



Arbitration CAS 2011/A/2592 Turkish Chess Federation (TCF) v. European Chess Union (ECU), award of 22 March 2012

Panel: His Hon. Judge James Robert Reid (United Kingdom), President; Mr Pantelis Dedes (Greece); Mr Hans Nater (Switzerland)

Chess

Awarding of the organisation of two chess tournaments

Final decision

Evaluation process

- 1. If no final decision has yet been taken as to the awarding of a tournament, any relief sought by the Appellant in relation to that awarding is inadmissible.**
- 2. Disappointment at the failure to obtain the right to stage a tournament is no basis for an unsuccessful bidder to challenge the decision awarding the organisation of the tournament, in absence of evidence of any flaw in the evaluation of the bids.**

The Appellant is the Turkish Chess Federation (TCF).

The Respondent is the European Chess Union (ECU). It is an association pursuant to Articles 60 *et seq.* of the Swiss Civil Code and it has its seat at Hünenberg, Switzerland.

By this appeal the relief which the TCF primarily seeks is (1) to set aside the award of the 2013 European Youth Chess Championship to the Montenegro Chess Federation and to have it awarded instead to the TCF and (2) to have the 2013 European Senior Team Championship awarded to the TCF.

The ECU manages the European Chess Championships.

The ECU has sole jurisdiction to award the organisation of a chess tournament within zones 1.1 to 1.9 of the FIDE classification. The General Meeting of the ECU has issued a set of rules to govern such tournaments, entitled “European Chess Union Tournament Rules 2010”.

All ECU competitions are organised annually, with the exception of the European Team Championship, which takes place every two years. The organisation of each tournament is awarded by the ECU board to a European national federation after considering the bid applications made.

Rule C2.3 of the Tournament Rules 2010 provides that *“After the opening of bids the ECU Board shall decide on the inspector of the bids (or two inspectors if there are more than three bids)”*. The rule continues *“He shall visit the venue, check the details of the bid according to the ECU Standards for Chess Tournaments and be able to advise the organisers of necessary requirements and additional improvements”*.

On the opening of the application bids, the ECU board decides on the inspector of the bids. He must be an experienced organiser or an arbitrator. The inspector visits the proposed venues for the tournament and checks the details of the bids according to the ECU Standards for Chess Tournaments as set out in Annex 1 of the ECU Tournament Rules 2010.

Annex 1 sets out a *“Catalogue of criteria for the bid procedure”*. In it are seven categories and within each category a number of sub-categories. Against each sub-category is set a mark or range of marks which may be awarded.

Having made his inspections rule C2.4 provides that *“the inspector(s) shall give his(their) report and the evaluation for categories 1, 2, 4, 5 and 6 of Annex 1”* to a meeting of the ECU board. After discussion the ECU board decides on the evaluation of categories 3 and 7. It is for the inspector to determine the marks for each category other than categories 3 and 7. The marking in those categories is determined by the ECU board after discussion.

The organisation of the tournament is then awarded to the bidder with the highest evaluation. If the difference between the first and second placed bids, or between the first, second and third bids is less than 10% of the highest evaluation, the decision is referred to the General Assembly of the ECU which takes a vote between these bids.

On 30 April 2011, by circular letter no. 3/2011, the ECU board issued a call for tenders in relation to the 2013 tournaments and set a deadline of 1 July 2011 for bid applications.

In circular letter no. 3/2011 dated 30th April 2011, the ECU board wrote as follows:

“As you already know, the deadline for sending bids for all the ECU competitions for 2013 is 01 July 2011.

Attached, you will find:

The invitation for bid with explanation (annexe 3)

The ECU bid procedure with the Catalogue of criteria for the bid procedure adopted in Rijeka in 2010 and the official ECU Bid form (annexe 4)”.

On 30 June 2011, the TCF submitted application bids in respect of the organisation of the European Club Cup 2013, the European Senior Team Championship 2013 and the European Youth Chess Championship 2013. No claim is made by the TCF in respect of its bid for the European Club Cup and it need not be referred to further.

By circular letter no. 4/2011, the ECU board, inter alia, informed its members that it had received the following applications:

European Youth Championship: Sibenik (Croatia), Batumi (Georgia), Jerusalem (Israel), Budva (Montenegro), and Urgup-Cappadocia (Turkey)

European Senior Team Championship: Plovdiv (Bulgaria), Sibenik (Croatia), Dresden (Germany), and Antalya (Turkey).

The opening of the bids took place on 5 July 2011 in the presence, among others, of a representative of the TCF. Copies of all the bids were given to all interested parties.

On 11 July 2011 the ECU published all the bids received on its website. It did not publish annexes to the bids made by TCF. Copies of all bids were given to all interested parties.

