Arbitration CAS 2010/A/2284 Anna Arzhanova v. Confédération Mondiale des Activités Subaquatiques (CMAS), award of 16 May 2011

Panel: Mr Martin Schimke (Germany), President; Mr Michele Bernasconi (Switzerland); Mr Olivier Carrard (Switzerland)

Underwater sports
Suspension of a member of the CMAS Board of Directors
Due process
Principle of legality and predictability of sanctions
Principle of proportionality
Good governance
Right to defend a right in court

1. **CAS appeal arbitration procedure normally cures infringements of the right to be heard or fairly treated committed by a sports organization during its internal disciplinary proceedings.**

2. **The principle of legality and predictability of sanctions requires a clear connection between the behaviour in question and the sanction and calls for a narrow interpretation of the respective provision. However, when a special rule does not exist, the interpretation of other provisions, in particular corresponding general clauses, may be the basis for a claim and/or a sanction.**

3. **The principle of proportionality dictates that the most extreme sanction is not to be imposed before other (less onerous) ones have been exhausted. This is particularly the case when the regulations that have supposedly been violated are of a general nature, i.e. what is prohibited and what is not is not clearly defined in them. In such a situation, the person accused of violating such regulations should, in the spirit of the principle of proportionality, at least be given a warning that the specific act in question is deemed a violation.**

4. **Good governance is important in sport, and thus a member of the board of directors of a federation should be able to raise questions without the fear of being immediately sanctioned.**

5. **Particularly in the absence of an explicit provision prohibiting such conduct, a member of the board of directors should not be sanctioned for resorting to a court when he/she has no internal means to protect his/her rights. In general, unless there are clear and valid statutory rules providing for such a sanction, a person should not be penalized or discriminated against for merely exercising his/her legitimate rights.**

Ms Anna Arzhanova (the "Appellant") is the president of the Russian Underwater Federation (RUF) and a member of the CMAS Board of Directors.

The Confédération Mondiale des Activités Subaquatiques (CMAS), also called the World Underwater Federation, is a non-profit international organisation, the aim of which is to use all appropriate means to develop and encourage the understanding and conservation of the underwater world as well as the practice of aquatic and underwater sports and activities. It consists of national and international federations, associations and organisations. The CMAS has its seat in Rome, Italy.

On 27 February 2010 Ms Arzhanova attended a meeting of the CMAS Board of Directors (the "BoD") in Rome. During that meeting the 2009 balance sheet and the 2010 provisional budget were unanimously accepted with remarks after a few hours of discussion.

On 8 March 2010 the CMAS Secretary-General sent to the BoD members, including Ms Arzhanova, the *"Resolutions"* adopted at the meeting containing the following:

> *"Resolutions BoD/168*
>
> *[…]*
>
> *Document: approved x*
> ***BALANCE:***
> *2009 Balance approval*
> *Votes in favour: Unanimity*
> *Votes against:*
> *Abstentions:*
>
> *Document: approved x*
> ***BALANCE:***
> *Study of budget 2010 to be submitted, for approval, at the GA.*
> *Votes in favour: Unanimity*
> *Votes against:*
> *Abstentions:*
>
> *[…]".*

The CMAS Secretary-General indicated that the resolutions contained only the results of the votes and were therefore different from the meeting minutes that would be sent in a short while. While minutes were drafted at a later stage, the Appellant did not receive them.

Regarding the same subject matter, the CMAS website indicated *"approved with remarks"*.

On 23 March 2010 the Appellant wrote an email to the CMAS Secretary-General, with a copy to BoD Members, indicating that she could not accept the above mentioned resolutions, because she believed notably that:

- the BoD only accepted the "treasurer's reports" regarding the 2009 balance sheet; (*"the debt of previous periods is not approved"* and *"the presence of this debt and its creation should be analysed professionally and in detail"*);
- the 2010 budget *"had many remarks"*;
- *"it is obligatory to include into Resolutions FULL BoD talks regarding the questions discussed"* as done before.

