



Arbitration CAS 2010/A/2243, 2358, 2385 & 2411 General Taweep Jantararoj & Amateur Boxing Federation of Thailand (ABAT) v. International Boxing Association (AIBA), award of 3 August 2011

Panel: Prof. Luigi Fumagalli (Italy), President; Prof. Brigitte Stern (France); Mr Luc Argand (Switzerland)

Boxing

Disciplinary suspension of a president of a national federation

Modification of the scope of the arbitration clause in the course of the disciplinary proceedings

Exhaustion of legal remedies

Possibility to challenge a provisional suspension before CAS

Sanctions aiming to protect an essential interest of an association according to Swiss law

1. The same arbitration clause applies to the entire disciplinary proceedings and therefore covers not only the decisions starting them, which fall within its scope of application; it applies also to appeals concerning subsequent decisions, rendered within the same disciplinary procedures. Any change introduced in the rules of the federation concerned, after the proceedings have started, therefore, does not prevent the CAS from exercising its jurisdiction to review the decisions rendered in the entire and same proceedings.
2. The requirement to exhaust all legal remedies before appealing to the CAS is intended to afford the internal bodies of a federation the opportunity to take a final decision on a disputed matter, in order to ensure that all the relevant rules, applicable to the case at stake, are fully complied with, to put right an alleged violation thereof and to prevent further appeals to the CAS. Although it pays tribute to the freedom of organization of the sports entity in question, it is therefore based on the assumption that the internal legal order will provide effective remedies for the violations of its internal rules. In accordance with the CAS jurisprudence in this respect, the internal remedy must be readily and effectively available to the aggrieved party and it must give access to a definite procedure.
3. It is not possible to argue that CAS proceedings are open also for challenges against provisional suspensions imposed on athletes. In doping related matters such possibility is expressly provided by the World Anti-Doping Code and, on the basis thereof, by the rules of the sports entities that have adopted it. The specific indication in such texts of the possibility to challenge also measures of provisional suspension appears to suggest that failing it an appeal would not be open.
4. Swiss law allows the imposition of sanctions in order to protect an essential interest of an association, i.e. the full compliance by the affiliates of the decisions rendered by its

bodies. As such, the association can sanction the conduct of affiliates who, however bound by a decision of an association's body, fail to respect it, "after having been given a warning to respect the decision in a last delay".

General Taweep Jantararoj ("Gen. Jantararoj" or the "First Appellant") was the President of the Amateur Boxing Association of Thailand in the period the facts giving rise to the dispute occurred. Gen. Jantararoj was also a member of the Executive Committee of the International Boxing Association. At the Ordinary Congress held on 1 and 2 November 2010 in Almaty, Kazakhstan, Gen. Jantararoj, however, was not re-elected to such position.

The Amateur Boxing Association of Thailand (ABAT or the "Second Appellant"; Gen. Jantararoj and ABAT are the "Appellants") is the national federation governing the sport of boxing in Thailand. ABAT is a Member Federation 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.

The circumstances stated below are a summary of the main relevant facts, as submitted by the parties in their written pleadings or in the evidence given in the course of the proceedings. Additional facts may be set out, where relevant, in connection with the legal discussion which follows.

On 20 August 2010, the AIBA Executive Director sent to the "*AIBA National Member Federations qualified to participate to the 2010 AIBA Congress*" the agenda of the Ordinary Congress of AIBA to be held on 1 and 2 November 2010 in Almaty, Kazakhstan ("2010 Congress"), together with, *inter alia*, some forms (i.e., the "*Registration Form for National Federation's Delegates*", the "*Application Form for AIBA Election Candidate(s)*"; the "*Compliance Form for AIBA Election Candidate(s)*"; the "*Nomination Form for AIBA Election Candidate(s)*") and the instruction for their filling and return.

On 21 September 2010, Gen. Jantararoj applied to be a candidate for a position in the AIBA Executive Committee, to be elected at the 2010 Congress.

On 26 September 2010, Gen. Jantararoj sent an email to several Asian national boxing associations, which had not received the AIBA's communication of 20 August 2010. Such communication reads *verbatim* as follows:

"Dear Presidents/Secretaries,

Please urgently kindly find an attached letter and make a notice that you have a legal right to nominate, attend and vote in 2010 AIBA Congress. (Please find a document named AIBA Congress 1020).

After you have understand, please kindly urgently pay the AIBA fee (US\$250) and urgently find the three attached AIBA Election Forms and urgently send your Forms to AIBA as soon as as possible to keep your rights of being AIBA member!

Referring to nomate the right ones for 2010 AIBA presidency and vice-presidency for AIBA congress 2010, and to develop the boxing sport we share and love in the better way, may we kindly ask you to nimate Mr. PAUL KING, the Life – Vice President of Amateur Boxing Association of England for the Presidency position and Mr. GOFUR ARSLONBEK RAKHIMOV, the vice-president of Uzbekistan Boxing Federation for the Vice-presidency position. (please see the example: How to write the Nomination Form).

To nominate accordingly the right procedure, you MUST write this nominated candidates on Nominate Form and send the FORM (which we attached the example form for you this email) by handwriting with black pen (ink) only within 30 September 2010 referred to the election rule.

As you see in the example form, please kindly fill the nominate names of Mr. Paul and Gofur as described. And please do not forget to have your association/federation's President sign his/her name and stamp and attached the passport copy of your president with this Form to verify the authority as requests by AIBA. If not, the form might be rejected!

