

Tribunal Arbitral du Sport
Court of Arbitration for Sport

Ref: CAS 2009/A/1762 Jean-Paul Touzé versus the World Chess Federation

ARBITRATION AWARD

issued by the

COURT OF ARBITRATION FOR SPORT

composed as follows:

President: Maître Jacques **Baumgartner**, lawyer, Lausanne, Switzerland

Arbitrators: Mr Jean-Pierre **Karaquillo**, instructor, Limoges, France
Maître Michele **Bernasconi**, lawyer, Zürich, Switzerland

Ad-hoc Court Clerk: Maître Patrick **Grandjean**, lawyer, Lausanne, Switzerland

in the arbitration proceedings between

Mr Jean-Paul Touzé, Valdoie, France

Represented by Maître Bernard Alexandre, lawyer, Strasbourg, France

Appellant

versus

World Chess Federation (FIDE), in Lausanne, Switzerland

Represented by Maître Jean-Marc Reymond, lawyer, Lausanne, Switzerland

Respondent

I. THE PARTIES

1. Mr Jean-Paul Touzé was born on 19 June 1950 and is domiciled in France. He is a competitive chess player and is member of the French Chess Federation (hereinafter referred to as “FFE”), which is affiliated with the World Chess Federation. He is registered with the latter in the capacity of international referee.
2. The World Chess Federation (hereinafter referred to as “the Respondent” or “FIDE”) has national chess federations as its members. It is responsible in particular for organising chess matches, world championships and any other event falling under its auspices. Its headquarters are in Lausanne.

II. THE FACTS

II.1 Organisation of the 2005 World Youth Chess Championship

3. In 2001, FIDE entrusted Mr Jean-Paul Touzé with the organisation of the 2005 World Youth Chess Championship (hereinafter referred to as “the Championship”), which was to take place in summer 2005 in Belfort, France. This appointment was approved by the FFE in 2002.
4. In January 2005, FIDE questioned Mr Jean-Paul Touzé, informing him that they considered the prices associated with the accommodation as being too high. FIDE regretted the fact that the names and quality of the hotels reserved had not been communicated and it expressed concerns about the fact that the players would have to eat at the premises where the competition was being held and not at their hotel, as is usually the case for this type of event.
5. In February 2005, Mr Israel Gelfer, member of the “World Championship Committee” and “Presidential Board” of FIDE at that time, visited Belfort to meet Mr Jean-Paul Touzé and get an idea of all the logistical aspects relating to the preparation of the Championship. On this occasion, both men allegedly agreed on a series of improvements to be made to the organisation of the competition.
6. Subsequently and on a number of occasions, FIDE drew Mr Jean-Paul Touzé’s attention to certain elements of the organisation of the Championship that were open to criticism, in particular with regard to accommodation and eating arrangements. FIDE also informed Mr Jean-Paul Touzé that it disapproved of his lack of transparency and collaboration, as well as the tone and attitude he adopted in response to comments that were intended to be constructive.

II.2 The Championship

7. The Championship took place from 18 to 29 July 2005 in Belfort, France. 1094 players took part, aged between 10 and 18 years and from 82 different countries. If you include the competitor’s accompanying adults, the number of participants rose to almost 2000 people.

8. During and after the Championship, twelve delegations from different countries and a number of individuals expressly manifested their discontent with FIDE. The subjects of criticism were in particular a) the inadequacy of the competitors' reception and of their registration, b) the quality of the accommodation, which was well below the price paid, c) the great distance between the hotel and the place of competition, d) the insufficient transport for the players, e) the quality of the food, which was not suitable for children or for people coming from different cultures, f) the lack of good means of communication to allow the players to stay in touch with their close relations, g) poor Internet access, an essential tool for preparing for matches, h) delays and schedules that were inappropriate for players of a young age, i) the lack of and uncleanliness of toilets available, j) the stifling heat inside the competition room, k) the lack of amenities provided for a disabled participant.

II.3 First appeal arbitration proceedings before the Court of Arbitration for Sport (CAS 2006/A/1163 Mr Jean Paul Touzé vs. FIDE)

9. In August 2005, the Executive Committee of FIDE (hereinafter referred to as "the Executive Committee") met in Dresden, Germany. This meeting mainly discussed the inadequacies in the organisation of the Championship in general, and the case of Mr Jean-Paul Touzé in particular. Neither Mr Jean-Paul Touzé, nor the FFE were present at this meeting. The deliberations and decisions made by the Executive Committee were the subject of an announcement that FIDE published on its website in August 2005. In substance, it announced that:
- Twelve national chess federations had complained about the conditions in which the Championship took place
 - FIDE was unable to communicate with Mr Jean-Paul Touzé six months before the Championship was held
 - The quality of the organisation was not in line with a world-level championship, nor at the usual standard
 - The image of FIDE and the world of chess had suffered as a result of these numerous inadequacies
 - The Executive Committee had taken the following decisions (free translation):
 - “1. The organiser of this Championship in Belfort, Mr Jean-Paul Touzé, shall no longer have the right to organise FIDE events for a period of 5 years, with effect from 23 August 2005.
 - 2. All complaints expressed to the FIDE Secretariat shall be submitted to the FIDE Ethics Commission for additional examination. The organiser may present his observations. The Ethics Commission is entitled to recommend to the Executive Committee that it take additional measures.
 - 3. The Executive Committee invites the European Chess Union to take similar measures against the organiser with regard to matters concerning his competence.”