The Appellant requested that the Secretary General *"correct the BoD resolution in concordance with what was in reality* (sic)*"*.

In a two-page letter dated 29 March 2010 the CMAS Secretary-General answered Ms Arzhanova, with a copy to the other BoD members, stating that:

- "Resolutions" are different from "minutes" that would be sent *"in a short while"*;
- *"budget/accounts have been unanimously approved"*;
- the Appellant should *"be careful"*; what she has written constitutes an offense under Italian criminal law, because it offends the honour and dignity of another person;
- the Appellant should report to the relevant authorities if she believes that a debt does not exist or has been inadequately represented.

By email dated 30 March 2010 Ms Arzhanova replied and denied that she intended to *"fight against CMAS"*. She said, *"My federation and me wish CMAS to be a great organisation. This is why I have put the main question – Who made the decisions how to use up money of CMAS during the year without any discussion of BoD and how has appeared debt for 2007 – 2008 in the middle of 2009 after Elected GA"*.

On the same date the Secretary-General answered the Appellant that she *"did not check on anything"* previously and therefore she should not blame him considering that he had arrived at a later date. Using a long analogy regarding illness treatment and diagnosis, the Secretary-General explained that *"the fact that the debt was communicated to the Board at the middle of 2009 does not mean that it did not exist before"*. The Secretary-General affirmed *"if you really want CMAS becoming a big organisation as you told, you had to find solutions and not making problems"*.

By email dated 31 March 2010 the Appellant reminded the Secretary-General of its functions and area of responsibility. She told him: *"I asked you in my letters to perform the actions that fall directly under your liability, i.e. to correct the Resolution of the BoD and to prepare corresponding detailed Minutes with the debt remarks made by the VP. I still haven't received any answers to my questions or properly grounded refusal, only emotions and bullying"*.

The Secretary-General answered on the same date: *"this will be my personal last answer to you. Next answer and last word about this issue will be given to you, directly from Mr. President of CMAS. I've nothing to say more than I did"*.

On 5 April 2010 the Appellant sent an email to the CMAS President, BoD members and the Secretary-General containing a short proposal to improve the CMAS financial situation. In her email the

Appellant also referred to art. 6.1.10 of the CMAS Articles of Association regarding the duties of the BoD to affirm that *"issues requiring collective actions of the Board members shall not be taken under control by one person"*; *"the BoD shall in fact take all operational decisions required for the organisations functioning, which requires financial reports at least every 3 months"*; *"the BoD shall in fact monitor the running of covenanted organisations"*.

On 9 April 2010 the CMAS President suspended the Appellant from all duties within CMAS as a precautionary measure until a decision by the Disciplinary Commission was taken. The reasons mentioned for this were as follows:

> *"- Non compliance with our Confederation's code of ethics.*
>
> *- Defamatory attitude vis-a-vis a member or third party, in the framework of our Confederation activity.*
>
> *- Intentional manoeuvring with a view to destabilising CMAS administration or governance".*

On 20 April 2010 Ms Arzhanova brought an action against this provisional suspension decision in the Civil Court of Rome. On 23 April 2010 the action was dismissed on procedural grounds.

On 23 April 2010 "the Steering Board" of the BoD decided *"to continue and support the disciplinary action"* taken by the CMAS President and appointed a "Reporter" (also called "Informer Counsellor") of the Disciplinary Commission.

Because of the above mentioned suspension, Ms Arzhanova was not able to participate in the CMAS General Assembly of 24 April 2010. The Appellant provided a power of attorney ("proxy") to her Italian lawyer, Mr. Luca Taverna, to represent the RUF.