To send this Form, please kindly urgently send to AIBA HQ by airmail (DHL or any registered mail) at this adress:

Ms. Patricia Steulet

INTERNATIONAL BOXING ASSOCIATION (AIBA)

Maison du Sport International

Avenue de Rhodanie 54 – CH-1007 Lausanne

About the Registration Form for National Federation's Delegates, please wrtie down names of delegates whoi will represent your association to participate in the Election and voting. You have to send them together with the Nomination Form within 30 September 2010. And please aware that the airmail may take time 3-5 days for a sending.

After you send Nomination Form, please send us a copy by email".

Such email was signed by Gen. Jantararoj as "President of ABA Thailand", was copied also to AIBA, and had attached the following letter:

"Dear Friends and Colleagues,

You must take notice that if you pay your outstanding affiliation dues, you will be eligible to attend the AIBA 2010 Congress in Almaty.

You have been misled and your rights to fully participate in the Congress in all aspects such as nomination and participation have been removed without adhearance to the current AIBA statutes.

Your AIBA statutes are as follows:

Article 16 Suspension

3. A member will be suspended if it is not up to date with its dues before an Ordinary Congress convenes: Any suspension will be lifted when dues are paid.

Therefore, if you pay your fees before the meeting convenes (assemble, meets or gathers). This means current National Boxing Federations under the impression, they are currently suspended are not, according to the AIBA statutes.

The decision of the AIBA Executive Committee led by CK. Wu, to time limit nomination, participation and attendance rights, is not enforceable or legal.

The AIBA statutes can only be amended and implemented by the AIBA Congress (the Supreme Power).

Please action your rights by submitting your outstanding dues to AIBA immediately to gain nomination and participation rights to attend the 2010 AIBA Congress in Amaty, Kazakhstan”.

On 27 September 2010, the AIBA President sent a letter to the AIBA Member Federations as follows:

“Dear Presidents,

I was shocked by receiving attached email communication sent by Gen Taweep Jantararoj, President of the Amateur Boxing Association of Thailand, inviting some non qualified national federations to participate to the Congress, sending them copies of the AIBA official forms and requesting those Federations to submit these forms to the AIBA HQs Office.

This is a clear intention to challenge the decisions of the AIBA Executive Committee and an obvious criminal act because he forced some national federations to fill fake Congress forms which were copied by him. As this is not the first time he challenges a movement initiated by AIBA, I would like to strongly encourage you not to be trapped by any ill proposals made by him.

He brought AIBA to CAS on his suspension which was due to his groundless accusations on AIBA over the R&J's performance in the 2008 Beijing Olympic Games. I truly believe that the justice will prevail and be on our side in order to reveal his hidden agendas to bring down all of current AIBA programs to further damage the sport of boxing.

As we are all aware, the AIBA Statutes have been issued to set the overall framework to govern the organization and the AIBA Bylaws complete these Statutes as stated ahead of Chapter 1 of the AIBA Statutes. Therefore, since Article 16-3 only sets the principles, the AIBA Executive Committee decided to set the detail of these principles in Article 15 of the AIBA Bylaws in order to complete the terms and conditions related to the annual membership fee.

In addition, Article 16 of the AIBA Bylaws states that a national federation which has not fulfilled its obligation to participate in AIBA events between 2 Ordinary Congresses will also lose its membership rights including voting rights as the Ordinary Congress.

In the last AIBA Extraordinary Executive Committee meeting held from July 9-11, 2010 in Marrakech, the Election Procedure was approved by the AIBA EC in order to follow all rules stated in both the AIBA Statutes and, specifically, Articles 10 and 11 of the AIBA Bylaws, and national federations were then informed to submit their applications and nominations by filing the AIBA Congress Forms sent by the AIBA HQs Office.

AIBA is very sorry for those national federations having not been and which will not be qualified to participate to the Congress. AIBA rights are fulfilled based on non-payment (or late payment) of membership fee and non-participation in AIBA events. However, the AIBA HQs Office gave its best efforts by informing well advance

and sometimes on several occasions about the membership fee and it is believed national federations had all necessary opportunities to amend themselves.

The Congress should be the site for unity of AIBA national member federations and global boxing family. The elections at the Congress should also be conducted in the most transparent and democratic way. Therefore, I will ensure the recent manipulative movements initiated by Gen. Taweep Jantararoj will not further damage current development programs both in AIBA and in your country”.

In a letter dated 29 September 2010, the AIBA Executive Director advised Gen. Jantararoj of the following decision, adopted by the Bureau of the AIBA Executive Committee on 27 September 2010 (the “Bureau Decision”):

“Due to your continuous violations of AIBA Ethics and Disciplinary Codes by sending an email to AIBA National Member Federations forcing them to use fake Congress forms which represents an evidence of forgery and also due to the fact that this clearly demonstrates your attempt to challenge the election procedure approved by the AIBA Executive Committee as the President of Amateur Boxing Association of Thailand, the AIBA Executive Committee Bureau decided on September 27 to:

- *Provisionally fully suspend you as President of the Amateur Boxing Association of Thailand from any AIBA activities including your status as an AIBA EC member;*
- *Provisionally fully suspend the Amateur Boxing Association of Thailand with immediate effect;*
- *Put this case for review and decision by the AIBA Disciplinary Commission”.*

On 30 October 2010, the AIBA Executive Committee (the “Executive Committee” or EC or ExCo), at its meeting in Almaty, in its decision No. 9 (the “ExCo Decision”), ratified the Bureau Decision and the suspension thereby imposed “*for having tried to manipulate the Congress election procedure approved by the AIBA EC by forcing chosen National Federations to use fake Congress Forms*”.

