



Arbitration CAS 2010/A/2188 General Taweep Jantararoj v. International Boxing Association (AIBA), award of 29 July 2011

Panel: Mr Martin Schimke (Germany), President; Prof. Brigitte Stern (France); Mr Andrés Gurovits (Switzerland)

Boxing

Disciplinary suspension of a member following its declarations to the press

Application of law in time

Characterisation as appealable decision

Prevailing rules in case of conflict

Consequences in case of new rules adopted in violation of rules of higher level

Full power of review and de novo review based on Article R57 of the CAS Code

Legal requirements relating to disciplinary sanctions

Serious infringement of the regulations through unsubstantiated public assertions

- 1. Although procedural rules are normally held to apply to all proceedings pending at the time when they enter into force, this is not the case with substantive rules. The latter usually apply to situations existing before their entry into force only in so far as it clearly follows from their terms, objectives or general scheme that such an effect must be given to them. New substantive regulations do not apply retroactively to facts that occurred prior to their entry into force, but only for the future. However, in disciplinary proceedings, the principle of non-retroactivity is mitigated by the application of the “*lex mitior*” principle.**
- 2. Even if it has been issued in the form of a letter sent to the appellant, a letter may be a decision if it materially affects the legal situation of the appellant.**
- 3. The highest level of rules (i.e. the Statutes) prevails where there is a conflict. Inconsistencies in rules shall be interpreted against the legislator (i.e. the federation).**
- 4. The fact that a new Disciplinary Code and new Procedural Rules were adopted in violation of the Statutes makes the amendment/adoption either voidable or null and void. Pursuant to Article 75 of the Swiss Civil Code (CC), any member who has not consented to a resolution which infringes the law or the articles of association is entitled by law to challenge such resolution in court within one month of learning thereof. The one month limitation period set forth under this provision is mandatory. It is only when the decision is voidable that the time limit set forth under Article 75 CC must be met. In the presence of decisions that are null and void, this deadline does not need to be complied with. The deciding body must have wide discretion in evaluating whether the decision is void or just voidable.**

5. Under Article R57 of the CAS Code, a CAS panel has full power to review the facts and the law and may even request *ex officio* the production of further evidence. According to basic legal principles, a complete investigation by an independent and impartial appeal authority, which has the power to fully hear the case, remedies, in principle, most flaws in the procedure at first instance. Whether or not a *de novo* award is appropriate depends on the individual facts and circumstances. This type of award allows the CAS panel to substitute its own award when it believes the body which rendered the appealed decision incorrectly applied the relevant rules/regulations/law when reaching the appealed decision.
6. The different elements of the rules of a federation shall be clear and precise if they are to be legally binding. Case law (both CAS and national) does not require the same strict certainty in relation to behaviour capable of disciplinary sanction by sporting federations as is required under criminal law. Instead, case law has recognised general elements as capable of constituting the basis for disciplinary sanctions.
7. Refereeing teams are of vital importance for the proper functioning of the game and the entire competition. They must be protected from all actions that could endanger the impartiality and technical qualities of their intervention. The president of a national federation and a member of the international federation's executive committee seriously infringes the international federation's regulations when openly questioning the impartiality of the officiating crew, raising issues of an unfair advantage during the Olympic games, claiming that the fights were manipulated and that biased refereeing favoured other boxers to the detriment of contestants of his national federation, without supporting his accusation with any evidence but an unclear reference to an anonymous letter and without establishing the fact that he had ever tried to raise the alleged refereeing issues formally before the international federation's competent authorities.

General Taweep Jantararoj (the "Appellant") was, at the time of the facts that gave rise to this Award, the President of the Amateur Boxing Association of Thailand and a member of the Executive Committee of the International Boxing Association.

The International Boxing Association (AIBA) is an international organization established as an association under Swiss Law. AIBA has its headquarters in Lausanne, Switzerland and was created to improve, promote and spread all forms of boxing worldwide, as well as to regulate all aspects of boxing. Its members are national boxing associations.

The 2008 Summer Olympic Games, featuring – amongst others – the sport of boxing, took place in Beijing, China, from 8 August to 24 August 2008.

On 20 August 2008, the Appellant was interviewed by a Thai television morning show. On that occasion, he admittedly questioned the arbitration of boxing games during the 2008 Summer Olympics. The exact content of the Appellant's comments to the journalist is disputed.

On an unspecified date, the Appellant appeared on another Thai television show, during which he confirmed that there were problems with the refereeing during the Olympic Games.

On 3 September 2008, in an article published on the website www.bankokpost.com, the Appellant was reported as claiming that certain bouts involving Thai boxers might have been manipulated during the Olympic Games.

On 10 October 2008, and at the request of Mr Ho Kim, AIBA Executive Director, the Appellant informed Mr Ching-Kuo Wu, AIBA President, that he had never been interviewed by the Bangkok Post and that the content of the above mentioned article was untrue.

On 17 November 2008, the AIBA Executive Committee held an extraordinary meeting in Geneva, during which it ordered measures of a disciplinary nature against some AIBA members and/or executives, who were allegedly involved in "*unethical cases*". Regarding the Appellant, the minutes of the said meeting read as follows:

- *Lt. Gen. Taweep Jantarroj was interviewed by a Thai newspaper and by a TV station and accused AIBA of manipulation.*
- *Lt. Gen. Taweep Jantarroj was then asked to explain himself and on October 10, a letter in which he denies having given this interview was received by AIBA*

Decision

As further evidence is awaited, this case will be further dealt with during the 2009 AIBA EC meeting to be held in February 2009, in Milan, Italy".

In a letter dated 14 December 2008, Mr Ho Kim explained to the Appellant that the fact he had made the allegations against AIBA was established by some DVDs and additional press cuttings. In this regard, the Appellant was informed that, based on this evidence, the AIBA Executive Committee Bureau had met the previous day and decided to provisionally suspend him from his position within the AIBA Executive Committee until a final decision was taken by the AIBA Executive Committee in its February 2009 meeting in Milan, Italy.

On 10 February 2009, the Appellant applied for pre-provisional and provisional measures before a civil court in Lausanne. He requested that the court order AIBA to immediately lift the suspension imposed upon him. A hearing was scheduled for 1 April 2009. However, in the interim, the President of the civil court passed an immediate injunction, lifting the Appellant's provisional suspension and enabling him to attend the AIBA Executive Committee meeting of 16-18 February 2009, in Milan.

At the said meeting, the members of the AIBA Executive Committee ratified the decision taken by its Bureau on 13 December 2008. From the minutes of the meeting, it appears that the Appellant

was heard but was not allowed to participate in the deliberations over his alleged infringements. In light of the pending case before the civil court of Lausanne, the members of the AIBA Executive Committee decided “*to respect the civil court decision and to wait for the court hearing*” scheduled for 1 April 2009.

On 9 April 2009, the President of the civil court of Lausanne rendered a decision rejecting the Appellant’s request for provisional measures, with the consequence that his suspension (ordered by the AIBA Executive Committee Bureau on 13 December 2008) was reinstated with immediate effect. On 5 August 2009, upon the Appellant’s appeal against the decision of 9 April 2009, the civil court of Lausanne issued provisional measures again, staying the Appellant’s provisional suspension. On 10 November 2009, the civil court of Lausanne rejected the Appellant’s petition as inadmissible on the grounds that the decision of 9 April 2009 was definitive and there was no legal possibility of appealing against it.

