



**Arbitration CAS 2011/A/2561 Federation Romana de Box (FRB) v. International Boxing Association (AIBA), award of 10 January 2012**

Panel: Prof. Michael Geistlinger (Austria), President; Mr José Juan Pintò (Spain); Prof. Petros Mavroidis (Greece)

*Boxing*

*Suspension of a National Federation*

*Exhaustion of internal remedies prior to the appeal to the CAS*

*No valid legal basis to order the holding of new elections*

- 1. An appellant is deemed to have exhausted the legal remedies prior to the appeal to the CAS if the Statutes of the Federation do not provide for legal remedies that would be available to the appellant for challenging the decision other than the appeal to the CAS. The ratification by the Congress is no legal remedy against a decision, if the appellant had no chance to be heard by the members of the Congress before the ratification of the decision.**
- 2. Assumed that Article 13 (E) AIBA Statutes 2010 allows for imposing elections on Members, it is certainly not a sign of good governance if AIBA imposes elections on a Member within a deadline that cannot be met according to the provisions of the Member's Statutes.**

The FRB (the “Appellant”) is an association incorporated according to the Romanian Physical Education and Sports Law no. 69/2000 of 28 April 2000, having its headquarters in Bucharest (Romania). The FRB is the governing body of Romanian boxing, aiming at dealing with all questions relating to professional and amateur boxing and exercising regulatory, supervisory and disciplinary functions over its clubs, regional associations, officials and athletes.

AIBA (the “Respondent”) is an association pursuant to articles 60 *et seq.* of the Swiss Civil Code, having its seat in Lausanne, Switzerland, which object is, amongst others, to improve, promote, and spread worldwide the sport of boxing in all its forms, as well as to regulate boxing in all its aspects by adopting measures and rules to ensure that AIBA Statutes, regulations, directives, Code of Ethics, Technical and Competition Rules, and decisions are enforced.

On 20 January 2010, the AIBA Disciplinary Commission suspended the President of the FRB, Mr Rudel Obreja, who had already been suspended for three and a half years beginning on 22 August 2008 before, for a period of eleven years. This suspension was reduced to five years by decision of the AIBA Appeal Commission on 6 February 2010.

On 9 February 2010, the Appellant informed the Respondent that, following the decision of suspension of Mr Obreja, it has decided to transfer all the powers of Mr Obreja regarding amateur boxing to Mr Citea Vasile. The Respondent emphasized after an exchange of emails with the Appellant that the Respondent would only communicate with an Interim President, if there was one, or with the Secretary General.

On 30 July 2010, the FRB Secretary General sent to the Respondent some proposals for inclusion in the Agenda at the AIBA 2010 Congress which were the same as sent by Mr Obreja in his function as *“Elected AIBA Vicepresident”* on the same day.

On 5 August 2010, the AIBA Director of External Relations & Development informed the Appellant that the Respondent *“will no longer communicate with your Federation until a new President is elected”* and that *“AIBA is urging your Federation to hold an Extraordinary General Assembly to have elections”*.

At a non specified date thereafter, the Respondent was informed by an anonymous group of coaches and referees from Rumania that Mr Citea was dismissed and that Mr Obreja continued to manage both sectors in the FRB, the professional and the amateur boxing in a manner disliked by them.

On 20 August 2010, the Respondent advised the Appellant that the Congress package was not sent to it, because it had no President eligible to sign the necessary forms. The Respondent will continue so as long as a new President is not in place in the FRB.

On 23 August 2010, the Secretary General of the FRB underlined that they have already informed the Respondent that Mr Citea Vasile is representing the Appellant with relation to the Respondent and that the letter sent by Mr Obreja to the Respondent was not empowered by the Appellant. The Respondent was requested to ignore this letter and to send the Appellant the Congress package.

At an unspecified date thereafter and according to the Respondent prior to the AIBA 2010 Congress 2010, the Respondent was informed by an anonymous group of referees and coaches, members of the FRB, that the Appellant was organizing a General Assembly for new elections on 27 October 2010 and had suspended Mr Citea for a period of two and a half years because of his opposition to a candidacy of Mr Obreja for President of the FRB.

On 20 November 2010, in an article on the Internet it was reported that at an extraordinary meeting of the FRB Mr Obreja was re-elected President having been the only candidate because all other members of the federal bureau of the FRB had resigned before.

On 30 November 2010, the Appellant informed the Respondent that the FRB Secretary General has been transferred all powers of Mr Obreja relating to amateur boxing and, therefore, was the official representative of FRB relating to AIBA and the EUBC.

On 2 December 2010, the AIBA Executive Director urged the FRB

*“to have an election for a new President immediately as your President has been suspended by AIBA for many years and can no longer occupy this position no matter what.”*

*In this regard, I would like to propose for this election to take place within the next two months from today. However, if this election does not take place, the AIBA Executive Committee Bureau will review this current situation and make a decision to assist the boxing family in Romania to receive a better support for a proper leadership in the future”.*

In this letter, the AIBA Executive Director further informed the Appellant that the Respondent will not accept the FRB Secretary General as representative of the FRB relating to the AIBA and EUBC. Nevertheless, no elections took place within the set deadline.

On 8 February 2011, the FRB Secretary General asked the AIBA Disciplinary Commission to lift the suspension of Mr Obreja. The chairman of this commission decided, however, not to have the case opened by his commission.

