Arbitration CAS 2011/A/2452 Paul King v. International Boxing Association (AIBA), award of 9 January 2012 (operative part of 3 November 2011)

Panel: Prof. Michael Geistlinger (Austria), President; The Hon. Michael Beloff QC (United Kingdom); Prof. Petros Mavroidis (Greece)

Boxing
Sanction of suspension against a board member
Filling of a lacuna by purposive interpretation
Articles 3 and 4 of the AIBA Disciplinary Code as principles of conduct
Use of an external opinion in order to support candidacy for the Federation's elections
Taking of legal advice and vigorous electioneering as right to freedom of expression

1. **If the AIBA Statutes 2008 define the term *"Member"* as *"National Federation"*, it is not possible to consider that there is a lacuna that should be filled by purposive interpretation in order to encompass individuals. Such interpretation would be no more than disguised legislation and would violate the fundamental principle of criminal and disciplinary law *nullum crimen sine lege*.**

2. **Articles 3 and 4 of the AIBA Disciplinary Code do not lay down any sanction but simply set out principles of conduct. Therefore, they cannot, in themselves, serve as legal basis for imposing a suspension.**

3. **The use of an external legal opinion to achieve support for candidacy for AIBA President does not violate the AIBA Statutes, Bylaws or regulations as required by the AIBA Disciplinary Code. Such action shows the wish of a candidate to demonstrate to the AIBA Member Federations that he was seeking to act in the interests of all the Member Federations. Such efforts by a candidate to put himself or herself in the best light with an actual or putative electorate is wholly normal behaviour in an election campaign and is neither a violation of the AIBA principles of conduct, nor misconduct directed against officials, nor an offensive behaviour or behaviour in violation of fair-play, nor any other violation of the AIBA Statutes, Bylaws or other regulations.**

4. **In any organisation, including a sports governing body, domestic or international, there is a danger that those in control may confuse their individual interests with those of the organisation as a whole and in consequence overact and misuse their powers vis à vis those who oppose them. The taking of legal advice, the institution of legal proceedings, and vigorous electioneering can only exceptionally be classified as conduct violating regulations reasonably drawn and reasonably to be applied. Political speech ranks foremost in the hierarchy of the rights, embraced by the right to freedom of expression protected by Article 10 of the European Convention on Human Rights.**

Mr Paul King (the "Appellant") is a Life President and former Chief Executive of the Amateur Boxing Association of England and member of the Executive Committee of the International Boxing Association ("AIBA") for a five years term which ended in November 2010.

AIBA (the "Respondent") is an association pursuant to Articles 60 *et seq.* of the Swiss Civil Code, having its seat in Lausanne, Switzerland, whose object, amongst others, is to improve, promote, and spread worldwide the sport of boxing in all its forms, as well as to regulate boxing in all its aspects in accordance with the AIBA Statutes, the AIBA Bylaws, the AIBA Technical and Competition Rules, the Code of Ethics and the Disciplinary Code and Procedural Rules.

On 27 April 2011, the AIBA Disciplinary Commission issued a decision against 13 member federations, the Appellant and General Taweep Jantararoj, sanctioning 10 of the federations and the two individuals. The Appellant was *"suspended from any activity at AIBA, Continental, other International and National (Amateur Boxing Association of England) levels, for a period of 24 months",* as from 27 April 2011 ("the suspension"). The Appellant also had to contribute to the costs of the procedure in the sum of CHF 500.-.

The decision gives the following reason for the suspension:

> *"2.5.a) On 28 September 2010, Mr. Paul King, vice-president of the Amateur Boxing Association of England and at that time EC member, sent an e-mail to the NFs. He told them that if a suspended NF paid its due, its suspension should be lifted and it should be able to participate and vote in the 2010 AIBA Congress. Mr. King mentioned that he was standing for the AIBA Presidency and was asking for support.*
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> *b) The DC finds that this e-mail was at best misleading and at worst false. Mr. King stated it was brought to his attention that 70 NFs were not being sent Congress and election materials, "due to unfair suspension imposed by the AIBA administration". In fact, the decision to suspend the NFs was not made by the AIBA administration, but by the EC (which Mr. King knew, as he was present at the Marrakech EC meeting). Further, most of the 70 NFs were not suspended because, or only because they had not paid their dues, but because they were simply dormant and had not participated in AIBA events for a long time. Mr. King stated he was relying on a legal opinion he had obtained, to instruct the NFs that if they paid their dues late, they would be allowed to attend and vote in the Congress. He conveniently failed to mention that the legal opinion from Bird & Bird law office he was referring to specifically recognized in paragraph 4.2 that "there are competing arguments at various points in the above analysis …", did not include any mention of these competing arguments in his message and did not indicate that this opinion had anyway neither been reviewed, nor endorsed by AIBA. The DC finds that the 28 September 2010 e-mail was deceptive but also that, of course, Mr. King's candidacy for the AIBA presidency was in itself not against any AIBA rule.*
>
> *[…]*
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> *3.3.a) Mr. King has associated with a suspended person, Mr. Doganelli (Art. 48 of the AIBA Disciplinary Code). He spread misleading allegations about AIBA (see par. 2.5 b above). He tried to influence people to support his candidacy for the AIBA presidency with these misleading allegations. Acting like that, he harmed the image of AIBA and its members (Art. 4 par. 1 of the AIBA Disciplinary Code). Obviously, Mr. Ruiz had reason to claim that Mr. King was some kind of leader for the opposition to the AIBA leadership (see Par. 2.11 above). If, in itself, all members of the boxing family have the right to seek any position within AIBA when elections are to be held, special conditions established by the Statutes being fulfilled, they have no right to*

act in a way that is harming AIBA as whole. For Mr. King to associate with someone – Mr. Ruiz – claiming to more or less buy NFs and votes did also harm AIBA's image, reputation and interests. The DC finds that Mr. King, as an EC member, should have known better. A suspension for 2 years seems appropriate.

b) Apart from this, the DC wants to stress that for Mr. King to try to recruit votes for his candidacy as AIBA President was of course no fault, as this is – obviously – a right of membership"."

The background to the Decision is as follows: On 4 January 2010, the AIBA HQ had sent a bill for the annual fee to all Member Federations and set the deadline to payment by end of March 2010. On 26 March 2010 a reminder was sent setting a final deadline of 30 April 2010 and indicated the legal consequences of non-payment by quoting paragraphs 3 and 4 of Article 15 of the AIBA Bylaws, (erroneously called Article 16).

The text quoted in the AIBA HQ letter of 26 March 2010 from the Bylaws reads as follows:

"If a Member is late in paying the fee, the AIBA HQs Office will send the Member a reminder, explaining that if the Member does not pay within the additional time alloted, the Member will be suspended by the Executive Committee Bureau following Art. 16 of the Statutes. A suspended Member does not lose its membership, but loses automatically its membership rights, including voting rights at the Congress (Ordinary and Extraordinary).

If a Member is not up to date in paying its dues six months before the Ordinary Congress or one month before the Extraordinary Congress, it loses its rights to vote at the Congress, even if dues have been paid in the meantime".

On 9 – 11 July 2010, on its Extraordinary meeting in Marrakesh, in the presence of the Appellant, the AIBA Executive Committee ratified, inter alia, the decision n° 4 on suspension of NFs for default in payment of dues"(decision No.4"). The relevant part of the meeting's minutes reads as follows:

"Decision N° 4: Membership Fee – Suspension of NFs

On May 7, 2010, the AIBA EC approved to suspend all National Federations not having paid their 2009 and 2010 membership fees within the final deadline set by the AIBA Bylaws thus April 30, 2010. Suspension does not mean losing membership, but losing automatically membership rights including voting rights at the AIBA Congress, even for the Federations having paid after the final deadline".