10. It is not disputed that FIDE never formally notified Mr Jean-Paul Touzé of its Executive Committee's decision. However, it has been established that Mr Jean-Paul Touzé became aware of this no later than September 2005.
11. On 3 February 2006, Mr Jean-Paul Touzé lodged an appeal with the FIDE Ethics Commission against the Executive Committee's decision of August 2005.
12. On 21 March 2006, Mr Jean-Paul Touzé's counsel wrote to the FIDE Ethics Commission to ask it to confirm that the appeal had been received and to indicate how long it would take to prepare the case.
13. On 23 March 2006, and with no other details, FIDE sent an undated document to the Appellant, which the Ethics Commission allegedly issued in March 2006 and which was entitled "*Decision of the FIDE Ethics Commission on the Youth World Chess Championship 2005 in Belfort (2005)*". The document succinctly mentions the discussions that took place within the Executive Committee during its meeting in Dresden in August 2005, the announcement published on the FIDE website and the various investigative measures taken by the Ethics Commission. However, no reference is made to the appeal lodged by Mr Jean-Paul Touzé on 3 February 2006. As a result of this document the FIDE Ethics Commission (back-translation of the words of the Respondent) "*arrived at the following conclusions*":
 - *The Ethics Commission proposes that FIDE formulate the conditions that must be met when organising events of this size and importance. These conditions must be verifiable and must be able to be monitored at each stage of the organisation.*
 - *It is recommended that once a matter has been transferred to the Ethics Commission, no decision should be taken by any other entity of the FIDE whatsoever, unless the Ethics Commission requires so.*
 - *No additional measure against the organisers is proposed. The Commission makes no comment on the measures taken by the Executive Committee.*
14. In the fax of 24 March 2006, Mr Jean-Paul Touzé's counsel drew the FIDE Ethics Commission's attention to the fact that he was surprised that in its undated document, the Ethics Commission did not comment on the measures taken by the Executive Committee. He concluded from this that: "*This wording does not appear [to him] to constitute a decision following the notice and grounds of appeal of MR TOUZÉ according to [his] appeal of 3 February 2006*". He therefore asked the said Ethics Commission to comment expressly on the appeal.
15. In the fax of 28 March 2006, FIDE acknowledged receipt of the above-mentioned correspondence of 24 March 2006 and promised that a reply would be delivered "*as soon as possible*".
16. In the fax and email of 2 April 2006, the legal adviser of FIDE, Mr Morten Sand, set out for the Appellant the general principles governing the internal

organisation of the Respondent, as well as the legal channels available depending on whether a decision is taken by its Executive Committee or by its Ethics Commission.

17. Mr Jean-Paul Touzé has always contested having received the correspondence of 2 April 2006, of which proof of the notification has not been able to be produced by FIDE.
18. On 18 April 2006, Mr Jean-Paul Touzé's counsel wrote to the FIDE Ethics Commission stating that he was still waiting for a response to the appeal of 3 February 2006 and to his correspondence of 24 March 2006.
19. The FIDE Ethics Committee has never responded to this correspondence of 18 April 2006.
20. In the notice of appeal of 29 September 2006, Mr Jean-Paul Touzé seized the Court of Arbitration for Sport (hereinafter referred to as "CAS"), requesting in particular that it: "**Annul or set aside the decision of the Ethics Commission of "March 2006" and the decision of the FIDE Executive Committee, the object of which was to ban Mr TOUZÉ from organising any FIDE event for a period of 5 years with effect from 23 August 2005.**"
21. In its award of 22 May 2007, the CAS declared the appeal to be partially admissible. The Arbitration Panel considered that FIDE had committed a miscarriage of justice that Mr Jean-Paul Touzé had grounds to contest before the CAS. The Panel also announced however that the internal legal channels had been neither exhausted nor respected, as the decision taken in August 2005 by the Executive Committee should have first been the object of an appeal before the FIDE General Assembly and not – as was the case – before the Ethics Commission. In this respect the Arbitration Panel stated that "*It would be after this appeal that there would be the possibility for the Appellant to challenge before the CAS a decision refusing to pursue the matter further or a negative decision taken by the General Assembly, and this within the time limits and forms set out in the FIDE Statutes. The question of the initial competence and disciplinary power of the Executive Committee to deliver the ban of 5 years could then be approached.*" (CAS 2006/A/1163 Mr Jean-Paul Touzé vs. FIDE, para. 54, page 12).

II.4 FIDE General Assembly 2008

22. On 16 November 2007, Mr Jean-Paul Touzé sent a letter to FIDE requesting that it put his case before the General Assembly 2008, which was asked to: "*annul the decision of the Executive Committee of which the object was to ban Mr TOUZÉ from organising any FIDE event for a period of 5 years with effect from 23 August 2005 and grant Mr [TOUZÉ], as compensation for the injury he has suffered, the sum of EUR 130,000.00.*" In his letter, Mr Jean-Paul Touzé not only presented his arguments but also expressly asked to be summoned before the General Assembly to be heard by it.

23. FIDE never responded to Mr Jean-Paul Touzé's letter, nor did they acknowledge receipt of it.
24. On 13 October 2008, FIDE stated on its website that the General Assembly 2008 would be held in Dresden from 23 to 25 November 2008. It also published the agenda on the website, item 17 of which concerned the re-examination of the Executive Committee's decision taken in August 2005 against Mr Jean-Paul Touzé. In this section a hyperlink gave access to the Appellant's letter of 16 November 2007.
25. On 14 November 2008 through its counsel, FIDE informed Mr Jean-Paul Touzé formally and for the first time of the fact that its General Assembly would announce a decision regarding his requests during its meeting of 24 November 2008 "*as announced on 13 October on the FIDE website*". It was stated that he would be able to express his arguments on this occasion.
26. On 17 November 2008, Mr Jean-Paul Touzé informed FIDE's counsel that, due to the lateness of his invitation to attend, it was not possible for him to prepare his defence or his travel arrangements to Dresden due to his reduced mobility linked to his disability of which FIDE was aware.
27. However, and within the time period given, Mr Jean-Paul Touzé took measures to be represented at the General Assembly by a person instructed to read a statement in his name. The person in question ultimately never appeared.
28. According to an undated extract of the minutes of the General Assembly entitled "*Decision taken by the General Assembly of the Fédération Internationale des Echecs (FIDE) in Dresden on the 24th November 2008*", it appears that the General Assembly approved, with regard to the substance, the decision taken by the Executive Committee in August 2005, however it reduced the duration of the ban issued against Mr Jean-Paul Touzé to three years. The General Assembly fully shared the Executive Committee's assessment of the seriousness of the inadequacies in the organisation of the Championship. However, it deemed that Mr Jean-Paul Touzé had to undergo a "*similar sanction*" to that envisaged in Article 3.4. of the FIDE Code of Ethics, which gives the most serious violation a maximum ban of 3 years.
29. The General Assembly's decision was notified to Mr Jean-Paul Touzé on 10 December 2008.