On 29 November 2010, the Chairman of the AIBA Disciplinary Commission (the “Disciplinary Commission”) informed Gen. Jantararoj and ABAT of the opening of disciplinary proceedings against them.

On 25 March 2011, the Disciplinary Commission rendered a decision (the “DC Decision”) sanctioning Gen. Jantararoj and ABAT as follows:

- “1. *Gen. Taweep Jantararoj is suspended from any activity at AIBA, Continental, other International and National (Amateur Boxing Association of Thailand) levels, for a period of 24 months, starting today.*
2. *ABAT officials (all ABAT representatives, except for athletes, coaches and referees & judges: President, Secretary General, Vice-President, Executive Committee Member, Secretary, Treasurer and anyone who holds a titled ABAT governance position, to include all board members) are barred from any activity at AIBA, Continental and other International levels for a period of 12 months, starting today, and no official representing the ABAT shall be allowed to take part in any such activity for the same period.*
3. *The costs of the procedure shall be borne by Gen. Taweep Jantararoj and the ABAT, joint and severally liable (CHF 2’500.-). ...”.*

In support of such decision, the Disciplinary Commission made reference to the email sent by Gen. Jantararoj on 26 September 2010 and held *inter alia* that:

“... having acted as mentioned above, the General and ABAT have failed to ‘respect the entirety of the Statutes and regulations of AIBA’; failed to ‘submit to the final decisions of AIBA’ and failed to ‘respect the principles of honesty, integrity and sportsmanship’, according to Art. 3 of the AIBA Disciplinary Code (Code). They have committed punishable acts, failed to respect decisions and disparaged AIBA’s reputation and interests (Art. 4, 46 and 47 of the Code). The decision made by the EC, not to allow specific National Federations (NFs) to participate in the 2010 Congress was final. None of the NFs concerned had appealed this decision. The General and the ABAT had to respect it. With their email, they misled the NFs as for their rights, with the result that for example the Laos NF sent a form, which had to be disregarded. They disseminated untrue facts. This was prone to damage AIBA’s reputation, among the NFs, their officials and the public, in case the message became public. The General and the ABAT acted to serve their own interests, in trying to influence the elections in a way they thought would be in their favour. The DC will not consider the attachments to the 26 September 2010 email as a ‘forgery’, because the senders did not represent that the forms they were sending would be original or genuine (the message uses the wording ‘example forms’ for them).

... As for the sanction to be imposed according to Art. 5 of the Code, ... the General shows no sign that he would recognize his wrongdoings: he has been sanctioned before and did not learn from that; a suspension for 24 months for all boxing activities must be considered as a minimum sanction in his case. Suspending the ABAT as a whole would prevent many boxers and coaches to compete at international level, and judges & referees to participate, despite the fact that they had nothing to do with their president’s wrongdoings. That would be disproportionate. Therefore ... the sanction must only affect the ABAT officials, not including coaches, athletes and referees & judges ...”.

On 19 April 2011, Gen. Jantararoj and ABAT were informed that the ExCo had adopted on 17 April 2011 a decision (the “Appeal Decision”) to dismiss their appeal against the DC Decision.

On 7 October 2010, the Appellants filed a statement of appeal with the CAS pursuant to Article R47 of the Code of Sports-related Arbitration (the “Code”) against AIBA to challenge the Bureau Decision. The statement of appeal contained the appointment of Prof. Stern as arbitrator and was accompanied by 17 exhibits. The arbitration proceedings so started were registered by the CAS Court Office as CAS 2010/A/2243.

In filing their statement of appeal, the Appellants also applied for a stay of the Bureau Decision, pursuant to Article R37 of the Code, requesting that ABAT be authorized to take part in the 2010 Congress and that the candidacy of Gen. Jantararoj for a position at the AIBA Executive Committee be submitted to the vote of the 2010 Congress.

On 18 October 2010, the Respondent filed its answer, with 3 exhibits, to the Appellants’ request for provisional measures.

On 28 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 General Taweeep Jantararoj and the Amateur Boxing Association of Thailand on 7 October 2010 in the matter CAS 2010/A/2243*

General Taweep Jantararoj & Amateur Boxing Federation of Thailand v. AIBA, is partially granted.

2. *The decision of the AIBA Executive Committee Bureau of 27 September 2010 is stayed pending the final resolution of the present case by the CAS.*
3. *General Taweep Jantararoj's request that his candidature for a position at the AIBA Executive Committee be submitted to the vote at the AIBA ordinary Congress of 1 and 2 November 2010 is dismissed.*
4. *The costs of the present order shall be determined in the final award or in any other final disposition of this arbitration".*

On 8 November 2010, the Appellants filed their appeal brief with 5 exhibits.

On 30 November 2010, the Respondent filed its answer brief in CAS 2010/A/2243, with 12 exhibits attached.

On 1 December 2010, the Appellants requested the CAS to order the Respondent to lodge within a date to be set some documents mentioned in the appeal brief of 8 November 2010. AIBA on 8 December 2010 informed the Panel and the Appellants that such documents would be filed as soon as available.

On 15 February 2011, AIBA filed with the CAS Court Office:

- i. the minutes of the meeting of the Executive Committee held on 30 October, containing the ExCo Decision;
- ii. the minutes of the 2010 Congress;
- iii. an extract of the transcript of the audio recording of the 2010 Congress.