On 8 March 2011, the AIBA Executive Committee Bureau unanimously decided and informed the Appellant on the day after as follows:

*“- To put the case of the Romanian Boxing Federation for review by the AIBA Disciplinary Commission as AIBA was informed that this Federation would conduct an election for Presidency on October, 27, 2010 in order to elect a new President to replace the suspended President, Mr Rudel Obreja which election did not happen. AIBA sent this Federation a letter on December 2, 2010 giving it 2 (two) additional months to organize an election but it never took place (see attached letter). Mr Obreja is still the President of this Federation despite this current long suspension (see extract from the Federation’s website).*

*- To provisionally fully suspend the Romanian Boxing Federation, meaning that no boxers, coaches or any officials are authorized to take part in any AIBA approved or controlled events and/or meetings and that this Federation is not authorized to host any continental or international boxing events until an election for Presidency takes place (AIBA will control the election process) and a decision by the AIBA Disciplinary Commission is made. This suspension is effective immediately”.*

On 24 March 2011, the Appellant sent a letter to the AIBA Disciplinary Commission and argued *inter alia* that the Appellant had held a General Assembly meeting on 27 October 2010, where Mr Obreja was elected President of the FRB for a 4-year mandate. Therefore, the Appellant did not see a reason for the Respondent to request the election of a new President. There was no rule in the AIBA Statutes stating that a member can be represented only by its President. The obligation to respect the prohibition on maintaining sports relationships with members who have been expelled or suspended by AIBA was related only to AIBA family activity in the FRB’s reading. Mr Obreja was allowed by the FRB to remain President, *“but only with responsibility for professional boxing matters”*. All FRB decisions were made by the FRB Federal Bureau and not by the President. He was allowed to vote only in professional boxing matters. He was not allowed to communicate with AIBA and EUBC. The email sent by Mr Obreja to AIBA concerning the Congress 2010 Agenda was not authorized by the FRB. The FRB argued *“that the provisional suspension affecting not only officials but athletes was not imposed considering the principle of proportionality and caused collateral damage, violating principles of law and rights of athletes. No presumption of innocence was accorded and before the investigation the RBF was suspended for a violation we yet don’t know if committed”*.

With regard to the argument that the FRB had violated Articles 6 (1) and 13 (A) and (B) of the AIBA Statutes, the FRB argued in the above letter that there was no respective detailed motivation. There

was no AIBA decision imposing to FRB elections within two months according to article 50 (1) AIBA Statutes. Such a decision needed to be taken by either the Congress, or the Executive Committee or the EC Bureau. The power and duty of the Executive Director was just to implement such decisions.

On 25 March 2011 the AIBA Disciplinary Commission ruled inter alia that the *“RBF is suspended from any activity at AIBA, Continental and other international levels, for a period of 2 (two) years, starting today. This suspension does not apply to coaches, athletes and referees & judges”*.

The AIBA Disciplinary Commission based this decision on the finding of the facts that *“the RBF never elected a new president, Mr Obreja apparently continuing to conduct the business, even if some RBF officials were presented as the persons running the office. AIBA requested the RBF to elect a new president to replace the suspended one. The RBF announced that it would do so on 27 October 2010, but it didn’t happen. On 2 December 2010, AIBA sent a letter to the RBF Secretary General, ordering the National Federation to elect a new president within two months. No election took place. AIBA alleges that Mr Obreja is still the president of the RBF. [...] On the RBF website, Mr Obreja appears as the president of the RBF, without any precision as to a possible split between the running of professional and amateur boxing”*. The Disciplinary Commission therefore considers that Articles 3 and 46 of the AIBA Disciplinary Code were seriously violated by the Appellant and that its behaviour would harm the image of boxing, AIBA, its Confederations or Members according to Article 4 of the Disciplinary Code.

On 28 March 2011, the Appellant sent a declaration of appeal asking for dismissal of the AIBA Disciplinary Commission’s decision of 25 March 2011. By letter dated 29 March 2011, the Respondent set to the Appellant a deadline of 5 April 2011 for receiving the FRB’s Submission in Appeal.

On 4 April 2011, the Appellant submitted its Submission in Appeal and argued that there was no violation of the AIBA Disciplinary Code. Due to Article 22.3 of the AIBA Statutes 2010, the FRB Secretary General was allowed under AIBA law to represent the Appellant in its relations with the Respondent and amateur boxing. Neither the decision of 6 February 2010, nor the email of Ms Patricia Steulet of 12 April 2010, nor her email dated 5 August 2010 had established or could establish an obligation for the Appellant to hold elections. When the elections were held on 27 October 2010, because of the Appellant being an independent organization governed by Romanian law and affiliated also to other international boxing organizations, *“nothing impeded Mr. Rudel Obreja to present his candidature in the elections to be held”*. The communications of a group of trainers and coaches have no value as means of evidence, because they were not signed and did not show any names, there were no respective complaints or procedures started against the quality of the elections of 27 October 2010. The letter of AIBA’s Executive Director of 2 December 2010 had no legal basis in any decision of a competent AIBA body, went beyond the competences of the AIBA Executive Director and, therefore, contained an unjustified demand.

On 6 April 2011, AIBA therefore organized a circular vote based on Articles 38-M and 38.3 of the AIBA Statutes within the members of the AIBA Executive Committee asking them to answer immediately or at the latest by 10 April 2011, whether they agree *“to uphold (thus to confirm my agreement with) the decisions of the AIBA Disciplinary Commission”* or whether they do not agree so. Since an absolute majority of the AIBA Executive Committee voted in favour already within five days, the decision was considered of having passed.

On 13 April 2011, the AIBA Executive Committee confirmed the decision taken by the AIBA Disciplinary Commission on 25 March 2011 in so far as it suspended the Appellant from any activity at AIBA, continental or other international level, for a period of two years. This suspension did not apply to the Appellant's coaches and athletes.

On 2 May 2011, the FRB filed a statement of appeal before CAS against this decision and requested its stay.

Further to the filing of this appeal, the procedure *CAS 2011/A/2423 Federatia Romana de Box v. AIBA* was initiated by the CAS Court Office.

By Order of 25 May 2011, the FRB's request for a stay was dismissed by the Deputy President of the CAS Appeals Arbitration Division.

At its meeting held on 31 July and 1 August 2011 in Astana, Kazakhstan, the AIBA Executive Committee adopted the proposal of the AIBA Executive Director "*to order the RBF to have a new election for presidency before the end of August 2011 and if this election does not take place, to provisionally exclude this National Federation*". The AIBA gives as reason that Mr Obreja "*is apparently still acting as president of the Romanian Boxing Federation (RBF) despite the fact that he was suspended for 11 years by the AIBA DC, suspension which was reduced to 5 years. In addition, the RBF apparently never elected a new president despite the request from AIBA and was therefore suspended by the AIBA DC on March 25, 2011*".