The annex containing details and the TCF's own appraisal of its bid was missing and not published on the website. In this respect, the President of the TCF appealed to the ECU board without success. These appendices were not taken into consideration by the inspector.

The ECU appointed a single inspector, a member of the ECU management, D., the ECU Tournament Director.

The tournament rules stipulate that "*Only in exceptional cases, the ECU Board may decide to make no inspections*". In this case the ECU board determined that it was not necessary for the inspector to conduct inspections in those cities where an inspection had been conducted within the last two years and where the conditions remained the same, provided that the bidder agreed.

TCF was asked whether it agreed that an inspection should not be conducted in the cities of Antalya and Urgup and was informed that the scores which would be allocated in relation to those cities were in each case 20 (the maximum) for the hall and 20 (the maximum) for the food. TCF agreed that the inspector should not visit the cities.

Israel, Croatia and Greece (which had made a tender for the European Club Cup) were also asked to agree that their respective cities should not be visited and all agreed.

As a result of the determination that a number of cities should not be visited there were only three cities to be visited and the board of the ECU accordingly decided that only a single inspector should be appointed. D. was appointed as the inspector.

The inspector did visit Budva, as directed by the board of the ECU, even though a tournament had been organised in the city in 2009. This was because the hall intended to be used was a different hall from that used in 2009. On his visit S., the Executive Director of the ECU and in his own right a tournament organiser, met him at the airport and chauffeured him to the venues.

Having made his inspections D. compiled his report and evaluation which was presented to the board of the ECU at its meeting in Albena on 13 and 14 September 2011.

The board proceeded in accordance with rules C2.4 and C2.5 of the Tournament Rules. Those rules provide:

- “2.4. *In the meeting of the ECU Board the inspector(s) shall give his (their) report and the evaluation for categories 1, 2, 4, 5 and 6 of annex 1. The ECU Board decides on the evaluation for the categories 3 and 7 after discussion. Neither the inspector nor a member of one of the bidding federations shall take part in this discussion. The evaluation reports shall be published on the ECU website within one week after the meeting.*
- 2.5. *The bidder with the highest evaluation is awarded the event. In case the difference between 1st and 2nd place is less than 10% of the highest evaluation the ECU General Assembly shall take a vote between these bids. In case the difference between 1st and 3rd place is also less than 10% of the highest evaluation the ECU General Assembly shall take first a vote between 2nd and 3rd bid, and then a vote between the winner and the 1st bid. Presentations of bidders will be made on the evening prior to the General Assembly”.*

The board decided that the European Youth Chess Championship for 2013 should be awarded to the Montenegro Chess Federation to be held in the city of Budva.

So far as the European Senior Club Championship for 2013 is concerned, the marking for the bids from Sibenik, Croatia, Dresden, Germany and Antalya, Turkey were within 10% of the highest bid, so the board determined in accordance with Rule C2.5 that the decision should be referred to the General Assembly.

By a circular letter no. 5/2011 dated 19 September 2011, following a board meeting in Albena on 13 and 14 September 2011 the board notified the members as follows:

“Following the bid procedure according to chapter C Art 2.5 of the ECU Tournament Rules the following bidders are invited for a presentation to the ECU General Assembly in Porto Carras on November 5th:

European Senior Team Championship

Sibenik, Croatia

Dresden, Germany

Antalya, Turkey”.

The minutes of that board meeting were approved after two corrections had been made at a board meeting on 4 November 2011.

On 10 October 2011 the TCF commenced this appeal and as a result the General Assembly at Porto Carras was postponed to await the outcome of this arbitration.

By an appeal dated 10 October 2011 TCF sought the following award:

- A. Principally
- I. The decision by ECU to award the European Youth Chess Championship 2013 to Montenegro Chess Federation is cancelled.
 - II. The organisation of the European Youth Chess Championship 2013 is awarded to the Turkish Chess Federation.
 - III. The organisation of the European Senior Team Championship 2013 is awarded to the Turkish Chess Federation.

- IV. An equitable indemnity is due by ECU to the Turkish Chess Federation, that sum to be no less than CHF 20'000.-.
 - V. The costs of the proceedings are to be paid by ECU, which should also reimburse the costs paid in advance by the Turkish Chess Federation.
- B. Subsidiarily
- VI. The decision by the ECU to award the European Youth Chess Championship 2013 to Montenegro Chess Federation is cancelled.
 - VII. The ECU board is invited to initiate a new bid procedure for the European Youth Chess Championship 2013 and the Senior Team Chess Championship 2013 in accordance with the Statutes and the ECU Tournament Rules 2010.
 - VIII. The ECU is ordered to make a decision on the organisation of the European Youth Chess Championship 2013 and the European Senior Team Championship 2013.
 - IX. An equitable indemnity is due by ECU to the Turkish Chess Federation, that sum to be no less than CHF 20'000.-.
 - X. The costs of the proceedings are to be paid by ECU, which should also reimburse the cost paid in advance by the Turkish Chess Federation.