By letter dated 28 May 2009, the Appellant was informed that the AIBA Executive Committee Bureau had requested that his case be investigated by the AIBA Disciplinary Commission, composed of Mr Piermarco Zen-Ruffinen, Chairman, Mr Antonio Rigozzi and Mr André Gorgemans.

On 9 June 2009, the Appellant challenged both the jurisdiction of the AIBA Disciplinary Commission and the composition of the panel appointed to hear his case. As to the competence of the said disciplinary body, the Appellant claimed that the matter was already being handled by the AIBA Executive Committee. As to the composition of the panel, the Appellant put forward the lack of independence of Mr Piermarco Zen-Ruffinen and Mr André Gorgemans, who had previously rendered professional services to AIBA.

Mr André Gorgemans resigned and another member, Mr Alexis Schoeb, was appointed instead. In accordance with Article 18 par. 2 of the AIBA Organization and Procedural Rules of the Judicial Authorities, the two other members of the panel confirmed Mr Piermarco Zen-Ruffinen as chairman of the Disciplinary Commission. On 6 July 2009, the Appellant was informed that the panel called up to resolve his case was composed of Messrs Piermarco Zen-Ruffinen, Antonio Rigozzi and Alexis Schoeb.

On 7 October 2009, the AIBA Disciplinary Commission held that the Appellant had made statements affecting the reputation and interests of AIBA and found him guilty of violations of Article 47 of the AIBA Disciplinary Code. It decided “*that a suspension in the range of 6 months is an appropriate sanction in the present case*”. Considering that the Appellant was “*de facto suspended for almost 6 months (from 13 December 2008 to 10 February 2009 and from 9 April to 5 August 2009)*”, the AIBA Disciplinary Commission decided that “*1. The suspension against Gen. Jantarroj is lifted. 2. The costs of the proceedings, fixed at CHF 2’000.-, shall be borne by Gen. Jantarroj. 3. The present decision shall be communicated to the party and to the Office of the AIBA*”.

The AIBA Disciplinary Commission took its decision without hearing the Appellant and without giving him access to his file.

On 19 October 2009, the Appellant challenged the decision of the AIBA Disciplinary Commission before the AIBA Appeal Commission, composed of Messrs Pierre Cornu, Albert Rey-Mermet and Alberto De Guzman.

On 20 November 2009, the AIBA Appeal Commission held that the Appellant “*was neither given a chance to explain himself with regard to the charges against him, nor in a position to discuss the charges according to a file which was never forwarded to him or his counsel*”. Hence, it found that the “*basic procedural rights of Gen. Jantarroj have been violated in the first instance proceedings*”. As a consequence, the AIBA Appeal Commission ruled that “[t]he decision of the Disciplinary Commission of [7 October] 2009 is annulled and the case of Gen. Taweep Jantarroj is returned to the AIBA Disciplinary Commission”.

With effect from 29 January 2010, the AIBA Disciplinary Code was amended so that the AIBA Appeal Commission was suppressed. Henceforth, the competence to act as the Appeal Authority in all appeals against any decision of the Disciplinary Commission was conferred upon the AIBA Executive Committee. Mr Pierre Cornu, the President of the former AIBA Appeal Commission, was designated as President of the AIBA Disciplinary Commission.

On 17 March 2010, Mr Pierre Cornu informed the Appellant that all the former members of the AIBA Disciplinary Commission had resigned at the end of 2009. He also forwarded to the Appellant “*a copy of the actual file*”, including transcripts of two interviews given by the latter to Thai television shows. Mr Cornu invited the Appellant to file a written submission which should “*a) contain an explanation or summary of the pertinent facts; b) contain a brief summary of legal arguments; c) specify the requested conclusions with respect to the decision in the proceedings; d) identify any witness to be relied upon in the proceedings and provide a summary witness statement from such witnesses to be used by the DC in the event no hearing is held in relation to the proceeding; e) include any evidence – documents, etc. – to be considered for the decision; f) mention if Gen. Jantarroj requests that a hearing be held before the DC*”.

On 24 March 2010, the Appellant challenged Mr Pierre Cornu’s capacity to act as an impartial and independent president of the AIBA Disciplinary Commission, given the fact that he had already chaired the AIBA Appeal Commission, which rendered a decision in the same case on 20 November 2009. Simultaneously, the Appellant requested a copy of the DVDs of the television shows in question as these were not in the file.

In a letter dated 31 March 2010, the Appellant explained to Mr Pierre Cornu that he could not take a position on the charges against him as he had not yet received the requested DVDs.

On 6 April 2010, two DVDs were sent to the Appellant by the AIBA legal Manager, Mr Anthony Downes. However, according to the Appellant, there was no DVD of the television show aired on 20 August 2008. Eventually, at an unspecified time, the Appellant received a copy of the said show directly from the broadcaster.

On 9 April 2010, the AIBA Disciplinary Commission, composed of Mr Alain Ribaux and Mr Tom Virgets, rejected the Appellant’s challenge of Mr Pierre Cornu’s impartiality.

On 27 April 2010, the Appellant submitted to the AIBA Disciplinary Commission a statement of defence accompanied by supporting documents. He did not request that other evidence be considered or that a formal hearing be held.

On 3 May 2010, and based on the evidence contained in the file and/or made available by the Appellant, the AIBA Disciplinary Commission found that the Appellant *“very clearly and repeatedly stated that there was some kind of organised cheating against Thai boxers, the cheating scheme involving AIBA officials, obviously at quite a high – or even the highest – level”*. It held that the Appellant’s behaviour *“does not meet the standards that one could reasonably expect from a member of the AIBA EC and president of an important national federation affiliated with AIBA. It constitutes an offence according to Art. 47 of AIBA’s Disciplinary Code (...). More concretely, Gen. Jantarroj did not ‘respect the principles of honesty, integrity and sportsmanship’ under Art. 3 § 1 of the Disciplinary Code, his behaviour was ‘offensive’ and ‘in violation of fair-play’ under Art. 4 of the same Code, and constitutes a ‘behaviour which harms the image of boxing, AIBA, its Confederations or Members”*.

As a consequence, the AIBA Disciplinary Commission ruled that *“Gen. Taweep Jantarroj is suspended from any activity at AIBA, Asian Confederation and National (Amateur Boxing Association of Thailand) levels, for a period of 12 months, starting today”*.

According to Article 29 of the AIBA Disciplinary Code, implemented on 29 January 2010, the AIBA Executive Committee *“will act as the Appeal Authority in all appeals against any decision of the Disciplinary Commission”*.

On 12 May 2010, the Appellant filed with the AIBA Executive Committee an appeal against the decision of 3 May 2010. He challenged the authority of the AIBA Executive Committee, claimed that the AIBA Disciplinary Commission was not competent to rule on his case and that Mr Pierre Cornu did not enjoy the necessary independence to chair the said Commission. Furthermore, he alleged that the transcripts used by the AIBA Disciplinary Commission to sanction him were purposely falsified and mistranslated to support AIBA’s accusation against him. All in all, the Appellant alleged that in the interviews given to the Thai media, he merely questioned the accuracy of the arbitration of some bouts, and that he did it in a manner that caused no harm to AIBA’s reputation, image or interests. He was of the opinion that his actions did not constitute a violation of any AIBA Regulations and that, in any event, the sanction was disproportionate.