On 22 July 2010, the AIBA Executive Director sent an email to the President of the Portuguese Member Federation, which was also sent to all other Member Federations that had missed the deadline for paying their annual dues and which reads as follows:

"Dear Mr President,

In accordance with Article 15 of the AIBA Bylaws (which complete the AIBA Statutes), each Member Federation should pay to AIBA an annual membership fee of US$ 250.00.

On January 4, 2010 the AIBA HQs Office sent you an invoice for the 2010 annual membership fee (and one for the 2009 annual membership fee if not received).

The 2010 annual membership fee was payable to AIBA no later than the end of March 2010 (and according to the reminder sent to you at the latest on April, 30, 2010 thus 6 months before the Congress).

We would like to remind you part of Article 15 of the AIBA Bylaws:

"If a Member is late in paying the fee, the AIBA HQs Office will send the Member a reminder, explaining that if the Member does not pay within the additional time allotted, the Member will be suspended by the Executive Committee Bureau following Art. 16 of the Statutes. A suspended Member does not lose its membership, but loses automatically its membership rights, including voting rights at the Congress (Ordinary and Extraordinary). If a Member is not up to date in paying its dues six months before the Ordinary Congress or one month before the Extraordinary Congress, it loses its rights to vote at the Congress, even if dues have been paid in the meantime".

Therefore, as a consequence and also as per the decision taken by the AIBA Executive Committee at its recent meeting held in Marocco, your Federation has lost its membership rights. It means that your Federation will not be invited to attend the 2010 AIBA Congress, nor be allowed to propose any candidate for any position within the AIBA Executive Committee.

…".

On 28 July 2010, the former AIBA Secretary General Caner Doganeli[1] sent an email to the AIBA President, directing attention to several AIBA provisions which required earlier notice of a Congress programme and noting the fact, that the AIBA 2010 Congress had been moved by AIBA Executive Committee decision of 9 – 11 July 2010 to a new place (Almaty, Kazakhstan). The email ended by saying: *"If you do not want the Congress to be cancelled, please order Mr. Ho Kim to apply the necessary procedures".*

On 16 September 2010, the Greek Boxing Federation transmitted to the Respondent the copy of an email it had received from Mr Doganeli on the same day which reads as follows:

"As we have talked in Balkan Meetings, we are continuing to work against Ho Kim and Dr. Wu.

At present Mr. Paul King has announced his candidacy. 20 countries must support him. Although we reach 20 countries I would like that you also be one of the supporting countries.

As you know, during my position in AIBA since 16 years I have been always with the Hellenic Boxing Federation.

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[1] Mr Doganeli's own case had been dealt with by the AIBA Executive Committee at its meeting in Lausanne on 14 – 15 June 2007. At this meeting under item 5 a report of the AIBA Ethics Commission Chairman was tabled which recommended inter alia that *"the most appropriate action, including if necessary legal action, against any and all individuals or entities having caused any prejudice to AIBA, including but not limited to former AIBA President Anwer Chowdry …"* should be taken by the AIBA Executive Committee. The Ethics Commission recommended further *"that AIBA irrevocably and definitely part with any AIBA officer, member of any AIBA commission, employee or other individual or entity associated in any way with AIBA, if any one of the following conditions is fulfilled:*
a) if, for any reason, the person concerned is unable to fully carry out his or her duties;
b) if the person concerned has been convicted of an offence;
c) if AIBA considers that the person concerned has acted in any way which tarnishes AIBA's reputation or public image".
Mr Doganeli was allowed 15 minutes to comment at the report and according to the minutes of the meetings *"underlined a lot of various matters to defend himself such as rumours that the IOC was interfering in AIBA's issues, or the power of Mr Chowdry who was an AIBA leader for over 40 years. He also emphasized that he was elected by the Congress by 54,7% of votes and that no one can overrule the Congress decision. He said it would be undemocratic to vote him out without consulting the Congress and that he knows AIBA and boxing better than many people".* All AIBA Ethics Commission recommendations were unanimously approved by the AIBA Executive Commitee members. AIBA, thus, decided to definitively part from Mr Doganeli.

As they announce obviously that they are atheist, we as our core group are entering to AIBA elections against unsuccessfull Ho Kim and Dr. Wu.

The candidate for the AIBA Presidency is Mr. Paul King from England. If we won the elections I will be in place of Ho Kim as the Executive Director and then pass to the title of the Secretary General.

When I will be in a position as before, I will do my best to help my Greek friends to be in different positions in AIBA:

For this reason, I would like to request from you to sign the Nominations form for AIBA Election Candidate to show Mr. Paul King as a candidate for the AIBA Presidency.

Furthermore, for some reasons I have opened a case to CAS in order to postpone the AIBA Elections.

Insallah we will succeed in this also. Instead of one country which is sufficient, Thailand, Belgium, Romania, Bulgaria, Israel, Iran have send the supporting letters.

I will be pleased if you sign the enclosed "Power of Attorney" and send it to our Lawyer's email: ramoni@libra-law.ch, ibarrola@libra-law.ch, valticos@libra-law.ch".

The email of 28 September 2010, referred to in the AIBA Disciplinary Commission's decision (see above), was sent by Mrs Diane Barnard on the Appellant's behalf to all addressees on the AIBA mailing list, used by the Respondent for the internal communication, and was referred to as "MESSAGE TO SUSPENDED AIBA MEMBERS FROM PAUL KING, "ENGLAND" PRESIDENTIAL CANDIDATE AIBA 2010". It reads as follows:

"Dear boxing friends and family,

It has been brought to my attention that more than 70 national federations have not been sent the Congress Forms and Instructions on the Election Procedure for the AIBA meetings taking place in Almaty, Kazakhstan in November 2010. This is due to unfair suspension imposed by the AIBA administration.

Disenfranchised countries should be given the opportunity to attend the AIBA Congress. A gathering of the worldwide boxing family that only happens once every four years. This is the occasion when you can represent your country and meet colleagues from across the globe.

As an Executive Committee member I urge you to exercise your right and demand from the AIBA administration that you receive the official invitation and papers to attend the Congress.

I have sought legal advice on this matter and received the following – If a suspended National federation pays its 'dues' within the six-month period prior to the Ordinary Congress on 1 and 2 November 2010, its suspension should be lifted immediately and (as a non-suspended member) it should be able to exercise its membership rights, including the right to vote during the Congress.

Please, find attached a letter of support from my solicitor. I encourage you to pay the membership fee of $250 as soon as possible. This will enable you to attend and vote at the Congress.

As you will know, I am standing for the Presidency of AIBA. My statement is attached in four languages. Please, read this and I humbly ask for your support in my candidature. Together we can bring a positive change to AIBA.

Please feel free to contact me

Best wishes

Paul King

AIBA Executive Member".

The legal advice referred to by the Appellant in his email was provided by Bird & Bird LLP London in collaboration with Dr. Stephan Netzle of Netzle Rechtsanwälte in Zurich. It analysed Article 67 of the AIBA Statutes 2008, the AIBA Bylaws as last amended on 9 July 2010, and AIBA's invitation of 20 August 2010 to the National Federations regarding the 2010 AIBA Congress. It stated that Articles 11 and 16 AIBA Statutes read together had the effect that *"if a member is suspended (for failure to pay 'dues') but subsequently pays its 'dues', its suspension is immediately lifted (upon payment) and as a non-suspended member it can thereafter exercise its membership rights, including the right to vote during the Congress"*. It opined, however, that this reading is contradicted by Article 15.4 of the AIBA Bylaws, which *"while not entirely clear, appears to suggest that if a member has failed to pay its 'dues' six months before an Ordinary Congress …, it loses its rights to vote at the Congress even if it subsequently pays those 'dues' within the six-month period prior to the commencement of the Congress"*. The advice finds that Article 15.4 of the AIBA Bylaws is accordingly *ultra vires* and invalid and that the conflict between the enumerated provisions would be resolved under applicable Swiss law so *"that the Statutes will prevail"*[2].

