

International Commercial Arbitration

1. (40%)

The Turkish Basketball club A concludes an employment contract (hereinafter referred to as “the Agreement”) with the American Basketball Player B for the season 2014/2015, which finishes on 10 May 2015. The Agreement contains an arbitration clause that reads as follows:

Any disputes arising out of this Contract shall be solved in accordance with the Rules of FIBA Arbitral Tribunal (BAT) in Geneva, Switzerland. The seat of arbitration shall be Geneva, Switzerland. The arbitration shall be governed by chapter 12 of the Swiss Act on Private International Law (PILA) Irrespective of the parties’ domicile.

B is of the view that A breached the Agreement and that because of that he is entitled to damages in the amount of CHF 100,000. All attempts to solve the dispute amicably have failed. After A was advised that B had assigned his alleged claim for damages to the player’s agent C, it initiates state court proceedings against C before the local Turkish courts on 15 May 2015. In these court proceedings A seeks declaratory relief that it is not liable for any amounts towards C. C, on his part, initiates arbitration proceedings against A before the BAT in Geneva on 18 May 2015, claiming the payment of CHF 100,000. B objects to the arbitration proceedings on a number of grounds, i.e.:

- that the state court proceedings initiated in Turkey bar the arbitration procedure before the BAT because of *lis pendens*;
- that the arbitration clause is no longer valid because it is an integral part of the Agreement, and the latter expired at the end of the basketball season 2014/2015 on 10 May 2015;
- that the arbitration agreement was not concluded between the parties in dispute, i.e. A and C;
- that that there is no signed agreement between A and C;
- that the Agreement relates to an employment contract and that employment disputes are not arbitrable; and
- that the Turkish club is owned by the municipality of the town where it is located and that according to Turkish statutory law public entities or entities owned by public entities cannot enter into arbitration agreements.

What is your view on these issues? How will the arbitral tribunal deal with these objections as to its jurisdiction?

2. (30%)

In the course of the constitution of the arbitral tribunal, A appoints the arbitrator Y. C objects to this nomination because Y’s spouse is an associate in the lawfirm of A’s counsel who represents A in the current arbitration proceeding. Is this objection well-founded? What remedies are available to C if the BAT rules do not provide for any challenge procedure against arbitrators?

3. (30%)

In the course of the arbitration proceedings, the arbitral tribunal wants to hold an evidentiary hearing. It invites the parties to formulate their evidentiary requests. C requests that a former teammate of B, the player P, be examined as a witness. P still plays for the club A. P is afraid that he will experience serious repercussions and in particular threats from fans of the club if he gives testimony in favor of C. Therefore, he is only prepared to appear as a “protected witness” in the course of the arbitration proceedings, i.e. under the condition that his identity be only made available to the arbitral tribunal but not to the club and that technical protection devices be put in place during his testimony in order to make it impossible to identify him. What is your view on this issue, taking into account that the BAT arbitration rules do not contain any specific provisions on procedure / the taking of evidence?