On 19 May 2010, due to the suspensive effect of his appeal, the Appellant requested that AIBA remove the words *“provisionally suspended”* that were next to his name on its website.

On 31 May 2010, AIBA informed the Appellant that its Executive Committee had decided to withdraw the suspensive effect of his appeal pursuant to Article 64 par. 2 of its Organization and Procedural Rules of the Judicial Authorities. In addition, AIBA invited the Appellant to appear before its Executive Committee to state his case on 9 July 2010, in the city of Marrakech, Morocco, provided that he met the costs of his travel and accommodation.

On 15 June 2010, the Appellant contested the validity of the AIBA Executive Committee's decision to withdraw the suspensive effect of his appeal and claimed that AIBA had to bear his travelling and accommodation costs relating to his hearing in Morocco.

As the parties could not reach agreement over these matters, the Appellant did not go to Morocco. The decision of the AIBA Executive Committee was issued in the form of the following letter, dated 14 July 2010 and sent by Mr Ho Kim to the Appellant's counsel (the "Appealed Decision"):

"I write to notify your client, Gen. Taweep Jantararoj, that the AIBA Executive Committee has unanimously determined to reject his appeal against the decision of the AIBA Disciplinary Commission dated 3 May 2010.

Accordingly, Gen. Jantararoj remains suspended from any activity at AIBA, Asian Confederation and National (Amateur Boxing Association of Thailand) levels, for a period of twelve (12) months, commencing on 3 May 2010.

For the avoidance of doubt, during such period of suspension Gen. Jantararoj is prohibited from acting as the President of the Amateur Boxing Association of Thailand or from carrying out any function as a member of the AIBA Executive Committee".

On 5 August 2010, the Appellant filed a statement of appeal with the CAS.

On 23 August 2010, the Appellant filed his appeal brief. This document contains a statement of the facts and legal arguments accompanied by supporting documents. He challenged the Appealed Decision, submitting the following request for relief:

"Based on the above said, the Appellant Gen. Taweep Jantararoj has the honour to request that the [CAS] rules:

- I The decision passed by the Appeal Commission of AIBA on 14 July 2010 against Gen. Taweep Jantararoj is null, respectively annulled.*
- II Gen. Taweep Jantararoj is innocent of any infringement to AIBA Disciplinary Code as well as to any other AIBA regulations and to any other organization for which regulation AIBA Disciplinary Commission may check the application.*
- III No penalty is pronounced against Gen. Taweep Jantararoj, who is freed of any sanction, disciplinary, financial or of any other kind.*
- IV The provisional suspension suffered by Gen. Taweep Jantararoj from 13 December 2008 to 10 February 2009, from 9 April 2009 to 5 August 2009 and from 31 May 2010 until today is illegal and unjustified.*
- V All costs of the proceedings must be borne by AIBA.*
- VI AIBA must pay an equitable contribution to Gen. Taweep Jantararoj towards the latter's legal and other costs amounting to CHF 100,000 at least".*

On 14 September 2010, AIBA submitted its answer, with the following request for relief:

- "1. A declaration that the Decision of the AIBA Executive Committee dated 14 July 2010 and of the AIBA Disciplinary Commission dated 3 May 2010 are confirmed;*

2. *An order that Gen. Taweep Jantarroj pay all costs of the arbitration as well as legal costs incurred by AIBA;*
3. *Any other or opposite conclusions of Gen. Taweep Jantarroj be rejected”.*

The Parties agreed to waive a hearing, and the Panel decided not to hold one.

On 5 August 2010, together with his statement of appeal, the Appellant submitted an application for a stay of the execution of the Appealed Decision. On 1 September 2010, the Deputy President of the CAS Appeals Arbitration Division granted the said application for provisional and conservatory measures and ruled that the “*decision of the AIBA Executive Committee of 14 July 2010 is stayed pending the final resolution of the present case by the CAS*”. In his order, the Deputy President of the CAS Appeals Arbitration Division reserved the costs.

LAW

The application of law in time

1. While the present dispute was pending either before AIBA’s deciding bodies or before the CAS, AIBA has amended several of its regulations. The revised provisions were effective as soon as adopted.
2. As a matter of fact:
 - the AIBA Statutes, effective as of 19 February 2008 (the “old AIBA Statutes”) were replaced by the AIBA Statutes effective as of 1 November 2010 (the “new AIBA Statutes”);
 - the AIBA Bylaws were amended on 18 February 2009, 30 January and 9 July 2010;
 - the Organization and Procedural Rules of the Judicial Authorities of AIBA, effective as of 1 August 2008 (the “old Procedural Rules”) were replaced by the Organization and Procedural Rules of the Judicial Authorities of AIBA effective as of 29 January 2010 (the “new Procedural Rules”);
 - the AIBA Disciplinary Code, effective as of 1 August 2008 (the “old Disciplinary Code”) was replaced by the AIBA Disciplinary Code effective as of 29 January 2010 (the “new Disciplinary Code”).
3. The succession in time of several AIBA regulations raises the question of the identification of the rules which are to be taken into account in the present dispute. The difficulty is even greater as the amended regulations are either characterized by the absence of any transitional provision as regards their application *ratione temporis* (AIBA Statutes) or by their ambiguity:

- Article 73 of the new Procedural Rules states that “[t]hese Procedural Rules are to be applied to all the procedures introduced after its coming into force” but does not say what it means by “procedures”. For instance, is an appeal lodged after 29 January 2010 against a decision taken before such date governed by the former regulations or by the revised ones?
 - Likewise, Article 58 of the new Disciplinary Code confirms that it is applicable “to all facts occurring after its coming into force. If a case has not been decided by any disciplinary authority, the Code shall be applicable to the facts of that case before its coming into force if the Code is more favorable than the law in force”. This article is apparently clear in the presence of substantive provisions but is actually quite problematic as the Disciplinary Code contains procedural regulations. For instance, is it “more favorable” to be judged on appeal by the AIBA Executive Committee, competent as of 29 January 2010, or by the Appeal Commission as provided by the former regulations?
4. It is commonly accepted that although procedural rules are normally held to apply to all proceedings pending at the time when they enter into force, this is not the case with substantive rules. The latter usually apply to situations existing before their entry into force only in so far as it clearly follows from their terms, objectives or general scheme that such an effect must be given to them. This is to insure the respect for the principles of legal certainty and the protection of legitimate expectations, by virtue of which the effect of a relevant regulation must be clear and predictable for those who are subject to it.
 5. In other words, new substantive regulations do not apply retroactively to facts that occurred prior to their entry into force, but only for the future. However, in disciplinary proceedings, the principle of non-retroactivity is mitigated by the application of the “*lex mitior*” principle (Advisory opinion CAS 94/128, Digest of CAS Awards (1986-1998), p. 477 at 491; advisory opinion CAS 2005/C/841).
 6. In the present case, it appears that there is no need for the Panel to ascertain whether the new regulations constitute a corpus of procedural provisions or a body of substantive provisions. Indeed, the relevant former and recent provisions happen to be quite similar and, in case of divergence, it will be established that the former regulations are applicable.