On 6 October 2010, upon request of the Respondent Professor Christine Chappuis of the University of Geneva delivered a Legal Opinion on the same question. Prof Chappuis identified as the problem in this way:

> *"5. The problem: there is an apparent contradiction between art. 16(3) of the Statutes according to which "any suspension will be lifted when dues are paid" and art. 15(4) of the Bylaws according to which a Member "loses its rights to vote at the Congress even if dues have been paid in the meantime". If suspension*

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[2] The advice draws the following conclusions:

"4.1 In the light of the above, in our view, if a suspended National Federation pays its 'dues' within the six-month period prior to the Ordinary Congress on 1 and 2 November 2010, its suspension should be lifted immediately and (as a non-suspended member) it should be able to exercise its membership rights, including the right to vote during the Congress.

While we recognise that there are competing arguments at various points in the above analysis, in our view (and in the view of Dr. Netzle) the analysis reflects how the position would be considered by a competent tribunal".

The provisions of the AIBA instruments referred to in the advice read as follows:

Article 11 AIBA Statutes 2008:

"Members have the following rights:

a) To participate and vote during the Congress;

b) *…".*

Article 16 AIBA Statutes 2008: *"Suspension*

1. A suspended member shall automatically lose its membership rights during the suspension period.

2. Other Members cannot entertain sporting contact with a suspended Member.

3. A Member shall be suspended if it is not up to date in paying its dues before an Ordinary Congress convenes; any suspension will be lifted when dues are paid".

Article 15.4 of the AIBA Bylaws: *"Membership Fees*

…

4. If a Member is not up to date in paying its dues six months before the Ordinary Congress or one month before the Extraordinary Congress, it loses its rights to vote at the Congress, even if dues have been paid in the meantime".

were automatically lifted once dues are paid (Statutes), the Member should not lose its rights to vote at the Congress (Bylaws). In my view, this contradiction can be lifted by an objective (systematic) interpretation of the application provisions as a whole, in particular in consideration of art. 8 of the Statutes".

In number 9 of her Legal Opinion, Prof Chappuis finds as follows:

" … In my opinion, art. 15 of the Bylaws clarifies the consequences of a suspension for non payment of the annual fee on two issues. Firstly, it specifies that the Member retains its membership but loses all the rights attached to it, including the voting rights. Secondly, the phrase "until the next Congress" in art. 8(2) of the Statutes is clarified as to the consequences of a late payment made within six months before an Ordinary Congress or within one month before an Extraordinary Congress: such payments will not allow the suspension to be lifted for the next Ordinary or Extraordinary Congress".

Prof Chappuis comes to the following conclusion:

"11. Conclusion: the sequence resulting from the relevant provisions of the Statutes and Bylaws – even if not clear at first sight – shows no contradiction between art. 16 (3) of the Statutes and art. 15 (4) of the Bylaws. The principle set down in art. 8 (2) of the Statutes according to which suspension will last "until the next Congress" is clarified by art. 15 of the Bylaws. Such interpretation gives effect to the two discussed provisions of the Statutes and to the provision of the Bylaws. It should be noted that this interpretation fundamentally relies on the Statutes, the Bylaws only clarifying the provisions of the Statutes without modifying them. Therefore there is no "temporary delegation of the legislative competence" at issue.

12. In my opinion, the questions can be answered as follows:

1) a suspended Member is not entitled to vote at the next Congress even if the "dues" have been paid within six months before an Ordinary Congress or one month before an Extraordinary Congress …

2) since suspension affects all membership rights, including voting rights …, none of the rights listed in art. 11 of the Statutes may be exercised during the suspension period".

On 2 October 2010 shortly prior to the delivery of this legal opinion, the Appellant had received and accepted the list of candidates for the presidential elections set up for the AIBA Congress 2010 by the Election Committee. The list did not include him as candidate, because he did not receive the minimum of 20 supporting Member Federations.

On 8 October 2010, 13 AIBA Member Federations, including the Amateur Boxing Federation of England, applied at the Tribunal d'arrondissement de Lausanne ("the tribunal") requesting an immediate cancellation or postponement of the AIBA Congress 2010. One of the main arguments in support of the application was the non-participation of the Member Federations suspended because they did not timeously pay their dues. The application also stated that, if the Member Federations that had paid their dues during the summer 2010, albeit belatedly, were taken into account, the Appellant would most likely have reached the necessary number of supporting federations to be a candidate.

While the case was pending before the Tribunal, several Member Federations informed the Respondent that they either had not been informed that their name was shown on the application before court or that they had misunderstood what it was that they had signed. Other Member Federations showed support for the position of the Respondent.

On 28 October 2010, the Tribunal rejected the application for provisional measures. Its decision was not the subject matter of any appeal.

On 1 November 2010, in an interview on the internet, Mr Jahangar Ruiz, managing director of a manufacturer of boxing equipments, whose license to provide the Respondent with equipment had earlier been cancelled on grounds of corruption (buying of votes of Member Federations), declared that he would do anything in his power to remove the AIBA President. Mr Ruiz stated *inter alia* that there was to be a meeting of representatives of 30 AIBA Member Federations in Bulgaria called to elaborate a strategy against the AIBA President and that *"We are giving financial and legal assistance to those national boxing federations who have been illegally suspended in order to have smooth sailing at the AIBA elections on Nov, 3"*. Mr Ruiz was also quoted having said: *"We had Paul King as our leader to contest against WU. But AIBA said that he cannot run for the post of president as he got support from only nine countries while he needed 20 votes. According to new rules, current Executive Committee members can run for election for president. Paul was current Executive Committee member but according to AIBA he failed to get nomination from minimum 20 countries"*.

On 31 January 2011, the chairman of the AIBA Disciplinary Commission sent an email to 13 Member Federations, including the ABAE, notifying the initiation of disciplinary proceedings against them based on an AIBA brief of 20 January 2011 and wrote inter alia the following: *"As the facts alleged in the brief could also concern Gen. Taweep Jantararoj (ABAT) and Mr Paul King (ABAE) personally, the DC considers that these two persons should also be entitled to act on their own behalf in this procedure"* and concluded by advising the ABAE to inform Mr King of his procedural rights.

On 27 April 2011, as noted above, the Decision, the subject matter of this appeal, was taken.

On 5 May 2011, the Appellant informed the Respondent of the receipt of the decision by email to a third person on 4 May 2011 which orally reported to him the contents. The Appellant opened the email on the morning of 5 May 2011.

On 6 May 2011, ie Mrs Riondel, the AIBA legal director, informed the President of ABAE that ABAE was requested to respect the AIBA Disciplinary Commission decision of 27 April 2011 and that the suspension of the Appellant was to be given effect to without further delay.

On 9 May 2011, the Appellant sent an email to Mrs Riondel, the AIBA Legal Director, and to the AIBA Executive Committee, which reads as follows:

> *"Submission of Appeal by Paul King against suspension of AIBA*
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> *My understanding is that the AIBA DC has actually initiated a procedure against me and that I am considered as a "person involved".*

The only "fact", which may concern me personally, is the email I sent to all member federations on 28 September 2010, together with a legal opinion issued by the law firm Bird & Bird with the support of Dr Stephan Netzle, Attorney-at –Law in Zurich and former CAS arbitrator.

Please note that this email was sent by me personally, as member of the AIBA Executive Committee and as candidate for the AIBA Presidency and not within my capacity as an official of ABAE. Therefore, ABAE shall not incur any liability if, quod non, said email was breaching AIBA rules.

Under article 16 paragraph 3 of the AIBA Statutes (version in force until the 2010 Congress), "A Member shall be suspended if it is not up to date in paying its dues before an Ordinary Congress convenes; any suspension will be lifted when dues are paid". I sought legal advice from a reputable law firm, which confirmed that if a suspended member paid its dues within the six-month period prior to the Congress, its suspension should be lifted immediately and it should be able to exercise its membership rights, including its right to vote during the Congress. This legal opinion further held that Article 15.4 of the AIBA Bylaws was in conflict with Articles 11 and 16 of the AIBA Statutes and that the terms of the Statutes would prevail.