On behalf of the TCF it was submitted that the entire process for awarding the 2013 Championships was flawed.

The Rules required that the bids be published on the ECU website within one week after their opening. This was not done because the annexes to the TCF bid were not published. Since the bids had to be made on the official bid form it was inevitable that material would have to be added to it because there would not have been enough space to put everything on the form.

The single inspector appointed did not have the annex in which TCF set out its predicted bid score.

The single inspector was not an appropriate person to appoint as the inspector and in any event since there were more than three federations competing for the Senior Team Championship there should have been two inspectors appointed pursuant to rule C2.3. If there had been their joint views might have been very different.

The inspector's scoring was suspect: it was noted that a member of the ECU who was S., a tournament organizer and also a member of the management of the ECU, had met the inspector at the airport on his visit to Budva and chauffeured him to the hotel and hall which he inspected. This gave rise to suspicions as to the independence/impartiality of the inspector.

Although TFC had agreed to there being no inspection and to the receipt of maximum points in the relevant categories, it did so in ignorance of the fact that other venues were not being inspected and were also being awarded maximum points.

Since the Panel had at an interlocutory stage refused to appoint an independent inspector to re-inspect all the bids for the European Youth Championship and the European Team Championship

it might be that rather than awarding the events to TCF the proper course was to set aside the determinations of the ECU and to require it to hold a fresh bidding process for the two championships.

The TCF did not persist in its assertion that additional documents were transmitted by the Montenegro Chess Federation to the inspector, in violation of Rule C2.2, which provides that: “until the decision on the award, the bids may not be changed”. The material provided in the course of the inspection was material to make good the assertions made in the bid document, not material changing or enhancing the bid.

By a Statement of Defence dated 2 November 2011 the ECU submitted that heads of relief II, VII and VIII were not admissible and that they should be dismissed, further that all other motions should be dismissed.

On behalf of the Respondent it was submitted that there was no irregularity in the conduct of the bidding process. The evaluation of bids was always in some respects a subjective matter. The exclusion of the “predictive scores” submitted by TFC from the website and from the material put before the inspector was proper. It did not form part of the bid. The bid form could be (and in the case of the TCF was) completed on line and the size of the various boxes for completion could be enlarged to contain all necessary information. In any event the TCF’s view of what it was likely to score was immaterial.

The agreement of the TCF to forego an inspection in the knowledge that it would receive maximum points in the relevant categories was not in any way vitiated by the fact that other federations which forewent inspection also received maximum points in those categories.

The use of one inspector was justified. There were not more than three cities to be visited. The proper construction of the rules did not make it mandatory to have two inspectors if there were more than three bids.

There could be no criticism of the selection of D. He was an experienced inspector. The fact that he used (as customary) someone as a chauffeur to take him to the various venues to be inspected and to introduce him to the relevant people there was not improper. The suggestion that S. might have had an interest in the organisation of the proposed tournaments was unfounded as was shown by S.’s denial of the fact in his evidence.

A hearing was held on 3 February 2012 at the CAS premises in Lausanne. The parties did not raise any objection to the constitution or composition of the Panel. At the conclusion of the hearing the parties expressed themselves satisfied that they had had a full and fair hearing.

LAW

CAS Jurisdiction, Admissibility and Applicable Law

1. Under the terms of Article R47 of the CAS Code, an appeal against a 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 all legal remedies available to him prior to the appeal in accordance with the statutes or regulations of the said sports-related body.
2. By Section 58 of the Statutes of the ECU:
 - “(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 ECU does not dispute the jurisdiction of CAS, but notwithstanding it accepts the jurisdiction of CAS the ECU disputes the admissibility of so much of the TCF's appeal as relates to the decision of the board of the ECU to refer the question of the award of the 2013 Senior Team Championship to the General assembly of the ECU.
4. Subject to Article R58 CAS Code the Panel must decide a dispute according to the applicable regulations and in absence of a choice of law, to the law of the country in which the federation which has issued the challenged decision is domiciled. The ECU is domiciled in Hünenberg, Switzerland, and CAS must therefore apply to the Rules and regulations of the Respondent and subsidiarily, Swiss substantive law.
5. The ECU submitted that TCF's appeal is in the final analysis an action to set aside a resolution or decision of an association (Art. 75 CC). Such an action, if submitted, is only admissible against a final decision of the competent body of an association (RIEMER H.-M., Berner Kommentar, No. 14 ad Art. 75 CC). The ECU points out that under rule C2.4 of the Tournament Rules the ECU Board decides on the evaluation for the categories 3 and 7 after discussion and if the difference between 1st and 2nd place is less than 10% of the highest evaluation

the ECU General Assembly shall take a vote between these bids. In case the difference between 1st and 3rd place is also less than 10% of the highest evaluation the ECU General Assembly shall take first a vote between 2nd and 3rd bid, and then a vote between the winner of that vote and the 1st bid. The difference between first and third place was less than 10% so the ECU Board was obliged to submit the decision to award the European Senior Team Championship 2013 to the General Assembly which will determine to which national federation the European Senior Team Championship 2013 will be awarded. There has therefore been, it was submitted, no final decision by the ECU in respect of this.