CAS Jurisdiction

7. The jurisdiction of the CAS, which is not disputed, derives from Article 59 of the old AIBA Statutes, Article 63.1 of the new AIBA Statutes as well as Article R47 of the Code of Sport-related Arbitration (“the Code”). It is further confirmed by the Order of procedure duly signed by the parties.
8. It follows that the CAS has jurisdiction to decide the present dispute.

Applicable law

9. Article R58 of the Code provides the following:

“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”.

10. Pursuant to Article 59 par. 4 of the old AIBA Statutes, *“CAS shall primarily apply the various regulations of AIBA and the Swiss law”*. Article 63.5 of the new AIBA Statutes is of similar content.
11. As a result, subject to the primacy of applicable AIBA regulations, Swiss law shall apply complementarily.

Admissibility of the appeal

A. The Regulations

12. Pursuant to Article 59 par. 1 of the old AIBA Statutes, *“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”*.
13. According to Article 63.1 of the new AIBA Statutes, *“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”*.
14. Furthermore, Articles 59 par. 3 of the old AIBA Statutes and 63.4 of the new AIBA Statutes state that *“[a]ppeals 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 (...)”*.
15. Pursuant to Article R47 par. 1 of the Code, *“[a]n 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”*.

B. *In the case at hand*

16. The Appealed Decision was rendered by the AIBA Executive Committee and it is undisputed that the Appellant has exhausted all the internal legal remedies available to him prior to lodging an appeal with the CAS. In view of these circumstances, there is no need to decide which version of the AIBA Statutes must be taken into account to resolve the admissibility issue, as both sets of rules lead to the same result.
17. Yet, the Appellant claims that the Appealed Decision is null and void because it is a simple letter, is not motivated and does not record the facts constituting the alleged infringement.
18. Accordingly, the Panel has to resolve whether the said document is a decision within the meaning of Article R47 of the Code and of the AIBA Statutes. As a matter of fact, and in accordance with the above provisions, the CAS has the power to adjudicate appeals against a sports organization (i.e. a federation, association or sports-related body) provided namely that an actual “*decision*” has been issued, that it is final (i.e. all other available stages of appeal have been exhausted) and that it is challenged in a timely manner.

C. *The notion of decision*

19. In the case at hand, the Appealed Decision was indeed rendered by the AIBA Executive Committee and was issued in the form of a letter sent to the Appellant on 14 July 2010. In its answer, AIBA confirmed that this document is in fact the decision of the AIBA Executive Committee (para. 56 of the answer).
20. The possible characterisation of a letter as a decision was considered in several previous CAS cases (CAS 2004/A/659; CAS 2005/A/899; CAS 2004/A/748; CAS 2008/A/1633; CAS 2008/A/1548).
21. The Panel agrees with the definition of “*decision*” and the characteristic features of a “*decision*” stated in those CAS precedents:

“the form of the communication has no relevance to determine whether there exists a decision or not. In particular, the fact that the communication is made in the form of a letter does not rule out the possibility that it constitutes a decision subject to appeal” (CAS 2005/A/899 par. 63; CAS 2007/A/1251 par. 30; CAS 2004/A/748 par. 90; CAS 2008/A/1633 par. 31).

“In principle, for a communication to be a decision, this communication must contain a ruling, whereby the body issuing the decision intends to affect the legal situation of the addressee of the decision or other parties” (CAS 2005/A/899 par. 61; CAS 2007/A/1251 par. 30; CAS 2004/A/748 par. 89; CAS 2008/A/1633 par. 31).

“A decision is thus a unilateral act, sent to one or more determined recipients and is intended to produce legal effects” (2004/A/659 par. 36; CAS 2004/A/748 par. 89; CAS 2008/A/1633 par. 31).

“an appealable decision of a sport association or federation is normally a communication of the association directed to a party and based on an ‘animus decidendi’, i.e. an intention of a body of the

association to decide on a matter [...]. A simple information, which does not contain any 'ruling', cannot be considered a decision" (BERNASCONI M., "When is a 'decision' an appealable decision?" in: RIGOZZI/BERNASCONI (eds), *The Proceedings before the CAS*, Bern 2007, p. 273; CAS 2008/A/1633 par. 32).

22. It is undisputed that the Appealed Decision was issued in the form of a letter sent to the Appellant on 14 July 2010. There is no doubt that such a document is materially affecting the legal situation of the Appellant, who had to apply for a stay of the execution of the Appealed Decision in order to avoid irreparable harm. It also seems evident from the answer and all the various submissions filed by AIBA, that the latter considered the letter of 14 July 2010 as a final and binding decision as required under Article R47 of the Code.
23. As a consequence, the Appealed Decision is to be considered a final decision of AIBA which may be appealed by the Appellant.
24. The statement of appeal was filed on 5 August 2010, i.e. within the deadline provided by the AIBA Statutes and it complied with all the other requirements of Article R48 of the Code.
25. It follows that the appeal is admissible.

Merits

26. In order to assess the merits of this case, the Panel will discuss the validity of the AIBA Executive Committee's Appealed Decision of 14 July 2010 upholding the suspension of the Appellant from any activity at AIBA, Asian Confederation and National (Amateur Boxing Association of Thailand) level. This issue can be separated into the two following questions:
 - A. *Did the Executive Committee have the power to make the decision to uphold the suspension of the Appellant and;*
 - B. *Does the Decision comply with AIBA's internal rules and regulations and Swiss law?*
27. The Panel will then have to balance a) what exactly the Appellant said; and b) the potential for the statements to breach the Appellant's duties to AIBA.
 - A. *The Validity of the Appealed Decision*
 - a. The Appealed Decision
28. The Appealed Decision was taken by the AIBA Executive Committee (acting as the new Appeal Authority) pursuant to Articles 2 and 62 of the new Procedural Rules and Articles 26.1 and 29.1 of the new Disciplinary Code which were both amended and adopted by the Executive Committee on, and effective from, 29 January 2010 (see Article 75 of the new Procedural Rules and Article 60 of the new Disciplinary Code). At that moment, the AIBA old Statutes were in force.