I would also like to stress that member federations, which had not paid their dues or had paid their dues late, were not properly "suspended" under the meaning of the AIBA Statutes. The Executive Committee issued a decision confirming that federations, which had not paid their dues, should be suspended, but the names of the concerned federations were not disclosed to the Executive Committee prior to the vote.

Apart from the national federation of Thailand (which had its suspension lifted by the CAS) and the national federation in Kuwait, I was unaware, albeit being a member of the Executive Committee, of the names of all federations allegedly suspended. No official list of such federations was issued before October 2010. Athletes affiliated to such federations were participating in AIBA competitions and no complaints had been made.

The Congress is defined as "assembly to which all members are convened on a regular basis" (Article 21 of the AIBA Statutes).

Therefore, I sent an email to all member federations on 28 September 2010 in support of my candidacy and in order to inform members, which had paid their dues late, of their right to attend the Congress.

I am convinced that I did nothing wrong in sending such correspondence. As a candidate for the presidency, I sent an email humbly asking members to support my candidature and encouraging them to comply with their obligations and to take part in the "life" of AIBA. This cannot be seen as a disciplinary offence. On the contrary, this was a fully legitimate step by me.

If AIBA was to impose a sanction on me for having sought support as a candidate for presidency, this would constitute an obvious breach of all democratic principles known in Europe and in Switzerland. This would also show that there are no free elections within AIBA.

My understanding of the AIBA Statutes was supported by a legal opinion issued by a reputable law firm and confirmed by a former CAS arbitrator. At the time the email was sent, the opinion issued by Prof. Chappuis, on which AIBA now relies on, was not available.

Therefore, I respectfully request this appeal is considered, bearing in mind the following points and precedents,

In Conclusion of my appeal I must stress as part of my submission of appeal, the following points need to be taken into account.

Lack of Competence of the Disciplinary Commission

I must firstly state for the AIBA Executive Committee's attention that I was informed, I was a 'person involved' in a potential Disciplinary Case and no Formal Charge had been made or set against me personally early in January 20(0)11.

However, the AIBA Disciplinary Commission saw fit to raise a charge and find a suspension against me, without due notice of potential charge.

The facts which AIBA relied upon to open a disciplinary case against me occurred before the 2010 Congress.

Under the then applicable AIBA Statutes, the AIBA Executive Committee was the competent body to suspend one of it(')s Members.

The case against me was not brought before the competent body namely the AIBA Executive Committee.

It appears therefore that the AIBA Disciplinary Committee is not competent to investigate and sanction me according to the facts mentioned and my submission statement, within this response.

In closing, I must also state that the Scope of Authority presumed by the AIBA Disciplinary Commission, clearly breaches all UK and EEC Employment Laws and thereby seeks to restrict me from trading or be employed freely in my own country in the sport of Amateur Boxing and ignores my Rights of Employment under United Kingdom Acts and Policies, about which I am seeking legal advice.

…".

On 10 May 2011, Mrs Riondel sent an answer to an earlier email from the Appellant which reads as follows:

"Mr King,

Article 62 of the AIBA Organizational and Procedural Rules states that the Declaration of Appeal must be submitted within 3 days of receiving notification of the decision to be appealed against.

According to your email below, you received the DC decision by email on 4 May and opened the email on 5 May. Thus, your appeal was received outside of the deadline and must be rejected.

…".

Article 62 para 1 of the AIBA Organizational and Procedural Rules reads as follows:

"Declaration of Appeal

The party deciding to appeal must send a declaration of appeal to the authority of appeal (Executive Committee of AIBA) within 3 days of receiving notification of the decision to be appealed against or the appeal will be directly rejected without further process. The appellant must, within the same deadline, pay and advance charge of CHF 500.- to the AIBA HQs Office.

…".

0n 25 May 2011, accordance with Articles R47 and R48 of the Code, the Appellant filed his statement of appeal. Together with the statement of appeal, the Appellant filed a request for extension of the deadline for submitting the Appeal Brief.

On 6 June 2011, this extension was granted.

On 7 June 2011, the ABAE Chief Executive Officer informed the CAS that the Appellant is no longer associated with ABAE.

0n 9 July 2011, in accordance with Article R51 of the Code, the Appellant filed his appeal brief together with 11 exhibits.

0n 2 August 2011, in accordance with Article R55 of the Code, the Respondent filed its answer together with 23 exhibits.

On 12 August 2011, the Panel invited the parties to file responsive submissions on jurisdiction and merits.

On 6 September 2011, the Appellant filed his responsive submission on jurisdiction and merits.

On 22 September 2011, the Respondent filed his final submission on jurisdiction and merits.

On 23 September 2011, the Panel decided to retain jurisdiction by way of a preliminary decision. The grounds thereof are included in the present award.

On 28 September 2011, the Appellant and on 3 October 2011, the Respondent signed an Order of Procedure.

0n 2 November 2011, a hearing took place in Lausanne at the CAS headquarters.

The Panel heard evidence from the Appellant. Having both listened to and seen him, the Panel accepts him as an honest and credible witness

The Appellant told the Panel that he was involved as boxer, coach, and chief executive for ABAE altogether for around 40 years and served the Respondent free of charge for about 20 years. For the last five years he had been a member of the AIBA Executive Committee having won 49 out of 54 votes at the 2005 AIBA Congress. During his active period the ABAE had made great progress both in professionalization and in performance. However, due to the suspension imposed by the Respondent he was unemployed and due to his consequent stigma in the sporting community has little prospect of finding a new job.

The Appellant explained that he had supported decision no. 4 at the Extraordinary meeting of the AIBA Executive Committee in Marrakesh at the time, but had changed his mind when he became aware of the number of Member Federations suspended as a result and the legal implications of the decision. The Appellant stated that in the wake of the Marrakesh EC meeting he had tried in a separate meeting to convince the AIBA President – unsuccessfully – to lift the suspension of so many Member Federations.

The Appellant also agreed that he had telephone discussion with Mr Doganeli and Mr Ruiz. In the Appellant's opinion contacts with Mr Doganeli were not forbidden, because the latter was not technically suspended but rather that the Respondent had parted from him. His contacts with Mr Ruiz was in the context of from the latter's function as provider of boxing equipment for ABAE. The contracts between ABAE and the Mr Ruiz's company subsisted and the Appellant had accordingly to deal with him in that context. Mr Ruiz was not a person who could be suspended by the Respondent because he was not an AIBA member. The Appellant also accepted that he had participated at the Balkan meeting of some Member Federations in Bulgaria and that Mr Doganeli and Mr Ruiz also were present. His own travel expenses to that meeting had been paid by the ABAE. The Appellant declared that the emails written by the two persons, referred to above were sent without his knowledge. He would not have employed Mr Doganeli as Executive Director, if elected President, and did not ask Mr Ruiz for his support of his candidacy for that office. The Appellant's decision to stand for the presidency was prompted by the approach of many Member Federations who had urged him to do so for three – four years. In 2010 the Appellant had been hospitalized and he had made his final decision to stand after the Marrakesh meeting. The Legal Opinion of Bird & Bird concerning the interpretation of the AIBA Statutes and Bylaws was asked for and paid by the ABAE.

On the day before the hearing the Appellant submitted three further exhibits and at the beginning of the hearing a copy of three CAS decisions for the attention of the Panel. The Respondent initially objected to the inclusion of the new exhibits into the file, but withdrew this objection for two of the three exhibits during the hearing. The Panel decided not to consider the first exhibit which was in any event not considered to be decisive for the outcome of the proceedings. The new exhibits which were included into the file, showed that the AIBA Executive Committee Bureau decided to accept those 32 Member Federations that paid their membership dues after the deadline of 30 April 2010, but before 1 October 2010, as participants at the 2010 AIBA Congress as observers albeit without the right to vote. The Congress accepted the presence of 12 of these federations as observers and restored the membership of all 32 Member Federations concerned.
3.18 AIBA itself adduced no oral evidence by itself or any witness, and relied on documentary evidence and submission only.

