



Arbitrations CAS 2011/A/2360 & 2392 English Chess Federation & Georgian Chess Federation v. Fédération International des Echecs (FIDE), award of 3 July 2012

Panel: Prof. Jan Paulsson (France), President; Prof. Ulrich Haas (Germany); Mr Quentin Byrne-Sutton (Switzerland)

Chess

Nomination to the executive committee of a federation

Application of both national laws and other applicable principles of law according to Article R58 CAS Code

Requirement of a “confirmation” by the General Assembly

Appealable decision according to Article R47 CAS Code

Difference between decisions null and void eo ipso and “annullable” decisions under Swiss law

Relationship between Article R49 of the CAS Code and substantive Swiss law

Characterisation of a decision as “null and void” or “challengeable” and admissibility of the claim under Article R49 of the CAS Code

1. **The applicability of both national laws and other applicable principles of law concomitantly falls within CAS panels’ discretion to apply the “rules of law ... which the panel deems appropriate”. This discretion, as per Article R58 of the CAS Code, is of course subject to a requirement that the CAS panel provide reasons where it applies any rules of law other than the law in which the relevant association is domiciled.**
2. **Article 9.6 of the FIDE Statutes refers to a “nomination” of the Vice Presidents by the President whereas Article 2 of the Electoral Regulations provides for the “nomination and confirmation” of the Vice Presidents. Such ambiguity is resolved by considering that the Electoral Regulations constitute the more detailed – the *lex specialis* – set of electoral rules against which the FIDE Statutes must be read. Thus, the process of “nomination” set out in Article 9.6 of the FIDE Statutes is effectively completed once it is “confirmed” by the General Assembly, as required by Article 2 of the Electoral Regulations.**
3. **A refusal of the FIDE Presidential Board (PB) to entertain an internal appeal and, thus, in effect, dismiss the claim of the appellants for lack of jurisdiction amounts to an appealable decision in terms of Article R47 of the CAS Code. This is so irrespective of whether the PB was materially correct or not in its appreciation of the extent of its jurisdiction as an internal reviewing body.**
4. **Under Swiss law, the decision or resolution may be either null and void *eo ipso* or only “annullable”. If a decision is null and void *eo ipso* it is deprived of any legal effect from the outset and any person can rely on this finding at any point in time, i.e. a person is not time barred in claiming that the decision is null and void. In order for an “annullable” decision to cease having any legal effect, a court must render a judgment**

in that respect in accordance with Article 75 of the Swiss Civil Code (SCC), and may do so only if seized within a time limit of 30 days.

5. Article R49 of the CAS Code is not limited to appeals filed against “*annullable*” decisions. First, nothing in the wording indicates such a limited scope of applicability of said provision. Second, an argument that Article R49 must be applied in light of Article 75 SCC and the distinction made in that connection between “*null and void*” and “*annullable*” decisions, simply cannot fit with what must have been the intention of the drafters of Article R49, since that provision is designed to apply to all parties appealing decisions to the CAS whatever the substantive law applicable to the dispute. Article R49 purports to place an admissibility threshold upon all appeals, without reference to the substantive law applicable to a dispute before CAS and is not intended to alter the law applicable on the merits. Article R49 only deals with the admissibility of the claim in front of the CAS and not with the merits of a specific claim.
6. Swiss law clearly gives precedence to the will of the parties as regards the applicable procedure for international arbitrations subject to the Swiss Private International Law Act. Therefore, the time limit for the commencement of claims set out in Article R49 of the CAS Code, being part of the procedural rules chosen by the parties to appeal arbitration proceedings brought before CAS, is applicable irrespective of the fact that other time limits may exist for filing appeals in front of State courts. Consequently, the substantive characterisation of a decision as “*null and void*” or “*challengeable*” and the effect of such characterisation on the time limit set out in Article 75 SCC are irrelevant to the procedural admissibility of the claim under Article R49.

The two Claimants are the national chess federations of England and Georgia. They are member federations of the Respondent.

The Respondent is the Fédération Internationale des Echecs (FIDE), the governing international body of the sport of chess.

This dispute revolves around the nomination, during the 81st FIDE Congress in Khanty-Mansiysk from 29 September to 2 October 2010 (the “FIDE Congress”), of five individuals – Chu Bo, Ali Nihat Yazici, Israel Gelfer, Ilya Levitov and Boris Kutin – as FIDE Vice Presidents (the “Five Vice Presidents”).

Below is a summary of the main facts deriving from the parties’ written submissions and the pleadings, as well as from the evidence adduced at the oral hearing. This summary is made for the sole purpose of providing a synopsis of the matter in dispute. Further details of the parties’ factual allegations and legal arguments are examined, where relevant, in the sections of this award dedicated to the summary of the parties’ contentions and in the legal discussion of the claims.

On 17 August 2010, the agenda for the FIDE Congress was published on the FIDE web site listing, *inter alia*, the following:

3.2 Validity of the candidacies and election for the combined Presidential ticket

3.3 Elections for the Continental Presidents

3.4 Nomination of the Vice Presidents

3.5 Election of Additional Vice Presidents

On 29 September 2010, the elections for the Presidential ticket took place, pursuant to which Kirsan Il'yumzhinov was elected as President of FIDE (the "President"). On that same date, the elections of Continental Presidents commenced.

On 30 September 2010, the elections of the Continental Presidents were completed. Whilst the agenda provided for the election of the Continental Presidents to be followed by the nomination of the Vice Presidents, the transcript of the FIDE Congress recordings evidence a deferral, in the following terms:

"Our next point is the nomination from the President. Kirsan is not here you know, and in any case because he is talking with Karpov which he has invited to accept the ... the place of one of the Vice Presidents, he doesn't – he prefers that he does not make the nominations at this moment, so we will proceed with the elections of the Vice Presidents".

