012 is annulled.
- The European Chess Federation is ordered to pay to the Croatian Chess Federation the cost of arbitration as a contribution towards the legal fees and other expenses incurred by the Croatian Chess Federation in connection with this Arbitration.

On 30 May 2011, the Appellant filed its appeal brief.

On 20 June 2011, the Respondent filed its answer. In its answer the Respondent claimed that the appeal was filed out of time and must be rejected and dismissed. The Respondent requested that the CAS decide to:

- Reject and dismiss the Appeal filed by the Croatian Chess Federation on May 29th, 2011 against the decision of the Extraordinary General Assembly of the European Chess Federation held in Aix-les-Bains on March 29th, 2011 and granting to Israel the organization of the European Club Cup (men and women) 2012.
- Order that the Croatian Chess Federation shall bear all costs of the procedure before the Court of Arbitration of Sports, including all costs incurred by the Respondent in connection with this dispute such as attorney fees, as well as out-of-pocket expenses or reasonable in-house costs related to these proceedings.

By letter dated 4 July 2011, the CAS informed the parties that Professor Petros Mavroidis had been appointed Sole Arbitrator in this matter. The parties did not raise any objection as to the constitution and composition of the Panel.

On 23 August 2011, the Appellant filed a submission in response to the Respondent’s answer. On 13 September 2011, the Respondent filed its comments on the Appellant’s submission.

On 15 September 2011, the parties were advised that having considered the file for this matter, pursuant to Article R57 of the Code of Sports-related Arbitration (the “Code”), the Sole Arbitrator considered himself sufficiently well informed to decide the case without the need to hold a hearing. The parties were further advised that failing any communication on their part within seven days of receipt of said letter, the Sole Arbitrator would proceed to draft the final award.

Neither party objected to the procedure proposed by the Sole Arbitrator. Furthermore, both parties signed the Order of Procedure which provided that pursuant to Article R57 of the Code, the Panel considered itself to be sufficiently well informed to decide this matter without the need to hold a hearing.

LAW

CAS Jurisdiction

1. Article R47 of the 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 Appellant 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.

2. The Appellant relies on Article 58 of the ECU Statutes as granting it a right of appeal to the CAS. Article 58 provides as follows:

58. (a) *Notwithstanding any provisions to the contrary in this Statute, ECU hereby subscribes to the final settlement of any dispute directly or indirectly related to the application and implementation of these Statutes in its whole or partial practice, be it commercial or relating to the practice and development of chess or a dispute following a decision by ECU, to be sent to the Court of Arbitration for Sport in Lausanne without recourse to any other court or tribunal.*

(b) *The settlement of all disputes described above shall be applicable to acts performed by:*

- *ECU as an Organisation*
- *ECU Office bearers*
- *Member Federations, their clubs and individual players*
- *Sponsors*
- *Any person or body with whom ECU has entered into any form of contractual arrangement either directly or indirectly related to Chess.*

(c) *The Decision of the Court of Arbitration for Sport shall be final and binding on the parties.*

3. The jurisdiction of the CAS is not contested by the Respondent and was confirmed by the signature of the Order of Procedure by the parties. Based on the foregoing, the Sole Arbitrator is satisfied that the CAS has jurisdiction to hear this dispute.

Applicable Law

4. Article R58 of the Code provides as follows:

The Panel shall decide the dispute according to the applicable regulations and 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 application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.

5. Both parties refer to the ECU's rules and regulations and in addition, the Respondent refers to Swiss law. The Sole Arbitrator shall apply the rules and regulations of the ECU and subsidiarily, Swiss law.

Admissibility

6. As set out in the parties' submissions above, the Respondent submits that as the Appellant was present at the Extraordinary ECU General Assembly on 29 March 2011 when it was decided to award the Event to Eliat, Israel, pursuant to Article 75 SCC, any appeal against that decision should have been filed within 30 days of that date. The Appellant submits that as it only received written notice of the Decision by circular letter dated 30 April 2011, pursuant to Article R49 of the CAS Code, its appeal filed on 20 May 2011 was filed in time and is admissible.

7. The Sole Arbitrator notes that the parties disagree firstly on what provision applies to the calculation of the time limit for appeal; the Appellant relies on Article R49 of the CAS Code, whereas the Respondent relies on Article 75 SCC.

8. Article R49 of the CAS Code (entitled "Time limit for Appeal") 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.

9. Article 75 SCC (entitled "Protection of members") provides as follows:

Art. 75

Any member who has not consented to a resolution which infringes the law or the articles of association is entitled by law to challenge such resolution in court within one month of learning thereof.