Referring to Article R47 of the Code of Sports-related Arbitration ("the Code"), the Appellant holds that the CAS jurisdiction derives from Article 59 para 1 of the AIBA Statutes 2008. This provision and paras 3 and 4 as in force at the time, when the alleged disciplinary offence took place, read as follows:

> *"Article 59 Court of Arbitration for Sport (CAS)*
>
> *AIBA recognizes the Court of Arbitration for Sport (CAS), with headquarters in Lausanne, Switzerland, as the only authority to resolve appeals, after exhaustion of all other appeals, against decisions made by AIBA's legal bodies and against decisions made by AIBA's Confederations, and National Federations.*
>
> …
>
> …
>
> *Appeals must be filed in accordance with the provisions of the CAS Code of Sports-Related Arbitration. Appeals shall be lodged with CAS within 30 days of notification of the written decision in question. The appeal*

shall not have a injunctive effect. The appropriate AIBA body or CAS may order the appeal to have injunctive effect.

CAS shall primarily apply the various regulations of AIBA and the Swiss law:"

With regard to the legal remedies within AIBA rules the Appellant refers to Article 29 of the AIBA Disciplinary Code which reads as follows:

> *"1 The Executive Committee of AIBA will act as the Appeal Authority in all appeals against any decision of the Disciplinary Commission.*
>
> *…".*

According to the Appellant the obligation to exhaust all legal remedies available prior to the appeal to CAS derives from Article R47 of the Code which reads as follows:

> *"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 … 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.*
>
> *…".*

The Appellant argues that he only received notice from a third party of the AIBA Disciplinary Commission's decision, very late in the evening on 4 May 2011. At that time he was away both from home and his computer. 0n 5 May 2011 upon his return, the Appellant opened the email. Later it became evident to him that the Respondent had used a wrong email address and, thus, did not send the email notice of suspension to him directly in first instance. On 5 May 2011, he brought this mistake to the attention of the Respondent. The Appellant further argues that he submitted his appeal to the Respondent *"through the relevant means of communication and within the timeframe, given the delay in notification due to AIBA's misdirection of email. He paid the appeal fee. The appeal was, however, rejected by AIBA as being outside the time frame. The Appellant, therefore, holds that he has exhausted all legal remedies available under AIBA rules and submits his appeal to CAS under Article 63 para 1 of the AIBA Statutes 2010".* which reads as follows:

> *"63.1 AIBA recognizes the Court of Arbitration for Sport (CAS), with headquarters in Lausanne, Switzerland, as the authority to resolve appeals against decisions made by the Executive Committee of AIBA.*
> *…".*

The appeal to CAS was lodged on 25 May 2011 and in the submission of the Appellant, thus, met the 30-day deadline under Article 59 para 3 of the AIBA Statutes 2008. Moreover all other requirements of Article R47 of the Code had been fulfilled by him.

In his additional submissions, the Appellant refers to the award rendered in the cases CAS 2010/A/2243-2358-2385-2411 and asserted that the AIBA Executive Committee is not an effective internal remedy and, therefore, decisions issued by the AIBA Disciplinary Committee could in any event be appealed to the CAS directly.

The Appellant refers to Article 58 of the Code, which reads as follows:

> *"Law Applicable to the merits*
>
> *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".*

According to the Appellant, both, Article 59 para 4 (see above) of the AIBA Statutes 2008 and Article 63 para 5 of the AIBA Statutes 2010 lead to the result that the CAS should apply the various regulations of AIBA primarily and the Swiss Law. Complementarily, Article 63 para 5 of the AIBA Statutes 2010 reads as follows:

> *"CAS shall primarily apply these Statutes, the AIBA Bylaws, the AIBA Technical & Competition Rules, the Code of Ethics, the Disciplinary Code and Procedural Rules, as well as to the Anti-Doping Rules of the World Anti-Doping Agency, and shall secondarily apply Swiss law".*

The Appellant contends that it is the Statutes in the version in force (and not any later version) when the facts which led to the challenged Decision occurred which should apply. He also submits with reference to CAS 2009/A/1827 Turkish Boxing Federation v/AIBA that other AIBA regulations may also apply, provided they do not contradict the AIBA Statutes.

The Appellant submits that the decision of the AIBA Disciplinary Commission (see above) was manifestly unfair and excessive. The Respondent in its letter dated 31 January 2011 (see para 2.20 above) did not raise any disciplinary charge against the Appellant, but only suggested that the process *"could concern Mr King"*. There was only one fact for the AIBA Disciplinary Commission's decision which concerned the Appellant directly, namely his email to the AIBA addressees of 28 September 2010 together with the attached legal opinion of Bird & Bird. The Appellant argues that that this email was circulated by him personally within the AIBA family only (and to no wider readership) in seeking support for his candidature as AIBA President.

The legal opinion was compiled by experts and its conclusions seemed to the Appellant to be reasonable and convincing. It had been sought with the support of UK Sport, a Governmental agency. The AIBA Executive Committee did not disclose to the Appellant the names of the suspended Member Federations; he was only aware that they included the federations of Thailand and Kuwait. This and the fact that the Congress is defined as an assembly *"to which all members are convened on a regular basis"*, was the reason why he sent the email to all Member Federations. The Appellant was convinced that he did nothing wrong in sending this email, but merely exercised a democratic right to ask for support of his candidacy. The suspension, therefore, had to be considered as an *"obvious breach of all democratic principles known throughout the World"*. At the time when the legal opinion of Bird & Bird was publicized by him, the opposing opinion of Prof Chappuis was not available.

Mr Doganeli and Mr Ruiz in their emails and statements expressed their own personal views using the Appellant's name as their personal preferred candidate. The Appellant had no influence on this and, therefore, could not properly be made responsible for that. Mr Doganeli, as far as the Appellant

knows, is not under AIBA rules a suspended person and he rejects all allegations by the AIBA Disciplinary Commission that there was or would be any benefit to him through contracts between him and Mr Ruiz as false.

Due to the suspension imposed on the Appellant and due to the Respondent's subsequent request to the ABAE President the Rt Hon Richard Caborn to have this suspension immediately implemented by ABAE in respect of all activities of the Appellant at national level, the Appellant had lost his job a consultant employed by ABAE. This demand by the Respondent amounted to a breach of UK and EU employment law and went beyond the parameters of the Respondent's remit and authority in the light of, in particular, UK and EU Freedom of Trade and Employment Rights. It had caused irreparable harm on the Appellant, affecting his family's income and livelihood, *"by being unreasonable, unenforceable and fundamentally a breach of all European and UK Human Rights in respect of the Appellant's ability to freely and gainfully seek employment, work and trade within his specialist field of work"*.
Finally the Appellant argued that the suspension offended free democratic principles and his right to campaign and seek the Presidency of AIBA through legitimate communication and correspondence with the AIBA family. The Appellant repeated this argument in his additional submissions dated 6 September 2011 by stating *"the sanction was for seeking to support National Federations who requested me to stand as President of AIBA and bring change to the organisation and re-direction as I stated in my Presidential address"*.

The Appellant submits the following Request for Relief:

> *"Paul King respectfully requests that the CAS Panel rules as follows:*
>
> *The decision of the AIBA Disciplinary Commission 27 April 2011 is null and void and set aside.*
>
> *AIBA shall bear all costs of the proceedings.*
>
> *AIBA shall compensate Paul King for the legal and other costs incurred in connection with this arbitration, in an amount to be determined at the discretion of the panel"*.

In his Statement of Appeal, the Appellant also asked for the decision of 10 May 2011 rejecting his appeal is set aside.