On 23 February 2011, the Appellants filed with the CAS pursuant to Article R47 of the Code a new statement of appeal, with 4 exhibits, to challenge the ExCo Decision. The arbitration proceedings so started were registered by the CAS Court Office as CAS 2011/A/2358. The Appellants indicated, for the purposes of Article R51 of the Code, that such statement of appeal would also serve as appeal brief, and requested that the new appeal be consolidated with CAS 2010/A/2243 and heard by the same Panel at the same hearing.

In a letter of 7 March 2011, the Respondent confirmed that it had no objections to the consolidation of the two procedures.

On 21 March 2011, the Respondent filed its answer brief in CAS 2011/A/2358 with 8 exhibits attached.

On 25 March 2011, the Appellants informed the Panel of the adoption of the DC Decision, confirming that they were maintaining the appeals already filed against the Bureau Decision and the ExCo Decision.

On 28 March 2011, a hearing was held in Lausanne on the basis of the notice given to the parties in the letter of the CAS Court Office dated 17 January 2011.

At the hearing, the Appellants filed with the CAS, pursuant to Article R47 of the Code, a statement of appeal to challenge the DC Decision. The arbitration proceedings so started were registered by the CAS Court Office as CAS 2011/A/2385. The Appellants requested that such appeal be joined to the appeals already pending. The Respondent agreed to such joinder.

Following the discussions at the hearing, on 28 March 2011, the CAS Court Office advised the parties on behalf of the Panel *inter alia* of the following:

“The Respondent shall, by 4 April 2011, file a declaration concerning the waiver of the exception of non-exhaustion of internal remedies available to the Appellants with respect to the appeal against the decision of the AIBA Disciplinary Commission of 25 March 2011.

... the Respondent has agreed that the deadline for the Appellants to file an internal appeal with AIBA’s Executive Committee against the decision of the AIBA Disciplinary Commission dated 25 March 2011 will only start upon receipt of the Respondent’s letter on the above-mentioned position on the waiver.

The Appellants, pursuant to Article R51 of the Code, shall file their appeal brief by 26 April 2011.

The Respondent, pursuant to Article R55 of the Code, shall be granted a deadline of 20 days from the receipt of the Appellants’ appeal brief to file an answer”.

In a letter dated 29 March 2011, the Respondent advised the Panel that it maintained the exception of non exhaustion of internal remedies available to the Appellants against the DC Decision.

On 30 March 2011, the Appellants applied for a stay of the DC Decision, pursuant to Article R37 of the Code.

Pursuant to Article R37 of the Code, by letter dated 30 March 2011, the Respondent was invited to express its position in relation to the Appellants’ new request for provisional measures.

On 1 April 2011, the Respondent filed with the CAS Court Office the answer to the Appellants’ application for provisional measures, requesting its dismissal.

On 1 April 2011, the Panel, after reviewing the parties’ submissions, issued an order on provisional measures (“Order to Stay”) as follows:

- “1. The application for provisional and conservatory measures filed by General Taweep Jantararoj and the Amateur Boxing Association of Thailand on 7 October 2010 in the matter CAS 2011/A/2385 General Taweep Jantararoj & Amateur Boxing Federation of Thailand v. AIBA concerning the decision of the AIBA Disciplinary Commission of 25 March 2011, is granted.*
- 2. The decision of the AIBA Disciplinary Commission of 25 March 2011 is stayed pending the final resolution of the present cases by the CAS.*
- 3. The costs of the present order shall be determined in the final award or in any other final disposition of this arbitration”.*

On 20 April 2011, the Appellants filed with the CAS a statement of appeal, with 10 exhibits, to challenge the Appeal Decision. The arbitration proceedings so started were registered by the CAS Court Office as CAS 2011/A/2411 and joined to the appeals already pending.

On 21 April 2011, the Appellants filed their appeal brief with respect to the consolidated appeals registered under CAS 2011/A/2385 and CAS 2011/A/2411.

On 13 May 2011, the Appellants filed an application to the CAS within the consolidated CAS proceedings CAS 2010/A/2243, CAS 2011/A/2358, CAS 2011/A/2385 and CAS 2011/A/2411, to inform the Panel that on 27 April 2011 the Disciplinary Commission had rendered a new decision suspending “*General Taweep Jantararoj ... from any activity at AIBA, Continental, other international and National (Amateur Boxing Association of Thailand) levels, for a period of 24 months, starting today (in addition to the other sanctions already imposed on him by DC decisions)*”, and to request that:

- “1. *The CAS request the assistance of the judicial authorities with jurisdiction in Lausanne according to article 183 par. 2 of the Swiss Private International Law Statute in order to enforce against AIBA and its organs the Order on provisional measures issued on 1 April 2011. More precisely, the judge shall be requested to issue an injunction toward AIBA to comply with the Order on provisional measures issued by the CAS on 1 April 2011, under the threat of the sanction provided for under article 292 of the Swiss Criminal Code for insubordination to a judicial decision.*
2. *The CAS order AIBA to bear all costs associated with such proceedings before the judicial authorities”.*

On 18 May 2011, the Respondent filed its answer, with 6 exhibits, to the consolidated appeals registered under CAS 2011/A/2385 and CAS 2011/A/2411.

On 30 May 2011, the Respondent filed its observations on the application to request the judicial assistance submitted by the Appellants, requesting it to be dismissed.