Mr Taverna was not a member of the RUF or any other affiliated association of the CMAS. For this reason it was decided during the General Assembly that the "*proxy*" held by Mr Taverna to represent the RUF was contrary to the CMAS Articles of Association. Mr. Taverna could therefore not represent the RUF and he was asked to leave the room. However, before he was denied the ability to vote for Russia in the General Assembly, Mr. Taverna was allowed to vote for Latvia with a similar *"proxy"*.

On 7 May 2010 the Informer Counsellor received a request from the CMAS President, on behalf of the Steering Committee, to report once again Ms Arzhanova to the Disciplinary Commission for *"bringing a lawsuit entailing a summary trial before an Italian Civil Court"* and *"illegal appointment of a proxy who was not a CMAS member"* and to join the proceedings.

On 5 June 2010 the Informer Counsellor heard Ms Arzhanova. On 7 June 2010 the Informer Counsellor joined the two proceedings, closed the investigation and ordered the communication of the case to the Steering Committee to decide whether to refer the case to the Disciplinary Council.

On 17 July 2010 the CMAS Disciplinary Commission of first instance imposed a suspension on the Appellant from all activities inside CMAS for a period of six months, starting from April 9th 2010, i.e. the date of the notification of the provisional suspension. However, two of the six months were "suspended" for a five year probationary period (meaning that if the Appellant did not commit any further disciplinary infringements in the five year period then the final two months of the sanction

would be waived [whereas, if she did, the suspended two months would be added to the new sanction]). The decision of the Disciplinary Commission was notified to Ms Arzhanova on 20 July 2010.

On 22 July 2010 Ms Arzhanova appealed the decision of the Disciplinary Commission. The Steering Committee lodged a "reconvention appeal" on 2 August 2010. Ms Arzhanova was only informed on 14 September 2010 that such an incidental appeal was lodged by the Steering Committee. On the same date, the Reporter Commissioner of the Commission of Appeal issued its report.

On 23 October 2010 the Commission of Appeal held that there were valid grounds for the decision made by the Disciplinary Commission of first instance, such grounds being well-founded considering:

> *"The fact that CMAS accounts dating back to 2005 and CMAS latest budget were only questioned starting in June 2009 and February 2010, whereas the accounts had been in the meanwhile approved during the various General Assemblies and BoD meetings into which Mrs. Anna Arzhanova had participated since 2005.*
>
> *The fact that she questioned the competencies and seriousness of a professional auditor.*
>
> *The fact that she questioned the integrity of CMAS leadership.*
>
> *The fact that she took legal steps at the Civil Court of first instance in Rome, whereas the case had already been referred to CMAS Disciplinary Commission of first instance.*
>
> *The fact that she had given a proxy to a person alien to the Russian Federation (the proxy was recognized as not valid by Anna Arzhanova herself during today's hearing), and that this proxy was made and given on the eve of the CMAS General Assembly. The fact that she was unable to justify her infringements, whereas she has been a member of the Board of Directors for several years by now, and she is supposed to be knowledgeable about CMAS Articles of Association (AoA) and Code of Disciplinary Procedures, and namely articles 5.1.1.1, 5.1.3.3, 5.1.3.4, 5.1.6 of AoA on the one hand, and the provisions set forth in articles 7.2.1, 7.2.2 and 9.1 (paragraphs 3, 4, 7 and 8) of the Code of Disciplinary Procedures, on the other.*
>
> *The allegations brought against Mrs. Anna Arzhanova constitute serous infringements upon sports ethical conduct, upon the general principles of sport and upon CMAS Articles of Association. They are such a nature as to seriously jeopardize CMAS credibility and the credibility of its bodies and leadership".*

The Commission of Appeal added that *"in light of Ms Arzhanova's obstinacy"* the suspended sentence/probation period was no longer justified and accordingly it condemned Ms Arzhanova to be suspended for a period of six months, starting from 9 April 2010.