The Respondent refers to Article R47 of the Code and the requirement to have any legal remedies available prior to the CAS appeal exhausted. The AIBA Statutes 2008, which were in force when the disciplinary offence occurred, were to the same effect; see Article 59 para 1. The Appellant, in the opinion of the Respondent, did not appeal against the decision of the AIBA Disciplinary Commission of 27 April 2011 within the deadline of 3 days set in Article 62 of the AIBA Organization and Procedural Rules and expressly drawn to his attention at the bottom of the document.

The Respondent points at the fact that the Appellant admits having been notified the AIBA Disciplinary Commission's decision at the latest on 5 May 2011 and that he submitted his appeal only on 9 May 2011. In the Respondent's view the internal appeal, thus, has been validly rejected *"for being outside of the above-mentioned frame of 3 days"*. Therefore, CAS lacked jurisdiction, since the Appellant did not exhaust all internal legal remedies available to him prior to the CAS appeal.

In its final comments on 22 September 2011, the Respondent rejected the opinion of the Appellant, that an appeal to the AIBA Executive Committee provides no effective internal remedy and, thus, does not need to be exercised before any approach is made to the CAS: The Respondent pointed out the particular circumstances that lead the CAS Panel decide the cases CAS 2010/A/2243-2358-2385-2411, in the way it had. In those proceedings according to the CAS, the AIBA President, the AIBA Executive Committee and the AIBA Executive Committee Bureau had in fact already clearly expressed their opinions on the alleged infringements prior to the appeal to the Executive Committee. The Respondent referred instead to, and relied on, the CAS decision 2010/A/2188, where the Panel had accepted the Executive Committee as AIBA Appeal authority based on the new AIBA Disciplinary Code and new AIBA Procedural Rules.

The Respondent did not take issue with the Appellant's contentions as to the applicable law.

The Respondent argues that the Appellant by sending his email violated AIBA rules in that he intended wrongly to inform the suspended Member Federations of their alleged right to participation at the 2010 AIBA Congress and intended to create and actually created confusion amongst the Member Federations, thereby undermining the AIBA Executive Committee's authority by encouraging those Federations not to follow the AIBA's official decision.

In pursuit of his objective, the Appellant associated with Mr Caner Doganeli, with whom the Respondent decided to definitively part in 2007, so violating Article 48 of the AIBA Disciplinary Code and further associated with Mr Jahangir Ruiz, who lost his license for corruption in 2006 and was seen by the Respondent as someone blatantly claiming to buy the votes of Member Federations.

In the further opinion of the Respondent, the Appellant violated AIBA rules by encouraging Member Federations to submit a case to a court based on misleading allegations and himself participated in those proceedings as a representative of ABAE challenging an AIBA decision to which he had been a party. This argument was further developed in the Respondent's final comments submitted to the CAS on 22 September 2011, where the Respondent raised doubts over whether the Respondent was officially supported by the UK Sport. The Appellant did not disclose who represented the ABAE before the Lausanne court and the Respondent posed the question whether the Appellant *"did not in fact exploit and manipulate the 'poor and badly administered Member Federations' for his own interests"*.

The Respondent further submits that the Appellant violated AIBA rules by associating with the attempt of Mr Doganeli and Mr Ruiz to have the 2010 AIBA Congress cancelled, irrespective of any ensuing harm for the Respondent's image and prejudice to its finances.

The Respondent finds that all in all, the Appellant failed to exercise due diligence by allowing misleading allegations against the Respondent to circulate and for no other purposes than to serving his own electoral campaign. The Respondent considers this the more serious given that the Appellant was himself an Executive Committee Member, and aware of all AIBA rules and had misused the influence derived from his high position that he had on the Member Federations.

All in all, according to the Respondent, the Appellant's behavior was in excess of anything which could be excused as part of an acceptable electoral campaign, harmed the image of the Respondent and of boxing in general and, therefore, seriously violating Article 4 para 1 of the AIBA Disciplinary Code making the suspension entirely justifiable.

At the same time, the Appellant's behavior in the view of the Respondent violated the principles of honesty, integrity and sportsmanship intrinsic to Article 3 of the AIBA Disciplinary Code and the Olympic Charter.

According to the Respondent, the Appellant could not claim to have acted in good faith, because he did not vote against decision no.4 at the Marrakesh meeting, did not protest against this decision before the AIBA Executive Committee thereafter, and did not explain why he sent the Legal Opinion of Bird & Bird first to the AIBA Members rather than to the AIBA Executive Committee. Even if, contrary to their primary position, the Appellant had acted in good faith, in the Respondent's view, he was not permitted to contradict such a decision of the AIBA Executive Committee. His behavior disparaged the Respondent's reputation and interests and violated, therefore, Article 4, 46 and 47 of the AIBA Disciplinary Code.

Furthermore, the Respondent submitted, that the consequences of a cancellation of the 2010 AIBA Congress would have been disastrous for both it and its members given the degree to which the demanding organization and planning of the event had already advanced.

The Respondent refers to Article 12 of the 2008 AIBA Statutes as the basis for its authority over a member of a National Federation. According to this provision, AIBA Members have, apart from any other duties, the obligation to comply with the Statutes, all rules and decisions of the Respondent and to ensure that their own national officials comply with them. Article 1 of the AIBA Disciplinary Code extends its scope of application to *"any and all competitions organized by AIBA, its Confederations or Members"* in relation to any breach of the Statutes and other AIBA; Confederations' or Members' rules and decisions.

The Respondent further refers to Article 2 of the AIBA Disciplinary Code, which provides that all persons subject to AIBA's, the Confederations' or Member Federations' Statutes, Bylaws and regulations fall in the sphere of personal application of this Code. The Respondent, was therefore, it is submitted, entitled to secure the observance of the AIBA Disciplinary Code on all levels.

The Respondent argues that the Appellant cannot dispute or repudiate his association with Mr Doganeli and Mr Ruiz and did not explain where he received the money for instructing Bird & Bird to issue its legal opinion.

In the opinion of the Respondent, the Appellant cannot seriously contend that his email of 28 September 2010 was only a legitimate step for his presidential nomination. He took part in the Marrakesh decision and thereafter undermined the authority of the Respondent's governing bodies and sought votes from ineligible members. This cannot be considered as exercise of a "democratic right".

The Respondent holds that the Appellant committed serious violations of the AIBA Statutes and regulations, in breach of Article 45 of the AIBA Disciplinary Code, and took actions against the Respondent's reputation and interests, in breach of Article 47 of the same Code. The sanctions to be imposed there under extend from a fine between CHF 1'000 to 20'000 and, in certain cases, a suspension of 6 to 12 months, respectively a fine between CHF 500 to 10'000 and, according to the gravity of the misconduct, to a suspension of 6 months to 2 years, or to a temporary of definitive ban from any boxing activity.

The Respondent sees no mitigating but rather aggravating circumstances, given the special position of the Appellant as member of the AIBA Executive Committee and Vice-President of ABAE, and finds a suspension of two years to be appropriate.

The Respondent holds also, that the Executive Committee decision of 10 May 2011, confirming the Decision and a two years ban was justified in light of the facts and proportionate in consideration of the CAS jurisprudence.

Finally the Respondent notes the deference due to its autonomy and discretion as regards to the assessment of a sanction imposed for breaches of its Code.

In its final comments of 22 September 2011, the Respondent rejects the assertion of the Appellant that the purpose of the sanction on the Appellant was to restrict his ability to be employed and argued that, if *"AIBA was prevented from suspending or excluding somebody from the association simply because that person is a full time employee of a Member Federation, then the sanctions provided for in the AIBA Statutes and Disciplinary Code would fall to periphery"*.