On 7 June 2011, the Panel issued an order on the application to request judicial assistance as follows:

- “1. *The request, filed by General Taweep Jantararoj on 13 May 2011, that this Panel seeks the judicial assistance of Swiss Courts to enforce the order on provisional measures of 1 April 2011 is denied.*
2. *The costs of the present order shall be determined in the final award or in any other final disposition of this arbitration”.*

On 4 July 2011, a new hearing was held in Lausanne on the basis of the notice given to the parties in the letter of the CAS Court Office dated 13 May 2011.

At the hearing, the Respondent filed with the CAS, with the authorization of the Panel, the minutes of the meeting of the Executive Committee held in Marrakesh, Morocco, on 9-11 July 2010, containing the decision to suspend those Member Federations that had not paid their dues by 30 April 2010. The Appellants, in their turn, with the authorization of the Panel, filed copy of a printout of the AIBA website of 20 July 2010, listing the resolutions adopted in Marrakesh, to argue

that there was no proper announcement of the suspension of the Member Federations, also in light of the fact that the minutes of the meeting were signed by the President of AIBA on 15 October 2010.

At the conclusion of the hearing, the parties, after making submissions in support of their respective cases, confirmed that the Panel had respected their right to be heard and to be treated equally in the arbitration proceedings.

The Appellants request the CAS to rule as follows:

i. in proceedings CAS 2010/A/2243

in the statement of appeal of 7 October 2010:

- “1. *The Decision issued on 29 September 2010 by the AIBA Executive Committee Bureau is set aside.*
2. *AIBA shall bear all the costs of this arbitration if any.*
3. *AIBA shall compensate General Taweep Jantararoj and Amateur Boxing Association of Thailand for the legal and other costs incurred in connection with this arbitration, in an amount to be determined at the discretion of the Panel”;*

in the appeal brief of 8 November 2010:

- “1. *The decision issued on 29 September 2010 by the AIBA Executive Committee Bureau suspending General Taweep Jantararoj and ABAT is null and void. Subsidiarily, the decision issued on 29 September 2010 by the AIBA Executive Committee Bureau suspending General Taweep Jantararoj and ABAT is set aside.*
2. *AIBA shall bear all the costs of this arbitration if any.*
3. *AIBA shall compensate General Taweep Jantararoj and Amateur Boxing Association of Thailand for the legal and other costs incurred in connection with this arbitration, in an amount to be determined at the discretion of the Panel”;*

ii. in proceedings CAS 2011/A/2358 (in the statement of appeal and appeal brief of 23 February 2011):

- “1. *The decision of the AIBA Executive Committee of 30 October 2010 suspending General Taweep Jantararoj and Amateur Boxing Association of Thailand is set aside.*

Subsidiarily

2. *The suspension imposed on Amateur Boxing Association of Thailand on 30 October 2010 ended on 2 November 2010.*

At any rate

3. *AIBA shall bear all the costs of the proceedings.*
4. *AIBA shall compensate General Taweep Jantararoj and Amateur Boxing Association of Thailand for the legal and other costs incurred in connection with this arbitration, in an amount to be determined at the discretion of the Panel”.*

iii. *in proceedings CAS 2011/A/2385 (in the statement of appeal of 28 March 2011):*

- “1. The decision of the AIBA Disciplinary Commission of 25 March 2011 suspending General Taweep Jantararoj and all officials of the Amateur Boxing Association of Thailand is null and void, subsidiarily is set aside.
2. AIBA shall bear all costs of the proceedings.
3. AIBA shall compensate General Taweep Jantararoj and Amateur Boxing Association of Thailand for the legal and other costs incurred in connection with this arbitration, in an amount to be determined at the discretion of the Panel”;

iv. *in proceedings CAS 2011/A/2411 (in the statement of appeal of 20 April 2011 and appeal brief of 21 April 2011):*

- “1. The decision issued on 19 April 2011 by the AIBA Executive Committee against General Taweep Jantararoj and Amateur Boxing Association of Thailand rejecting the appeal filed against the decision of the AIBA Disciplinary Commission of 25 March 2011 is null and void, subsidiarily is set aside.
2. The decision of the AIBA Disciplinary Commission of 28 [25] March 2011 suspending General Taweep Jantararoj and all officials of the Amateur Boxing Association of Thailand is null and void, subsidiarily is set aside.
3. AIBA shall bear all costs of the proceedings.
4. AIBA shall compensate General Taweep Jantararoj and Amateur Boxing Association of Thailand for the legal and other costs incurred in connection with this arbitration, in an amount to be determined at the discretion of the Panel”.

In other words, the Appellants challenge, in these consolidated appeal proceedings, four decisions rendered by AIBA bodies.

The Respondent seeks the following relief:

i. *in its answer in proceedings CAS 2010/A/2243:*

- “1. An order that the appeal filed by Gen. Taweep Jantararoj and Amateur Boxing Association of Thailand is inadmissible. Further, an order that Gen. Taweep Jantararoj and Amateur Boxing Association of Thailand are dismissed of all their conclusions.
2. An order that Gen. Taweep Jantararoj and Amateur Boxing Association of Thailand pay all costs of and occasioned by the arbitration as well as legal costs incurred by AIBA.
3. Any other or opposite conclusions of Gen. Taweep Jantararoj and/or Amateur Boxing Association of Thailand be dismissed”;

ii. *in its answer in proceedings CAS 2011/A/2358, as consolidated with CAS 2010/A/2243:*

- “1. An order that both appeals filed by Gen. Taweep Jantararoj and Amateur Boxing Association of Thailand are inadmissible. Further, an order that Gen. Taweep Jantararoj and Amateur Boxing Association of Thailand are dismissed of all their conclusions.