On that same date, the elections of the three Vice Presidents to be individually elected by the FIDE General Assembly (the "GA") were commenced and were completed on 2 October.

On 2 October 2010, the President announced his nominations for the position of Vice Presidents, to which Mr. Zurab Azmaiparashvili, the representative of the Georgian Chess Federation (the "Georgian Representative") objected. The transcript of the FIDE Congress's recording provides, *inter alia*, as follows:

"FIDE President Kirsan Il'yumzhinov

Dear Delegates,

Now I want to announce my nominations. You know that I want to concentrate all my time now for FIDE activities and chess development in all countries and you know that the main programme now for me this is Chess in schools and that's why I need my assistants, people who help me because now as I have only one position ...

I want to ask your approval. [small pause] Nomination of Vice Presidents: - Mr. Chu Bo, China [applause]. You know him. Ilya Levitov, you know him [applause]. You should all know him because Ilya did a lot, did a lot for preparation and organisation of this Olympiad in Khanty-Mansiysk. Thank you. Ali Yazici, Turkey [applause]. Israel Gelfer [applause]. ... Thank you. Boris Kutin [applause]. You know him.

...

Mr. Azmaiparashvili

Dear Mr. President, dear delegates. It is strange what President is doing here because he violated our Statutes. He cannot nominate, you know, 5 Vice Presidents, we only have two places there, even Deputy President was trying yesterday to put my name there without consultation with me. I declined this because we have to follow the

Statutes, I object what Mr. President offered. And it should be in the Minutes I will use all my rights if Mr. President do not change his decision. Thank you.

FIDE President Kirsan Illyumzbinov

Thank you, Zurab, for your information. Yes, I understand. We discussed you know, that after our elections, because opposite team of Anatoly Karpov and that's why I decided to discuss how we can work for the next four years ...

Mr. Azmaiparashvili

Excuse me, objection

Mr. Makropoulos

Please

FIDE President Kirsan Illyumzbinov

Georgios, please.

Mr. Makropoulos

There is a procedure.

Mr. Azmaiparashvili

I am a delegate and do not stop me here. I am not Mr. Kasparov. The President is lying here. I want to say that decline any position, including what they are offering now. I decline any position in FIDE.

Mr. Makropoulos

Zurab, can we respect the procedure.

Mr. Azmaiparashvili

I will go for legal procedures.

Mr. Makropoulos

There is any other objection? There is any other objection? Zurab please. There is any other objection? Thank you very much. There is one objection from Azmaiparashvili.

The minutes of the FIDE Congress broadly reflect the transcript of the recordings, and provide as follows:

“President announced his nominations and submitted them to the General Assembly to confirm their appointment. He said that he wanted to concentrate all his time on FIDE and he needed extra assistants to help him carry out his programme, especially with Chess in Schools. He would concentrate all his efforts, connections and all his money on FIDE activities.

Vice Presidents – Mr. Chu Bo (CHN), Mr. Ilya Levitov (RUS), Mr. Ali Nihat Yazici (TUR), Mr. Israel Gelfer (ISR) and Mr. Boris Kutin (SLO)

Honorary Vice Presidents – Prof. Kurt Jungwirth (AUT), Prof. Vanik Zakarian (ARM), Mr. Dabilani Buthali (BOT), Mr. Khalifa Al-Hitmi (QAT). FIDE Ambassador for Life – GM A. Karpov (RUS).

He had talked with Mr. Karpov who said that he wants to work for FIDE. He requested him to ask the delegates of the General Assembly for a position as FIDE Ambassador for Life.

Mr. Azmaiparashvili said that the President is violating the Statutes. He cannot nominate 5 Vice-Presidents, he only has two positions. He objected and we have to follow the statutes.

Mr. Ilyumzhinov thanked Mr. Azmaiparashvili and said that is why he decided to discuss with all parties how we can work for the next four years. He had invited Mr. Karpov to be a Vice President and he had asked his opinion regarding who he wants to nominate in the team. Mr Karpov suggested Mr. Kurchenkov, head of the Karpov team to have a position in FIDE.

He had discussed the future work with members of his former team and with many delegates. He wanted to involve everyone and he wanted their active work, as he wants to work for FIDE 24 hours a day. He wanted chess in schools in all 170 member federations. He had announced that he will put 1 mln USD from his private foundation for the preparation of trainers and arbiters. And many FIDE people will work in this and many other Commissions.

Mr. Azmaiparashvili said he had declined all positions and he will go for a legal procedure, this is an official objection from Georgia.

The Deputy President, Mr Makropoulos, asked the meeting if there were any objections to the confirmation of the nominations. He said there is one objection from Mr. Azmaiparashvili of Georgia. He asked if there were any further objections but no other objections were raised”.

On 8 October 2010, FIDE issued an announcement entitled “Elections and Nominations from Khanty-Mansiysk”, listing the Five Vice Presidents as “Nominated Vice Presidents”.

On 25 October 2010, Silvio Danailov, the President of the European Chess Union, sent FIDE a letter on behalf of fourteen member federations of FIDE, including the Appellants, protesting the Vice Presidential appointments on the basis that such nominations violate Article 9.6 of the FIDE Statutes and Article 2 of the FIDE Electoral Regulations. The letter requested that FIDE (i) immediately remove all the Five Vice Presidents; and ensure that a proper procedure is followed in the nomination and confirmation of vice presidents; or (ii) alternatively, that at least three of the Vice Presidential appointments be revoked.

