



Arbitration Newsletter Switzerland

The battle for the "Queen of Queens": Shakira v. Gentiane - a summer story from the Swiss Alps

On August 5, 2015 the Federal Supreme Court posted (under the heading "Combats de reines") a quite remarkable case¹ on its website - at least as to its facts. While the case is not about arbitration, we still believe that the facts and the legal arguments raised - violation of the right to be heard and arbitrary decision - deserve at least a brief mentioning of this case.

1. Introduction

The story of the case is about a cow fight in the canton of Valais, Switzerland. Unlike bull fights in Spain this fight is between cows only and mainly between cows of the breed 'Herens'. These fights usually take place in the spring time, before the cows go up to the high mountain pastures. The winning cow then becomes the queen, the leader of the herd for the summer. At the end of the season a grand final is held, where the six best cows from seven districts fight each other in six different weight categories.



The fights are basically a pushing contest; any cow backing down from a fight is eliminated until one cow is left standing alone in the arena, which is then "la Reine des reines" i.e. "the Queen of Queens".

Under the following link you find a film on such a fight: <https://www.youtube.com/watch?v=9Pbb1rQW8qw>

2. Facts

Dominique Giroud and David Luvet, together with an undisclosed third individual, are the co-owners of the Heren cow Gentiane, whereas the Heren cow Shakira is co-owned by Sepp and Renato Karlen. Those two cows qualified for the final in 2012. Gentiane wanted to start the fight with Shakira, which, however, decided to avoid it. Consistent with the rules of the game, the organizing committee held that Shakira was shying away from the fight and declared Gentiane the winner. Therefore the jury instructed the herders standing in the arena ("les rebatteurs") to tie Gentiane to the railings for the victory ceremony. This decision was vividly disapproved by the public with whistles and shouting and was also contested by Shakira's owners. Discussions were held in the arena and, under the eyes of Gentiane's co-owners, she was released by a rabatteur to re-continue the fight against Shakira, which was brought by its owners in the vicinity of Gentiane. By the order of the rabatteur all persons had to leave the arena and, after a short fight, Gentiane drew back and, this time, Shakira was declared to be "la Reine des reines".

In November 2012 the organizing committee issued a warning to Gentiane's co-owners for having disregarded the decision of the jury in discharging Gentiane again from the railings. Such warning could, after a second violation of the rules, lead to exclusion

¹ BGE 4C_1073/2014, in French.



from the "Combat de reines" for a five-year term. Gentiane's co-owners did not accept this warning and filed a complaint with the Cantonal Commission for Agricultural Matters ("the Commission"), which admitted the complaint for the third of the co-owners, not being present in the arena at all, but confirmed it for the other two. Those two co-owners then filed a complaint against this decision at the Federal Supreme Court, alleging two violations, namely that their right to be heard was violated and that the decision was arbitrary.

3. Considerations

In dealing with the first argument - violation of the right to be heard - the Federal Supreme Court recalled its consistent practice in this respect and then analyzed the argument of Gentiane's co-owners, according to which they had been deprived of the possibility of reviewing and commenting on the official video recorded on the fight between Gentiane and Shakira. The Federal Supreme Court then made reference to the summary of facts as contained in the decision of the Commission, quoted as follows:

"At the time of the matters in dispute Dominique Giroud and David Luvet were both in the arena, not far away from Gentiane. Under the pressure of certain persons and, beyond any doubt, by the public in general the two co-owners accepted that Gentiane was unbound again from the railing to face Shakira [...] contrary to what they maintain the unbinding of Gentiane did not occur against their will. Whilst they were apparently not actively involved in such action and they did not give an order to do so, they, nevertheless, did not object thereto. In the video of the final one can distinguish very clearly Dominique Giroud assisting to the unbinding of Gentiane and encouraging her to recommence the fight. He was also attending the fight, without being involved, his hands being in his pockets. One can also very clearly see David Luvet, hands behind his back, leaving things just to develop, without any effort to intervene. Interviewed after the events by the television channel 9, David Luvet also indicated that the unbinding of Gentiane was more a matter of a reflex, providing her equal arms against Shakira. Neither Dominique Giroud nor David Luvet can therefore draw any conclusions in

their favor from the fact that Gentiane was unbound by the rabatteur and not by themselves. Whatever the circumstances were, and they were really particular, and the reasons which pushed them to act in this way, for which one can have a certain understanding, they have nevertheless acted deliberately in violation of the decision of the jury, which was clear. Therefore, one has to reproach them that they did not oppose a new fight which undoubtedly would not have taken place if they had actively refused to participate."

The Federal Supreme Court then held that this description corresponds with the facts based on the video of this fight. Also the Federal Supreme Court held that the situation in the arena was rather particular and the mood of the general public very heated. The Federal Supreme Court, nevertheless, concluded that the refusal of the Commission not to involve Gentiane's co-owners in the review of the video on this particular final would, in applying an anticipatory valuation of such proof, not result in a violation of their right to be heard.

The Federal Supreme Court then turned to the second argument of Gentiane's co-owners - arbitrary decision. In doing so it recalled, once again, its principles in this respect.

A decision is arbitrary in the sense of Art. 9 of the Federal Constitution if it is manifestly untenable, disregards substantially a norm or a legal principle which is clear or undisputed or violates in a shocking way the essence of justice and equity.

The Federal Supreme Court then turned again to the facts in the arena and held further that Gentiane had actually been unbound by one of the rabatteurs, as established in the decision of the Commission. Those rabatteurs are nominated for each individual round of fights by the organizing committee and fulfill their duties under the order of the jury, consisting of five members and selected by an organ of the Federation for the Regulation of the "Combats de reines" ("the Federation"). Consequently the rabatteur are agents or organs of the organizing committee of the Federation and their acts have therefore to be attributed to the Federation and not to the owners of the cows. As established, Gentiane was unbound by



a rabatteur in order to allow to confront Shakira again. Subsequently, the rabatteurs had ordered all persons present in the arena to leave. In all those activities the rabatteurs were presumed to be acting upon instructions and with the consent of the jury in charge of the proper organisation of the fights, as established in the applicable regulations governing the jury. Considering this factual matrix one cannot reasonably blame Gentiane's co-owners for not having interfered with her unbinding by a rabatteur and with the recommencement of the fight with Shakira. To the contrary, by their passive attitude the two co-owners had respected the orders of the jury. Consequently, there was no room for any disciplinary sanction against the two co-owners and their recourse had to be admitted because the decision of the Commission was, considering those arguments, arbitrary.

4. Conclusions

We hope you have enjoyed reading about a rather unique case, providing you an insight to a very special field of Swiss folklore. Certainly the Federal Supreme Court had its pleasure in dealing with this rather unique matter since it used its authority; due to the (special) circumstances of the case, it did not levy any costs.

The conclusion is: also cows, in particular "La Reine des reines", have a right to be heard ("mooooooooo !!!!") and are entitled to a fair, unarbitrary decision.

August 18, 2015

Hansjörg Stutzer
Bösch Michael

For further information please contact:
Hansjörg Stutzer (h.stutzer@thouvenin.com)
Michael Bösch (m.boesch@thouvenin.com)

Enclosure: BGE 4C_1073/2014, in French.