2. *An order that Gen. Taweep Jantararoj and Amateur Boxing Association of Thailand pay all costs of and occasioned by the arbitration as well as legal costs incurred by AIBA.*
 3. *Any other or opposite conclusions of Gen. Taweep Jantararoj and/or Amateur Boxing Association of Thailand be dismissed”;*
- iii. *in its answer in proceedings CAS 2011/A/2385 and CAS 2011/A/2411, as consolidated with CAS 2010/A/2243 and CAS 2011/A/2358:*
- “1. *An order that the first three appeals filed by Gen. Taweep Jantararoj and Amateur Boxing Association of Thailand are inadmissible. Further, an order that Gen. Taweep Jantararoj and Amateur Boxing Association of Thailand are dismissed of all their conclusions.*
 2. *An order that Gen. Taweep Jantararoj and Amateur Boxing Association of Thailand pay all costs of and occasioned by the arbitration as well as legal costs incurred by AIBA.*
 3. *Any other or opposite conclusions of Gen. Taweep Jantararoj and/or Amateur Boxing Association of Thailand be dismissed”.*

AIBA, in other words, requests that the appeals brought by Gen. Jantararoj and ABAT be dismissed, as inadmissible or unfounded, for reasons relating to jurisdiction or the merits.

LAW

CAS Jurisdiction

1. The jurisdiction of the CAS to hear the appeals brought by the Appellants against the Bureau Decision (CAS 2010/A/2243), against the ExCo Decision (CAS 2011/A/2358) and against the DC Decision (CAS 2010/A/2385) is disputed by the Respondent. On the other hand, the Respondent concedes that CAS has jurisdiction to hear the appeal lodged against the Appeal Decision (CAS 2011/A/2411).
2. In accordance with Article 186 of the Swiss Private International Law Act, the CAS has the power to decide upon its own jurisdiction.
3. Article R47 of the CAS Code states that “*an appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement 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*”.
4. In the absence of a specific arbitration agreement, therefore, in order for the CAS to have jurisdiction to hear an appeal, the statutes or regulations of the sports federation from whose decision the appeal is being made must expressly recognize the CAS as an arbitral body of

appeal; and the appellant must have exhausted all internal remedies of the federation concerned.

5. The provisions that are relevant, or have been invoked, in these proceedings with regard to the CAS jurisdiction are the following:

i. Article 59 of the 2008 Statutes, in force at the time the email of 26 September 2010 was sent, and the Bureau Decision and the ExCo Decision were adopted, 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 an injunctive effect.*

⁴ *CAS shall primarily apply the various regulations of AIBA and the Swiss law”;*

ii. Article 63 of the 2010 Statutes, in force at the time the DC Decision and the Appeal Decision were adopted, which provides that:

“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.

² *CAS will not have authority to deal with appeals relating to:*

- (A) decisions under the AIBA Technical & Competition Rules, including any pronouncements of violations of the AIBA Technical & Competition Rules;*
- (B) suspension of less than three (3) months (with the exception of decisions made in accordance with the World Anti-Doping Code);*

³ *Recourse to ordinary courts of law is prohibited unless it is mandated by state law.*

⁴ *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 an injunctive effect. The Disciplinary Commission, the Executive Committee or CAS may order the appeal to have injunctive effect.*

⁵ *CAS shall primarily apply the these Statutes, the AIBA Bylaws, the AIBA Technical & Competition Rules, the Code of Ethics, the Disciplinary Code and Procedural Rules, as well as to the Anti-Doping Rules of the World Anti-Doping Agency, and shall secondarily apply Swiss law*”;

iii. Article 70 of the Organization and Procedural Rules of the Judicial Authorities of AIBA, in force since 29 January 2010 (the “Procedural Rules”), pursuant to which:

“⁴ 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”.*

6. In light of the foregoing, the questions that the Panel has to consider in these proceedings with regard to the AIBA provisions are (i) whether they recognize the CAS as a body of appeal with respect to the AIBA decisions actually challenged by the Appellants, and (ii) whether the Appellants have exhausted, before appealing to CAS, the remedies available to them within the AIBA system. As mentioned, these questions have to be addressed with regard to the appeals filed against the Bureau Decision, the ExCo Decision and the DC Decision. It is in fact conceded by the Respondent that this Panel has jurisdiction to decide on the dispute concerning the Appeal Decision: actually, jurisdiction would be found in its respect under all mentioned rules.
7. The first question to be decided relates to the identification of the arbitration clause applicable to evaluate whether jurisdiction is granted to this Panel. In fact, AIBA rules changed over the time the various decisions, challenged in these proceedings, were adopted: according to the 2008 Statutes, in force at the time the Bureau Decision and the ExCo Decision were rendered, appeals could be filed with the CAS against “*decisions made by the AIBA’s legal bodies*”, while the 2010 Statutes, entered into force before the DC Decision and the Appeal Decision were passed, limit the CAS jurisdiction to hear appeals (only) against “*decisions made by the Executive Committee*”.
8. The Panel finds that jurisdiction with regard to the appeals against the Bureau Decision (CAS 2010/A/2243) and the DC Decision (CAS 2011/A/2358) is certainly defined by the 2008 Statutes. In fact, they are decisions issued by “*legal bodies*” of AIBA (Article 20 para. 1 (b) of the 2008 Statutes) for the purposes of Article 59 para. 1 of the 2008 Statutes.