6. The TCF submitted that the refusal of the Board to award the European Senior Team Championship was itself a final decision and hence the relevant parts of the claim were admissible.
7. In the view of the Panel the ECU's submission is correct and is unanswerable. All that the Board did was determine that in accordance with the rules the matter should be referred to the General Assembly. It made no final decision as to the award of the Senior Team Championship. The relief sought seeks to remove the right to make a decision as to the award from the ECU and to impose on the ECU a decision in a matter which it has not yet resolved. Since there has been no final decision by the ECU in respect of the award of the European Senior Team Championship 2013 those heads of relief claimed by the TCF in relation to that Championship are inadmissible.
8. The Panel adds that for the reasons which appear below even if this part of the appeal had been admissible it would have failed.

Merits of the Appeal

9. It is clear that the TCF is disappointed at its failure to obtain the right to stage these major chess tournaments. No doubt the other unsuccessful bidders are also disappointed. Disappointment however is no basis for challenging the decision which the ECU has taken in relation one of the tournaments and to seek to short-circuit the selection process in relation to the other.
10. There was an underlying suggestion in the TCF's case that the selection process had been "rigged" but that suggestion was not made overtly and although there was criticism of D.'s performance as an inspector no overt attack was made on his integrity. Having seen D. giving evidence the Panel is satisfied that any such attack would have been bound to fail and that he discharged his duties properly and to the best of his abilities.
11. Insofar as there was an attack on the selection of D. as the inspector the evidence showed that he was an experienced inspector. Even the former President (and current Honorary President of the ECU) who was called by the TFC and who did not regard D. as one of his favorite inspectors did not fault the appointment.
12. So far as the need to appoint two inspectors is concerned, the view of the Panel is that the proper construction of the rule is that if there are more than three bids for a competition

there is a power in the board to appoint two inspectors rather than one. It is not mandatory to do so. The clear object of the rule is to lessen the burden of inspecting where more than three venues have to be inspected, and no doubt to reduce the necessary time span for the inspections. The purpose of the rule is clearly to enable the two inspectors to split the inspections between them rather than simply to double the number of people visiting each venue.

13. Since various of the bidders forewent their right to an inspection having been told the marks which would be allocated to their venue in the absence of an inspection, there were not more than three venues to be physically inspected. In these circumstances it was not only permissible but sensible for the board to appoint only a single inspector.
14. As to the objection that TFC were unaware that the other bidders foregoing an inspection were also being awarded maximum marks, that is of no substance. The TCF could not have bettered its position by refusing to forego the inspection. Its marks could never have exceeded the maximum, nor could the refusal to forego an inspection have resulted in a reduction of the marks given to those others bidders who forewent an inspection.
15. The ECU board was correct not to publish on its website the annex to the TCF's bid in the form of its predicted evaluation or to include it in the material presented to the inspector. The requirement as to the form of the bid is explicit. It is that bid form which forms the basis of the inspector's evaluation: not the view that the bidder has as to the strength of its bid. Indeed it is difficult to see how such material could properly be given to the inspector. It can have had no other intended purpose than to influence him in his evaluation and marking of the venue.
16. It was suggested that in some way the production of confirmatory material to the inspector in the course of his evaluation might be a breach of the rules. The rule prevents a change in the bid. It does not prevent the provision during the course of the inspection of material to substantiate the terms set out in the bid. Rhetorically it might be asked whether the TCF would suggest that if in the course of considering the food available at the hotel to be used the inspector were provided with sample menus this would invalidate the bid. In the Panel's judgment there is no evidence to suggest any impropriety or breach of the terms.
17. In the end the TCF's complaint is that the inspector and the board which had the benefit of the inspector's report did not make the awards which the TCF felt it deserved. That does not justify the attack made on the decisions of the Board to award the European Youth Chess Championship 2013 to the Montenegro Chess Federation and to submit the decision as to the venue for the European Senior Team Championship 2013 to the General Assembly.

Conclusion

18. For these reasons the Panel holds that the appeal so far as the European Senior Team Championship 2013 is concerned is inadmissible but would have been dismissed even if

admissible and the appeal so far as the European Youth Chess Championship 2013 is concerned is dismissed.

The Court of Arbitration for Sport rules:

1. Claims A.III, and B.VII and VIII of the Appellant's claim are inadmissible.
 2. All other grounds of appeal are dismissed.
- (...).