On 5 August 2011, the Respondent informed the Appellant on the above decision and drew its attention "*to the fact that if the above request is not fulfilled, AIBA will exclude the Romanian Boxing Federation from its AIBA members according to article 18 of the AIBA Statutes*". On the same day, the Respondent informed also the Romanian Olympic and Sports Committee (ROSC) accordingly.

On 17 August 2011, the FRB Secretary General informed the Respondent as follows:

"...

*Mr. Rudel Obreja is the legitimate President of the RBF, being democratically elected to conduct this – so far – independent institution by means of the elections held on 27 October 2010. All powers and prerogatives related to AIBA correspond to the undersigning since 11 September 2010 (Decision no. 1168).*

*There is no need to remind you that unfortunately, the RBF is currently suspended as an AIBA member due to the abusive and groundless Decision of the AIBA Disciplinary Commission on 25 March 2011, such decision affecting only RBF officials, and therefore not Athletes, Coaches, Referees and Judges.*

*The validity of the aforementioned decision has been appealed before the Court of Arbitration for Sport, being the first hearings scheduled on 21 September 2011.*

*Note that a decision to exclude the RBF of AIBA can only be adopted in accordance with article 18.2 of the AIBA current Statutes. In this respect, RBF has not committed any violation of the Statutes and related rules as set forth in the referred article 18.2 which would somehow justify the adoption of such harming measure.*

*A decision of exclusion adopted before the end of the proceedings started before the CAS-TAS would be considered arbitrary, preventing our institution of the most basic defence rights not to mention the presumption of innocence of which we are invested until proven the contrary.*

*RBF will respect and proceed consequently with the decision passed by the CAS-TAS. Until that moment arrives, RBF cannot accept your groundless request.*

*...”.*

On 22 August 2011, the Respondent informed the ROSC on the Appellant’s letter of 18 August 2011 and reminded the ROSC that *“should no election be held before August 31, 2011 as requested by the AIBA Executive Committee, the RBF would be provisionally excluded from AIBA starting September 1, 2011 which decision will have to be ratified by the AIBA Extraordinary Congress on September 24, 2011”.*

The Appellant apparently did not organize elections before the end of August.

On 30 August 2011, the Respondent sent another letter to the ROSC confirming the results of a phone conversation some days before and the receipt of a letter of the President of the ROSC who had committed to make sure that Mr Obreja would resign by 1 September 2011. The President of AIBA requested the ROSC in addition to make sure that the CAS appeal forming the basis for the procedure CAS 2011/A/2423 was withdrawn by 1 September 2011. The latter request was not accepted by the President of the ROSC, since he considered this to be an interference with CAS competences beyond the sphere of the competences of the ROSC.

By letter of 6 September 2011 (the “Decision”), the ROSC was sent a letter which was forwarded by e-mail of the same day to the Appellant and reads as follows by the Respondent:

*“Dear Mr President,*

*This letter is regretfully to inform you that the Romanian Boxing Federation is excluded as a member of AIBA as of today.*

*At its meeting held on July 31 and August 1, 2011 in Astana, Kazakhstan, the AIBA Executive Committee decided to further impose an election for presidency to the RBF before the end of August 2011 under the supervision of an AIBA Observer.*

*Given that the requested RBF election for presidency was not held before August 31, 2011, the Romanian Boxing Federation is therefore excluded as a member of AIBA and has lost all of its AIBA membership rights as of today. This decision will also be ratified by the 2011 AIBA Extraordinary Congress to be held on September 24”.*

On 15 September 2011, the Respondent’s Executive Director submitted a *“Mail Vote of AIBA EC Bureau Members”* and proposed *“to allow boxers and coaches to participate in the AIBA World Boxing Championships Baku 2011 under the name and flag of AIBA with the support of the ROSC”*. The addressees of this e-mail were invited to reply immediately.

On the same day, the ROSC informed the Respondent that Mr Obreja was sanctioned with a vote of censure and exclusion of the latter from the ROSC as representative of the Appellant, *“as a consequence of his indecent behaviour and infringement of the image caused by Mr. Rudel Obreja, both towards the ROSC president*

*and the ROSC organization as such*". The Appellant was asked by the Respondent to confirm within 30 days the name of the new representative in charge with the ROSC relation.

On 16 September 2011, the ROSC sent the registration form for the AIBA World Boxing Championships Baku 2011 to the Respondent where it mentioned: "*We hereby confirm that, on the basis of your invitation, our team will participate at the AIBA World Boxing Championship Baku to be held from September 22 – October 10 in Azerbaijan*".

On 20 September 2011, the CAS granted the request for a stay the Appellant filed before it.

According to the Respondent, on 24 September 2011, the AIBA Extraordinary Congress ratified the AIBA Executive Committee decision of 6 September 2011, but noted the Order of the CAS of 20

September 2011, and, thus, the ratification of the challenged decision was made subject to a final and binding decision of the CAS.

On 28 September 2011, the Respondent followed the CAS Order of granting a stay and allowed the Appellant to have its boxers participated under the flag of Romania at the AIBA World Championships in Baku.

On 8 September 2011, RFB filed an appeal against the Decision and requested its stay as well as the consolidation of this case with the case CAS 2011/A/2423.

By letter of 9 September 2011, the CAS initiated the procedure *CAS 2011/A/2561 Federatia Romana de Box v. AIBA* and *inter alia* granted to the Respondent to file its position/observations on the Appellant's requests for a stay and for the consolidation of the proceedings CAS 2011/A/2423 and CAS 2011/A/2561.

By letter of 14 September 2011, the Respondent objected to the requested consolidation because, according to it, the present appeal would be premature and CAS would not have jurisdiction. It also objected to a decision in an expedited procedure.

On 15 September 2011, the Respondent accepted the submission of the cases CAS 2011/A/2423 and CAS 2011/A/2561 to the same Panel but objected to the requested stay and asked CAS:

*"- to take note that AIBA will allow the boxers and coaches of Romania to participate in the AIBA World Boxing Championships Baku 2011 under the name and flag of AIBA with the support of the Romanian Olympic and Sports Committee;*

*- to dismiss the Federatia Romana de Box for its application for a stay dated 8 September 2011"*.