[Translation available at: <http://www.admin.ch/ch/e/rs/2/210.en.pdf>]

10. The Sole Arbitrator agrees with the views expressed by Professor Ulrich Haas in a recent article (HAAS U., *The time limit for appeal in Arbitration proceedings before the Court of Arbitration for Sport (CAS)*, Schieds VZ 1/2011) where, in discussing the time limit for appeal to the CAS, he stated that "the correct view is that there is no potential conflict between Art. 49 CAS Code (or the corresponding regulations of a federation) and Art. 75 Swiss Civil Code (ZGB) because the applicable law is determined by

Art. 58 CAS Code. According to this provision, the regulations of a federation or an association apply primarily. According to the regulation, a national legal system (e.g. Swiss law) only applies subsidiarily, or additionally if the legal question is not (exhaustively) dealt with in the federation's statutes and regulations (or the deadline in Art. 49 CAS Code) take precedence over national law (here therefore over Art. 75 Swiss Civil Code (ZGB)) - at least in international arbitration proceedings. This applies even if the federation's regulation conflict with mandatory law of the (subsidiarily) applicable law. Art. 75 Swiss Civil Code (ZGB) therefore does not limit the parties in their freedom to determine a preclusion period even if Swiss law applies to the dispute in addition".

11. As noted above, the Respondent does not contest CAS jurisdiction and confirmed same by signing the Order of Procedure. Furthermore, the Order of Procedure provides that “in accordance with the terms of the present Order of Procedure, the parties agree to refer the present dispute to the Court of Arbitration for Sport (CAS) with a view to having the matter resolved in accordance with the Code of Sports-related Arbitration (the “Code”), 2010 edition”. The Sole Arbitrator is therefore satisfied that for the purposes of calculating the time limit for appeal, the relevant provision is Article R49 of the CAS Code. This deals “exhaustively” with the time limit for appeal and there is no need to have regard to Swiss law, which is the underlying subsidiary law.

12. The Sole Arbitrator notes the extract from the decision of the Swiss Federal Tribunal cited by the Respondent and set out above at paragraph 4.13 of this Award (ATF 90 II 346, at 347); however, the Sole Arbitrator also notes the sentence preceding the phrase highlighted by the Respondent, which provides that “pour se former une opinion sur les chances de succès d'une action en justice, le membre exclu doit connaître non seulement le fait de son exclusion, mais aussi les motifs invoqués à l'appui d'une pareille décision” (In free translation: to form an opinion on the chances of a successful lawsuit, the expelled member must know not only the fact of his exclusion, but also the reasons given in support of such a decision). The Sole Arbitrator considers that the Appellant was entitled to wait for the written notice of the Decision – which contained the vote tallies for each of the bids – before deciding whether to appeal the Decision.

13. The Sole Arbitrator notes the dicta of another CAS Panel in CAS 2007/A/1284 & CAS 2007/A/1308 - where the Panel stated that:
 84. *In the present case, Article 13.5 of the FINA Doping Control Rules provides that the time limit to appeal a decision starts to run from the date of the “receipt of the decision” and not – according to the FECNA-Rules (see para. 74 above) or other regulations of sport associations – from the “notification” or “notice” of the decision in question (see for example CAS 2006/A/1153 WADA v/ Portuguese Football Federation & Nuno Assis Lopes de Almeida, para. 33 and CAS 2007/A/1413/ WADA v/FIG & N. Vysotskaya, para. 57). This also applies to a party which were not a party to the proceedings, such as the Appellant in the case at hand (see Article 13.5 1st “dash” of the FINA Doping Control Rules).*

 85. *According to CAS case law, provisions contained in the rules governing sports associations may derogate from provisions of national law (as the case may be here with Colombian law). In particular, they may provide for a different statute of limitations or they may provide that the time limit starts to run when the appellant has been formally notified of the decision (see e.g. CAS 2002/A/432, in Reeb, Rec. II, p. 419 ss.; CAS 2002/A/399, in Reeb, Rec. III, p. 383 ss.; CAS 2005/A/487; CAS 2007/A/1413/ WADA v/FIG & N. Vysotskaya, para. 56; see also Rigozzi, L'arbitrage international en matière sportive, Helbing & Lichtenbahn, Basle 2005, p. 541; see, however, Riemer, p. 359 s.). Thus, the “dies a quo” of the time limit is – according to Article 13.5 1st “dash” of the FINA Doping Control Rules – the “receipt of the decision”.*

14. As stated above, the Sole Arbitrator determines that the relevant provision for calculating the time limit for appeal is Article R49 of the CAS Code which provides that *“the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against”*. The Sole Arbitrator notes that the first time the Appellant received written notification of the challenged Decision was via the circular letter dated 30 April 2011, sent by the ECU to all European Federations informing them that *“the general Assembly in Aix les Bains made the following decisions...”*. The appeal was filed on 20 May 2011, i.e., within 21 days of receipt of the challenged Decision. Accordingly, the Sole Arbitrator determines that the appeal was filed in due time and is admissible.