On 23 November 2010 Ms Arzhanova filed a Statement of Appeal with the Court of Arbitration for Sport (CAS). Within her Statement of Appeal and Appeal Brief, the Appellant requested that the CAS:

> *"a) Adjudge and declare that the decision dated 23 October 2010 of the CMAS Commission of Appeal is set aside.*
>
> *b) Adjudge and declare that Mrs. Arzhanova has not committed any disciplinary violations put forward by the CMAS.*

c) Adjudge and declare that Mrs. Arzhanova is entitled to receive from CMAS a contribution towards its legal fees and other expenses incurred in connection with the CMAS disciplinary proceedings and this arbitration".

On 6 December 2010 the Appellant filed her Appeal Brief.

On 21 December 2010 the CMAS filed its Answer, requesting the CAS "*to take for granted terms of time and form this challenging brief against the appeal lodged by Mrs Arzhanova against the CMAS, and to agree to DISMISS the mentioned appeal, and consequently confirm the judgement given by the Committee of Appeal of the World Underwater federation, on October 23 2010, to run with the arbitration costs and the lawyer fees of the Appellant".*

A hearing was held on 18 March 2011 at the CAS headquarters in Lausanne. At the close of the hearing, the Appellant and the Respondent confirmed that they were satisfied as to how the hearing and the proceedings were conducted.

LAW

CAS Jurisdiction

1. Art. R47 of the CAS Code stipulates that:

   "An appeal against the 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 (…)".

2. The CAS is not referred to in the CMAS Rules of Discipline, which provides at Article 7-2 that:

   "…the verdict of the Commission of Appeal is final and without appeal".

3. Article 10.3.2 of the CMAS Articles of Association provides:

   "The law applied *in the country where CMAS has its Head Quarters will prevail in all matters not covered by the present articles of association without prejudice of jurisdiction ratione materiae of the Sports Arbitrate Court".*

4. While the *jurisdiction ratione materiae* of the Sports Arbitrate Court (presumably the CAS) is not prejudiced by the Articles of Association, it does not seem *prima facie* to actually *confer* jurisdiction on the CAS. Nevertheless, as raised by the Appellant in her Statement of Appeal, the CMAS (in its brief submitted in the proceedings before the Civil Tribunal of Rome) accepted Article 10.3.2 to be an arbitration clause giving jurisdiction to the CAS.

5. In any event, the Panel does not require to evaluate the interpretation of Article 10.3.2 of the CMAS Articles of Association as the jurisdiction of the CAS to *"adjudge and declare that the decision dated 23 October 2010 of the CMAS Commission of Appeals is set aside"* is not disputed by the parties and, furthermore, the competence of the CAS is explicitly recognised by the parties in the Order of Procedure which they have both signed.

6. It follows that the CAS has jurisdiction to decide the present dispute.

Admissibility

7. Art. R49 of the CAS Code stipulates that:

   "In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late".

8. There are no provisions in the CMAS Rules regarding time limits for an appeal. Thus, the time limit for appeal is twenty-one days from the receipt of the decision.

9. The decision of the "Commission of Appeal" of the CMAS imposing a sanction on the Appellant was communicated by fax on November 4, 2010. The Appellant's appeal was filed on November 23, 2010. Therefore, the Appellant has met the deadline and the appeal is admissible.

Applicable law

10. Art. R58 of the CAS Code provides:

    "The 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 sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

11. Such provision was expressly mentioned in the Order of Procedure signed by both parties.

12. The "applicable *regulations"* in this case are the CMAS Rules, in particular the CMAS Rules of Discipline and Articles of Association.

13. The parties have not expressly or by implication agreed a choice of law applicable to this proceeding before the CAS. Since the domicile of the CMAS is in Rome, Italy (Article 1.2.1 of the CMAS Articles of Association), the Panel shall apply Italian law on a complementary basis.

Procedural issues

A. Due process

a) The minutes of the hearing in front of the "Informer Counsellor" were not submitted to Ms Arzhanova

14. The Appellant takes issue with the fact that she was not asked to sign as accurate the minutes taken by the Informer Counsellor during his investigation.