On 10 November 2010, Mr. Makropoulos, FIDE’s Deputy President, responded to the federations’ letter noting that the decision was taken by an overwhelming majority of the GA, which exceeded the 2/3 majority required to amend the statutes. He noted that only one objection was raised to the decision, and that alterations to the FIDE statutes by the GA had taken place on a number of previous occasions, listing a number of examples.

On 7 January 2011, the President of the European Chess Union sent FIDE a letter on behalf of the Appellants and 16 other chess federations noting that they wished to appeal the nomination of the five Vice Presidents, and requesting details of the deadline and procedure for an appeal to the FIDE Presidential Board (PB). The letter noted that the FIDE Presidential Board was the appropriate body for the appeal, for the following reasons:

According to Article 9.4 of the FIDE Statutes, “[e]very party concerned may appeal against the decisions of the President to the General Assembly”. The next General Assembly will take place in 2012. We cannot wait two

years, as this would lead to deciding on the impropriety of the nominations only after the Vice Presidents had already served half their terms. Article 4.1 of the FIDE Statutes, among other things, transfers the powers of the General Assembly to the Executive Board when the General Assembly is not in session. But the Executive Board will not convene in the ordinary course for nearly another year. This is also too long a period to wait for a decision regarding the improper appointment by the FIDE President of five Vice Presidents. The Presidential Board is charged with the “day-to-day management of FIDE ... and exercises the rights of the General Assembly and the Executive Board between meetings of the General Assembly and Executive Board respectively. A Court of Arbitration for Sport arbitral tribunal recently confirmed the interim decision-making power of the FIDE Presidential Board in decision CAS 2010/O/2166.

On 21 January, Mr. Jarret, an executive director of FIDE, responded to the federations’ letter noting that that the 7 January 2011 letter was unsigned. The letter noted that the *“decision of the General Assembly became final and entered into force. Nobody challenged it which is not surprising since all FIDE members (except one) agreed with the confirmation of the nominations”*.

On that same date, the Appellants submitted an appeal to the PB by means of a letter to the FIDE Secretariat, enclosing a number of factual and legal exhibits, and requesting the appeal be considered during the PB’s meeting of 3-6 February 2011 in Antalya, Turkey. The appeal contended that the appointment of the Vice Presidents was a decision of the President, and not of the GA. In the alternative, it noted that to the extent the decision was one of the GA, such decision was *null and void* under Swiss law. The letter requested that the PB: (a) determine that the nominations of the Five Vice Presidents were invalid; (b) immediately remove all Five Vice Presidents from office; and (c) ensure that FIDE observes the proper nomination process.

On 8 February 2011, the Georgian Representative wrote to FIDE requesting information about the pending appeal. On that same day, Mr. Jarrett responded noting that the minutes of the PB meeting would state that *“[t]he Presidential Board has seen Annex 34. Without discussion, it notes that the issue has been decided by the last General Assembly”*. This was confirmed in an excerpt of the minutes of the PB.

In accordance with Articles R47 and R48 of the Code, the Appellants filed their Statement of Appeal in the procedure CAS 2011/A/2360 on 24 February 2011, challenging an alleged refusal by the PB to set aside the appointment of the Five Vice Presidents by the President.

On 2 March 2011, the Respondent wrote to CAS requesting the appeal be dismissed pursuant to Article R49 of the CAS Code as it was *“manifestly late”*.

On 10 March 2011, the Respondent filed a request pursuant to Article R49 of the CAS Code, arguing that the appeal filed by the Appellants was *“manifestly late”*.

On 10 March 2010, the Appellants responded to the Respondent’s R49 Request.

On 16 March 2011, the Deputy President of the CAS Appeals Arbitration Division informed the parties that he was not satisfied that the appeal was *“manifestly late”* and that any issue as to the admissibility of the appeal would be considered by the Panel in due course.

In accordance with Articles R47 and R48 of the Code, on 29 March 2011, the Appellants filed a Statement of Appeal in the procedure CAS 2011/A/2392, challenging an alleged decision by the GA to confirm the appointment of the Five Vice Presidents.

On 5 April 2011, the Respondent filed a Request for Security for Costs.

In accordance with Article R51 of the Code, and in light of a decision by the Deputy Division President of CAS to consolidate the two appeal procedures, on 18 April 2011 the Appellants filed an Appeal Brief, dealing with both procedures.

On 25 April 2011, the Appellants filed their Response to Respondent's Request for Security for Costs.

In accordance with Article R55 of the Code, on 8 June 2011 the Respondent filed its Answer.

On 27 June 2011, the Panel issued a Procedural Order, dismissing the Respondent's Request for Security for Costs.

On 3 August 2011, the Panel issued an Order for Document Production.

On 19 August 2011, the Appellant filed its Rebuttal Brief.

On 7 September 2011, the Panel issued a Procedural Order with various directions for the parties including a decision as to the admissibility of the new evidence adduced in the Appellants' Rebuttal Brief.

On 9 September 2011, the Appellants filed a redacted version of their Rebuttal Brief.

On 12 October 2011, the Respondent filed its Rebuttal Brief.

On 23 November 2011, the Panel issued a Procedural Order with various directions for the parties including a decision as to the admissibility of the new evidence adduced in the Respondent's Rebuttal Brief, and requiring the parties to agree on an indicative hearing schedule.

The Respondent filed a redacted version of its Rebuttal Brief on 28 December 2011.

The Panel convened an oral hearing on Wednesday 11 and Thursday 12 January 2012 at the Hotel de la Paix, Lausanne, Switzerland.