29. However, the new AIBA Statutes (i.e. those confirming the amendments made by the Executive Committee to the new Procedural Rules and the new Disciplinary Code in January 2010) were adopted by the Congress only on 1 and 2 November 2010, a fact that raises the question of the competence of the Executive Committee to amend and adopt the new Procedural Rules and new Disciplinary Code.
- b. The competence of the Executive Committee to amend and adopt the new Procedural Rules and new Disciplinary Code
30. Pursuant to Article 22 of the old AIBA Statutes (which were AIBA's "Constitution" i.e. its highest level of regulations), the Congress is the supreme body and votes to adopt or amend the Statutes and Regulations. Article 37 (d) of the old AIBA Statutes stipulates that the Executive Committee shall prepare proposed amendments to the Statutes and Regulations which proposals shall be submitted to the Congress. It therefore follows that the Executive Committee, acting alone (i.e. without the Congress), does not appear to have been competent (pursuant to Articles 22 and 37 of the said Statutes) to adopt and amend the new Procedural Rules and new Disciplinary Code.
31. However, the Panel also considered Article 66 of the AIBA old Statutes. In this regard, the Panel notes that the English version of the Statutes prevails in case of conflict but, as it found the English version to be slightly ambiguous, the Panel also referenced the French version as a tool of interpretation. After considering both versions, the Panel is of the view that it is clear that, via Article 66, part – but only part – of the legislative power of the Congress was delegated to the Executive Committee: the power to amend rules, but not the power to amend the Statutes. In other words, it follows that the Executive Committee could indeed modify the AIBA Disciplinary Code and Procedural Rules, but had to respect the provisions of the Statutes, which are the supreme regulations of AIBA, while doing so.
32. In this regard, the Panel notes that the amendments in Article 2 of the new Procedural Rules and Article 26 of the new Disciplinary Code (which designate the Executive Committee as the Appeal Authority) contradicted Article 46 of the old AIBA Statutes, which were in force when the new regulations were adopted and when the Appealed Decision was rendered. This provision reads as follows:
- “The judicial bodies of the AIBA are:*
- *the Athletes Eligibility Commission;*
 - *the Disciplinary Commission;*
 - *the Appeal Commission.*
- The composition and specific duties of these bodies shall be stipulated in special regulations”.*
33. The Panel notes that Article 46 of the old AIBA Statutes did not mention the Executive Committee and stipulated that there shall be a specific Appeal Commission.

34. The Panel contends that the highest level of rules (i.e. the Statutes) prevails where there is a conflict. Furthermore, CAS case law indicates that inconsistencies in rules shall be interpreted against the legislator (i.e. the federation) (CAS 2007/A/1437).
 35. The Panel is of the view that, in suppressing the Appeal Commission as a distinct body (as was provided for in the old AIBA Statutes), the Executive Committee did not respect the old Statutes and, furthermore, that at the time it was applied to the Appellant, neither the new Disciplinary Code nor the new Procedural Rules had been confirmed by the Congress yet. Article 46 of the old AIBA Statutes did not mention the Executive Committee as a judicial body and stipulated that there shall be a specific Appeal Commission. This was disregarded by the Executive Committee, when drafting both the new Disciplinary Code and the new Procedural Rules.
 36. The new Disciplinary Code and the new Procedural Rules were therefore adopted in contradiction to the then current Statutes.
- c. The consequence of the amendment/adoption of the new AIBA Regulations being carried out by the Executive Committee
37. According to the applicable law, the fact that the new Disciplinary Code and the new Procedural Rules were adopted in violation of the Statutes makes the amendment/adoption either voidable or null and void. Pursuant to Article 75 of the Swiss Civil Code (CC), any member who has not consented to a resolution which infringes the law or the articles of association is entitled by law to challenge such resolution in court within one month of learning thereof. The one month limitation period set forth under this provision is mandatory and its non-observance must be raised by the judging authority on its own motion (ATF 85 II 525, JT 1960 I 538). It is only when the decision is voidable that the time limit set forth under Article 75 CC must be met. In the presence of decisions that are null and void, this deadline does not need to be complied with (RIEMER H.M., *Commentaire bernois*, Association, N. 127 ad art. 75 CC; ATF 71 I 383, JT 1946 I 135). A decision is null and void, notably when it is vitiated insofar as it does not comply with formal or material requirements and, therefore, cannot be considered as a decision taken by the General Assembly (HEINI/SCHERRER, *Kommentar zum Schweizerischen Privatrecht, Schweizerisches Zivilgesetzbuch, Art. 1-359 ZGB*, Basel und Frankfurt am Main 1996, N. 33 ad art. 75 CC). The deciding body must have wide discretion in evaluating whether the decision is void or just voidable (TAS 97/168, in REEB M. (ed.), *Digest of CAS Awards*, vol. II, pp. 12-24, p. 20).
 38. The question, therefore, is whether a decision issued by an association's body acting beyond its jurisdiction is actually void or merely voidable. According to legal opinion, decisions should be seen as void if they are the subject of a serious formal or factual irregularity. Authors consider, however, that it is difficult to establish a precise boundary between void and voidable decisions, since there are no exact criteria for this purpose. If in doubt, it is preferable, for reasons of legal certainty, to assume that a decision is voidable. Neither case-

law nor legal opinion defines with any clarity whether decisions issued by incompetent bodies are void or voidable. There is little case-law on this particular issue and that which exists sheds little light on the subject. Existing case-law includes a case in which a member was expelled by a committee despite the general assembly being the only body with the authority to take such a step. In this case, the committee's decision was deemed void (CAS 98/185, in REEB M. (ed.), Digest of CAS Awards, vol. II, pp. 469-478, pp. 476-477).

39. In the case at hand, none of the parties alleged that the adoption of the new Disciplinary Code and the new Procedural Rules was challenged by any member of the Respondent in accordance with article 75 of the CC. The Panel, thus, concludes that such amendments were not challenged by any member in the sense of article 75 CC. Therefore, the amendments must be considered valid, except if they were to be seen null and void in accordance with the relevant statutory provisions.
40. Swiss law widely acknowledges the right of associations to autonomously set their own set of rules and to apply and enforce these rules. Such autonomy is limited only if and to the extent a rule or decision of the association violates mandatory law, the purpose of the association, bona mores or general principles of law, or if it violates, in a particular case, the rights of an individual who is affected by a decision.
41. In the case at hand, the 14 July 2010 decision of the AIBA Executive Committee suspends the Appellant from any AIBA activity for a period of twelve months and may, thus, violate the rights of Appellant. It must, thus, be subject to appeal.
42. As regards the amendment and adoption of the Disciplinary Code and Procedural Rules, the Panel concludes, however, that any possible violation by the Executive Committee of the Statutes is voidable (only) and any such violation should have been challenged within the time limit and in accordance with article 75 CC. Thereby, the Panel particularly considers the liberty of (Swiss) associations to set and enforce their own internal rules, that the Executive Body had some competence to amend the Disciplinary Code and the Procedural Rules, that these amendments were not challenged by any member and that the Statutes were later modified in a way consistent with the Disciplinary Code and the Procedural Rules. The Panel does not consider the violation of the Statutes as so severe and does not see any compelling reason for it to interfere with the association's autonomy which would justify holding the amendment of the new Disciplinary Code and new Procedural Rules null and void.

d. Type of award

43. Pursuant to Article R57 of the Code, the Panel "*shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance*".
44. Under Article R57 of the CAS Code, the Panel's scope of review is fundamentally unrestricted. It has full power to review the facts and the law and may even request *ex officio*

the production of further evidence. In other words, the Panel not only has the power to establish whether the decision of the disciplinary body being challenged was lawful or not, but also to issue an independent decision based on the regulations of the interested federation (CAS 2004/A/607; CAS 2004/A/633; CAS 2005/A/1001; CAS 2006/A/1153; CAS 2008/A/1700 & 1710). According to basic legal principles, a complete investigation by an independent and impartial appeal authority, which has the power to fully hear the case, remedies, in principle, most flaws in the procedure at first instance. As a rule, disciplinary proceedings within (sports) federations/associations are not legal proceedings comparable with proceedings before state courts or arbitral tribunals. Judicial bodies of federations/associations lack, in general, independence and, thus, impartiality. Decisions resulting from such (internal) disciplinary proceedings are to be seen as acts of internal administration, rather than decisions of (independent and impartial) courts and/or arbitral tribunals. Hence, if there had been procedural irregularities in the proceedings before the disciplinary bodies of AIBA, it would be cured by the present arbitration proceedings (CAS 2004/A/607; CAS 2004/A/633; CAS 2005/A/1001; CAS 2006/A/1153).