By letter of 15 September 2011, the Appellant reiterated its position with respect to CAS jurisdiction that, according to it, is given based on Article 63 of the AIBA Statutes and underlined that it has exhausted internal remedies since the Decision cannot be attacked within AIBA.

On 16 September 2011, the Deputy President of the CAS Appeals Arbitration Division dismissed the Appellant's request for the consolidation of the cases CAS 2011/A/2423 and CAS 2011/A/2561,

but, in view of the Respondent's agreement, confirmed the submission of these procedures to the same Panel.

On 19 September 2011, the Appellant filed some new arguments. The Panel did not consider these new arguments, except for exhibits that were not included before, for its decision on the request to stay, because the Code of Sports-related Arbitration (the Code) only provides one round of written submissions related to provisional measures. This shall guarantee that the CAS can issue an order as quickly as necessary.

On 20 September 2011 the CAS ruled that:

- “1. *The application for a stay filed by the Federatia Romana de Box in the matter CAS 2011/A/2561 Federatia Romana de Box v. AIBA is granted.*
2. *The costs related to the present order shall be determined in the final award or in any other final disposition of this arbitration”.*

On 21 September 2011, the Appellant filed its Appeal Brief together with 10 annexes.

On 5 October 2011, the CAS pronounced its decision on the request to stay with reasons.

On 13 October 2011, the Respondent submitted its Answer to the Appeal together with 30 exhibits.

On 17 October 2011, the CAS invited the Appellant to answer the arguments of the Respondent as to lack of jurisdiction of the CAS.

On 27 October 2011, the Appellant submitted its answer to the arguments of the Respondent as to lack of jurisdiction of the CAS.

On 1 November 2011, the Respondent referred to the Appellant's letter of 27 October 2011 and submitted further arguments as to the jurisdiction of the CAS.

On 3 November 2011, the CAS Counsel informed that the Respondent's letter of 1 November 2011 will be included into the file only if the Appellant will agree until 8 November 2011. Since the Appellant did not react to this CAS letter, on 10 November 2011, the CAS Counsel informed the parties that the Respondent's letter of 1 November 2011 will not be considered by the Panel.

On 8 November 2011, the CAS in the case CAS 2011/A/2423 between the same parties ruled *inter alia* that the appeal filed by the FRB on 2 May 2011 against the decision of the AIBA Executive Committee notified on 13 April 2011 was upheld and that the decision of the AIBA Executive Committee notified on 13 April 2011 and the decision of the AIBA Disciplinary Commission of 25 March 2011, as far as referred to by the above decision of the AIBA Executive Committee, were set aside. The CAS also declared that the decision of the AIBA Executive Committee Bureau of 8 March 2011 requesting the AIBA Disciplinary Commission to suspend the Appellant was declared having had no legal basis in the AIBA 2010 Statutes and the AIBA Disciplinary Code.

According to the Appellant, CAS jurisdiction is given, *in casu*, by Article 63.1 of the AIBA Statutes which reads as follows:

*“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. Each Confederation and National Federation must recognize CAS as the authority of appeal against decisions made by the legal bodies of such Confederation or National Federation”.*

Further to that the Appellant refers to 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 or as the parties have concluded a specific arbitration agreement 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 points also to Article 65 of the AIBA Statutes which reads as follows:

*“Compliance of Decisions of AIBA*

*Confederations and National Federations must comply fully with any decisions passed by the Executive Committee, the EC Bureau, the Disciplinary Commission or any other Commission which such decisions are, according to these Statutes, final and not subject to appeal. Confederations and National federations must take every precaution necessary to ensure that their own Boxers and Officials comply with these decisions”.*

The Appellant understands Article 65 AIBA Statutes stating that the Executive Committee decisions are to be deemed final and not subject to appeal.

The Appellant has exhausted all legal remedies available to him prior to the appeal to CAS, *“as confirmed by article 65 of the statutes of AIBA”*. It argues that the decision of exclusion produces immediate effects and cannot be internally attacked by the FRB.

In its additional submission of 27 October 2011, the Appellant fully supports the arguments of the CAS concerning its preliminary finding of jurisdiction and adds that the wording of the decision of the AIBA Executive Committee of 6 September 2011 is not clumsy and imprecise, but reflects the handwritings and intent of its author, the AIBA Executive Director.

Since the Appellant was informed on the Decision of exclusion on 6 September 2011, it submitted the Statement of Appeal within the deadline of 30 days laid down by Article 63.4 AIBA Statutes.

As to the applicable law, the Appellant refers to Article R58 of the Code and Article 63.5 of the AIBA Statutes.

The Appellant recalls Article 18 AIBA Statutes as legal basis for exclusion of a Member from AIBA.

This provision reads as follows:

*“Exclusion*

*18.1 If a National Federation is excluded, its membership rights shall automatically be cancelled.*

18.2 *A National Federation may be excluded by a decision of the Executive Committee if the National Federation commits a severe violation of these Statutes, the AIBA Bylaws, the AIBA Technical & Competition Rules, the Code of Ethics, the Disciplinary Code and Procedural Rules. The Executive Committee may, in its discretion, warn a National Federation that its conduct may lead to exclusion before making such decision. Any decision by the Executive Committee to exclude a National Federation must be made subject to ratification by Congress”.*

Since the Executive Committee decision of 6 September 2011 is exclusively based on the facts that the FRB did not hold elections before 31 August 2011 and there was no such obligation under the applicable AIBA rules, which issue was under consideration at the CAS procedure CAS 2011/A/2423, and since the FRB could not organize such elections without violating Article 34 (3) of its own Statutes, the requirement of a “violation” of AIBA regulations was not fulfilled. Alternatively, if it was found in the parallel CAS proceedings that there was a violation of AIBA regulations, such violation was not “severe” as required by Article 18.2 AIBA Statutes. Besides, the Appellant underlined that since the non-holding of election was already the reason for its suspension on 13 April 2011, its exclusion for the same ground would breach the principle *non bis in idem*.