The following witnesses were heard by the Panel:

Appellants' witnesses

Mr. Zurab Azmaiparashvili

Mr. Morten Sands

Respondent's witnesses

Mr. Nigel Freeman

Mr. Boris Kutin

Mr. Israel Gelfer

Mr. Geoffrey Borg

Mr. Willi Iclicki

Mr. Ignatius Leong

Furthermore, the Panel held a joint session with the parties' experts on Swiss law, Prof. Lukas Handschin (for the Appellants) and Dr. Urs Scherrer (for the Respondent) on 12 January 2012.

LAW

CAS Jurisdiction

1. Article R47 of the CAS Code provides that:

"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. In accordance with this Article, the Panel considers that it has jurisdiction to hear this appeal in light of the broad submission to arbitration set out in Chapter 14.1 of the FIDE Statutes, which provides that:

"FIDE hereby subscribes to the final settlement of any dispute directly or indirectly related to chess 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 FIDE, to be sent to the Court of Arbitration for Sport in Lausanne without recourse to any other court or tribunal, as earlier subscribed to by FIDE on 11 October 1995".

3. Issues of admissibility, such as the existence of a "decision", the exhaustion of internal remedies and the timeliness of the appeal are examined by the Panel further below.

Applicable law

4. Pursuant to Article R58 of the Code of Sport-related Arbitration (the "CAS Code"), "[t]he Panel shall decide the dispute according to the applicable regulations and the rules of the 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. The parties disagree as to the scope of this provision.
6. On the one hand, the Appellants contend that the Panel is empowered, pursuant to Article R58, to apply concomitantly Swiss law and any other principles of law it considers appropriate, and in particular general customs of sports law, i.e. *lex sportiva*.
7. On the other hand, the Respondent submits that general principles of law (e.g. *lex sportiva*) are inapplicable when the parties base their case on domestic Swiss law. It contends that Article R58 of the CAS Code provides that in the absence of a choice a panel must decide a dispute “*according to the law of the country in which the federation ... which has issued the challenged decision is domiciled or according to the rules of law, the application of which the panel deems appropriate*”. The Respondent argues that this provision requires Panels to make a choice between the applicable domestic law or the application of the rules of law, rather than both.
8. The Panel considers that the Respondent’s interpretation of Article R58 is unduly restrictive. It has been the practice of CAS Panels to apply both national laws and other applicable principles of law, and it is the Panel’s view that the applicability of both such bodies of law concomitantly falls within the Panel’s discretion to apply the “*rules of law ... which the panel deems appropriate*”. This discretion, as per Article R58, is of course subject to a requirement that the Panel provide reasons where it applies any rules of law other than the law in which the relevant association is domiciled.
9. This Panel has thus considered the Appellants’ arguments relating to Swiss law and to *lex sportiva*.

FIDE’s Constitutional Framework

10. The FIDE Statutes and Electoral Regulations provide, *inter alia*, as follows:

Statutes

Chapter 3

... The President and all other FIDE officials and organizations are elected or nominated and confirmed, as the case may be, for a period of four years.

Chapter 4

4.1. The General Assembly, being the highest authority of FIDE, exercises the legislative and - unless otherwise defined below - also the executive power. It supervises the activities of the Executive Board, the Presidential Board, the President and also the other FIDE officials and organizations. It approves the FIDE budget, elects the Presidential Board, Ethics Committee, Verification and Constitutional Committees and determines the schedule of FIDE activities.

When the General Assembly is not in session its powers are transferred to the Executive Board. However, the Executive Board cannot take decisions on the following:

election of officials - as previously defined

changes in Statutes,

matters of Rules Commission,

matters of Qualification Commission.

All decisions taken by the Executive Board shall be reviewed by the following General Assembly. The World Champion and the Women`s World Champion shall be invited to attend the General Assembly with consultative voice, but no vote.

4.4. Each member-federation represented in the General Assembly has one vote. The other participants in the General Assembly have a consultative voice only.

The discussions may be carried through on the basis of a speaker`s list to be kept by the General Secretary. the chairman can take the floor as often as required also outside the order of the speaker`s list. Motions of order (closing of the speaker`s list, closing of the discussion, adjournment of the agenda point, removing the point from the agenda) may be made at any time on a point under discussion. These motions should be considered and decided upon at once in so far as they do not entail an interruption of the session.

The same goes for objections because of violation of the statutes. Proposals regarding amendments or supplementary proposals will be treated only if they are seconded by another voting member.

4.7 Votes are made orally. Votes on elections are to be made by secret ballot, unless otherwise decided by a two-third`s majority ...

Chapter 7

7.1. The Presidential Board is the managing organization of FIDE and is in charge with the day-to-day management of FIDE. It resolves on all matters not otherwise and explicitly reserved to another body by those Statutes. The Presidential Board exercises the rights of the General Assembly and the Executive Board between meetings of the General Assembly and the Executive Board respectively. Such powers include taking decisions which require a 3/4 majority vote pursuant to Standing Order to 1.2. Any rights so exercised have no continuing effect beyond the following General Assembly unless so authorized by the requisite majority vote.

However, the Presidential Board cannot take decisions on the following:

election of officials,

changes in Statutes,

Rules Commission matters,

Qualification Commission matters,

Budget reviews.

7.2. (GA `96) The Presidential Board consists of the President, the Honorary President, the Deputy President, the General Secretary, the Treasurer, the Vice Presidents, the four Continental Presidents, World Champion, Women`s World Champion and the Honorary Vice-Presidents.

Honorary Vice Presidents are ex officio members of the Presidential Board without vote. The Auditor shall be invited to all the Presidential Board meetings. The Auditor should not be a member of the Presidential Board when he is elected by the General Assembly.

