



Arbitration CAS 2010/A/2209 Bettan Andersson v. International Boxing Association (AIBA), award of 24 January 2011

Panel: Prof. Luigi Fumagalli (Italy), President; Mr Conny Jörneklint (Sweden); Mr Luc Argand (Switzerland)

Boxing

Suspension of an official of the international federation

Principle “tempus regit actum”

Standard of proof

Measure of the sanction

1. A CAS panel identifies the applicable substantive rules by reference to the principle *“tempus regit actum”*: in order to determine whether an act constitutes a disciplinary infringement, the panel applies the law in force at the time the act was committed. In other words, new regulations, unless they are more favourable to the athlete (*“lex mitior”* principle), do not apply retroactively to facts that occurred prior to their entry into force, but only for the future.
2. The party bearing the burden of evidence, in order to satisfy it, does not need to establish “beyond any reasonable doubts” the facts that it alleges to have occurred; it simply needs to convince the Panel that an allegation is true by a “balance of probability”, i.e. that the occurrence of the circumstances on which it relies is more probable than their non-occurrence. In this respect, it must be noted that disciplinary rules enacted by sports authorities are private law (and not criminal law) rules. Consequently, any legal issue concerning the satisfaction of such burden of proof should be dealt within the context of the principles of private law of the country where the interested sports authority is domiciled. In this respect, in Swiss law Article 8 of the Civil Code, which establishes the rule on the burden of proof, allows the adjudicating body to base its decision also on natural inferences.
3. The measure of the sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rules can be reviewed only when the sanction is evidently and grossly disproportionate to the offence.

Ms Bettan Andersson (“Ms Andersson” or the “Appellant”) is a Swedish citizen, born in 1964, active in the field of amateur boxing. Ms Andersson served as President of the Swedish Boxing Federation between 2005 and 2009. In 2006, she became a member of the Executive Committee of the International Boxing Association.

The International Boxing Association (“AIBA” or the “Respondent”) is an association pursuant to Articles 60 *et seq.* of the Swiss Civil Code, with seat in Lausanne, Switzerland. Its 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.

On 14-21 September 2009, the European Women Boxing Championships (the “Championships”) were held in Nikolaev, Ukraine. At the Championships, the Appellant was an International Technical Officer (ITO) and a member of the Draw Commission. The position of Technical Delegate (TD) with regard to the organization and management of the Championships was held by Ms Sirpa Makkonen, an officer of Finnish nationality.

Following the Championships, on 9 October 2009, Mr Humbert Furgoni, President of the European Boxing Confederation (the “EUBC”), addressed a letter to the AIBA President stating the following:

“... I have received complaint letters from 13 National Federations and from 4 ITOs regarding the Technical Delegate [Ms Makkonen] and what has taken place during this Championships.

Detail information and documents are enclosed for your review. In this regard, it is sure that several manipulation cases took place and I am sure that AIBA and EUBC should investigate these matters for benefits of boxers in the future.

As the President of the European Confederation, I am very disappointed to face this situation in Europe. As I also attended at the final days, I tried to rectify some of these wrongdoings. However, the damage was done long before from the beginning of the competition. The main areas of the manipulation took place at the R&J Draw and assignment of the ITOs.

The Technical Delegate did not follow my assignment of the ITOs on the Draw Commission Chairman. The draw was often done by a single member, Ms. Bettan Andersson, which was not possible. In addition, the Technical Delegate allowed non-officials inside the FOP and her seat. In addition, the Technical Delegate even participated in the R&J draw by herself.

I sincerely appreciate if you can investigate all of these corruptions and take any possible action as soon as you can. I would also like to propose to put those responsible persons in the AIBA Disciplinary Commission’s review”.