15. There is nothing in the CMAS Rules of Discipline that says this must be done.

16. Moreover, there is an established CAS jurisprudence based on Art. R57 of the CAS Code (*"The Panel shall have full power to review the facts and the law"*), according to which the CAS appeal arbitration procedure normally cures infringements of the right to be heard or fairly treated committed by sports organization during its internal disciplinary proceedings (CAS 2009/A/1880-1881; CAS 2008/A/1545; TAS 2004/A/549). *"In general, complaints of violation of natural justice or the right to a fair hearing may be cured by virtue of the CAS hearing. Even if the initial hearing in a given case may have been insufficient, the deficiency may be remedied in CAS proceedings where the case is heard* «de novo»*"* (CAS 2003/O/486).

17. Therefore, given the authority granted to the Panel by Article R57 of the CAS Code to fully review the facts and the law *de novo*, the Panel considers that even if the Appellant's rights in this regard were initially infringed such infringement is hereby cured and thus irrelevant.

b) Complement to the Report of the Commissioner

18. Additionally, the Appellant argues that the Reporter Commissioner submitted a *"Complement to the Report of the Commissioner"* despite the fact there does not appear to be any provision in the CMAS Rules of Discipline allowing for such an additional report (and despite the fact there was no call for such an additional report from the Commission of Appeal).

19. The Panel takes the view that given the authority granted to the Panel by Art. 57 of the CAS Code, the potential infringement of the Appellant's rights in this regard is also irrelevant for the reasons outlined above.

B. Competence of the Steering Committee

20. The Appellant alleges that the Steering Committee should not have resolved to continue the disciplinary proceedings against her as, pursuant to the Articles of Association, the Steering Committee has no disciplinary competence.

21. While it is true that the Articles of Association do not refer to the Steering Committee having any disciplinary competence, Article 2-3 par. 2 of the CMAS Rules of Discipline stipulates that:

"The Steering Committee of the Board of Directors takes note of facts, complaints and events needing a judicial action, it informs the discipline commission, appoints the reporters and decides to continue or not an action as mentioned below according to art. 6-3-1".

22. Furthermore, Article 8 of the CMAS Rules of Discipline stipulates:

"Under specially serious circumstances, CMAS President is allowed, as provisional remedy, to suspend any affiliated legal person or individual representing a body from its activities or functions within CMAS, being upon him to submit the case to the Steering Board of the Board of Directors within 15 days under penalty of loss, that, through the intermediary of the Disciplinary Commission must give verdict within three months from the notification".

23. The CMAS President wrote to the Appellant on 9 April 2010, referring to his competence pursuant to Article 8 of the CMAS Rules of Discipline and provisionally suspending her. On 23 April 2010 (within 15 days), the CMAS President submitted the case to the Steering Board. On 17 July 2010 (within three months), the Disciplinary Commission passed its decision. Therefore, it is clear that the special procedure of Article 8 has been followed (and that the deadlines contained in that article have been met).

24. On this basis, the Panel rules that the Steering Committee has competence in some disciplinary matters and had in particular the authority to resolve to continue the disciplinary proceedings.

C. Non ultra petita and reformatio in peius

25. The Appellant argues that the appealed decision breached the principle of *no reformatio in peius*.

26. However, there is no mention of the principle of *no reformatio in peius* in the CMAS Rules of Discipline which simply read at Article 7-2-4 in relation to appeals:

"The commission hears the final address of the Reporter Commissioner. He/she may ask for confirmation or changing of the judgement of first quash the verdict (sic)*".*

27. The Appellant raises another issue, namely that as the Reporter Commissioner did not request in his reports any specific increase to the sanction imposed on the Appellant that the appealed decision breaches the principle of *non ultra petita*.

28. The Panel understands that it would not be up to the Reporter Commissioner but to the Respondent (in its "reconvention appeal") to set out what the "reconvention appeal" was seeking.