The Appellant also points at Article 46 AIBA Disciplinary Code which establishes a fine of 3.000 CHF and a suspension, exclusion from a competition or ban for 3 months to 6 months for the failure to respect an enforceable decision of a body or Commission of AIBA.

The Appellant finds that AIBA acted with bad faith in imposing an obligation without any legal base and doing this in the vacation period of August and without waiting for the CAS decision in the procedure 2011/A/2423.

The Appellant submitted the following Prayers for Relief:

*“The Appellant respectfully requests the Court to accept and uphold this Appeal against the RESPONDENT, the International Boxing Federation (AIBA) and:*

*- to adopt an award by means of which the Decision of 6 September, 2011 adopted by the AIBA Executive Committee, is set aside.*

*- An order that the Respondent pays all costs of the arbitration as well as all legal costs and defense fees incurred by the Romanian Boxing Federation”.*

The Respondent refers to Article 23 first sentence AIBA Statutes which calls the Congress the supreme body of AIBA and to Article 63.1 AIBA Statutes which makes decisions of the AIBA Executive Committee subject to appeals to CAS, but not decisions of the Congress. The Respondent holds that due to Article 23 (G) the decision to exclude a National Federation is a decision of the Congress. This provision reads as follows:

*“... The Congress has the following powers:*

*...*

*(G) ratifies the admission or exclusion of National Federations following the decision of the Executive Committee; ...”.*

The Respondent holds that considering the opposite *“would severely violate the organizational and jurisdictional autonomy of the association (Article 63 of the Swiss Civil Code)”*.

The Respondent, thus, considers the CAS Panel’s preliminary finding in the Order on the Request of a Stay with regard to Article 18.2 AIBA Statutes as wrong. It holds that the *“decision of exclusion is in fine taken by the Congress, upon submission of the Executive Committee”*. The finding that the decision *“remains a decision of the AIBA Executive Committee”* goes against the systematic of AIBA and of most Swiss associations, whereby the Respondent refers to ATF 57 II 121, which according to it states *“that the exclusion of a member can be appealed against only when ratified by the statutory authority called to decide in last resort”*.

The Respondent cannot recognize any aim of submitting the decision of exclusion to the Congress if the *“first instance decision of the Executive Committee would already be a definitive decision”*.

The Respondent called the wording of the decision of 6 September 2011 saying that the Executive Committee decision *“will also be ratified by the 2011 AIBA Extraordinary Congress to be held on September 24”* *“somewhat clumsy and imprecise”* and shows surprised by the Panel considering seriously *“that the AIBA Congress would not be independent from the AIBA Executive Committee”*. The Respondent mentions that the AIBA Congress consist of 195 affiliated National Federations, each of them being represented by a maximum of three appointed delegates, whereas the AIBA Executive Committee consist of twenty persons. It, thus, cannot be assumed that the very much larger number of Congress members could be dependent from the members of the Executive Committee.

The Respondent holds that the AIBA Statutes did not give jurisdiction to the CAS with respect to the final decision of exclusion made by the Congress. The CAS, therefore, has no jurisdiction to decide the present dispute.

As a consequence the Respondent did not discuss the question of time and applicable law, but refers only to the admissibility of its Response to the Appeal Brief as to having met the time frame of twenty days from the receipt of the grounds of appeal (Response: 13 October 2011; Receipt of Appeal Brief: 23 September 2011).

The Respondent explains the structure of its membership (one member per country), which can be terminated *inter alia* by exclusion by a decision of the Executive Committee ratified by the Congress. The conditions for exclusion are laid down in Article 18 AIBA Statutes.

According to Article 6.1 AIBA Statutes *“National Federations ... must always comply with these Statutes, the AIBA Bylaws, the AIBA Technical & Competition Rules, the Code of Ethics and the Disciplinary Code and Procedural Rules, as well as to the Anti-Doping Rules of the World Anti-Doping Agency”*.

The Respondent refers to Article 14.1 and 14.2 AIBA Statutes which reads as follows:

*“14.1 The election and appointment processes adopted by each National Federation must be approved by AIBA and each National Federation must prevent any and all external interference in their election and appointment processes. AIBA may send an observer to the election in the discretion of the President or at the*

*request of the National Federation (in which case the National federation shall pay the costs and expenses of such observer).*

*14.2 Any person elected or appointed as an officer of the National federation who is not selected in compliance with article 14.1 shall not be recognized by AIBA”.*

The Respondent explains that it decided the FRB as a Member of AIBA “because the Appellant did not comply with its request to organize an election for presidency to the RBF before the end of August 2011 under the supervision of an AIBA Observer”. It holds that it provided the Appellant “with ample time to arrange new elections and warned the RBF of the consequences of not doing so”.

As to the argument of the Appellant that according to its Statutes it was impossible to organize elections before 31 August 2011 it held that it “is interesting to note that, as of today, the Appellant did not consider convenient to organize these elections, even though it would have had plenty of time to do it”.

Further to that the Respondent holds that the facts of CAS 2011/A/2423 are different from the present case. Object of the case CAS 2011/A/2423 is the decision of 25 March 2011 which was issued since the Appellant continued to consider Mr Rudel Obreja as its president what is different from the fact “that the RBF has today no leadership and makes no effort to have a new one”. The Respondent “cannot continue any relationship with a National Federation who has no approved presidency”.

The Respondent calls it an absurd situation if it was forced to accept a National Federation which refuses to organize new elections, “while it is in fact under the influence of a President who was suspended twice for severe violations of the AIBA Statutes”. The Respondent would not have a possibility to cancel the membership of a National Federation, “which in an evident way does not comply with its Statutes, Bylaws and regulations”. This result would also go against the autonomy of an association and, in particular, against Article 72 of the Swiss Civil Code, which is quoted in its French version:

- “1. Les statuts peuvent déterminer les motifs d'exclusion d'un sociétaire; ils peuvent aussi permettre l'exclusion sans indication de motifs.*
- 2. Dans ces cas, les motifs pour lesquels l'exclusion a été prononcée ne peuvent donner lieu à une action en justice.*
- 3. Si les statuts ne disposent rien à cet égard, l'exclusion n'est prononcée que par décision de la société et pour de justes motifs”.*

The Respondent holds that the ongoing non-cooperation of the Appellant and the fact that it has no approved leadership constitute, *inter alia*, “a case of contempt to the entirety of the Statutes, Bylaws and regulations of AIBA, as well as to the principles of honesty, integrity and sportsmanship, disparaging AIBA’s reputation and interests”. It constitutes a severe violation of AIBA’s Statutes within the meaning of Article 18 of AIBA Statutes.