In a letter of 14 October 2009, AIBA informed Ms Andersson that on 13 October 2009 the Bureau of its Executive Committee had adopted the following decision:

- *To provisionally suspend Ms Sirpa Makkonen and Ms Bettan Andersson from their positions in AIBA and Confederation Commissions*
- *To provisionally suspend Ms Sirpa Makkonen and Ms Bettan Andersson from any official function as an Official in AIBA and Confederation competitions*
- *To put these cases for review first by the AIBA Technical & Rules Commission for its comments and further put these cases for review by the AIBA Disciplinary Commission*

this due to the fact that further to the European Women Championships held from September 14 to 21, 2009 in Nikolaev, Ukraine, Dr Humbert Furgoni, President of the European Boxing Confederation, received

complaint letters from 13 National Member Federations and from 4 ITOs against Ms Makkonen's management as the Technical Delegate and against Ms Andersson's management as a R&J Draw Member for this event".

In a brief dated 23 November 2009, the AIBA Legal Manager set out further information for the AIBA Disciplinary Commission (the "Disciplinary Commission") in relation to the allegations against Ms Makkonen and Ms Andersson, alleging that they committed "a number of serious breaches of the AIBA Technical & Competition Rules" and that "by doing so [they] committed a punishable offence under article 4(1) of the AIBA Disciplinary Code" and further that they committed "a punishable offence under article 45 of the AIBA Disciplinary Code".

On 27 July 2010, the Disciplinary Commission rendered a decision (the "DC Decision"), in the disciplinary procedure No. 2009/018, sanctioning Ms Makkonen and Ms Andersson as follows:

- "1. Ms Sirpa Makkonen is sanctioned with a suspension from her positions in AIBA and Confederation (EUBC) Commissions and from any function as an official in AIBA and Confederation competitions, for a period of 15 months (starting on 12th October 2009).*
- 2. Ms Bettan Andersson is sanctioned with a suspension from her positions in AIBA and Confederation (EUBC) Commissions (including as AIBA Executive Committee member) and from any function as an official in AIBA and Confederation competitions, for a period of 15 months (starting on 12th October 2009).*
- 3. Ms Makkonen shall pay a part of the costs of the procedure (CHF 1'500).*
- 4. Ms Andersson shall pay a part of the costs of the procedure (CHF 1'500).*
- 5. There will be no award for legal fees (...)"*

In support of its Decision, the Disciplinary Commission held the following, in the portions relating to Ms Andersson:

"... There is enough evidence for the DC to consider that in some cases, Ms Andersson made the 'draw' for R&Js alone, and that her method of drawing did, in the first days of the championships, not meet any requirement of random selection. The DC has no reason to believe that Mr. Furgoni's, Mr Rachkov's, Mr Raguimov's and Mr Hacville's explanations would be untrue, together with the complaints made by the Irish and Swiss delegations. Ms Makkonen alleges that she, in each session, appointed two or three persons for the duties of the Draw Commission. This may be true, but she couldn't ignore that on several occasions, Ms Andersson did the draws alone, as she was working closely with her, in the same premises. Several draw sheets were not signed by two persons. Nobody denies that any draw should be made by at least two persons. The DC finds that both Ms Makkonen and Ms Andersson didn't meet the requirements in that respect. ...

(...) Art. 4 § 1 of the AIBA Disciplinary Code provides that 'any behaviour which harms the image of boxing, AIBA, its Confederations and Members' constitutes an offence that can be sanctioned. The violations mentioned above fall under this paragraph.

(...) As for the sanctions to be applied, the DC notes that this case is not about cheating or corruption. It is about one TD and one ITO who made mistakes in performing their duties during an international competition, but there is no evidence these mistakes would have been done with the purpose of advantaging or disadvantaging any boxer or delegation, or with the purpose of deliberately harming the AIBA's and EUBC's interests. Therefore, the DC will only consider suspensions from their international activity for a certain period of time, not

suspensions for any activity within boxing. Ms Makkonen's responsibility is more important than Ms Andersson's, but Ms Andersson is a seasoned veteran of the AIBA Executive Committee. She should have known better than to participate in such activities. At best, she used poor judgment and brought into question her integrity as an ITO and a leader of AIBA. Because of her leadership positions within AIBA, she was in the position to take liberties with her ITO duties and responsibilities that were not available to others. The period of suspension shall therefore be the same for both. Both Ms Makkonen and Ms Andersson have been provisionally suspended since 12th October 2010 (sic – should be read as 2009), that is for more than nine months now. Therefore and given all circumstances, a suspension – in the above mentioned sense – for 15 months corresponds to Ms Makkonen's and Ms Andersson's responsibility”.