29. The Appellant also raises the fact that the Disciplinary Commission of first instance found that *"the code of disciplinary procedures is not envisaging any possibility of objection of the decision of suspension taken by the President"* and that it was perfectly legitimate for Ms Arzhanova to take legal action at the

Italian Court, while the Commission of Appeal sanctioned the defendant for this. However, since the Reporter Commissioner did not comment on this issue, it would be necessary to determine what the "reconvention appeal" was seeking in order to determine if the Commission of Appeal went further than it was asked to.

30. Separately, regarding "the reconvention appeal", the Appellant also raises the fact that the Steering Board did not notify her of its decision to lodge an appeal. The structure of Article 7-2 of the CMAS Rules of Discipline does not make it entirely clear whether an appeal must be notified to the Appellant when the Steering Board appeals in its incidental capacity. However, since the Appellant was not notified of the incidental appeal, she was unable to tell whether it was lodged within *"30 clear days as from the appeal lodged by the defendant"*.

31. While it would be possible, by examining the "reconvention appeal", to determine if the Commission of Appeal went further than it was asked to, the Panel will first examine the decision of the Commission of Appeal on its merits. If the Panel takes the view that the decision of the Commission of Appeal was unfounded on its merits, there will be no need to address the above mentioned arguments.

D. New claims

32. The same applies to another argument raised by the Appellant, namely that when the Steering Committee decided to *"(…) continue and support the disciplinary action taken by President Ferrero (…)"* against the Appellant on 23 April 2010 pursuant to Article 2-3 of the CMAS Rules of Discipline, that this was prior to the "Luca Taverna" incident (and the Appellant also seems to imply that the Respondent would not have known about the Civil Court of Rome challenge at this point either). However, both these issues were dealt with by the Disciplinary Commission.

33. The Panel will first examine the merits of the decision and will address this question only if needed.

The merits

34. The principle of legality and predictability of sanctions requires a clear connection between the behaviour in question and the sanction and calls for a narrow interpretation of the respective provision (CAS 2007/A/1363). The CMAS Articles of Association do not contain any rule specifically governing the suspension or removal of a member of the Board of Directors.

35. However, when a special rule does not exist, the interpretation of other provisions, in particular corresponding general clauses, may be the basis for a claim and/or a sanction (CAS 2007/A/1319; CAS 2007/A/1437).

36. In this regard the Panel notes that the decision of the Disciplinary Commission of first instance did not explain what specific rules the Appellant breached with her actions. It was not until the

appealed decision that the Respondent referred to any disciplinary rules, namely Article 9-1 paragraphs 3, 4, 7 and 8 of the CMAS Rules of Discipline, which provide:

"3: Any action violating CMAS General Rules causing damage or being prejudicial to the proper development of any activity of the sports, technical or scientific committee and any CMAS events, or hindering competitions or events or public order of the sport.

4: Any action contrary to the Statutes, to CMAS Internal Rules or rules of its Committees and Commissions.

[…]

7: Any breach of loyalty, integrity and honour governing all Federal activities and specially sports activity.

8: Any misconduct, violent or slanderous attitude against any individual in a Federal site, against another member or a third person, during any federal event".

37. The Panel will now examine the different acts for which the Appellant has been sanctioned in light of these provisions.

A. Exchange of emails

38. The Respondent emphasized that the emails sent by Ms Arzhanova were sent *"with a copy to multiple addresses"* and characterized them as being of a *"public nature"*. The Panel observes that the replies made by the CMAS Secretary-General were also sent with a copy to *"multiple addresses"*. If the fact that the discussion was not being kept private between Ms Arzhanova and the Secretary-General was viewed as damaging or prejudicial to the CMAS, then the Secretary-General could have stopped it. As he did not, the cause of any damage is shared.