The Respondent refers to Article 13 (E) AIBA Statutes which reads as follows:

*“National Federations and Provisional Members have the following obligations:*

*...*

(E) *to submit the results of any election of officers of the National federation and the organizational structure of the National Federation to AIBA for final approval and recognition*”;

According to the Respondent these provisions “*imply clearly that when the President of a National Federation is suspended by AIBA – a fortiori for eight years and a half – this National Federation has an obligation to elect a new President to replace the suspended one*”.

The Respondent submits the following Prayers for Relief:

*“AIBA respectfully seeks the following relief:*

- 1. An order that the appeal filed by Federatia Romana de Box is inadmissible. Alternatively, an order that the Federatia Romana de Box is dismissed of all its prayers for relief.*
- 2. An order that the Appellant pays all costs of the arbitration as well as legal costs incurred by AIBA.*
- 3. Any other or opposite conclusions of the Appellant be dismissed”.*

## LAW

### CAS Jurisdiction and Admissibility

1. In accordance with Article 186 of the Swiss Private International Law, the CAS has power to decide upon its own jurisdiction. In its Order of Request for a Stay with reasons dated 5 October 2011, the CAS based its jurisdiction on Article R47 of the Code and Article 63.1 AIBA Statutes.
2. The Parties did not submit any arguments in the further procedure that could convince the Panel to change its opinion. As predicted by the Executive Committee in its decision of 6 December 2011 the Congress at its Extraordinary meeting of 24 September 2011 ratified the Decision, however, noted the Order of the CAS of 20 September 2011, and, thus, the ratification of the challenged decision was made subject to a final and binding decision of the CAS. Accordingly, the Romanian boxers were allowed to participate at the 2011 World Championships under the Romanian flag on 28 September 2011.
3. The Panel feels satisfied that the AIBA Congress under these particular circumstances found a way to comply with the CAS ruling, thereby overruling the part of the Decision which stated that the Appellant “*has lost all of its AIBA membership rights as of today*”. The Panel finds that, indeed, the consequence of an immediate effect of the Decision as from the day of its adoption by the Executive Committee does not automatically ensue from the wording of Article 18.2 AIBA Statutes. The date of entry into force of the Decision could also be the date of ratification of the Decision by the Congress or any later date specified by the Congress. Due to the clear and not “*somewhat clumsy and imprecise wording*” of the respective part of the Decision the Panel found it necessary to intervene and grant a stay.

4. If AIBA wants to have the decision on exclusion of a Member to be a decision of the Congress, both Article 18.2 and Article 23 (G) AIBA Statutes, need to be amended substantially. The Congress must be given the authority to change the contents of a proposal of such Decision by the Executive Committee. Currently, the Congress has only the option to approve or to disapprove the decision of the Executive Committee. The Congress cannot influence on its contents. The ratification by the Congress, thus, is an element of an effective decision, but does not change the authority to whom to be assigned the Decision.
5. The wording of Article 18.2 in the view of the Panel raises no doubt that exclusion takes place by decision of the Executive Committee. The ratification by Congress does not change the nature of the decision, since the authority of the Congress is limited to an either accept or reject vote regarding the submitted decision of the Executive Committee. The Decision remains a decision of the AIBA Executive Committee. The ratification by the Congress is no legal remedy against the Decision. The AIBA Statutes do not provide for legal remedies that would be available to the Appellant for challenging the Decision within AIBA since the only appeal provided for decisions taken by the AIBA Executive Committee is the one before CAS. The Appellant had no chance to be heard by the Members of the AIBA Congress before ratification of the Decision by the Congress.
6. According to the clear wording of Article 63.1 of the AIBA Statutes, as in force at the relevant date, the CAS is the authority *“to resolve appeals against decisions made by the Executive Committee of AIBA”* and decisions subject to ratification by Congress are not one of the two exceptions provided for under Article 63.2.
7. In view of the above and in spite of the Respondent’s objections, the Panel considers that no internal remedies are available to the Appellant to challenge it. Article 63 of the AIBA Statutes provides for CAS jurisdiction against the Decision since this decision is not covered by the exceptions listed under Article 63.
8. The Panel does not see any contradiction of its finding with the jurisprudence of the Swiss Federal Tribunal, in particular, with the systematic of the Respondent and most of the Swiss associations and, in particular, with the judgement referred to by the Respondent (ATF 57 II 121 / JT 1931 I 578).
9. The relevant part of the judgment referred to by the Respondent reads in German language as follows (para 3.2 third subparagraph):

*“Nach der Rechtsprechung des Bundesgerichts kann ein Vereinsmitglied den staatlichen Rechtsschutz erst in Anspruch nehmen, nachdem es von den Rechtsbehelfen, die ihm die Vereinsorganisation zur Verfügung stellt, erfolglos Gebrauch gemacht hat; der vereinsinterne Instanzenzug ist deshalb zunächst auszuschöpfen (BGE 85 II 525 E. 2 S. 533; 118 II 12 E. 3b S. 17). Lediglich vereinsintern nicht weiterziehbare Beschlüsse der Delegiertenversammlung sind unmittelbar anfechtbar (Riemer, Berner Kommentar, 1990, N. 14 und N. 16 zu Art. 75 ZGB sowie N. 39 a.E. zu Art. 66 ZGB mit Hinweisen). Das Bundesgericht begründete diesen Grundsatz mit der Absicht des Gesetzgebers, die Vereine ihre inneren Angelegenheiten möglichst selbstständig ordnen zu lassen und die gerichtliche Überprüfung von Vereinsbeschlüssen auf ein Mindestmass zu beschränken (BGE 51 II 237 E. 2 S. 241; 57 II 121 S. 125/126). Vorliegend steht zwar nicht das Verhältnis zwischen*

