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Multiparty proceedings at CAS: co-claimants and the payment of costs

The CAS Code of Sports-Related Arbitration (“CAS Code”), which regulates the procedural aspects of ordinary arbitration proceedings, does not regulate multiparty arbitration in depth, establishing only some general rules under article R41 in relation to the formation of the Panel, joinder and intervention of other parties.

While CAS appeals involving co-appellants are quite common¹, cases involving co-claimants in ordinary arbitration proceedings are relatively rare².

Not even the Swiss Federal Statute on Private International Law (“PILA”) which, “*appl[ies] to all arbitrations if the seat of the arbitral tribunal is in Switzerland and if, at the time of the conclusion of the arbitration agreement, at least one of the parties had neither its domicile nor its habitual residence in Switzerland*” (Article 176), includes specific rules regarding multiparty arbitration.

However, as CAS is a Switzerland-based institution, which applies Swiss law subsidiarily, the provisions of the Swiss Civil Procedure Code (“CPC”) may be applied by analogy.

In particular, Article 376 paragraph 1 of the Swiss CPC reads: “*Arbitration may be initiated by or against joint parties if: A) all the parties are connected among themselves by one or more corresponding arbitration agreements; and B) the asserted claims are identical or factually connected*”.

Therefore, according to the Swiss CPC, two cumulative conditions are to be met for multiparty arbitrations to be allowed: there must be corresponding arbitration agreements and the claim must be at least factually connected.

In a recent case submitted to CAS, Lombardi Associates represented four individuals who had signed contracts with the same counter-party and therefore, such party was the one and only respondent in all four claims.

The arbitration clauses set out in the relevant contracts were exactly the same and the claims were identical on both a factual and legal basis.

¹ Particularly in relation to multiple members of the same team/squad etc. e.g. CAS 2015/A/4351 (players of a football club); CAS 2016/A/4703 (athletes of the same nationality); and CAS 2016/A/4708 (members of a canoe and kayak team).

² Only a couple of examples in recent years available on the CAS database, e.g. CAS 2017/O/5025 and CAS 2016/O/4684.

As a result, the claimants requested CAS to decide the cases in the same proceedings, for reasons of procedural economy and legal certainty.

Each of the four individuals paid a CAS Court Office Fee of CHF 1'000, meaning that CHF 4'000 was paid in total. The reason for this was in case CAS decided to open four cases separately, which would have led to four different arbitration procedures.

However, CAS accepted the request to open just one arbitration procedure: as a result, pursuant to Article R64.1 of the CAS Code, the claimants submitted to CAS that there had been an over-payment of CHF 3'000.

As there is no indication in the CAS Code that the Court Office Fee is to be paid on a per-claimant basis, it was the claimants' understanding that the one-off payment of CHF 1'000 due at the beginning of each procedure is paid per procedure.

Therefore, although Article R64.1 of the CAS Code states that the Court Office Fee is non-refundable, at the end of the proceedings the claimants submitted that because only one procedure had been opened, only CHF 1'000 should be considered as the Court Office Fee. As a result, the Claimants requested CAS to refund the remaining CHF 3'000.

Such refund request was granted by CAS, which therefore confirmed that in cases where there are co-claimants, and only one procedure is opened, only one Court Office Fee must be paid and the costs will effectively be on a per-procedure basis rather than per claimant.

This not only effects the Court Office Fee, but also has an impact on the advance of costs pursuant to Article 64.2 of the CAS Code. It is unlikely that the level of the advance of costs set by CAS for one procedure involving co-claimants would be as high as the total costs set if the claimants submitted individual claims and multiple procedures were opened.

This situation could encourage more claimants to file claims together in multiparty proceedings, where the conditions so allow, in the knowledge that the procedural costs and the initial Court Office Fee could be divided amongst the group, potentially creating a more cost-effective procedure for all claimants.

This could even lead to claimants filing claims that otherwise would not have been filed if individuals had to bear the costs on their own. Parties could decide to be united from the very beginning of a claim, creating "class action" style proceedings, knowing that it would be dealt with by CAS as one procedure and would optimise cost efficiency.