39. Furthermore, the principle of proportionality also dictates that the most extreme sanction is not to be imposed before other (less onerous) ones have been exhausted. This is particularly the case when the regulations that have supposedly been violated are of a general nature, i.e. what is prohibited and what is not is not clearly defined in them. In such a situation, the person accused of violating such regulations should, in the spirit of the principle of proportionality, at least be given a warning that the specific act in question is deemed a violation. In other words, any other sanctioning measures available must be exhausted before the "ultimate solution" is imposed.

40. Regarding the form/style of the emails, the Panel does not see a substantial difference in the tone used by Ms Arzhanova or the Secretary-General or anything shocking in the tone used by the Appellant.

41. Turning now to the content of the emails, the Commission of Appeal found that three matters merited a sanction:

"- The fact that CMAS accounts dating back to 2005 and CMAS latest budget were only questioned starting in June 2009 and February 2010, whereas the accounts had been in the meanwhile approved during the various General Assemblies and BoD meetings into which Mrs. Anna Arzhanova had participated since 2005.

- *The fact that she questioned the competencies and seriousness of a professional auditor.*
- *The fact that she questioned the integrity of CMAS leadership".*

42. A closer examination of the requirements of the offences set out in the Rules of Discipline cited by the Respondent gives rise to the following: paragraph 3 demands that the action must cause damage or be *"prejudicial to the proper development of any activity of the sports, technical or scientific committee (…)",* while paragraph 4 stipulates that the action must be *"contrary to the Statutes, to CMAS Internal Rules or rules of its Committees and Commissions".* The problem for the Respondent here is that no substantiated evidence has been provided to establish either of these offences. The offences referred to in paragraphs 7 and 8 require intention, or even a certain degree of malice, on the part of the person acting. After having carefully reviewed the emails, the Panel is satisfied that Ms Arzhanova's only intentions were to raise an issue and to call for transparency. There was no intention to be disloyal or to destabilize the CMAS. Good governance is important in sport, and thus a member of the BoD of a federation should be able to raise questions without the fear of being immediately sanctioned. The Panel takes the view that the decision of the Commission of Appeal may not stand on this issue.

B. The fact that the Appellant had given a proxy to a person alien to the Russian Federation

43. Article 7.2.1 of the CMAS Articles of Association provides that *"(…) any affiliated organisation unable to attend the Meeting may give a proxy to another affiliated association or organisation with voting rights",* and article 5.1.1.1 provides that *"[a]ny member so defined is represented by right by its Chairman or, should that not be possible, by one of its members who must bring with him/her a proxy document signed by the Chairman".* The Panel is of the view that if the granting of the proxy by the Appellant was invalid pursuant to the Articles of Association, a more proportionate consequence of this would have been that the RUF's vote could not be passed.

44. Moreover, sanctioning the Appellant for granting an invalid proxy, when the same "invalid proxy" was accepted from Latvia does not appear logical and would go against the principle of legality and predictability of sanctions. The Panel is of the view that the Appellant should not have been sanctioned for having given a proxy to Mr. Taverna.

C. The fact that the Appellant took legal steps at the Civil Court of first instance in Rome

45. The CMAS rules did not provide an internal remedy to challenge the provisional suspension by the President on an interim basis. The Panel is of the view that, particularly in the absence of an explicit provision prohibiting such conduct, a member of the BoD should not be sanctioned for resorting to a court when she has no internal means to protect her rights. In general, unless there are clear and valid statutory rules providing for such a sanction, a person should not be penalized or discriminated against for merely exercising his/her legitimate rights.

46. In light of all of the above, the Panel finds that the decision of the CMAS Commission of Appeal dated 23 October 2010 shall be set aside. Against the above, all other and further prayers for relief are dismissed.

The Court of Arbitration for Sport rules:

1. The appeal filed by the Appellant Ms Anna Arzhanova on 23 November 2010 is upheld.

2. The decision of the CMAS Commission of Appeal dated 23 October 2010 is hereby set aside.

(…)

5. All other and further prayers for relief are dismissed.