III. Proceedings before the Court of Arbitration for Sport

III.1 The appeal

30. In a notice of appeal dated 2 January 2009, Mr Jean-Paul Touzé brought his case before the CAS. In his statement of appeal, he made the following submissions:

“Annul or set aside the decision of the FIDE General Assembly of 24 November 2008 and the decision of the FIDE Executive Committee taken in Dresden in 2005.

Rule, consequently, that there are no grounds for sanction against Mr TOUZÉ.

Order FIDE to pay Mr TOUZÉ the sum of EUR 130,000.00 (or the equivalent in Swiss francs) in respect of damages, with interest at the rate of 5% per year with effect from the date of the decision to be taken.

Order the publication of the decision to be taken on the FIDE website for a minimum of three months, at the expense of FIDE.

Order FIDE to pay all costs of the arbitration proceedings and to repay Mr TOUZÉ the sum of USD 250 (or the equivalent in Swiss francs) in respect of advance fees for the appeal before the Ethics Commission.

Order FIDE to pay Mr TOUZÉ the sum of EUR 10,000.00 (or the equivalent in Swiss francs) in respect of contribution to Lawyer fees and all costs incurred for the requirements of the proceedings.”

31. In support of his submissions, Mr Jean-Paul Touzé raised the grounds and arguments that are, in substance, as follows:
- Even though Mr Jean-Paul Touzé does not have a vested right to organise FIDE events, the ban issued by the Executive Committee constitutes a true sanction. The Appellant is suffering a double injury from it. On the one hand, the ban deprives the Appellant of the opportunity of applying as a candidate and presenting a dossier for the organisation of a FIDE event. On the other hand, it dissuades any partner to associate with him for the organisation of championships (which are not within the competence of FIDE) due to the significant risk that FIDE would refuse to validate the results on the basis of an extensive interpretation of the Executive Committee’s decision. Consequently, Mr Jean-Paul Touzé has not been able to organise a chess championship since 2005.
 - In accordance with the applicable provisions, the Executive Committee did not have the power to ban Mr Jean-Paul Touzé from organising FIDE events. Such a sanction can only be determined by the Ethics Commission. For this reason, the disputed decision of the Executive Committee should be annulled.
 - In its decision of 22 March 2006, the Ethics Commission chose to not comment on the measures taken by the Executive Committee against Mr Jean-Paul Touzé and held that the organisers of championships should not

undergo any sanction. This decision has entered into force and is the only decision taken validly.

- At all stages of the proceedings, FIDE violated the general principals of the right of defence and systematically prevented Mr Jean-Paul Touzé from exercising his right to be heard, be it in writing or verbally.
- The inadequacies alleged against Mr Jean-Paul Touzé are void of any basis. It is inevitable that in an event of such magnitude as the Championship, certain people will be dissatisfied. Only 12 of 82 delegations complained to FIDE. Taking into account that almost 2000 persons were present, the Championship ran perfectly. Mr Jean-Paul Touzé managed the situation in an irreproachable manner, despite the fact that there was a higher number of participants than initially announced by FIDE and despite the indiscipline of certain federations.
- In reality, FIDE wanted to punish Mr Jean-Paul Touzé for supporting Mr Anatoly Karpov, when the latter intended to apply for the presidency of FIDE.
- Mr Jean-Paul Touzé's experience in organising chess tournaments earned him an excellent reputation on an international scale. The unjustified criticisms and unfair sanctions imposed on him by FIDE have caused him a financial loss in the region of EUR 130,000.

III.2 The reply

32. On 2 March 2006, FIDE sent the CAS its reply, which contains the following submissions:

"Based on the foregoing, the Respondent, World Chess Federation, asks the Court of Arbitration for Sport to rule as follows:

I. – All the submissions of the appeal are rejected

II. – Order Jean-Paul Touzé to pay FIDE the sum of CHF 16,000.00 in respect of costs as well as all costs of the present proceedings, in particular the costs of witnesses and interpreter that FIDE will calculate subsequently."

33. The arguments raised by FIDE can be summarised as follows:

- FIDE is free to decide to whom it grants the right to organise an event falling under its authority. By announcing that it will no longer assign the organisation of a FIDE championship to Mr Jean-Paul Touzé for a certain period of time, FIDE is violating no legal provision or provision provided for by the Statutes and is not depriving the Appellant of a vested right.

- The shortcomings of Mr Jean-Paul Touzé in the organisation of the Championship are established and justify him no longer being able to organise FIDE events.
- *“The serious inadequacies in the organisation [of the Championship] provoked ten or more complaints. It is indeed FIDE and not the Appellant whose reputation suffered as a result of the negligence of the latter.”*
- In accordance with the applicable regulations, the Executive Committee had the power to take the decision that was reviewed by the General Assembly 2008. Contrary to what is claimed by Mr Jean-Paul Touzé, the criticisms made against him are connected with the poor organisation of the Championship and not with the violation of values of an ethical nature. Consequently, the Ethics Commission had no need to intervene in this case.