Ms Andersson appealed against the DC Decision before the AIBA Executive Committee (the “Executive Committee”), acting as body of appeal. By decision dated 11 August 2010 (the “Decision on appeal”; the DC Decision and the Decision on appeal are jointly referred to as the “Decisions”), the Bureau of the Executive Committee

“... rejected Ms Kerstin Bettan Andersson appeal against the decision of the AIBA Disciplinary Commission. Therefore, such decision is definitive”.

The Decision on appeal was served upon Ms Andersson on 11 August 2010.

On 26 August 2010, the Appellant filed a statement of appeal with the Court of Arbitration for Sport (CAS), pursuant to the Code of Sports-related Arbitration (the “Code”), to challenge the Decisions.

Together with her statement of appeal, the Appellant applied for a stay of the Decisions, pursuant to Article R37 of the Code.

In a letter dated 2 September 2010, the Appellant informed the CAS Court Office, pursuant to Article R51 of the Code, that her statement of appeal would serve as appeal brief.

On 13 September 2010, the Respondent filed its answer to the Appellant's request for provisional measures.

On 15 September 2010, the Appellant lodged an additional submission with respect to her request for provisional measures.

On 21 September 2010, the Respondent filed its position with regard to the Appellant's additional submission.

On 22 September 2010, the Respondent filed its answer brief.

In letters dated 29 September 2010 and 30 September 2010 respectively, the Appellant and the Respondent authorized the Panel to render an award on the basis of the written submissions only.

On 1 October 2010, the Deputy President of the CAS Appeals Arbitration Division issued an Order on Provisional and Conservatory Measures as follows:

- “1. *The application for provisional and conservatory measures filed by Ms Bettan Andersson on 26 August 2010 in the matter CAS 2010/A/2209 Ms Bettan Andersson v. AIBA, is rejected.*
2. *The costs of the present order shall be determined in the final award or in any other final disposition of this arbitration”.*

On 30 November 2010, the CAS Court Office, on behalf of the President of the Panel, issued an order of procedure (the “Order of Procedure”), which was accepted and countersigned by the parties.

In a letter dated 14 December 2010, the CAS Court Office informed the parties that the Panel had decided, according to Article R57, second paragraph of the Code, to issue an award without a hearing. The present award is therefore rendered after consideration only of the written documents on file.

LAW

Jurisdiction

1. The CAS has jurisdiction to decide the present dispute between the parties. The jurisdiction of the CAS, which is not disputed by either party, has been confirmed by the signature of the Order of Procedure and is based *in casu*, for the purposes of Article R47 of the Code, on Article 59 and 60 of the AIBA Statutes (the “Statutes”) and on Article 70 of the Organization and Procedural Rules of the Judicial Authorities of AIBA (the “Procedural Rules”).
2. More specifically, the provisions that are relevant to that effect in these proceedings are the following:
 - i. Article 59 of the Statutes, which provides that:
 - “*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.*
 - CAS however, will not deal with appeals arising from:*
 - a) *violations of Technical & Competition Rules;*
 - b) *suspension of up to three months (with the exception of doping decisions).*
 - ² *Recourse to ordinary courts of law is prohibited unless it is mandated by state law.*
 - ³ *Appeals must be filed in accordance with the provisions of the CAS Code of Sports-Related Arbitration. Appeals shall be lodged with CAS within 30 days of notification of the written decision in question. The appeal shall not have a injunctive effect.*
 - ⁴ *CAS shall primarily apply the various regulations of AIBA and the Swiss law”;*

ii. Article 60 of the Statutes, under which:

“Confederations and Members of AIBA shall agree to recognize CAS as an independent judicial authority and to ensure that their members, boxers, licensed boxing agents and officials comply with the decisions passed by CAS”;

iii. Article 70 of the Procedural Rules, pursuant to which:

“Once all the internal channels have been exhausted, the decisions of the judicial authorities of AIBA are subject to an appeal to the Court of Arbitration for Sport (CAS), the headquarters of which are in Lausanne (Switzerland), except for the cases dealing with:

- the breach of sporting rules;*
- suspension of less than or equal to three months and fines less than or equal to CHF 5000.--, except in doping cases;*
- decisions against which an appeal to an ordinary court of the country is mandatory in the country in which AIBA, the Confederations or the Federations are seated.*

² *The provisions of the CAS Code of Sports-related Arbitration shall apply to the appeal proceedings. The CAS shall primarily apply the AIBA Statutes and regulations and subsidiarily Swiss law.*

³ *The appeal does not have a suspensive effect, except if the case concerns the payment of a sum of money. However, the judicial authorities of AIBA or the CAS may grant such an effect”.*

Appeal proceedings

3. As these proceedings involve an appeal against decisions in a dispute relating to a disciplinary infringement, issued by an international federation (AIBA), which statutes provide for an appeal to the CAS, they are considered and treated as appeal arbitration proceedings in a disciplinary case of international nature, in the meaning and for the purposes of the Code.

Admissibility

4. The statement of appeal was filed within the deadline set in the Statutes. No further recourse against the Decision on appeal is available within the structure of AIBA. Accordingly, the appeal filed by Ms Andersson is admissible.

Scope of the Panel's review

5. According to Article R57 of the Code, the Panel has full power to review the facts and the law of the case. Furthermore, the Panel may issue a new decision which replaces the decision challenged, or may annul the decision and refer the case back to the previous instance.

Applicable law

6. Pursuant to Article R58 of the Code, the Panel is required to 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”.
7. According to Article 59.4 of the Statutes, and to Article 70.2 of the Procedural Rules, the Panel shall apply the AIBA rules and regulations and, subsidiarily, Swiss law.
8. The Panel identifies the applicable substantive rules by reference to the principle *“tempus regit actum”*: in order to determine whether an act constitutes a disciplinary infringement, the Panel applies the law in force at the time the act was committed. In other words, new regulations, unless they are more favourable to the athlete (*“lex mitior”* principle: advisory opinion CAS 94/128, rendered on 5 January 1995), do not apply retroactively to facts that occurred prior to their entry into force, but only for the future (CAS 2000/A/274, award of 19 October 2000).
9. In light of the above, in order to establish a disciplinary violation and its consequences, the Panel shall apply the AIBA rules in force in 2009, at the time the Championships were held.
10. More specifically, the AIBA rules in force in 2009 that are applicable in these proceedings are the following:
 - i. within the AIBA Disciplinary Code (the “Disciplinary Code”)¹:
 - 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;*
 - *Respect the prohibition on maintaining sports relationships with Members who have been expelled or suspended by AIBA; in addition, not to take part in competitions in which the expelled or suspended Members take part;*
 - *Take part in competitions organized by AIBA. [...]*
 - Article 4 *“Punishable acts”*:
 - ¹ *The following offences can be sanctioned, in particular:*

¹ The Panel notes that the Respondent filed in these arbitration proceedings (as Exhibit 6 to its answer) the version of the Disciplinary Code that entered into force on 29 January 2010, after the Championships, and not the text in force at the time the Championships were held. The rules relevant in this arbitration have however the same content in the two versions, leaving no room for the application of the *lex mitior* principle.