The Respondent submits the following Prayers for Relief:

> *"AIBA respectfully seeks the following relief:*
>
> *An order that the appeal filed by Mr Paul King is inadmissible, alternatively dismissed*
>
> *An order that Mr Paul King pays all costs of and occasioned by the arbitration as well as legal costs incurred by AIBA.*
>
> *Any other or opposite conclusions of Mr Paul King be dismissed".*

LAW

CAS Jurisdiction, Admissibility and Applicable Law

1. Both parties agree that the jurisdiction of the CAS in the present case is based on Article 59 para 1 of the 2008 AIBA Statutes as those in force at the time when the alleged disciplinary offence occurred. This provision requires the exhaustion of the internal legal remedies offered by the Respondent. The Panel does not see any need to enter the debate as whether an appeal to the AIBA Executive Committee must be made before approaching the CAS, if only because such appeal was in fact submitted by the Appellant against the Decision brought to his attention when he opened the Respondent's email on 5 May 2011. Both parties agree that the appeal to the AIBA Executive Committee was submitted on 9 May 2011.

2. Both parties further agree that Article 62 para 1 AIBA Organization and Procedural Rules sets a deadline of 3 days of receiving notification of the decision to be appealed against. The appeal was rejected by the Respondent because according to its Legal Director's opinion this deadline was not met. Putting to one side consideration of the formalities of an effective notification under the AIBA Organization and Procedural Rules, the Panel draws attention to Article 34 of this set of rules which reads as follows:

   "Start and end of period of prescription

   If the prescription depends on the reception of an act, the time limit starts on the day following this reception.

   If the last day of the prescriptive period conincides with an official holiday or a day where normal business is not conducted in the place of residence or the seat of the party concerned, repesectively that of his counsel, the deadline expires at the end of the next following business day.

   Official holidays and days on which business is not normally conducted form an integral part of the prescriptive period for calculating the deadline".

3. According to Article 34 para 1 AIBA Organization and Procedural Rules the period to be calculated started on 6 May 2011 which was a Friday. 7 May 2011, a Saturday, and 8 May 2011, a Sunday, do not count, because they are days *"where normal business is not conducted"*. The deadline, thus, ended on 10 May 2011 at midnight. Indeed, even if 4 May 2011 were considered to be the day of receipt of notification, the deadline would still have been met. As the appeal was submitted on 9 May 2011, it was, the Panel holds, submitted in time. The AIBA decision on rejection of appeal of 10 May 2011 because of the appeal having been submitted out of time was accordingly not correct. The Panel finds that the requirement of exhausting the internal legal remedies before appealing to CAS was met.

4. The Respondent did not raise any other concern as to the jurisdiction of the CAS and admissibility of the appeal. The Panel hereby formally notes that the deadline of 30 days for submitting the appeal to CAS, as laid down by Article 59 para 3 2008 AIBA Statutes and Article 63 para 4 2010 AIBA Statutes was met.

5. The CAS, thus, enjoys jurisdiction to decide the present appeal.

6. According to Article 59 para 4 of the AIBA Statutes 2008 the CAS will primarily apply the various regulations of AIBA, in particular the Statutes themselves, the AIBA Bylaws, the AIBA Disciplinary Code and the AIBA Organization and Procedural Rules, and secondarily Swiss law as the law of the country in which AIBA has its seat.

Merits

7. The Panel relates for convenience that by the decision of the AIBA Disciplinary Commission of 27 April 2011 the Appellant was *"suspended from any activity at AIBA, Continental, other International and National (Amateur Boxing Association of England) levels, for a period of 24 months",* starting from 27 April 2011 onwards, and had to contribute to the costs of the procedure with CHF 500.-.

8. According to the Disciplinary Commission's reasoning and to the explanations of the Respondent before the CAS, two facts had been decisive for the imposition of a two years suspension on the Appellant:

   i) The circulation of an email by the Appellant to the AIBA family on 28 September 2010 accompanied by a legal opinion of Bird & Bird;

   ii) The association of the Appellant with two persons (Mr Doganeli and Mr Ruiz).

9. The Panel emphases its concern that the Appellant at no stage of the proceedings before the Respondent was confronted with a formal disciplinary charge, so enabling him as well as the Panel to identify precisely what was the charge made against him, what the provision having been violated and what the sanction to be based on the respective provision in the AIBA rules. Although, as will hereafter appear, the Panel does not need to base its decision on any procedural irregularity, it should not be taken to endorse this indirect and imperfect way of instituting disciplinary processes with potentially serious consequences; in any event the Panel's right to conduct a hearing de novo cures, according to well established CAS jurisprudence defects of this character. Reading the reasoning of the AIBA Disciplinary Commission and the arguments of the Respondent before the Panel together, it is now apparent that the Respondent based the two years suspension decision on the Appellant on a violation of the Articles 3, 4 para 1, 45, 46, 47 and 48 of the AIBA Disciplinary Code. And the Appellant has now been able before the Panel to address the case against him.

A. Article 48 AIBA Disciplinary Code

10. Article 48 of the AIBA Disciplinary Code reads as follows:

    "Relationship with a suspended or excluded Member

Any AIBA Confederation or Member who maintains sport relationships with suspended or excluded Members shall be fined CHF 5'000.- to 10'000.-".

11. At the hearing it became clear that the Respondent viewed the association of the Appellant with Mr Doganeli and with Mr Ruiz as violation of this provision. The AIBA Statutes 2008 define the term *"Member"* in Article 6. It must be a *"National Federation"*. This requirement is maintained by Article 8.1 B of the AIBA Statutes 2010. Article 2 of the AIBA Disciplinary Code by reading

"The present Code is applicable to all the persons subject to:

- The Statutes, Bylaws, regulations, … as well as AIBA decisions, in particular Confederations, Members, any officials and boxers, as well as all persons and organizations;

…"

obviously adopts the same approach. Neither the Appellant on the one hand, nor Mr Doganeli or Mr Ruiz on the other hand are "National Federations".

12. At the hearing, the Respondent admitted this obvious fact, but argued that there was a *lacuna* which should be filled by purposive interpretation. The Panel holds that such interpretation would be no more than disguised legislation and to accept the Respondent's invitation would violate the fundamental principle of criminal and disciplinary law *"nullum crimen sine lege"*. The Panel finds that Article 48 of the AIBA Disciplinary Code is not applicable in the present case, because its requisite ingredients are not satisfied.

B. Article 3 AIBA Disciplinary Code

13. Article 3 of the AIBA Disciplinary Code, as far as relevant to the present case reads as follows:

"Principles of Conduct

Every physical or legal person to whom this Code is applicable shall, in particular:

- Respect the entirety of the Statutes, Bylaws and regulations of AIBA, …

- Submit to the final decisions of AIBA …

- At all times behave with respect towards each other;

- Respect the prohibition of honesty, integrity and sportsmanship;

…".

14. It is to be noted that Article 3 of the AIBA Disciplinary Code does not itself lay down any sanction. It is a general provision setting out principles of conduct, the violation of which is to be sanctioned as laid down and implemented in chapter 4 of the Code. The Panel therefore holds that Article 3 in itself cannot serve as legal basis for imposing a suspension.

C. Article 4 para 1 AIBA Disciplinary Code

15. Article 4 para 1 of the AIBA Disciplinary Code reads as follows:

"Punishable acts

1 The following offences can be sanctioned, in particular:

- Violation of the principles of conduct as mentioned in the Statutes, Bylaws and regulations of AIBA, in the present Code and in the Technical & Competition Rules;

- Infringements of the Statutes, Bylaws and regulations of AIBA, its Confederations and Members as well as the non implementation of their executive decisions;

- Violations of the rules related to the publicity and the equipment;

- Offensive behaviour or behaviour in violation of fair-play;

- Misconduct against officials;

- …

- …

- Any behaviour which harms the image of boxing, AIBA, its Confederations or Members".

16. Again it is to be noted that Article 4 para 1 does not lay down any sanction, but is a general provision on punishable acts. These acts are to be sanctioned as laid down and implemented in chapter 4 of the Code. The Panel holds that Article 4 para 1 in itself, therefore, also cannot serve as legal basis for imposing a suspension.

17. Given the facts of the case, a violation of Articles 3 and/or 4 para 1 is capable of being punished only according to the terms of Articles 45 – 47 of the AIBA Disciplinary Code.