III.3 The hearing of 2 June 2009

34. On 2 June 2009, a hearing was held in Lausanne, at the CAS headquarters.
35. At the opening of the hearing, the parties expressly confirmed that they had no objection to the composition of the Arbitration Panel.
36. The following persons were present at the hearing:
 - Mr Jean-Paul Touzé, accompanied by his lawyer, Maître Bernard Alexandre, assisted by Maître Hervé Guy, lawyer, Mr Jean-Claude Moingt and Mr Laurent Verat, president and director-general of the FFE respectively.
 - FIDE, represented by its secretary-general, Mr Ignatius Leong and its executive director, Mr David Jarrett, accompanied by Maître Jean-Marc Reymond, lawyer, accompanied by Maître Delphine Rochat, trainee lawyer, and assisted by Mrs Anne Marie El Nadi-Lo Russo, interpreter.
37. The Arbitration Panel heard the witness statements of Mr Anatoly Karpov, former world chess champion, Mr Jean-Louis Wolff, former deputy for sport of the town of Belfort, Mr Israel Gelfer, member of the “Presidential Board” of FIDE, Mr Michael Khodarkovsky, head of the US delegation, Mr Mario Merritt, head of the delegation of Trinidad and Tobago, Mrs Laura Franco and Mr Sebastiano Messina, each a parent of a child who took part in the Championship, and Mr George Mastrokoukos, responsible for the coordination of FIDE events and employed by the latter. Before they were heard, the attention of each witness was drawn to the possible consequences of providing a false statement.
38. At the end of the hearing, the parties expressly acknowledged that their right to be heard had been respected and that they were satisfied with the manner in which they had been treated during the present arbitration proceedings.

IV. IN LAW

IV.1 Competence of the CAS

39. The competence of the CAS is derived from Article R47 of the Code of Sports-related Arbitration (hereinafter called "the Code"), which stipulates the following:

"An appeal against the decision of a federation, association or other sports-related body may be filed with the CAS insofar as the statutes or regulations of the said sports-related body so provide or insofar as the parties have concluded a special 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."

40. The competence of the CAS is envisaged in Article 17.1 of FIDE's statutes and was expressly accepted by the parties in their documents and by the signature of the procedural order.

IV.2 Applicable law

41. Article R58 of the Code stipulates that the Arbitration 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 other sports-related body which has issued the challenged decision is domiciled, or according to the rules of law, the application of which the Arbitration Panel deems appropriate. In the latter case, the Arbitration Panel shall give reasons for its decision.
42. In the case in point, FIDE has its headquarters in Lausanne, Switzerland. The parties did not expressly choose any rules of law. Therefore FIDE's statutes and rules will be applied in the first place. Subsidiarily, Swiss law is applicable. This has been accepted without reservation by the Appellant, at the hearing and by the signature of the procedural order.
43. The Respondent has qualified the above insofar as it is of the opinion that, based on Article R45 of the Code, only Swiss law is applicable to Mr Jean-Paul Touzé's claim for payment of damages, this claim relating to the ordinary arbitration proceedings and not the appeal arbitration proceedings. This aspect is not to be settled in the present proceedings, given its result.

IV.3 The admissibility of the appeal

44. The notice of appeal was sent to the CAS on 2 January 2009, that is within the period of 21 days specified in Article R49 of the Code. Furthermore, it meets the conditions set out in Article R48 of the Code.

45. Consequently, the appeal is admissible, which moreover is not disputed.
46. In accordance with Article R57 of the Code, the Arbitration Panel shall have full power to investigate in fact and in law. This power allows it to hear the parties again on all the factual circumstances and the legal arguments they wish to raise, and to issue a definitive decision on the case concerned (FCLP v. IWL, CAS 99/A/252, p. 22; Mr De Bruin v. FINA, CAS 98/211, p. 19; G. Deferr & FREG v. FIG, CAS 2004/A/549, p. 8; CAS 2004/A/674 Fernando Correa v. FIFA; CAS 2005/A/983&984 Penarol v. Bueno, Rodriguez & PSG).

IV.4 The merits

47. The fundamental questions that the Arbitration Panel has been asked to settle are as follows:
- a) By declaring that Mr Jean-Paul Touzé will no longer have the right to organise FIDE events for a certain period, did the federation issue a sanction against Mr Jean-Paul Touzé?
 - b) Did the Executive Committee have the capacity to declare that FIDE will not grant Mr Jean-Paul Touzé the right to organise an event falling under its authority for a certain period?
 - c) Is Mr Jean-Paul Touzé entitled to claim compensation?
- a) **By declaring that Mr Jean-Paul Touzé will no longer have the right to organise FIDE events for a certain period, did the federation issue a sanction against Mr Jean-Paul Touzé?**

a.1) Preliminarily

48. In a press release published on its website in August 2005, FIDE announced that its Executive Committee had decided, on the one hand, that Mr Jean-Paul Touzé would no longer have the right to organise FIDE events for a period of 5 years and, on the other hand, that the case file would be transferred to the Ethics Commission for further investigation. With regard to this matter, it is indicated that Mr Jean-Paul Touzé was entitled to submit his comments and that, if necessary, the Ethics Committee could make its recommendations to the Executive Committee with regard to any possible additional measures to be taken.
49. The Appellant deems the decision taken by the Executive Committee (ratified in principle by the General Assembly 2008) to be a true sanction. He is of the opinion that the alleged shortcomings associated with the organisation of the Championship fall within the ambit of FIDE Code of Ethics, which grants exclusive competence to the Ethics Commission.
50. FIDE, on its part, disputes that the measure taken by its Executive Committee is a “sanction” and has pleaded before the Arbitration Panel that the Code of Ethics is not applicable for the simple and good reason that the criticisms held

against Mr Jean-Paul Touzé (poor reception, expensive hotels located far away, insufficient transport and toilet facilities, unsuitable food etc.) do not constitute a violation of ethical rules.