- *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;*
 - *Disqualification of a boxer or expulsion of his or her seconds during a competition;*
 - *Suspension of a boxer from a current competition, future competition(s) or for a predetermined time period;*
 - *Exclusion of a Member from a competition;*
 - *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.*
- Article 8 “Fines”:
 - ¹ *A fine is the pecuniary sanction issued in Swiss Francs (CHF). It must be paid in said currency within the time limit and according to the methods fixed by the disciplinary authority. [...].*
- 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 the present Code and 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*
 - *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*
 - *a fine of CHF 500.-- to 10’000.--;*
 - *or a suspension of 6 months to 2 years;*
 - *or a temporary or definitive ban from any boxing activity.*
- ii. within the AIBA Technical & Competition Rules – Rules for Competition Officials (the “T&C Rules”):
- Rule 5 “*Rules for both Referees & Judges*”
 - 5.1 *Designation and Neutrality*
To ensure neutrality, the names of the Referee and of the five Judges for each contest shall be selected by a Computerized Software Program and/or a Draw Commission. [...]

The merits of the dispute

11. The main issues in this arbitration, as raised by the Appellant, concern the existence of the infringements for which a sanction has been imposed on Ms Andersson by the AIBA disciplinary bodies, and the measure of such sanction. The Appellant submits, in fact, that AIBA has not proved any violation by Ms Andersson of any AIBA rule at the Championships. In any case, in the Appellant’s opinion, the sanction imposed is too severe. On the other side, AIBA maintains that the evidence offered confirms that Ms Andersson committed the violations for which she was sanctioned in a proper measure.
12. As a result of the Appellant’s submissions, there are two questions that the Panel needs to answer:
 - A. the first question is whether Ms Andersson can be found to have committed the violations of the AIBA rules for which she was sanctioned;
 - B. the second question, to be addressed in the event Ms Andersson is found to have committed violations of the AIBA rules, concerns the measure of the sanction to be imposed on her.
13. The Panel shall consider each of said questions separately.

14. Before turning to them, however, the Panel wishes to clarify two points, relating to the burden and the standard of evidence applicable in these proceedings.
 15. With respect to the first point, it is the Panel's opinion that the establishment of the facts that would constitute a violation by the Appellant of the AIBA rules remains with AIBA. In other words, it is the Panel's duty to verify whether AIBA has proved that Ms Andersson committed infringements of the applicable regulations.
 16. With respect to the second point, it is the Panel's opinion that the party bearing the burden of evidence, in order to satisfy it, does not need to establish "beyond any reasonable doubts" the facts that it alleges to have occurred; it simply needs to convince the Panel that an allegation is true by a "balance of probability", i.e. that the occurrence of the circumstances on which it relies is more probable than their non-occurrence (see CAS 2008/A/1370 & 1376, § 127; CAS 2004/A/602, § 5.15; TAS 2007/A/1411, § 59).
 17. In this respect, it must be noted, in fact, that disciplinary rules enacted by sports authorities are private law (and not criminal law) rules (see on the point the advisory opinion CAS 2005/C/841, § 78). Consequently, in the Panel's view, any legal issue concerning the satisfaction of such burden of proof should be dealt within the context of the principles of private law of the country where the interested sports authority is domiciled. In this respect, the Panel notes that in Swiss law (being the law subsidiarily applicable in these proceedings: § 7 above) Article 8 of the Civil Code, which establishes the rule on the burden of proof ("*Chaque partie doit, si la loi ne prescrit le contraire, prouver les faits qu'elle allègue pour en déduire son droit*"), allows the adjudicating body to base its decision also on natural inferences (see the award CAS 96/159 & 96/166, § 16).
- A. *Can Ms Andersson be found to have committed the violations for which she was sanctioned?*
18. In the DC Decision the Disciplinary Committee found:
 - i. that "*there is enough evidence for the DC to consider that in some cases Ms Andersson made the 'draw' for R&J's alone, and that her method of drawing did, in the first days of the championships, not meet any requirement of random selection*", and
 - ii. that such violations fall under "*Art. 4 § 1 of the AIBA Disciplinary Code [which] provides that 'any behaviour which harms the image of boxing, AIBA, its Confederations and Members' constitutes an offence that can be sanctioned*".
 19. Ms Andersson challenges in this arbitration the first point of the DC Decision, and contends that the evidence referred to by AIBA before the Disciplinary Commission does not prove the violations for which she was sanctioned. Indeed, in the Appellant's opinion, the evidence available shows that she has not violated the AIBA rules: more specifically, that she was never alone in the Draw Commission to make the "draws" for the referees and judges of the Championships' bouts. No submission, on the other hand, is made in this arbitration by the Appellant with respect to the second point of the DC Decision, i.e. with regard to the characterization of the actions of "making the draws alone" (which are denied) as a behaviour

harming the image of boxing and of the boxing federations, i.e. as one of the offences contemplated in Article 4.1 of the Disciplinary Code.