*dem erstinstanzlichen und dem oberinstanzlichen vereinsinternen Entscheid zur Beurteilung, sondern dasjenige zwischen Antrag und anschliessendem Entscheid. Auch in diesem Zusammenhang ist von Bedeutung, dass das entscheidende Organ den Mangel selber korrigieren kann, indem es auf den fehlerhaften Antrag nicht eintritt oder diesen zur Verbesserung zurückweist. Im vorliegenden Fall wäre es der Generalversammlung freigestanden, auf den Antrag der Delegiertenversammlung wegen dessen formellen Mängeln nicht einzutreten. ...”.*

10. The Panel respects the authority of the Respondent to set up its internal organization, but understands that the way how the Respondent would like to have understood the distribution of powers inside its organization in the present proceedings does not correspond to the wording of its rules read in their objective appearance. In particular, the AIBA Statutes do not empower the Congress to enter any examination of the formalities how the Decision came into being and reject the Decision because of formal reasons. The Congress has just the right to vote to approve or reject the Decision. There is no legal remedy for the Member to be excluded to appeal from the Executive Committee to the Congress or even to be heard before the Congress ratifies the Decision. The internal legal remedy asked for by the Swiss Federal Tribunal in the above judgment does not exist in the present case. There are no two instances. There is only the instance of the Executive Committee, whose Decision is subject to ratification.
11. The Panel finds that the fact that the Decision remains a decision of the Executive Committee and not of the Congress does also not contradict to the Congress being the supreme body of AIBA and makes sense. The ratification by the Congress being an element of the Decision makes it indispensable for the Executive Committee to submit its Decision to the Congress. Otherwise, the elements of the Decision are not complete. The fact that the Congress is the supreme body within AIBA follows from all its powers enumerated in Article 23 AIBA Statutes in their totality and read together, the power of ratification of the Decision is just one of these powers. The most important powers, qualifying the Congress as supreme body of AIBA, enumerated in Article 23, are those of adopting and amending the AIBA Statutes (Article 23 (A)), of electing the Executive Committee (Article 23 (B)) and of disbanding or dissolving AIBA (Article 23 (H)). The decision of excluding a member is widely laid into the hands of the Executive Committee. The Congress reserves just the right to agree or disagree by means of ratification. The Congress, thus, makes sure that it is informed. It obviously does not want to be burdened by a legal discussion on the reasons, formalities and arguments of the Member concerned. The Congress just wants to express its support or its disagreement. The Congress widely relies on its confidence given to the Executive Committee by means of having elected the President and the other members.
12. Finally, the Panel hereby notes that according to Article 63.4 of the AIBA Statutes “[a]ppeals shall be lodged with CAS within 30 days of notification of the written decision in question. The appeal shall not have an injunctive effect. The appropriate AIBA body or CAS may order the appeal to have injunctive effect”.
13. Based on the foregoing and in view of the filing of the appeal two days after the issuance of the Decision, the appeal is admissible and CAS has jurisdiction to decide the present dispute.

## Merits of the dispute

14. The Appellant holds that Article 18 AIBA Statutes requires for exclusion of a Member that the Member commits a severe violation of these Statutes and/or other AIBA rules. It argues that the FRB has not committed any violation of the AIBA regulations and points at the procedure CAS 2011/A/2423 which was pending before CAS at the time and which would decide with regard to the accusations of a possible violation of AIBA regulations.
15. The Respondent holds that the facts in the other CAS case are different from the facts relevant for the present case. The Respondent was entitled by the AIBA Statutes to request new elections before 31 August 2011 and to exclude the Appellant after having warned it, because such elections were not held. The non-compliance with the obligation to hold elections after the President of a National Federation was suspended is to be considered a severe violation of Article 13 (E) AIBA Statutes. The ongoing non-cooperation of the Appellant and the fact that it has no approved leadership constitutes a case of contempt to the entirety of AIBA rules and to the principles of honesty, integrity and sportsmanship, disparaging AIBA's reputation and interests.
16. The Panel finds that the Respondent by the way it elaborated the facts of the present case included many elements of the facts of the case CAS 2011/A/2423 into the present case. This goes, in particular, for the decisions and occurrences mentioned above, to the most part based on the Response of the Respondent. The Panel, thus, refers to its decision in the parallel case CAS 2011/A/2423, as regards these parts of the facts, and repeats, in particular, that the decision of the AIBA Executive Committee notified on 13 April 2011 and the decision of the AIBA Disciplinary Commission of 25 March 2011, as far as referred to by the above decision of the AIBA Executive Committee, have been set aside. The Panel also wishes to point at its decision in the parallel case having declared that the decision of the AIBA Executive Committee Bureau of 8 March 2011 had no legal basis in the AIBA Statutes 2010 or AIBA Disciplinary Code.
17. The Panel would like to refer specifically to its finding in para 6.31 of the decision CAS 2011/A/2423, where it stated as follows:

*"..., the Panel also did not see any violation of other provisions alleged by AIBA, in particular Article 6 (1) AIBA Statutes 2010 (obligation of National Federations to comply with the AIBA Statutes, By-Laws and Rules), which, as AIBA pointed out during the hearing, is implemented by Articles 3 (first and fourth lines), 4 (1) (last line), 39 (1) (b), 46 and 47 of the AIBA Disciplinary Code. The AIBA Disciplinary Commission in its decision dated 25 March 2011 considered it "quite evident" "that the RBF continues to consider the suspended Rudel Obreja as its president and that Mr Obreja continues to run the RBF as a whole". As far as the facts are concerned, the AIBA Disciplinary Commission stated "Mr Obreja apparently continuing to conduct the business". AIBA in its submissions in writing and by providing of three witnesses at the hearing tried to give evidence to the Panel's comfortable satisfaction that Mr Obreja continues to run the RBF. None of the witnesses, however, could mention even one event, without referring to hear-say, that a decision of the FRB, in fact, had been made by Mr Obreja and not by the FRB's Federal Bureau or some of its members, including the Secretary General and/or Vice-President Citea, as long as not suspended. Even for the assumption that the FRB's website did not separate between professional and amateur boxing was not shown any evidence. The fact*