51. In its award of 22 May 2007 (CAS 2006/A/1163 Mr Jean-Paul Touzé vs. FIDE pages 9), the Arbitration Panel already found that FIDE had managed the situation in such a way that had created the impression that a disciplinary procedure had been taken against Mr Jean-Paul Touzé.

“47. Quite to the contrary, due to lack of transparency and because of questionable communication procedures, FIDE created a misleading impression. Thus, the Executive Committee's decision in August 2005 can be interpreted to mean that the Ethics Commission was formally called upon to issue a decision on the Appellant's case. Such an eventuality is, moreover, envisaged in Article 15.7.2 of FIDE's Statutes. In fact, Mr Jean-Paul Touzé did not have in his possession all the information that would have enabled him properly to assess the mission entrusted to the Ethics Commission. In particular, he did not have the "whereas" clauses of the Executive Committee's decision. However, as is clear from the evidence finally produced in the present proceedings, the Executive Committee wanted merely to consult the Ethics Commission, asking it simply for recommendations on the events surrounding the Youth World Chess Championship of 2005. The confusion was all the greater because, firstly, the document issued by the Ethics Commission is entitled "Decision of the FIDE Ethics Commission on the Youth World Chess Championship 2005 in Belfort (2005)" and because, secondly, that document was sent to the Appellant two days after he had approached the Ethics Commission to rule on his appeal. In those circumstances, Mr Jean-Paul Touzé could have thought that this document in fact constituted the Ethics Commission's decision on his appeal of 3 February 2006.

48. However, and as the Appellant himself has stated, the document issued by the Ethics Commission in March 2006 made no reference to his appeal of 3 February 2006 and gave no decision. Spurred on by this fact, on 24 March 2006 Mr Jean-Paul Touzé called for a clear determination by the Ethics Commission regarding the true nature of its "decision" and any link that it might have with his appeal. On 28 March 2006, FIDE promised the Appellant that it would inform him shortly of its stance. This promise was apparently sent to the Appellant on 2 April 2006, but the Appellant disputes ever having received it. The Respondent has not been able to demonstrate the contrary. The Panel has no reason to doubt the Appellant's statements on this subject, especially as he wrote to FIDE on 18 April 2006 expressing his surprise at not yet having received any news (...).”

52. The nature of the decision taken by the Executive Committee (and ratified in principle by the General Assembly 2008) is all the more ambiguous because a set of what are often contradictory circumstances surrounds it. For example, no indication is given of the regulatory or legal basis according to which the disputed decision was taken. Nevertheless, the Executive Committee appears to draw on the text of Article 3.4 of the Code of Ethics, which refuses an organiser who violates the said Code the right to organise FIDE events. Whereas in this last hypothesis the maximum ban is three years, the Executive Committee decided to ban Mr Jean-Paul Touzé for a period of five years, with effect from 23 August 2005. Such a period does not appear in any regulatory provision of FIDE. The situation is all the more disconcerting as the General Assembly 2008 reduced the said period to three years, based on the fact that the maximum ban envisaged in Article 3.4 of the Code of Ethics is a period of three years in the event of the most serious violation.
53. Furthermore, the terms used by FIDE are ambiguous. Whereas FIDE claims not to have issued a sanction against the Appellant, the General Assembly 2008 confirms that a “*similar sanction*” to that envisaged in Article 3.4 of the Code of Ethics must be applied in the case in point. However, FIDE has pleaded that Mr Jean-Paul Touzé does not have a vested right to organise FIDE events. In this context, it deems that it was not able to restrict the rights of Mr Jean-Paul Touzé, thereby confirming the absence of any sanction. Now, the disputed decision – as in Article 3.4 of the Code of Ethics – states that it “*refuses the right*” to organise FIDE events.
54. This unclear context is entirely attributable to FIDE which, had it been diligent, would have been able to spare the parties much time and energy. The Arbitration Panel regrets that such a significant federation as FIDE could not have been able to nor wanted to manage with greater rigour the dissensions against it with the Appellant. It is all the more deplorable as the Respondent criticises Mr Jean-Paul Touzé of shortcomings in his organisation whereas, in the same domain, the Respondent is clearly not exempt from criticism. All international federations have a duty to act in an exemplary manner, which was not the case here.

a.2) In particular

55. During August 2005, the Executive Committee decided that “*Mr Jean-Paul Touzé will no longer have the right to organise FIDE events for a period of 5 years, with effect from 23 August 2005*”. In a decision taken by the General Assembly, announced on 10 December 2008, the duration of the measure in question was reduced to three years.
56. In reality, under these circumstances, the question must be asked whether FIDE is able to refuse to conclude a contract for the organisation of a championship with a certain person for a specified period of time, without such a decision being identifiable with that of a disciplinary decision.