D. Article 45 AIBA Disciplinary Code

18. Article 45 of the AIBA Disciplinary Code reads as follows:

"Serious violation of the Statutes, Bylaws or regulations

Subject to the specific provisions of this Code or of the Statutes, the person and/or Member who seriously violates or acts in subordination of the Statutes, Bylaws or regulations of AIBA, its Confederations or Members shall be, according to the severity of the infringement, fined CHF 1'000.- to 20'000.-, and may also be suspended for 6 months to 1 year".

19. The Panel holds that neither by circulating an email including a legal opinion on 28 September 2010, nor by having had contact with Mr Doganeli and Mr Ruiz, in particular at the meeting of some AIBA Member Federations in Bulgaria, did the Appellant violate Article 45 read together with Articles 3 and 4 para 1 of the AIBA Disciplinary Code.

20. The comparison of the legal opinions of Bird & Bird and Prof Chappuis concerning the interpretation of Articles 11 and 16 AIBA Statutes read together with Article 15 para 4 AIBA Bylaws shows to the Panel, materially to the Appellant's conduct, that, there is legitimate debate about the effect of those provisions which the Panel is not required to resolve. It is the duty of the Respondent to provide for clear rules. At the moment when the Appellant participated in the Decision of the Executive Board in Marrakesh he was, the Panel accepts, not aware of the legal consequences and of the number of federations affected by the decision. The Panel accepts the testimony of the Appellant in stating that he changed his mind once he learnt to know how many federations were affected and that he sought to have legal clarity on the consequences of a late payment of the membership dues, which, nevertheless, were discharged before the 2010 AIBA Congress.

21. Since there was no meeting of the Executive Committee scheduled and the AIBA Congress 2010 was imminent approaching, the Panel also does not see why the Appellant had any implied – there was certainly no express – obligation to first consult with the AIBA Executive Committee on the legal opinion he received and only, thereafter, approach the AIBA Member Federations. The Appellant was entitled to rely on the correctness of that, especially in the then absence of any contradictory opinion (The Panel reminds itself that the conflicting opinion of Prof Chappuis was issued upon request of the Respondent only after the Appellant's email had been circulated).

22. The Appellant's use of the Bird & Bird legal opinion to achieve support for his candidacy for AIBA President does not violate the AIBA Statutes, Article 3 or Article 4 para 1 or any other AIBA Bylaw or regulation as required by Article 45 of the AIBA Disciplinary Code. The Appellant obviously wished to demonstrate to the AIBA Member Federations that he was seeking to act in the interests of all the Member Federations. Such efforts by a candidate to put himself or herself in the best light with an actual or putative electorate is wholly normal behaviour in an election campaign. By providing the issuance of a legal opinion the Appellant showed a proactive capacity to his potential supporters, which behaviour is neither a violation of the AIBA principles of conduct, nor misconduct directed against officials, nor an offensive behaviour or behaviour in violation of fair-play, nor any other violation of the AIBA Statutes, Bylaws or other regulations. The Panel also does not see it either as a violation of the principles of honesty, integrity and sportsmanship.

23. The Panel cannot recognize any intent in the Appellant to mislead or deceive the AIBA Member Federations and finds efforts made by the Member Federations, including the Appellant's own federation, once under threat of loss of one of their fundamental rights as members of an association, the right to participate and vote at the General Assembly of the members, to obtain appropriate relief from the tribunal in relying on the only available legal opinion at that moment. This was again no more than an exercise of their legitimate individual freedoms. That they failed is irrelevant, litigants may fail without incurring the stigma of bad faith for having instituted the litigation. Had they succeeded any adverse organisation consequences for the Respondent would have resulted from nothing other than proper application of Swiss law.

E. Article 46 AIBA Disciplinary Code

24. Article 46 of the AIBA Disciplinary Code reads as follows:

"Failure to respect decisions

Anyone who fails to respect enforceable decisions of a body or Commission of AIBA, its Confederations or Members, will be fined CHF 3'000.-, after having been given a warning to respect the decision in a last delay, and may also be suspended, excluded from a competition or banned from any boxing activity for 3 months to 6 months".

25. The Respondent argues that the Appellant violated Article 46 of the AIBA Disciplinary Code by associating with Mr Doganeli, the former Secretary General of AIBA from whom AIBA definitively parted in 2007, and with Mr Ruiz, a provider of boxing equipment whose AIBA license had been withdrawn because of corruption, in order to gain support for the undermining of the Decision of Marrakesh and himself opposing it after initially supporting it. As to this, the Panel repeat, the Appellant did not dispute his contact with those two persons, but stated that the email of Mr Doganeli and internet presentation of Mr Ruiz happened without his knowledge. He confirmed that had he been elected President he would not have chosen Mr Doganeli as AIBA Secretary General. The Panel accept his evidence on those points too. The Appellant emphasised his right to change his opinion, once he has had a better appreciation of its implications. The Panel would in any event note that it is by no means unknown (or unacceptable) in the forum of national politics for campaigning candidates to disavow decisions to which in government they were party.

26. The Panel finds that the Respondent has not supplied any evidence for an active cooperation between the Appellant and Mr Doganeli beyond that which the Appellant has acknowledged, nor any evidence from which it could be concluded that the Appellant was or could have been involved in their actions and statements.

27. The Panel also does not accept that the Appellant unacceptably undermined the Decision of Marrakesh. In the opinion of the Panel, the true analysis of the record is that the Appellant initially endorsed and hence respected the decision, but changed his mind once he appreciated the number of Member Federations affected, and, as he was entitled to sought to minimise the damage caused by this decision for these Members with, in particular, the benefit of the legal opinion. Such action did not undermine the authority of the AIBA Executive Committee but rather sought to persuade it to act in accordance with the advice contained in that opinion.

28. The Panel, thus, finds that the Appellant did not violate Article 46 of the AIBA Disciplinary Code.

F. Article 47 AIBA Disciplinary Code

29. Article 47 of the AIBA Disciplinary Code reads as follows:

"Disparagement of AIBA's reputation and interests

Subject to specific provisions of the Code or of the Statutes, any action affecting the reputation or interests of AIBA, its Confederations or Members will be sanctioned with:

…

If the action is committed by a person

- a fine of CHF 500.- to 10'000.-

- or a suspension of 6 months to 2 years;

- …".

30. The Respondent seeks to identify that a violation of Article 47 was constituted by the same behaviour of Mr King that was also advanced as a violation of one or several articles of the AIBA Disciplinary Code discussed above. For the same reasons that it rejected a finding of those violations, which it need not repeat in extension, the Panel finds no violation of Article 47 either.

31. As a consequence, the Panel rules that the decisions of the AIBA Executive Committee of 10 May 2011 and of the AIBA Disciplinary Commission of 27 April 2011 must be set aside and Mr King's appeal is upheld. Any question of the proportionality of the sanctions or the degree, if any, of deference to be shown to the Respondent's view thereon is moot to discuss.

32. The Panel would only comment that in any organisation, including a sports governing body, domestic or international, there is a danger that those in control may confuse their individual interests with those of the organisation as a whole and in consequence overact and misuse their powers vis à vis those who oppose them. The taking of legal advice, the institution of legal proceedings, and vigorous electioneering can only exceptionally be classified as conduct violative of regulations reasonably drawn and reasonably to be applied. It is, the Panel notes, political speech that ranks foremost in the hierarchy of the rights, embraced the right to freedom of expression protected by Article 10 of the European Convention on Human Rights.

The Court of Arbitration for Sport rules:

1. The appeal filed by Paul King against the decision taken by the International Boxing Association's Disciplinary Commission on 27 April 2011 and the International Boxing Association's refusal of appeal of 10 May 2011 is granted.

2. The sanction imposed on Paul King by the decision adopted on 27 April 2011 by the International Boxing Association's Disciplinary Commission is set aside.

3. (…).

4. (…).

5. All other prayers for relief are dismissed.