45. Whether or not a *de novo* award is appropriate depends on the individual facts and circumstances. This type of award allows the Panel to substitute its own award when it believes the body which rendered the appealed decision incorrectly applied the relevant rules/regulations/law when reaching the appealed decision.

B. *The Panel's decision*

46. In view of the circumstances of the case, the Panel must determine whether the Appellant committed an infringement and, if so, what sanction must be imposed upon him.

a. The Regulations

47. The Panel notes at the outset that a) it is undisputed that AIBA's Regulations are applicable to the Appellant and b) that the relevant disciplinary provisions are virtually identical in both the old and the new Disciplinary Codes.

48. Both Disciplinary Codes provide so far as material as follows:

Article 3 Principles of conduct

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

- *Respect the entirety of the Statutes and regulations of AIBA, the Confederations and Members;*
- *Submit to the final decisions of AIBA, its Confederations or Members as well as to the World Anti-Doping Code of the World Anti-Doping Agency (WADA);*
- *At all times behave with respect towards each other;*
- *Respect the principles of honesty, integrity and sportsmanship (...)*

Article 4 Punishable acts

1 The following offences can be sanctioned, in particular:

- Violation of the principles of conduct as mentioned in the Statutes and regulations of AIBA, in the present Code and in the Technical & Competition Rules;
- Infringements of the Statutes 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 behavior or behavior in violation of fair-play;
- Misconduct against officials;
- Violation of the Anti-Doping Code, notably the Code from AIBA;
- Unjustified refusal to take part in a competition and unjustified abandonment;
- Corruption and any other violations of the principles of loyalty, integrity and fair-play;
- Any behavior which harms the image of boxing, AIBA, the Confederations or the Members.
(...)

Article 5 Disciplinary sanctions

1 The disciplinary sanctions are the following:

- Warning;
- Reprimand;
- Fines from CHF 500.-- to CHF 100'000.--;
- Cancellation of the result of a bout;
- Deprivation of a title/ Return of an award;
(...)
- Suspension or exclusion from the exercise of certain activities (referee, judge, official, second, etc.);
- Ban from any boxing activity;
- Ban from competition grounds;
- Suspension of a competition location.

2 The sanctions may be cumulated.

(...)

II Culpability and Degree of Participation

Article 18 Intention and negligence

1 Unless otherwise specified, infringements are punishable regardless of whether they have been committed deliberately or negligently.

2 In the case of an infringement of Art. 3.2 and Art. 3.3, no fault is required to inflict liability.

(...)

III Determination of the Sanction

Article 21 General rule

- 1 *The body pronouncing the sanction shall fix the type and duration of the sanction based on the gravity of the infringement and the degree of the offender's guilt.*
- 2 *The body shall take into account possible extenuating circumstances such as the young age of the offender as well as any aggravating circumstances such as recurrence.*
- 3 *If the nature of the sanction implies certain duration, it is in principle limited in time, unless indicated otherwise. Sanctions may also be limited to a geographical area or to one or more specific category of competitions. (...)*

Article 45 Serious violation of the Statutes 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 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 12 months.

Article 47 Disparagement of AIBA's reputation and interests

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

- a) *If the action is committed by a Confederation or a Member*
 - o a fine of CHF 1'000.-- to 10'000.--, or a suspension of 6 months to 2 years;*
 - b) *If the action is committed by a person*
 - o a fine of CHF 500.-- to 10'000.--;*
 - o or a suspension of 6 months to 2 years;*
 - o or a temporary or definitive ban from any boxing activity.*
49. The AIBA Code of Ethics, applicable as of 11 June 2007 namely to AIBA's members of the Executive Committee (see its Article 1), states the following, where relevant:

Preamble

(...)

The AIBA members undertake at all times to respect and ensure respect of the following principles:

Fairness: *Operating within the spirit of the rules, never taking an unfair advantage and making informed and honourable decisions at all times.*

Respect: *Recognizing the contribution which people make to sport, treating them with dignity and consideration, as well as caring for the property and equipment they use.*

Responsibility: *Taking responsibility for one's actions and being a positive role model at all times.(...)*

Principles

Art. 2

The Parties must comply with the following principles:

1. *Human dignity.*
2. *Nondiscrimination, either on the basis of race, gender, nationality, ethnic origin, religion, philosophical or political opinions, sexual preference or any other grounds.*
3. *Nonviolence, including abstaining from any kind of pressure and harassment, whether physical, mental, professional or sexual.*
4. *Friendship, mutual aid and fair play.*
5. *Integrity.*
6. *Priority to the interests of the sport of boxing and the athletes in relation to financial interests.*
7. *Protection of the environment.*
8. *Political neutrality.*
9. *Promotion of the Olympic Movement ideals.*

Art. 3

The Parties shall use due care and diligence in fulfilling their mission. They shall, on all occasions and to the best of their ability, serve the interests of boxing and AIBA. They shall refrain from any behavior which might jeopardize boxing, and they must not act in any manner likely to tarnish the reputation of AIBA.

(...)

Confidentiality

Art. 8

The Parties shall refrain from disclosing any information concerning AIBA or its activities that has not been made public, unless such a disclosure has been authorized by the competent authority at AIBA or is required by law.

Art. 9

The disclosure of information must not be aimed at making profit or taking any personal advantage, nor may it be motivated by malicious intent to damage the reputation of any person”.

b. Legal requirements relating to the Regulations

50. At this stage of its reasoning, the Panel must consider the legal requirements of the applicable AIBA Regulations. Pursuant to CAS case law, the different elements of the rules of a federation shall be clear and precise if they are to be legally binding (see CAS 2006/A/1164; CAS 2007/A/1377). However, the internal control upon the rules of the federation is put into context by the fact that case law (both CAS and national) does not require the same strict certainty in relation to behaviour capable of disciplinary sanction by sporting federations as is

required under criminal law (i.e. more general provisions may be enforceable). Instead, case law has recognised general elements (like Articles 3 and 4 of the Disciplinary Code in the current case) as capable of constituting the basis for disciplinary sanctions (see CAS 2007/A/1437 para. 8.1.8).

c. The infringement

51. AIBA initiated disciplinary proceedings against the Appellant following public declarations he made, namely in front of the press. The Panel's task, in issuing a decision, is to balance a) what exactly the Appellant said; and b) the potential for the statements to breach the Appellant's duties to AIBA against the Appellant's right to freedom of speech.
52. In order to carry out this task, and in light of the conflicting translations of the comments in question provided by the parties, the Panel instructed an independent translation of the offending statements, which read as follows, where relevant:

Morning Talk Show of 20 August 2008; i.e. during the Olympics

- *"By my experience, I could analyse that there were attempts to make Thai boxer lost" (sic).*
- *"This referee cut the score of Thai boxer almost everytime he was on stage" (sic).*
- *"why it was fixed to be this person on stage to pressure the Thai boxer by cutting points and warning all the time?"*
- *"I confirm this is not by accident. It was planned by somebody who wanted Thai boxer to lose. These people were 3 Thais, one is here and another two are in Thailand. There were behind lobbying process. They did not want Thai team to get the gold medal".*
- *"Because there were Thais who betray our country, I think he wants to be a president to replace me".*
- *"It was like this. I had evidence from Doha game. There were a person who wrote a letter to me because he heard the one group of people discussed and planned that the Thai team would not get any gold medal. I did not believe (the letter). No signature on the letter but it became true or close to the truth. Next he wrote to me to inform me how it happened. He was by accident had dinner near the table of this group. In fact, he was not interested because it was a discussion on drinking table but once the result of the match became close to what he overheard, then he wrote a letter to me. He gave me the name of the person and informed me about their plan" (sic).*
- *"When I have evidence I will reveal who were behind all this".*
- *"They would cut his score same way as (what they had done with) Manut".*
- *"I believe in President of Confederation because he always say it has to be clean boxing but in this tournament there were many which were not clean".*
- (regarding the score of a match disputed by Amnard on 7 August) *"equal from 2 referees and won from 1 referee. First referee gave 4:4 Second 3:4 Third 5:4 Fourth 5:5 Fifth 4:5 and the last person was Chinese (Judge) who also judged Non's tournament and gave him lost. Because he knew that he did not want the Chinese boxer to fight with Amnard. If Amnard won, he would fight with Cuba and go to world champion round. Then one won, one lost. Same as Non's case, if he would be able to*

cut the point, his point would have been cut. Non fought with Egypt, he did not lose even he did not follow the plan. He did not lose because 2 referees gave him won. In Non's case Cuban referee gave 12:8, the Chinese referee 12:15, Canadian referee 18:14, South African referee 14:14, Russian 12:33 It means 2 referees decided that we won, 1 referee decided a tie, and 2 referees decided that we lost. But by the (total) individual score, we lost. If we look at referee team it was the fourth person that decided as a tie. The fact was he hold the points to be equal. Set score we lost 7:10 Russian referee gave us lost 12:13 for individual score, set score we won 6:5 meaning the match with Egypt we did not lose. We lost because of the referees. I have followed the results up until Annard's match. It showed that the information I got was true" (sic).

- *"We punched 2-3 times for first and second rounds and our points should be ahead. Situation will change he had to approach, not us. If our points are ahead of him, the score will be cut. Because the referee here was being set up, it was not an accident. Total number of referees was 34 persons. For the match of Thai boxers, the same referees came up in every time. This was strange and unbelievable. Either referee or judge" (sic).*
- *"Yes, they gave Lee Shing as the judge. Everytime he gave us lower score to make us lost" (sic).*
- *(regarding the person who sent an anonymous letter to the Appellant) "I am surprised that 2 days ago we did not see each other, we did not talk. I don't want to say who he is because I don't have enough evidence. I got it from what I heard and from the letter which this story was started from Doha Games and continue for 2 years till now. At Doha games a letter without signature was sent to me. He wrote it after the game was finished. At the beginning he did not believe till the result of Doha Games came out so he thought that it was a joke. Later I still received some information that it is still the same group of people who would do the same for this time but I still did not believe. I started to have some doubts when I compare the method to the last Olympics. (In the Olympics) the method of choosing the referees (randomly) would be that it would happen only 20 minutes before each match and (the referees) would be selected by choosing ping pong balls in front of everyone. If anyone had any doubts, you could go see by yourself how they arrange referee and could be sure that referees was not arranged before the match" (sic).*

Morning talk show on an unspecified date but admittedly after the Olympic games

- *(Regarding the question of whether he still had doubts about the Olympic results) "Yes, still. Non fought with Egypt and referee are from Asia and Africa. African referee gave African boxer won for 7:10 but Asian referee who is Chinese gave Non lost for 6:8. The fact was they balanced between continent it should be that way. The Chinese referee decided Non to lose. Why is the result came out like this? Because Non will meet Chinese (Si la moo) boxer for the next round. In case of Annard we could see that Annard lost to Mongolia even he punched 5 or 6 times but he did not gain any score. You can see from your tape from Channel 3. If Mongolian boxer only tap his shoulder, the score went up. (even slightly punch) This is because they wanted Mongolian to fight with Chinese, same as Cuban, they make Cuban lost even he punched till his hand broken. He would never win. His score would not raise up. Once Mongolian fought with Chinese, he surrendered by informing that he was injured. This was what happened in Olympic in Beijing and also with many matches" (sic).*
- *"(...) Yes, French referee was 6 times with Thai. Three times was on stage and three times was on ground. For Somjit's match, these referees were the same group who was set up for holding score. For Manut's match, it was even worse because these referee, three or four of them was the referees from*

Amnard's match. It was obvious that there were attempts to make Thai boxer lose or not receive any medal" (sic).

- *"I checked how they arranged referee, how they cheated or did not cheat".*

d. The Panel decision

53. There are numerous similarities between the present dispute and the issues confronted by the CAS in a fairly recent case (TAS 2009/A/1795). Consequently, it seems appropriate to briefly introduce this precedent hereafter.
54. In 2008, Mr Rudel Obreja was the President of the Romanian Boxing Federation, the Vice-President and a member of the AIBA Executive Committee. During the 2008 Summer Olympic Games in Beijing, Mr Obreja held an impromptu and unauthorised press conference, where he raised serious claims of bribery, of manipulation of judging panels and made strong allegations against high ranked AIBA officials. The CAS Panel criticized Mr Obreja for having organized such a press conference spontaneously and without the approval of AIBA or of the organization committee of the Olympic Games. It considered that Mr Obreja's actions were a flagrant violation of the AIBA Disciplinary Code and incompatible with common sense. In this regard, the CAS Panel underlined how certain rules must be respected before going in front of the media, in particular during an event as important as the Olympic Games (par. 94). It found that as a President of a national federation and as a member of the Executive Committee, Mr Obreja should have put forward his various claims before AIBA's internal commissions, which he never did. In addition, the CAS Panel underlined that Mr Obreja did not establish that there was any urgency to make public his allegations (par. 95). It held that he did not respect the principles of conduct as set forth in Article 3 of the Disciplinary Code and that his actions constituted a serious infringement as provided under Article 45 of the said Code (par. 97). It judged that Mr Obreja's behaviour not only affected the reputation and honour of the persons he expressly accused but also the interests of AIBA and, consequently, was to be sanctioned in accordance with Articles 47 and 49 of the Disciplinary Code (par. 104). The CAS Panel suspended Mr Obreja from exercising any boxing related activity during 24 months (instead of 42 months as decided by the lower instance) and discharged the CHF 2,000 fine adjudged against him by AIBA.
55. In the present case, the Appellant was at the time of the facts the President of the Amateur Boxing Association of Thailand and a member of the AIBA Executive Committee. As such, he undoubtedly carries out official functions on behalf of his federation but also of AIBA and plays a key role in developing the sport of boxing. What is at stake is the Appellant's exemplary behaviour and the perception of the public towards his actions. The public knows the Appellant in his quality of President of the national federation and judges or is influenced by his action accordingly.
56. The Appellant's televised interventions occurred during and after the 2008 Summer Olympic Games. This event is the largest sports competition in the world in terms of worldwide interest and importance. In view of the magnitude of the Olympic Games, one must expect

high standards of behaviour from all the people involved. It is vital that these expectations are met and that the integrity of the sport is maintained. Hence, it seems obvious that all official contacts with the press tending to raise question as to the organization of the games must be carefully weighed.