57. FIDE is an association under private law within the meaning of Articles 60 et seqq. of the Swiss Civil Code (CC). As such, it has a legal personality (Article 52 CC) and, consequently, enjoys private autonomy, which is one of the essential principles of law. In the law of obligations, this principle materialises in the principle of contractual freedom, which has various facets: freedom to conclude a contract or to refuse to, freedom in the choice of contractual partner and therefore freedom not to conclude a contract with certain persons, freedom of the object and form of the contract (ATF¹ 129 III 35, recital 6.1, p.42, JT² 2003 I 127, 133; Olivier Guillod/Gabrielle Steffen, Commentary in Swiss-French, Code of Obligations I, Geneva, Bâle, Munich, 2003, on Article 19-20 CO, N.28, p.127 and N.46, p. 130).
58. The obligation to contract is the exception (Pierre Engel, *Traité des obligations en droit Suisse* [Treaty of obligations in Swiss law], Bern 1997, p.98). It can ensue either from a contract or from the law. The case in point concerns only a possible obligation to contract based on a legal basis.
59. Generally, an obligation to contract does not solely exist when it is envisaged by an express legal basis. Indeed, such an obligation can ensue from the application of general principles of private law, such as the prohibition of behaviour that is contrary to accepted standards (ATF 129 III 35, recital 6.3 p. 45, JT 2003 I 127,136). The Swiss Federal Tribunal has found that a person who refuses to enter into a contract for no reason, even if the person has invited the public to submit offers, is not violating accepted standards of good behaviour and is not committing an abuse of right. There can only be an obligation to contract in exceptional cases, namely when a refusal, which is not justified by pertinent reasons, violates or threatens vital interests of the person affected (ATF 80 II 26, recital 4 c) p.37; JT 1955 I 136, 142). In the presence of an entity that enjoys a dominant position, the refusal of this latter to contract must be justified objectively and the contract must relate to goods and services that concern a normal need, namely goods and services that are accessible nowadays to everyone and used on a daily basis (ATF 129 III 35, recital 6, p.42, JT 2003 I 127, 133).
60. According to Article 8 CC, “*Each party must, unless otherwise stipulated by the law, prove the facts that it alleges in order to deduce its right from them.*” The burden of proof is incumbent on the applicant. It falls upon the applicant to prove the facts on which he bases his claim (ATF 123 III 60, recital 3a); CAS 2006/A/1141 *Moisés Moura Pinheiro v/ FIFA & PFC Krilja Sovetov*, p.17).
61. During the hearing, the Arbitration Panel was informed that chess tournaments were generally organised on the basis of a competition announced by the body overseeing the event in question. This could be FIDE, or a national or local federation. The candidates submit a dossier to a competent committee, which

¹ ‘Recueil des Arrêts du Tribunal Fédéral Suisse’ = Official Collection of the Decisions of the Federal Tribunal

² ‘Journal Tribunal’ = Tribunal journal

selects the most attractive offer and the one that best meets its expectations. The selection is made at the discretion of the body in question.

62. The Arbitration Panel expressly questioned Mr Jean-Paul Touzé on the remuneration that an organiser who was ultimately chosen could expect to receive. Without responding clearly to the question, Mr Jean-Paul Touzé made it understood that he carried out his work voluntarily. In any case, he did not provide proof of payment of any fees in relation to the various championships that he has organised.
63. Mr Jean-Paul Touzé has alleged that the decision of the Executive Committee dissuaded all partners to associate with him in the organisation of non-FIDE championships, for fear that the Respondent would refuse to validate the results. In the hearing, the representatives of FFE confirmed that it was due to this eventuality that they renounced the services of Mr Jean-Paul Touzé for the organisation of the French individual championship of 2009. During the investigation, it came to light however that neither Mr Jean-Paul Touzé nor FFE contacted the Respondent to ask whether their fears were justified. FIDE, for its part, repeated that only FIDE championships were the object of its Executive Committee's decision and that Mr Jean-Paul Touzé was free to organise tournaments falling under the auspices of other bodies. The Arbitration Tribunal has no reason to question this latter affirmation, which is supported by the text itself of the disputed decision and by the Respondent's rules and regulations, which distinguish FIDE events from other events. Likewise, Mr Jean-Paul Touzé has not established the number of offers he has actually submitted since August 2005 for the purpose of being awarded the organisation of chess championships and from which he has been excluded due to the disputed decision of the Executive Committee.
64. It follows from the foregoing that Mr Jean-Paul Touzé has not explained according to which legal provision FIDE was obliged to enter into a contractual relationship with him. He suggests at most that FIDE abused its dominant position in preventing him from exercising his activity as a tournament organiser. Such a claim must be rejected in the absence of tangible evidence regarding the financial loss in fact suffered and regarding the contract to which access was hindered in concrete terms. The allegations of Mr Jean-Paul Touzé are far too vague and general to be taken into consideration (CAS 2008/A/1700 Deutsche Reiterliche Vereinigung e.V. v/FEI & Christian Ahlmann; CAS 2008/A/1710 Christian Ahlmann v/FEI P18 para. 86). Furthermore, the Appellant did not even attempt to demonstrate that he submitted and/or was in a position to submit dossiers that were more advantageous and attractive and the candidates ultimately selected as part of a tender procedure relating to the organisation of chess championships. There is nothing to indicate that his possible exclusion – if there was indeed one – was not the result of a less attractive dossier than that of his competitors. Indeed, knowing that the activity of the organiser was not remunerated, Mr Jean-Paul Touzé cannot reasonably uphold that his financial interests – and still less his vital interests – were threatened. What is more, FIDE has justified its refusal to enter into a contract with the Appellant objectively, by referring to the complaints actually received from a dozen delegations and the inability to

communicate with Mr Jean-Paul Touzé six months before the Championship. Mr Jean-Paul Touzé has never disputed these criticisms, even though he has tried to minimise them. Inadequacies in the organisation of the Championship have been established and the reluctance of FIDE to renew its confidence in the Appellant does not therefore appear completely arbitrary. The alleged conspiracy organised by FIDE to punish the Appellant for his links with Mr Anatoli Karpov has not been supported by concrete evidence, apart from the witness statement of the latter, who is very close to Mr Jean-Paul Touzé (they have known each other since 1985 and have written a book together) and who is evidently not neutral. The accusation of reprisals by FIDE against the Appellant is serious and cannot be accepted without material and convincing evidence. Finally, and even in admitting that FIDE had to occupy a dominant position (a fact which was not established, in particular for the organisation of national or local tournaments), the organisation of championships cannot be considered as relating to “*a normal need*” within the meaning of the case law cited above (ATF 129 III 35, recital 6, p. 42, JT 2003 I 127,133), nor to goods and services which must be accessible to everyone and used on a daily basis.