Merits

15. The issue facing the Sole Arbitrator is whether the Israeli bid was admissible. The Appellant claims that the Israeli bid should not be taken into account and the Decision should be annulled, which would result in the bidding process being reopened.
16. The procedure leading to the awarding of events is a fairly elaborate process and the Tournament Rules set out an elaborate bid system, the conditions of which are set out in Article C 1.1 of the European Chess Union Tournament Rules. This system provides for substantive requirements that should be met and also a system of points being awarded based on the various criteria.
17. A procedural requirement of the bidding system is the obligation to pay a bid fee – EUR 2,000 in this case. This fee must be paid within one week *“after the deadline”* to submit bids. The bid fee was initially due to be paid by 8 July 2010. However, on 23 July 2010, the ECU extended the original deadline for Israel to pay its bid fee until 15 August 2010. It is not disputed that the letter from the ECU extending the deadline arrived at the Israeli office during the summer holidays. The Israeli Federation made the payment as soon as its office re-opened on 25 August 2010 and payment arrived in the ECU account on 27 August 2010.
18. The Sole Arbitrator notes that Article 6 of the ECU’s Memorandum and Articles of Association provides that:
6. The Objects for which the European Chess Union is established are:
...
(d) to provide an organisation for the promotion and participation of chess in all related existing and future activities, tournaments and other competitions and seminars within its said jurisdiction;
...
(g) to do all such other lawful things as are helpful to the attainment of the above Objects.
19. The Sole Arbitrator considers that the above article provides a legal basis for the ECU to act as it did; it was a reasonable exercise of its discretion to grant a short deadline for the Israeli Federation to pay its bid fee, particularly in light of the fact that the money was paid well in

advance of the Decision being taken in March 2011. The ECU granted the Israeli Federation an extension of time until 15 August 2010 to pay the bid fee and accepted the payment as being timely made when the Israeli Federation made the payment once its offices re-opened after the summer holidays on 25 August 2010.

20. The Sole Arbitrator notes that in March 2011 there were three bids on the table: Israel, Greece and Croatia. The only question the Sole Arbitrator considers relevant was to what extent the Israeli Federation's payment was made within the deadline for the purposes of the ECU's meeting in March 2011. It is clear that the payment had to be made by a certain date; as the payment was made within the extension of time granted, the Sole Arbitrator considers that the Israeli bid was lawfully considered.
21. Furthermore, the Sole Arbitrator notes that the ECU Board fixes the deadline for bids according to C 1.3 of the Tournament Rules and therefore has the right to extend it; the Sole Arbitrator considers that this is not just a question of practice but also statutory power.
22. The Sole Arbitrator notes that bid applications have procedural and substantive requirements. The ECU clearly considers that payment of bid fees is an administrative requirement, and it is probably for this reason that the ECU granted an extension to the Israeli Federation to make payments; the decision regarding the successful bid was made by the ECU on 29 March 2011; the Israeli Federation paid its bid fee on 27 August 2010; the ECU clearly considered the Israeli bid acceptable; similarly, the Israeli Federation in good faith believed it had an extension of time to pay its bid fee.
23. In addition, the Sole Arbitrator considers that it would be disproportionate to exclude a bid for late payment of EUR 2,000. In its submissions, the ECU draws a distinction between late payment and non-payment, with which the Sole Arbitrator agrees. At the time the decision was taken, payment had been made, and was made well in advance of March 2011.
24. Finally, in relation to the Appellant's claim that it should have been awarded the Event as it was the bidder with the highest evaluation of the bid and that the ECU "*unlawfully and without grounds*" applied Article C 2.5 of the Tournament Rules, the Sole Arbitrator notes that this argument was not substantiated by the Appellant in its appeal brief nor was it further developed in the Appellant's second written submission. As the Appellant has failed to discharge its burden of proof in relation to this claim, it must be dismissed.
25. In light of the above, the Sole Arbitrator believes that the right to host the Event was granted to Israel in accordance with the prevailing rules and practice. However, to avoid a similar situation in the future, the ECU would be well advised to notify decisions to extend deadlines to all interested parties, *i.e.*, other bidders.

Conclusion

26. The appeal filed by the Croatian Chess Federation is dismissed.

The Court of Arbitration for Sport rules:

1. The appeal filed by the Croatian Chess Federation on 20 May 2011 against the decision of the European Chess Union dated 29 March 2011 is dismissed.

(...)

4. All other or further claims are dismissed.