57. In spite of this, it results from the above excerpts that, during two TV shows, the Appellant was openly questioning the impartiality of the officiating crew, raising issues of an unfair advantage during the Olympic games, claiming that the fights were manipulated and that biased refereeing favoured other boxers to the detriment of Thai contestants, who were victims of a large conspiracy, involving numerous people and officials. The Appellant did not support his accusation with any evidence but only made some unclear reference to an anonymous letter received from someone who overheard a conversation in a public drinking place, a couple of years earlier. In addition, he even confirmed that he had no/not enough evidence (*“when I have evidence I will reveal who were behind all this” “I don’t want to say who he is because I don’t have enough evidence”*) and he did not establish the fact that he had ever tried to raise the alleged refereeing issues formally before AIBA’s competent authorities. Moreover, he has never explained the reasons why he suddenly needed to go before the press during the Olympic Games whereas he alleged that he had observed manipulations at least since the 2006 Asian Games in Doha.

58. Furthermore, it must be noted that the refereeing teams are of vital importance for the proper functioning of the game and the entire competition. They must be protected from all actions that could endanger the impartiality and technical qualities of their intervention. Referees should not have to bear such verbal abuse under any circumstances. That should be obvious, in particular for an experienced person such as the Appellant. Such a display of disrespect questions the referees’ competence, undermines the referees’ authority, and brings the game into disrepute. In such a context, it is not unlikely that the Appellant was actually trying to put pressure on the officiating crew and influence the fights, which were to take place following his televised appearance.

59. With his accusations, the Appellant openly accused unnamed Thais – and at least impliedly accused AIBA and/or the refereeing team – of conspiracy. An insinuation of conspiracy is a serious allegation which could likely tarnish the reputation and the proper functioning of the game and the entire competition. Such a statement should not be made absent a basis in fact. It casts doubt on the independence and technical qualities of all the people involved in the organisation of the event. The Appellant did not begin to make credible or even plausible the existence of such a vast conspiracy requiring the participation of so many actors:
 - several, if not all, the members of the various refereeing team, who officiated during the bouts involving Thai boxers;
 - the delegates responsible for selecting the members of the refereeing teams;
 - the people who nominate the delegates.

60. The Panel observes that this conspiracy theory would falter unless all the conspirators knew in advance that the Thai boxers would constitute a threat for the final beneficiaries of the alleged

plot. In this regard, by insinuating that AIBA and/or the refereeing team accepted to take part in such a conspiracy, the Appellant also strongly discredited the Thai boxers' opponents. As a matter of fact, with his insinuations, he was suggesting that those opponents won the fights against Thai boxers not because they deserved the victory on the basis of their skills, training and everyday sacrifices but thanks to some manipulation of the score.

61. Based of the foregoing, the Panel finds that the Appellant's comments constitute a breach of Article 3 of the Disciplinary Code (i.e. the Appellant's duty to respect the principles of honesty, integrity and sportsmanship), of Article 4 (i.e. Behaviour which harms the image of boxing, AIBA, the Confederations or the Members), of the AIBA Code of Ethics and that his actions constitute a serious infringement as provided under Article 45 of the said code, affecting the reputation and interests of AIBA, meeting the requirements of Article 47 of the Disciplinary Code.
 62. At this point, the Panel would like to comment that in reaching its conclusion it has taken into consideration the Appellant's right to "freedom of speech" as well as the fact that sports bodies enjoy "... freedom and [a] wide margin of autonomy ... to establish their own rules and structures, a right which in many legal traditions derives from respective national constitutions..." (CAS 2009/A/1788, para. 45; see also judgment of the Court of First Instance in T-313/02 *Meca-Medina/Majcen*). In any event, however, as outlined above, as the Appellant did not support his allegations with any evidence his right to freedom of speech cannot be seen to have been unfairly or unjustly fettered by the AIBA's rules.
- e. The sanction
63. Based on its scope of review, the Panel has the discretion to determine the final sanction (TAS 2009/A/1795, para. 108). In setting sanctions, the Panel must take into account the objective and subjective elements constituting the infringement, its gravity and the degree of the offender's guilt. It must also evaluate any aggravating and extenuating circumstances that might be related to the infringement (see Article 21 of the Disciplinary Codes).
 64. In the case at hand:
 - the Appellant seriously infringed several AIBA regulations, which are indisputably applicable to him;
 - his responsibility is greater in view of his important position as a President of a national federation and as a member of the AIBA Executive Committee;
 - despite the fact that his accusations were exclusively based on speculations and some kind of anonymous document, he made them public, during one of the most important sporting events.
 65. As a mitigating factor, it can be observed that the Appellant did not give any name of who might be involved in the alleged conspiracy, he expressed his trust in AIBA's President ("*I believe in President of Confederation because he always say it has to be clean boxing, but in this tournament*

there were many things which are not clean") and that other incidents lead him to believe that there were some issues regarding the refereeing. As a matter of fact, during the Extraordinary Executive Committee Meeting of 17 November 2008, AIBA's President, Ching-Kuo Wu stated that during *"the Beijing Olympic Games, there were several attempts of manipulation and also violation of the Code of Conduct"*. Moreover, the Panel notes that, in effect (as a result of his provisional suspension prior to the decision of the AIBA Disciplinary Commission of 7 October 2009) the Appellant has already served an almost 6 month suspension (from 13 December 2008 to 10 February 2009 and from 9 April to 5 August 2009). Moreover, after the decision of the AIBA Disciplinary Commission of 3 May 2010, he also served a 4 months suspension from 3 May 2010 to 1 September 2010. Finally, the Panel also took into consideration the unsatisfactory and invalid procedural hurdles at AIBA level, which the Appellant had to overcome to have his case heard.

66. In light of the above, of the fairly close CAS precedent (TAS 2009/A/1795) and with respect to the range of the sanctions applicable, the Panel finds it fair to impose upon the Appellant a suspension of 6 months, pursuant to Article 47(b) of the Disciplinary Code, commencing on 3 May 2010. Keeping in mind that the Appellant, as a result of the same allegations, has already served almost 10 months of suspension (almost 6 months from 13 December 2008 to 10 February 2009 and from 9 April to 5 August 2009 plus almost 4 months of suspension between 3 May 2010 and 1 September 2010) prior to his request provisional and conservatory measures in this case, the suspension in practice has already been fully served.
67. In view of the foregoing, it is unnecessary for the Panel to consider the other requests submitted by the parties. Accordingly, all other prayers for relief are rejected.

The Court of Arbitration for Sport rules:

1. The appeal filed on 5 August 2010 by General Taweep Jantarroj is partially upheld.
2. The decision of the Executive Commission of the International Boxing Association dated 14 July 2010 is annulled.
3. General Taweep Jantarroj is hereby sentenced to a suspension of 6 months commencing on 3 May 2010.
4. (...).
5. All other motions or prayers for relief are dismissed.