In the event of any vacancy occurring on the Presidential Board, it shall be filled from within the Board by the Board, except in the case of a Continental Presidency vacancy which shall be referred for election by the particular continent, provided that the membership of the Presidential Board does not drop below the statutory requirements.

A Steering Committee consisting of the President, Deputy President, First Vice President, General Secretary and Treasurer can convene as necessary to discuss urgent and developing issues. All actions taken by the Steering Committee must be ratified by the Presidential Board.

Chapter 9

9.4. Every party concerned may appeal against the decisions of the President to the General Assembly.

9.6. At the conclusion of elections for the Presidential ticket, the President shall be entitled to nominate 2 additional Vice-Presidents and no more, as the 2nd and 3rd Vice-Presidents with voting rights on the Presidential Board to be covered under the financial regulations for an initial term of four years.

Electoral Regulations

Article 2

2. Other Elections

A defeated candidate from the Presidential ticket may accept nomination for any elected office, immediately following the election of the combined ticket.

The nomination and confirmation of the 2 appointed Vice Presidents shall be made in the General Assembly immediately after the election of the Continental Presidents.

After the appointment of the 2 Vice Presidents, the individual elections of 3 additional Vice Presidents take place.

Only candidates with written nominations made by FIDE delegates, Federation Presidents, Zonal Presidents, Executive Board members or Presidential Board members, are eligible to be elected.

The FIDE Auditor and the Verification Commission members, The Chairman of Ethics Committee and the Committee members and the Constitutional Committee members are all elected after the Vice Presidents.

Article 3

To secure a fair and impartial electoral process, three scrutineers, a chairman and two members, shall be appointed for the elections.

Preceding the elections, there shall be a roll-call, in alphabetical order, to establish the number of votes possible (GA '93)

Marked ballots shall be prepared for the elections, with the names of the candidates if there is more than one for a given office.

Excerpt of the parties' submissions

11. In summary, the Appellant's primary position, set out in CAS 2011/A/2360, characterises the decision to appoint the Five Vice Presidents, during the FIDE Congress, as a unilateral decision of the FIDE President. In that appeal, the Appellants challenge the decision by the PB not to consider their appeal against this alleged decision by the President to appoint the Five Vice Presidents. They argue that the PB should have considered the appeal in light of a number of breaches of FIDE Statutes, Electoral Regulations, Swiss law and *lex sportiva*, including:
12. In the alternative, the Appellants have commenced CAS 2011/A/2360, to address the possibility that the decision to appoint the Five Vice Presidents could be construed as a decision of the GA. Thus, in that appeal, the Appellants directly challenge a decision by the GA to confirm the appointment of five Vice Presidents. The Appellants argue that the breaches which have led to this decision are so serious as to render the decision *null and void* under Swiss law, consequently rendering the time limits set out in Swiss law and in the CAS Code for commencing an appeal inapplicable. The Appellants accept that the threshold for nullity under Swiss law is high, but argue that in the present instance this threshold has been met.
13. In summary, the Respondent argues that the only appealable decision is a decision by the GA to elect the Five Vice Presidents.
14. In relation to the claim in CAS 2011/A/2360, the Respondent argues that the appeal to the PB was misplaced, insofar as the PB had no authority to hear an appeal against a decision of the GA and did not in any event render any decision. In the alternative, the Respondent argues that if the PB indeed had the authority to hear the appeal presented by the Appellants, then the Appellants have not exhausted their internal remedies, as there remains the possibility to appeal the PB decision to the Executive Board and to the next GA.
15. More generally, in relation to both CAS 2011/A/2360 and CAS 2011/A/2392, the Respondent challenges the alleged breaches of FIDE Statutes, Electoral Regulations, Swiss law and *lex sportiva* raised by the Appellants. In particular, the Respondent argues that:

Preliminary issue – the nature of the vice presidents' appointment

16. The rationale underlying the commencement of two separate appeals by the Appellants lies in the disputed characterisation of the initial decision to appoint the Five Vice Presidents. As outlined above, the Appellants' primary claim seeks to characterise the appointment as one made unilaterally by the President, whereas the Respondent argues that the decision was ultimately taken by the GA.
17. The characterisation of the appointment of the Five Vice Presidents thus goes to the heart of both appeals, and has a significant bearing on the relevance of a number of arguments made by the parties, as well as on the admissibility of each appeal. In light of this, the Panel has examined

as a preliminary matter the parties' contentions as regards the precise characterisation of the original decision to appoint the Five Vice Presidents.