65. It appears therefore that Mr Jean-Paul Touzé has not explained or established what the exceptional circumstance or legal basis is that could limit the contractual freedom of FIDE and oblige it to have to enter into a contract with him. In other words, FIDE has done nothing but exercise its contractual freedom by choosing not to assign the organisation of its events to the Appellant. To some extent and by publishing its decision on its website in August 2005, FIDE did nothing but limit in advance the circle of persons who could participate in its potential call for tenders, which, in the case in point, is not unacceptable. At the very least, Mr Jean-Paul Touzé has not proven the contrary.
66. Very indirectly, Mr Jean-Paul Touzé let it be understood that FIDE had injured his personal rights by deciding to no longer assign him with the organisation of FIDE events. Article 28 Paragraph 1 CC bestows upon a person who suffers illicit injury to his personality the right to take action in court to protect himself against any person participating in his injury. The guarantee of Article 28 CC extends to all essential values of the person that belong to the person as a result of his sole existence and that can be injured. In the case of high-level sport, it encompasses more particularly the right to health, bodily integrity, honour, professional consideration, sport and, with regard to professional sport, the right to development and financial improvement (ATF 134 III 193, 400).
67. However, Article 28 CC protects personal interests against illicit injury only. The behaviour of FIDE can only be illegal if it had a legal obligation to perform the service that it refused to the Appellant. Indeed, a person who abstains from an act that it is not obliged to carry out under a legal system is not acting illegally (ATF 80 II 26, recital 5 a) p.40; JT 1055 I 136, 143). For the reasons given above, in refusing to conclude an agreement with Mr Jean-Paul Touzé, FIDE did not exceed the limits of the rights it possesses according to the principle of the freedom of contracts.

68. For all these reasons, the Arbitration Panel has arrived at the conclusion that Mr Jean-Paul Touzé did not have a right to be assigned the organisation of FIDE events and that contractual freedom, and more particularly the freedom to conclude a contract, must prevail. FIDE has not contravened any legal or contractual basis that may have obliged it to enter into a contract with the Appellant. FIDE has simply exercised its right and therefore has not issued a sanction against Mr Jean-Paul Touzé. Therefore, the question concerning the exclusive competence of the Ethics Commission to issue a sanction does not need to be dealt with.
- b) Did the Executive Committee have the capacity to declare that FIDE will not grant Mr Jean-Paul Touzé the right to organise an event falling under its authority?**
69. Mr Jean-Paul Touzé is of the opinion that only the Ethics Commission could issue a sanction against him. However, and for the reasons given above, FIDE's decision does not constitute a sanction but must be conceived as the expression of its desire not to conclude a contract with the Appellant. The only question to be asked therefore is whether such a decision fell under the sphere of the Executive Committee's competence.
70. Article 23 of the Swiss Federal Constitution establishes the freedom of association for organisations which have, in accordance with article 63 paragraph 1 of the Swiss Civil Code, a large degree of autonomy in the establishment and application of regulations to manage their activities and relationships with their members. However, this autonomy is limited to the extent that such regulations cannot deviate from the rules which must be applied in accordance with a binding legal requirement (Article 63 Paragraph 1 of the Swiss Civil Code, cf. ATF 97 II 108, recital 2, page 113).
71. In this case, the General Assembly is the highest authority of FIDE. It exercises both legislative and, in principle, executive powers. In particular, it supervises the activities of the Executive Committee (Article 4.1 of FIDE's Statutes). Ordinarily, it is convened every other year, i.e. every even year (Article 4.12 of the Statutes). In order to be included in the agenda of a General Assembly, proposals must be received by the President of FIDE three months before the date of this General Assembly. Proposals submitted to the President within this time limit must in principle be included in the agenda (Article 4.11 of the Statutes).
72. During odd years, the powers of FIDE's General Assembly are transferred to the Executive Committee which, however, cannot take decisions on the election of officials within FIDE or on changes to the Statutes. The decisions taken in odd years by FIDE's Executive Committee can be reviewed by the following General Assembly (Article 4.1 of the Statutes). During even years, the powers of FIDE's Executive Committee are limited (Article 5.1 of the Statutes).
73. The Executive Committee delivered its decision against Mr Jean-Paul Touzé in August 2005, i.e. during an odd year. Based on the delegation of powers

expressly envisaged by the Statutes, the Executive Committee was at that time exercising the same powers as those attributed to the General Assembly. The decision taken in August 2005 did not involve the election of officials within FIDE or changes to the Statutes. This decision was therefore taken legitimately by an authorised body.

c) Is Mr Jean-Paul Touzé entitled to claim compensation?

74. Mr Jean-Paul Touzé considers that he is entitled to “*claim compensation for the damages he suffered as a consequence of the illegitimate sanction imposed on him and due to the bad publicity given to him in the world of chess*”. He claims a payment of the sum of €130,000 in damages.

75. The Appellant justifies his claim by the fact that his reputation has suffered from “*the very widespread publicity given to the sanction taken against him*”, that his right to be heard was never respected, that he has been unable to organise any competitions since 2005, and that FIDE has presented a distorted picture of the ruling of the CAS 2006/A/1163 on the case of Mr Jean-Paul Touzé versus FIDE.