20. In this framework, the question that the Panel has to consider is whether Ms Andersson “*made the ‘draw’ for Refs alone*”, in violation of Article 5.1 of the T&C Rules.
21. Article 5.1 of the T&C Rules, in fact, provides that, in order “*to ensure neutrality, the names of the Referee and of the five Judges for each contest shall be selected by a Computerized Software Program and/ or a Draw Commission*”. The meaning of such provision has been clarified in the disciplinary proceedings by Ms Andersson, and is the result of a modification, effective since 1 September 2008, of the earlier system, no longer applicable in the AIBA competitions, of using “draw balls” to appoint referees and judges for every bout. As a result, a computerized system is to be used. In the alternative, a Draw Commission is to be established with the task to “appoint” referees and judges, by following the principles (chiefly concerning nationality) set in Articles 5.1.1 to 5.1.8 of the T&C Rules.
22. The system of selection of referees and judges through a Draw Commission was used at the Championships. It is in fact not disputed that a Draw Commission was established, as mentioned in the TD Report of 3 October 2009. The issue in this arbitration is actually whether Ms Andersson on occasions “by-passed” the Draw Commission, formally existing, and appointed referees and judges alone.
23. Contentions have been put forward by the parties in respect of such issue. Both parties point to the evidence brought in its regard by AIBA and offer diverging views as to the satisfaction of the burden of evidence AIBA has to satisfy in order to prove that a disciplinary infringement has been committed.
24. The Panel, having examined all the elements brought to its attention by the parties, agrees with the DC Decision, and finds that the AIBA has discharged the burden it has to prove, on the basis of the “balance of probability” standard, that Ms Andersson appointed referees and judges alone, in violation of Article 5.1 of the T&C Rules, notwithstanding the formal existence of a Draw Commission.
25. The Panel is led to such conclusion by the following elements:
 - i. a letter from Mr Furgoni (EUBC President) to Ms Makkonen dated 17 September 2009 (i.e. sent during the Championships), underlining that “*we cannot accept the assignment of the judges by the unique and same person (...). In order to ensure the neutrality in this procedure, you have to allow the intervention of the other Members of the jury (...). Therefore, I ask you from now on to assign more than one person for the draw of the judges respecting one of the most important AIBA’s principles of the fairness and neutrality in our sport*”;
 - ii. a letter from Mr Valery Rachkov (an ITO at the Championships) to Mr Furgoni dated 20 September 2009, which, in its English translation, reads as follows: “*During the European Women Championships (...) my duty was to control that the competition was held according to the rules of AIBA and EUBC. From the very first days of the Championships, one of the ITOs, Mrs Bettan Andersson assigned personally the judges crews for the bouts. It led to the following situation: in the bout*

n° 40, two side judges from Hungary and Turkey influenced by their work the awarding of the winner when they gave the victory to the Swedish boxer. In the next day program, for the match between Finnish and French athletes, Mrs Bettan Andersson appointed the judges from Turkey and Hungary. I crossed out the Hungarian judge from the judges' list, and it displeased to the Technical Delegate Mrs Sirpa Makkonen. Mr Raguimov and myself insisted on the presence of Mr Patsatyy (Ukraine) at the assignment of judges. The draw of the judges was not held before the arrival of the EUBC President Furgoni. I believe that the EUBC authorities shall react to the gross violation of AIBA rules”;