*that Mr Obreja referring to his function as Vice-President of AIBA sent an email to AIBA concerning the agenda for the AIBA Congress 2010 which was identical with an email sent by the Secretary General on behalf of the FRB does not prove, that Mr Obreja was the driving force within the FRB. It even cannot be taken as granted, that the FRB was aware of the fact that Mr Obreja sent such email. The FRB later asked AIBA to ignore this email of Mr Obreja. Also the fact that on 11 February 2011 Mr Obreja was shown on the forms for participation in the 2011 AIBA Women's Junior/Youth World Boxing Championships in Turkey in the compartment "Name of President" does not prove whether Mr Obreja continued to run FRB's business. AIBA did not indicate the circumstances how and by whom the form was filled and whether there was an alternative for Mr Obreja to be included on the forms. AIBA did also not communicate whether Mr Obreja was allowed at all to take part at this event, even not as a private person".*

18. Given the result of the proceedings in the parallel case CAS 2011/A/2423, there was not only no legal reason given for suspending the Appellant from AIBA membership, but there were also no new arguments offered in the present proceedings that Mr Obreja continues to run the FRB. The Respondent did not prove any "*ongoing non-cooperation of the Appellant*". At the date of the Decision (31 July 2011, 1 August 2011, 6 September 2011) and before, the Appellant acted in line with all applicable AIBA rules.
19. The AIBA's Executive Director's information given to the Executive Committee as reason for imposing new elections on the Appellant with the possible consequence of excluding the Appellant as a Member of AIBA in case of not organizing new elections before the deadline of 31 August 2011 stating that Mr Obreja "*is apparently still acting as president of the Romanian Boxing Federation (RBF) despite the fact that he was suspended for 11 years by the AIBA DC, suspension which was reduced to 5 years. In addition, the RBF apparently never elected a new president despite the request from AIBA and was therefore suspended by the AIBA DC on March 25, 2011*" was wrong or at least an error according to the later finding of CAS in the case CAS 2011/A/2423.
20. This fact is re-enforced by the decision of the ROSC not further accepting Mr Obreja as representative of the FRB regarding its relations with the ROSC. Thus, irrespective of the fact that Mr Obreja has been re-elected as President of the FRB, in matters relating to AIBA it is the Secretary General who represents the FRB, and in matters relating the ROSC, no person has yet been nominated by the Appellant at the relevant moment of time for these proceedings.
21. The Panel, thus, must examine whether the Respondent was entitled to request from the Appellant to hold new elections before 31 August 2011 without the reason given by the AIBA Executive Director. The Respondent refers to Article 13 (E) AIBA Statutes for its right to impose elections on Members. The last elections of the FRB took place on 27 October 2010, *id est*, before the entry into force of the AIBA Statutes 2010 which were adopted on 1 November 2010 and entered into force on the same day.
22. Since Article 13 (E) is related to the submission to an approval by AIBA of the results of elections held by a Member and since such elections were *in casu* held prior to the entry into force of this provision, the Panel does not see a necessity to consider the range of possible obligations of Members ensuing from Article 13 (E) AIBA Statutes and whether this provision can serve as legal basis to impose elections on Members at all. With regard to the Appellant like

for many Members of AIBA more Statutes and elected bodies were in place at the moment of entry into force of the AIBA Statutes 2010, which, therefore, fell outside the scope of their application as of time. The Respondent in the present proceedings did not indicate to CAS whether a similar provision existed before, but referred explicitly and exclusively to Article 13 (E) AIBA Statutes 2010. In the parallel case CAS 2011/A/2423 the Respondent had also mentioned Article 13 AIBA Statutes 2008. The Panel would like to refer to its respective finding in the other case at para. 6.20 where it held that Article 13 AIBA Statutes 2008 allowed for the non-approval of elections held by a Member only in case they had been influenced by intervention from outside, in particular, from a government or even National Olympic Committee or political party. There was, however, never any discussion before the Panel and there are no elements in the facts in the present and in the other case that the candidacy of Mr Obreja for President of the FRB was based on interference from outside the FRB.

23. Assumed that Article 13 (E) AIBA Statutes 2010 allows for imposing elections on Members, the Panel wishes, however, to remind the Respondent that it is certainly not a sign of good governance if the Respondent imposes elections on a Member within a deadline that cannot be met according to the provisions of the Member's Statutes. Article 34 (3) of the Statutes of the FRB, which needed to be taken into consideration in the present case, reads as follows:

*“The General Assembly in which elections take place shall be convened, as a rule, by the Federal Bureau with at least 45 days before the fixed day for its celebration. On exceptional circumstances in which FB cannot work or can no longer exercise the powers provided in the statute, the General Assembly is convened by the Secretary General”.*

24. As a consequence of the above the Panel holds that there was no severe violation of the AIBA Statutes, the AIBA Bylaws, the AIBA Technical & Competition Rules, the Code of Ethics, the Disciplinary Code and Procedural Rules which could justify the exclusion of the Appellant by the Respondent according to Article 18.2 AIBA Statutes. Therefore, the Panel rules that the decision of the AIBA Executive Committee of 6 September 2011 is set aside and the appeal of the FRB granted.
25. Finally, the Panel underlined that, since the AIBA Congress ratified the Decision subject to a binding and final decision by the CAS, even if requested to do so the Panel would not have found it necessary to set aside this decision. The Panel finds that it has lost its legal force due to the decision of the CAS in the present case.

**The Court of Arbitration for Sport rules:**

1. The appeal filed by the FRB on 8 September 2011 against the decision of the AIBA Executive Committee of 6 September 2011 is upheld.
2. The decision of the AIBA Executive Committee of 6 September 2011 concerning the exclusion of the FRB as Member of AIBA is set aside.
3. (...).
4. (...).
5. All other or further prayers for relief are dismissed.