18. The Appellants argue that the appointment of the Five Vice Presidents was a decision by the President.
19. They explain that the Five Vice Presidents were nominated pursuant to the power granted to the President by Article 9.6 of the FIDE Statutes, and that the GA was never required to "confirm" the appointments. They contend that the reference to "confirmation" in the Electoral Regulations simply allows the GA to "confirm that [the] appointments have been made". In that respect, they submit that FIDE procedure distinguishes between elections, where votes are counted, and appointments, and that FIDE's practice of announcing nominations and asking for any objections does not transform the process into an election. They contend that the Agenda of the FIDE Congress, and the Minutes of the FIDE Congress, provide for the "nomination" of Vice Presidents. They explain that the power to nominate two Vice Presidents has been validly delegated under Swiss law from the GA to the President.
20. In support of their position, the Appellants invoke:
 - a. Article 2 of the Electoral Regulations which in the Appellants' view confirms that the Vice Presidents are appointed by the President, rather than by the GA, when it states that "the nomination and confirmation of the two appointed Vice Presidents ... after the appointment of the 2 Vice Presidents" (emphasis added).
 - b. Article 4.7 of the FIDE Statutes which provides that "[v]otes on elections are to be made by secret ballot, unless otherwise decided by a two-thirds majority". The Appellants argue that the fact that no such secret ballot was held is evidence that no election by the GA took place.
21. The Appellants also argue that there is no debate or deliberation within the GA over the suitability of the nominees, and that the applause is simply an acknowledgment by the delegates of the nominations made by the President rather than a decision by acclaim. They contend that the minutes of the 2006 GA do not even mention the confirmation of the Vice President nominations, and that any such confirmation in any event significantly differs from normal elections.
22. Further, the Appellants contend that there is no such concept as a vote by acclaim under Swiss law. Rather, they explain that acclaim is a reference to the absence of a democratic vote, for example if a position needs to be filled and there is only one candidate. Moreover, they emphasise that even if such a procedure existed, normal election procedures must apply, such as making the assembly aware that a resolution will be taken, and give the opportunity to the members to request a secret vote. They argue that acclaim can thus only validly confirm a decision in case of unanimity.
23. The Respondent challenges the characterisation, by the Appellants, of the appointment as a decision by the President. Rather, they explain, with reference to the transcript of the FIDE Congress recording (where the President "asks [the] approval" of the Delegates), that the President submitted his nominations to the FIDE Delegates at the GA, who, by clapping,

expressed their agreement – by acclaim - with the names proposed by the President. Thus, the decision to appoint the Vice Presidents was ultimately taken by the GA.

24. The Respondent explains, by reference to Articles 4.1 and 7.2 of the FIDE Statutes, that the entire PB is “*elected*” by the GA, including the President’s nominees. It contends that Article 9.6 of the FIDE Statutes does not dispense with the requirement for an election. It also notes that Article 2 of Electoral Regulations, entitled “*other elections*” provides for the “*nomination and confirmation*” of appointed Vice Presidents. It argues in essence that the President “*proposed*” the candidates, but that the GA had to ratify and confirm such proposal by a decision of its own, which it did by acclaim.
25. The Respondent explains that voting by acclaim complies with Swiss Law, and that the only circumstance where such voting would not be allowed is where the association’s statutes prohibit it. In the case of FIDE, the Respondent explains that the only restriction on voting in the Electoral Regulations is under Article 3.1, in circumstances where there is more than one candidate for an office.
26. The Respondent contends that the reality and the practice, in FIDE and in other associations, is that most decisions are made by acclaim, or by the absence of any objection. The board proposes a decision, and it must be considered approved if nobody objects and requires a formal vote. In the present instance, the Respondent argues that the objection raised by the Georgian Representative recorded in the GA minutes and the transcript of the General Assembly recording, was immediately submitted to the FIDE General Assembly which, pursuant to Section 4.4 of the FIDE Statutes was obliged to decide at once any objection based on the violation of the Statutes. It contends that by asking twice whether other FIDE Delegates had an objection to the five nominations, and as no other objections were raised, the objection by the Georgian Representative was therefore rejected and the nominations of the Five Vice Presidents were confirmed by the GA.
27. In the Panel’s view, the characterisation of the decision to appoint the Five Vice President requires an analysis of both the constitutional framework of FIDE underpinning the decision, as well as the specific events which occurred during the GA.
28. Looking first at FIDE’s constitutional framework, the Panel considers that the FIDE Statutes and the Electoral Regulations contemplate the GA confirming the nomination of Vice Presidents. In reaching this conclusion, the Panel acknowledges that a level of ambiguity exists insofar as Article 9.6 of the FIDE Statutes refers to a “*nomination*” of the Vice Presidents by the President whereas Article 2 of the Electoral Regulations provides for the “*nomination and confirmation*” of the Vice Presidents.
29. However, this ambiguity is, in the Panel’s view, resolved by considering that the Electoral Regulations constitute the more detailed – the *lex specialis* – set of electoral rules against which the FIDE Statutes must be read. Thus, it becomes clear that the process of “*nomination*” set out in Article 9.6 of the FIDE Statutes is effectively completed once it is “*confirmed*” by the GA, as required by Article 2 of the Electoral Regulations, an act which formalises the appointment

process. When read alongside Chapter 3 of the FIDE Statutes, which provide that “*the President and all other FIDE officials and organizations are elected or nominated and confirmed*”, it is clear to the Panel that a “*confirmation*” process by the GA is thus required for the appointment of Vice Presidents.

30. This interpretation of the FIDE constitutional framework is, in the Panel’s opinion, borne out by the actual events during the GA. In particular, the Panel considers that the President’s request for the FIDE Delegates’ “*approval*” for the appointments and the fact that Mr. Makropoulos – however abruptly – made requests for objections to the appointments, clearly suggests that the process was seen as an effective confirmation by the GA, rather than a unilateral decision by the President.
31. For these reasons, it is the Panel’s view that the decision to appoint the Five Vice Presidents was a decision taken by the GA. However, whilst the *existence* of such a decision is accepted by the Panel, the *validity* of the decision is a matter which relates to the merits of this claim.