- iii. an undated declaration of Mr Yakov Raguimov (an ITO at the Championships) to Mr Furgoni dated 20 September 2009, which, in its English translation, reads, inter alia, as follows: “(...) *During the competition, the Technical Delegate Mrs. Sirpa Makkonen, decided to appoint me as the Chairman of the Jury in the majority of the programs, given the fact that I was the most neutral ITO (since the federation of Israel did not send the team for these Championships). During the Championships, the violation of the rule of the assignment of the judges for every bout was observed, in particular, one could notice that instead of the draw, the assignment of the judges was made by Mrs Andersson in person, and some representatives of national teams were displeased by this fact, which has been reported to the Technical Delegate. (...)*”;
 - iv. a letter from Mr Michel Hackville (another ITO at the Championships) to Mr Furgoni dated 24 September 2009, portions of which, translated into English translation, read as follows: “(...) *On the first day, during the draw, all the members of the Jury were standing apart quietly. We were patently pushed aside; we had not chairs to sit down. This person [the Panel understands Ms Makkonen] took care to grab different functions. On the first day of the competition, I obtained to make the R/J juries by designation with Mrs Andersson from Sweden. 12 designations were an excellent work to do. On the second day, my work of the day before was not to these two women liking, as they eliminated me from the designations without taking any of my colleagues. We had nothing to do but to be shown, which gave possibility to make believe in a semblance of respect of the AIBA Statutes and Regulations. Designations were made by Mrs Andersson alone, without any control from the Jury, including designations for the boxers of the same nationality as hers. On the third day, the seminar from 11.30 to 11.55, the analysis of the R/J's work was done by Mrs Makkonen, we were blatantly pushed aside, Mr Rachov, one of the members of the Jury, wanted to take the floor, it was short and was interrupted, we were there for justification. The 4th day, surprise. Mr Patsatyy from Ukraine, who from the beginning of the competition was many times furious about this work and about the fact that the Jury had been pushed aside, obtained to make designations together with Mrs. Andersson. A semblance of equity of sport and especially of the boxers was obtained”;*
 - v. the declaration of the Irish team leader dated 20 September 2009, indicating that “*based on our observations, we feel that one person having the full responsibility of selecting officials for the entire championships is both unfair to the participants and the officials and the I.T.O.*”;
 - vi. the declarations of the Swiss, Spanish, Lithuanian, Italian team leaders dated 20 September 2009, complaining with Mr Furgoni that the R/J selection was done by one single ITO and did not follow a principle of random selection.
26. In other words, according to such converging declarations, Ms Andersson, at least in Day 2 and Day 3 of the Championships, proceeded to appoint alone, i.e. without involvement of the other members of the Draw Commission, the referees and judges. This led to the “uprising” of several

team leaders, who found this procedure to be the cause of their dissatisfaction with the way some contests had been officiated by the referees and evaluated by the juries.