76. Article 41 of the Swiss Code of Obligations (CO) stipulates as follows:
“*Anyone who causes damages to another person in an illegitimate way, either intentionally or by negligence or irresponsible actions, is obliged to provide compensation for this.*
Anyone who intentionally causes damages to another person in an illegitimate way, either or by negligence or irresponsible actions, is obliged to provide compensation for this.”

77. Article 49 of the Swiss Code of Obligations stipulates as follows:
“*Anyone who suffers unlawful injury against their personality is entitled to a sum of money by way of moral reparations, provided that the gravity of this injury justifies this and that the author of this offence has not provided compensation in some other way. The judge may replace this compensation or add to it with some other form of reparations.*”

78. In determining the amount of compensation to be paid, Article 42 of the Swiss Code of Obligations affirms the principle of requiring the claimant to provide evidence of the damages suffered (see Article 8 of the Swiss Civil Code). This principle applies equally to damage to someone’s reputation, covered in particular by Article 49 of the Swiss Code of Obligations (Franz Werro, Commentaire romand [‘Swiss Law Commentary in French’], Code des Obligations I [‘Swiss Code of Obligations I’], published in Geneva, Basel and Munich, 2003, on Article 42 of the Swiss Code of Obligations, item 2, page 289).

Article 42 of the Swiss Code of Obligations stipulates as follows:

“It is the responsibility of the claimant to provide evidence of the damages suffered.

When the exact amount of the damages cannot be established, the judge should determine a fair amount of compensation to be paid, taking account of the circumstances of the case and the actions taken by the injured party.”

79. The injured party must therefore prove not only the existence of damages but also the extent of these (ATF 122 III 219). Article 42 Paragraph 2 of the Swiss Code of Obligations establishes an exception to paragraph 1 of this article, and this exception is applicable in cases where the extent of the damages is impossible to prove or if the necessary proof cannot be submitted or the claimant cannot reasonably be expected to provide it. This exception does not free the injured party from his obligation to allege and present all the facts proving the existence of damages or which make it possible or easier to determine the extent of these (ATF 131 III 360, 265, recital 5.2).
80. In the case in point, the claims of Mr Jean-Paul Touzé are entirely founded on his affirmations. He has not provided any evidence confirming any loss of earnings resulting from the decision taken against him by FIDE in August 2005. In the same way, and concerning the possible damage to his reputation, Mr Jean-Paul Touzé has merely attempted to refute the complaints made against him in the witness statements made by several delegations and confirmed in the Court session. In these circumstances, the Arbitration Court has no evidence enabling it to apply Article 42 paragraph 2 of the Swiss Code of Obligations.
81. The Appellant has therefore not proven that the decision published by FIDE was illegitimate in any way, or that FIDE was at fault in this, or what were the damages caused by this decision, still less the extent of the claimed damage to his personality.
82. In these circumstances, the Arbitration Panel cannot accept and assess the compensation claim made by Mr Jean-Paul Touzé, so that this claim must be rejected.
83. Finally, in these circumstances and for the reasons explained above, all other or more detailed submissions by either party are rejected.

V. Costs

84. In accordance with Articles R64.4 and R64.5 of the Code of Sports-related Arbitration, the Court Office of the CAS will determine the final amount of the costs of arbitration, including the CAS Court Office fee, the administrative costs of the CAS, the costs and fees of the arbitrators and a contribution towards the expenses of the CAS. This final account may be included in the award or communicated separately to the parties. The arbitration award determines which party will bear the arbitration costs or in which proportion the parties will share them.
85. It is clear that in deciding to issue a formal decision against Mr Jean-Paul Touzé and publish this on its website, FIDE took steps which gave rise to this case, which has resulted in almost 4 years of exchanges of documents, questions and legal proceedings. The question can of course be raised as to whether this publicity was justified, which was probably intended to pacify the delegations who were disappointed by the way the Championship was organised.
86. This long and laborious legal dispute could have been avoided if FIDE had immediately clarified any ambiguity after the initial intervention by Mr Jean-Paul Touzé, who only attempted to exercise his right to let his side of the story be heard, which FIDE seemed willing to allow, while in fact it put obstacles in the way of this. In fact, it invited Mr Jean-Paul Touzé to present his case to the Ethics Commission, which never replied to him and which proved to be incompetent. In the extension of this case, CAS 2006/A/1163 Mr Jean-Paul Touzé versus FIDE, the appellant requested the Respondent on 16 November 2007 to allow him to address the next General Assembly. In a reply, on 14 November 2008, he was only invited to attend the next General Assembly with 10 days' notice, and it was to be held in Germany, which made it impossible for him to prepare his defence properly.
87. In view of the facts considered above, and even though this appeal must be rejected, 80% of the costs of these arbitration proceedings shall be paid by FIDE and 20% by Mr Jean-Paul Touzé. The final account of the costs of these proceedings will be prepared by the Court Office of the CAS and sent to the parties later.
88. In accordance with Article R64.5 of the Code of Sports-related Arbitration and for the reasons explained above, each party will pay its own costs.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

- I) The appeal lodged by Mr Jean-Paul Touzé on 2 January 2009 is rejected.
- II) 80% of the costs of the case are to be paid by FIDE and 20% by Mr Jean-Paul Touzé.
- III) Each party will pay its own lawyers' fees.
- IV) All other or more detailed submissions are rejected.

Lausanne, 28 July 2009

THE COURT OF ARBITRATION FOR SPORT

The President of the Panel

[Signature]

Jacques Baumgartner

Jean-Pierre **Karaqillo**,
Arbitrator

Mr Michele **Bernasconi**,
Arbitrator

Mr Patrick **Grandjean**,
Ad hoc Clerk