CAS 2011/A/2360

A. Admissibility of the appeal

32. The principal admissibility thresholds relevant to this appeal are set out in Articles R47 and R49 of the CAS Code, *viz*:
 - a. That a “*decision*” has been rendered by the relevant association (Article R47);
 - b. That the appellant has “*exhausted the legal remedies available to him prior to the appeal*” (Article R47); and
 - c. That the appeal has been filed within the time limit of “*twenty-one days from the receipt of the decision appealed against*” (Article R49).
33. The Panel has considered the admissibility of CAS 2011/A/2360 in light of the three admissibility thresholds set out above.
 - a) Was there an appealable decision?
34. The Appellants contend that the decision being appealed to CAS is the refusal of the PB to set aside the decision to appoint the Five Vice Presidents, and that this constitutes an appealable decision pursuant to Chapter 14 of the FIDE Statutes, as it has been interpreted under Swiss law.
35. The Appellants argue that the PB’s refusal to make a decision is appealable under CAS case law. They explain that the nature of the decision of the PB was a decision of refusal to consider a case for lack of jurisdiction, which is considered an example of negative decision. Alternatively,

they note that the statement to the effect that “*the issue had been decided by the last General Assembly*”, as set out in the minutes of the PB meeting, constituted a challengeable implicit decision.

36. The Respondent contends that whilst formal decisions with a negative content can be challenged under Article 75 of the Swiss Civil Code and/or Article R47 of the CAS Code, these provisions do not apply in cases where no decision has been taken at all. It argues that the statement by the PB to the effect that the issue had been decided by the General Assembly was not a decision within the meaning of Article 75 SCC and/or Article R47 of the CAS Code.
 37. It submits in any event that the PB’s statement to the effect that the decision had already been taken was correct as the Georgian Representative’s objection, during the GA, to the nomination of the Presidents was fully considered, in light of the Georgian Representative’s objection, and then rejected by the GA immediately pursuant to Article 4.4 of the FIDE Statutes. Consequently, it argues that the PB never had the power to hear the appeal raised by the Appellants, and could thus not have made a decision relating to it.
 38. In the case at hand, the Appellants by letter dated 21 January 2011 lodged an internal appeal to the PB against the (alleged) appointments of the Vice-Presidents by the President. In this letter the Appellants made it clear that they wanted the PB – in its function as an (alleged) internal review body of FIDE – to annul the appointments made by the President. The PB refused to entertain this internal appeal and, thus, in effect, dismissed the claim of the Appellants for lack of jurisdiction. Whether the PB was materially correct or not in its appreciation of the extent of its jurisdiction as an internal reviewing body, the Panel find that this refusal of the PB amounts to a “*decision*”.
- b) Other admissibility thresholds
39. The Appellants lodged the appeal with CAS against the refusal of the PB to act as an internal reviewing body on 24 February 2011. This refusal of FIDE was communicated to the Appellants – pursuant to a request for information about the pending internal appeal – on 8 February 2011. Thus, the deadline for appeal to CAS provided for in Article R49 of the CAS Code was complied with.
 40. Finally, the Panel must examine whether or not all means of internal recourse have been exhausted. In the Panel’s view that is the case. Nowhere in the statutes and regulations of the FIDE is it provided that a second internal level of review must be accessed prior to appealing to the CAS. Since the PB was called upon to decide upon the Appellants’ request dated 21 February 2011 as a first instance internal reviewing body and since the PB refused to entertain the appeal and, by doing so, drew to a close the internal reviewing process, the appeal to CAS is admissible.

B. *On the Merits*

41. The Panel considers that the present appeal to CAS must be dismissed on the merits whether or not the PB was correct in not entertaining the appeal. As discussed and decided above, Mr. Chu Bo (CHN), Mr. Ilya Levitov (RUS), Mr. Ali Nihat Yazici (TUR), Mr. Israel Gelfer (ISR) and Mr. Boris Kutin (SLO) acquired the position as Vice-Presidents only through the act of confirmation/approval by the GA. Hence, it is only this final act - if any – that could have interfered with and potentially violated the Appellants' rights. However, that final act is not the object of the appeal in the case CAS 2011/A/2360. For the foregoing reasons, this appeal must be dismissed on the merits.

CAS 2011/A/2392

A. *Admissibility*

42. The Panel has considered the admissibility of CAS 2011/A/2360 in light of the three admissibility thresholds set out above, in turn.
- a) Was there an appealable decision?
43. The Panel is satisfied that the decision of the GA to appoint the Five Vice Presidents constitutes an appealable decision pursuant to Article R47 of the CAS Code.
- b) Has the Appellant exhausted internal remedies?
44. The Panel is satisfied that the GA is the highest decision making body in FIDE, and that no internal appeal can be made against the decisions of the GA. Thus, the Panel is satisfied that internal remedies have been exhausted as required by Article R47 of the CAS Code.
- c) Was the appeal timely?
45. The Appellants contend that the appeal is timely, insofar that the decision of the GA is “*null and void*” under Swiss law and under *lex sportiva*. The Appellants' arguments as regards the nullity of the GA's decision are outlined in Section VIII above.
46. The Appellants argue that a null and void decision is not subject to the time limit set out in Article 75 of the Swiss Civil Code (SCC) or Article R49 of the CAS Code.
47. The Respondent has contested the Appellants' characterisation of the decision as “*null and void*”. The Respondent's arguments as regards the nullity of the GA's decision are outlined in Section VIII above.