27. The conclusion that Ms Andersson breached Article 5.1 of the T&C Rules is, in the Panel's opinion, not denied by the elements underlined by the Appellant, which, even though suitable to cast doubts, and even reasonable doubts, concerning the events at the Championships, do not, if assessed according to the balance of probability test, outweigh those brought by AIBA. For instance:
- i. the reports submitted by Ms Makkonen to EUBC (i.e. the TD Report of 3 October 2009 and the TD Report of 7 October 2009) are not conclusive, since
 - they are mainly concerned with the formal appointment of a Draw Commission, which is conceded by AIBA as having occurred, and the definition of its composition, while the issue is whether, notwithstanding the existence of a Draw Commission and the approval of the appointments by the Jury Chairman, the selection of the referees and judges was made by Ms Andersson alone; and
 - to the extent they are held to indicate that Ms Andersson did not act alone, because "*in no bout (...) the decision of R&J Draw would have been made by one person only*", they come from a biased source: Ms Makkonen was in fact the TD at the Championships, responsible also for the actions of Ms Andersson, and for the failure to implement a proper "draw" system;
 - ii. the document headlined "*Official nominated by Ukraine Boxing Federation*" shows only that Mr Zolotar was nominated to the Draw Commission, not that Ms Andersson acted jointly with Mr Zolotar while appointing referees and judges. Indeed, the Panel notes as meaningful the fact that Ms Andersson did not seek in this arbitration or in the disciplinary proceedings to take the deposition of Mr Zolotar, who could contradict the evidence brought by AIBA that notwithstanding the existence of a Draw Commission, of which he was a member, the selection of the referees and judges was made by Ms Andersson alone;
 - iii. the documents showing judges appointed during the tournament, indicating that all of these documents have been approved by the Chairman of the Jury, and the "*photo documentation*", showing Mr Zolotar and Ms Andersson together at the table of the Draw Commission, do not exclude the finding, supported by the AIBA adduced evidence, that the appointments in Day 2 and/or Day 3 of the Championships were made by Ms Andersson acting alone;
 - iv. the indication by the ITO or the various team leaders that something wrong was happening with respect to the draw, because Ms Andersson was making it "personally", cannot be explained by a poor understanding of the (then relatively new) rules on draws: it is not possible to assume that experienced officers were not familiar with the AIBA rules applicable at the Championships, that had already been in force for one year;
 - v. the explanation that Ms Andersson is a victim of a conspiracy (involving Mr Furgoni), as a reaction to contest results felt to be unfair by various teams, appears to be pure speculation and cannot be accepted.

28. As a result of the above, the Panel finds that Ms Andersson violated Article 5.1 of the T&C Rules. Ms Andersson, therefore, committed a disciplinary infringement: as indicated by the Disciplinary Commission, she is responsible of a violation of the principles of conduct mentioned in the T&C Rules, for a behaviour harming the image of boxing, of AIBA, of its Confederations or of its members (Article 4.1 of the Disciplinary Code). As a result, she is punishable under Article 47 of the Disciplinary Code.

B. *What is the appropriate sanction to be imposed on Ms Andersson?*

29. As mentioned, Article 47 of the Disciplinary Code provides that a person who has committed an action affecting the reputation or interests of AIBA will be sanctioned with a fine of CHF 500 to CHF 10,000, or a suspension of 6 months to 2 years, or a temporary or definitive ban from any boxing activity. According to Article 21.1 of the Disciplinary Code, then, the determination of the type and duration of the sanction is based on the gravity of the infringement and the degree of the offender's guilt.

30. The Appellant submits that the sanction imposed by the Disciplinary Committee is excessive since the infringement, as acknowledged in the DC Decision, was committed without the intention of advantaging anybody or of harming AIBA's or EUBC's interests.

31. This Panel subscribes to the CAS jurisprudence under which the measure of the sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rules can be reviewed only when the sanction is evidently and grossly disproportionate to the offence (see TAS 2004/A/547, §§ 66, 124; CAS 2004/A/690, § 86; CAS 2005/A/830, § 10.26; CAS 2005/C/976 & 986, § 143; CAS 2006/A/1175, § 90; CAS 2007/A/1217, § 12.4).

32. The Panel, in this specific case, and taking in mind the totality of its circumstances, holds the sanction imposed by the Disciplinary Committee to be proportionate (in the scale of sanctions contemplated by Article 47 of the Disciplinary Code) to the level of Ms Andersson's guilt and the gravity of her infringement, which put in question the transparency and fairness of the conduct of the Championships.

Conclusion

33. In light of the foregoing, the Panel finds that the Decisions are to be confirmed. The appeal brought by the Appellant against them is therefore to be dismissed.

34. This award is rendered by a majority decision.

The Court of Arbitration for Sport rules:

1. The appeal filed by Ms Bettan Andersson against the decision issued on 27 July 2010 by the Disciplinary Commission, as confirmed by the decision issued on 11 August 2010 by the Bureau of the Executive Committee of the International Boxing Association (AIBA), is dismissed.
2. This award is pronounced without costs, except for the Court Office fee of CHF 500 (five hundred Swiss Francs) paid by Ms Bettan Andersson, which is retained by the CAS.
3. (...).
4. All other prayers for relief are dismissed.