48. The Respondent also argued, during the oral hearing, that by agreeing to Article R49 of the CAS Code the Parties have altered the scope of exercise of their rights under the applicable substantive law (Swiss law), in the sense that even if the breach of an association member's rights is serious enough to render the association's decision null and void *eo ipso*, the validity of that decision may only be challenged through an appeal lodged with CAS within the time limit of Article R49 of the CAS Code.
49. It is undisputed between the Parties that on the merits – inter alia – Swiss law applies. Nor do the Parties differ as to Swiss law in relation to decisions or resolutions of the general assembly of an association that breach state law or the statutes or regulations of the association. Under Swiss law, the decision or resolution may be either null and void *eo ipso* or only “*annullable*”. If a decision is null and void *eo ipso* it is deprived of any legal effect from the outset and any person can rely on this finding at any point in time, i.e. a person is not time barred in claiming that the decision is null and void. In order for an “*annullable*” decision to cease having any legal effect, a court must render a judgment in that respect in accordance with Article 75 SCC, and may do so only if seized within a time limit of 30 days.
50. It is further undisputed between the Parties that they agreed to the application of the CAS Code, which under Article R28 refers to Lausanne as the seat of the arbitration. Consequently, by virtue of the arbitration being seated in Switzerland and involving at least one non-Swiss party, the present appeals are subject to the Arbitration chapter of Switzerland's Federal Code on Private International Law of 18 December 1987 (the “Swiss PIL Code”), as the *lex arbitri*, which provides, *inter alia*, that “*the parties may directly or by reference to rules of arbitration regulate the arbitral procedure*” (Article 182). It is also undisputed that the Parties are thus subject to Article R49 of the CAS Code, whereby appeals against decisions must be filed, in principle, within a deadline of 21 days.
51. What is disputed between the Parties is the relationship between Article R49 of the CAS Code and the above-summarized contents of the Swiss law applicable to the merits, since at first sight they could appear contradictory. Thus far, the cases forming CAS jurisprudence have not resolved this issue. In CAS 1997/O/168, cited by the Appellants, the Panel acknowledged that there might be a conflict between Article R49 of the CAS Code and substantive Swiss law. However, in the end the arbitrators there did not need to decide how to resolve the conflict, since the parties in that case agreed on the non-applicability of Article R49 of the CAS Code. The situation is different here, since the Respondent has not waived the applicability of Article R49 of the CAS Code.
52. Contrary to the view held by the Appellants, the Panel finds that Article R49 of the CAS Code is not limited to appeals filed against “*annullable*” decisions. First, nothing in the wording indicates such a limited scope of applicability of said provision. Second, in the Panel's opinion, the Appellants' argument that Article R49 of the CAS Code must be applied in light of article 75 of the SCC and the distinction made in that connection between “*null and void*” decisions on the one hand and “*annullable*” decisions on the other, simply cannot fit with what must have been the intention of the drafters of Article R49, since that provision is designed to apply to all

parties appealing decisions to the CAS whatever the substantive law applicable to the dispute. In other words, subject to the parties being entitled to agree on a different time limit, Article R49 purports to place an admissibility threshold upon all appeals, without reference to the substantive law applicable to a dispute before CAS. Whether an exception to this rule must be accepted and an appeal allowed after the expiry of the deadline if a decision of an association violates international public policy can be left unanswered, since in the view of the Panel no such violation has occurred in the case here.

53. For sake of clarity, the Panel underlines that in its view Article R49 of the CAS Code is not intended to alter the law applicable on the merits. If the latter differentiates between decisions that are null and void and those that are only “*annullable*” this situation remains unchanged. Article R49 of the Code comes into play at a different level. It only deals with the admissibility of the claim in front of the CAS and not with the merits of a specific claim. Thus, in a case where an association’s decision were null and void, it would not become materially valid merely because the time limit in R49 of the CAS Code has expired. Instead, the member would only be procedurally barred from filing a principal action against said decision. However, nothing would prevent the same member to avail himself in a different context of the fact that the decision is null and void.
54. Swiss law clearly gives precedence to the will of the parties as regards the applicable procedure for international arbitrations subject to the Swiss PIL Code. Therefore, the time limit for the commencement of claims set out in Article R49 of the CAS Code, being part of the procedural rules chosen by the parties to these arbitration proceedings, is applicable irrespective of the fact that other time limits may exist for filing appeals in front of State courts as provided for example by Article 75 of the SCC as interpreted by Swiss law.
55. Consequently, the substantive characterisation of the underlying decision as “*null and void*” or “*challengeable*” and the effect of such characterisation on the time limit set out in Article 75 of the SCC are irrelevant to the procedural admissibility of the claim under Article R49 of the CAS Code.
56. It is thus unavailing for the Appellants to seek to circumvent the 21 days time limit set out in the procedural rules of the CAS Appeal procedure, as the Appellant seeks to do in the present instance, by reference to Article 75 of the SCC.
57. For these reasons, the Panel holds that CAS 2011/A/2392 is inadmissible, having been brought later than 21 days following the receipt of the decision being challenged.

B. *The Panel’s finding on the merits*

58. The Panel has reviewed and duly considered both parties’ pleadings on the merits, and notes that these at the very least raise a number of *prima facie* issues regarding the clarity of the FIDE Statutes and Electoral Regulations, and regarding the internal governance of FIDE. However,

having decided that CAS 2011/A/2392 is inadmissible, the Panel will not address in this award the parties' pleadings on the merits, which have been outlined above in Section VIII.

59. Nevertheless, the Panel would encourage FIDE to assess critically its past practice in light of the texts of its statutes and regulations, so as to maintain an appropriate level of transparency in its decision-making process.

Other claims

60. The Panel, having considered and dismissed the Appellants' appeals, will not address the arguments raised by the Respondent relating to the Appellants' lack of standing to commence the proceedings, the Respondent's allegation that the appeal is an abuse of right by the Appellants and the Respondent's allegation that the source of financing of the Appellants' claim raises questions of standing.

The Court of Arbitration for Sport rules:

1. The appeal filed by the Appellants on 24 February 2011 (CAS 2011/A/2360) is dismissed.
2. The appeal filed by the Appellants on 29 March 2011 (CAS 2011/A/2392) is inadmissible.
3. (...).
4. (...).
5. All other claims for relief are dismissed.