9. In CAS 2011/A/2385 the Appellants are, on the other hand, challenging the DC Decision, *i.e.* a decision issued by a “legal body” of AIBA (Article 20 para. 1 (c) of the 2008 Statutes and Article 21 para. 1 (c) of the 2010 Statutes), but not a decision of the Executive Committee. As a result of the foregoing, therefore, the Appellants’ request should fall outside the arbitration clause contained in the 2010 Statutes, in force at the time the DC Decision was rendered, but would remain within the scope of the arbitration clause set by the 2008 Statutes.
10. The Panel finds, however, that the arbitration clause provided in the 2008 Statutes applies also to the appeal brought by the Appellants against the DC Decision. The DC Decision, in fact, follows the Bureau Decision and the ExCo Decision, challenged on the basis of the 2008 Statutes, is based on the deferral therein contained of the Appellants’ case to the Disciplinary Commission, and finally imposed a suspension provisionally applied by the Bureau Decision and the ExCo Decision. In such respect, it is the Panel’s opinion that the same arbitration clause applies to the entire disciplinary proceedings and therefore covers not only the decisions starting them, which fall within its scope of application. It applies also to appeals concerning subsequent decisions, rendered within the same disciplinary procedures. Any change introduced in the rules of the federation concerned, after the proceedings have started, therefore, does not prevent the CAS from exercising its jurisdiction to review the decisions rendered in the entire and same proceedings.
11. The Panel therefore finds that the 2008 Statutes provide for the arbitration clause applicable also within the proceedings brought by the Appellants against the DC Decision.
12. The most disputed issue which arises, indeed, with respect to the existence of this Panel’s jurisdiction is to determine whether the Appellants have exhausted all legal remedies available to them prior to the appeal against the Bureau Decision, the ExCo Decision and the DC Decision. Article R47 of the Code, as well as Article 59 para. 1 of the 2008 Statutes, together with Article 70 para. 1 of the Procedural Rules, in fact, stipulate that an appeal to the CAS can be formed only after the exhaustion of all internal remedies.
13. The condition so set is intended to afford the internal bodies of a federation the opportunity to take a final decision on a disputed matter, in order to ensure that all the relevant rules, applicable to the case at stake, are fully complied with, to put right an alleged violation thereof and to prevent further appeals to the CAS. Although it pays tribute to the freedom of organization of the sports entity in question, it is therefore based on the assumption that the internal legal order will provide effective remedies for the violations of its internal rules.
14. In this vein, indeed, the CAS precedents that have dealt with the issue of the exhaustion of legal remedies have indicated that “*the internal remedy must be readily and effectively available to the aggrieved party and it must give access to a definite procedure*” (CAS 2007/A/1373, § 9.3, and CAS 2003/O/466, § 6.12, in *International Sports Law Review*, 2004, p. SLR-48; see also the awards in CAS 2008/A/1468; CAS 2008/A/1494; CAS 2008/A/1495; CAS 2008/A/1699; and the order in CAS 2007/A/1347).

15. On such basis, this Panel already found, in the order on provisional measures it issued on 1 April 2011, that the Appellants have exhausted all internal remedies available to them prior to appealing to the CAS against the DC Decision, since, for the reasons indicated in the mentioned order, the appeal to the Executive Committee, contemplated by Article 47 para. 1 of the 2010 Statutes (which provides that the Executive Committee acts as the authority of appeal under the Disciplinary Code) cannot be considered for the Appellants to be an “effectively available” remedy: therefore, the Appellants could directly appeal to the CAS against the DC Decision without waiting for a decision of the Executive Committee – the “ineffective” appeal authority under the 2010 Statutes. Such reasons (detailed at §§ 72-76 of the order dated 1 April 2011) ⁽¹⁾ are finally confirmed also for the purposes of this award.
16. The same reasons, however, lead this Panel to a different conclusion with respect to the appeals filed by the Appellants against the Bureau Decision and the ExCo Decision.
17. By such decision, in fact, AIBA provisionally suspended the Appellants, putting their case for review before the Disciplinary Commission, i.e. before the body primarily entrusted with the exercise of the disciplinary powers within the AIBA system. The Disciplinary Commission had the opportunity to review the provisional suspension imposed by the Executive Committee (Article 32 para. 3 of the Disciplinary Code; Article 21 para. 2 of the Procedural Code). In addition, the AIBA did not express, by the Bureau Decision and the ExCo

(1) In the mentioned Order the Panel has noted that the 2008 Statutes provided for an “Appeal Commission” (Article 46 para. 1) to hear the appeals against decisions rendered by the Disciplinary Commission; in early 2010, the Disciplinary Code then enacted made reference to an “Appeal Authority” (Article 26 para. 1), with the specification (Article 29 para. 1), confirmed by the contemporary Procedural Rules (Article 2), that the Executive Committee would serve as Appeal Authority; the 2010 Statutes, finally, codified this arrangement in general terms (Article 47 para. 1): the Executive Committee acts as the authority of appeal under the Disciplinary Code. In addition, the Panel noted that (i) the Disciplinary Commission is the “judicial authority” of AIBA (Article 47 para. 1 of the 2010 Statutes), while the Executive Committee, however acting as appeal authority, is not a plain “judicial authority”; (ii) the President of AIBA, who is also a member of the Executive Committee (Article 34 para. 1 of the 2010 Statutes) and of its Bureau (Article 40 para. 1 of the 2010 Statutes), appoints the members of the AIBA Commissions: failing a different specification, this includes the members of the Disciplinary Commission; (iii) the Executive Committee approves the Disciplinary Code and the Procedural Rules (Article 60 of the 2010 Statutes); (iv) the Executive Committee has the (non exclusive) power to make complaints to the Disciplinary Commission in relation to an alleged infringement of the Disciplinary Code, and has the power to impose a provisional suspension on any person or body who is alleged to have infringed the Disciplinary Code. Finally, with regard to the specific case of the Appellants, the Panel remarked that:

- i. in the letter dated 27 September 2010, the AIBA President declared to be “shocked” by the communication sent by Gen. Jantararoj on 26 September 2010, for which the Appellants were subsequently sanctioned. In the same letter, the AIBA President defined such communication to be “a clear intention to challenge the decisions of the AIBA Executive Committee and an obvious criminal act”;
- ii. in the Bureau Decision, the Executive Committee Bureau imposed a suspension on the Appellants “due to your continuous violations of the AIBA rules ...”;
- iii. in the ExCo Decision, the Executive Committee ratified the suspension imposed “for having tried to manipulate the Congress election procedure approved by the AIBA EC by forcing chosen National Federations to use fake Congress Forms”.

The above led the Panel to the conclusion that the appeal to the Executive Committee cannot be considered for the Appellants to be an “effectively available” remedy, taking in mind the general context in which it operates, the fact that it has to be brought before a “non judicial” body and it does not seem to offer reasonable prospects of success.

Decision, its final position on the infringements imputed to Gen. Jantararoj and the sanction to be imposed on the Appellants.

18. Therefore, the Panel considers that the Appellants, before turning to the CAS, had to seek first an internal remedy, “*readily and effectively available*” before the Disciplinary Commission, against the provisional measure issued against them.
19. Contrary to such conclusion, it is not possible to argue that CAS proceedings are open also for challenges against provisional suspensions imposed on athletes, as the CAS practice indicated by the Appellants might show. In doping related matters, in fact, such possibility is expressly provided by the World Anti-Doping Code (Article 13 para. 2) and, on the basis thereof, by the rules of the sports entities that have adopted it. In the Panel’s view, indeed, the specific indication in such texts of the possibility to challenge also measures of provisional suspension appears to suggest that failing it an appeal would not be open.
20. Based on the foregoing, the Panel concludes that it has jurisdiction to decide on the appeals brought against the DC Decision (on the basis of the 2008 Statutes) and the Appeal Decision (which is not disputed). On the other hand, the Panel does not have jurisdiction to review the Bureau Decision and the ExCo Decision, since the Appellants failed to exhaust the internal remedies available to them against those decisions.
21. The Panel notes, however, that the above conclusion concerning the Bureau Decision and the ExCo Decision does not prevent it from examining the merits of the dispute, i.e. whether a sanction was properly imposed on the Appellants: the examination of such issue, in fact, is involved (also) in the review of the DC Decision and of the Appeal Decision. In the same way, the Panel underlines that it would have jurisdiction to decide on such merits of the dispute between the parties, even if a different conclusion had been reached with regard to the jurisdiction on the DC Decision: jurisdiction to review, as a result of the challenge brought by the Appellants (in CAS 2011/A/2411), the Appeal Decision, which “finally” confirmed the DC Decision, is certainly granted, also on the basis of the 2010 Statutes. Therefore, the jurisdiction on the Appeal Decision would suffice to give this Panel the power to decide on the sanction imposed on the Appellants.

Appeal Proceedings

22. As these proceedings involve appeals 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.

Compliance with Time Limits

23. The statements of appeal were filed within the deadline set in the 2008 Statutes and the 2010 Statutes. Accordingly, the appeals filed by Gen. Jantararoj are timely.

Scope of the Panel's Review

24. 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

25. 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”.
26. According to Article 59 para. 4 of the 2008 Statutes, Article 63 para. 5 of the 2010 Statutes and Article 70 para. 2 of the Procedural Rules, the Panel shall apply the AIBA rules and regulations and, subsidiarily, Swiss law.
27. More specifically, the substantive AIBA rules within the Disciplinary Code that are relevant in these proceedings are the following:

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:

- *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 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 46 “Failure to respect decisions”:

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

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
 - 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.**

Article 48 “Relationship with a suspended or excluded Member”

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

The Merits of the Dispute

28. The issues raised by the Appellants in this arbitration concern the infringements for which sanctions have been imposed on Gen. Jantararoj and ABAT’s officials by the AIBA disciplinary bodies, and the measure of such sanctions. The Appellants submit, in fact, that the AIBA bodies that issued the challenged decisions were not competent to impose sanctions on the Appellants, that no violation of any AIBA rule was committed by Gen. Jantararoj and that no sanction can be imposed on ABAT (or its officers) because of Gen. Jantararoj’s alleged violations. In any case, in the Appellants’ opinion, the sanctions imposed are too severe. On the other side, AIBA maintains that Gen. Jantararoj committed the violations for

which he was sanctioned, together with ABAT's officials, in a proper measure by the competent bodies.

29. As a result of the Appellants' submissions, there are four questions that the Panel needs to answer:
- A. *the first question is whether the decisions sanctioning the Appellants have been adopted by the competent bodies;*
 - B. *the second question, to be addressed in the event the Panel finds that the decisions sanctioning the Appellants have been adopted by the competent bodies, is whether Gen. Jantararoj could be found to have committed the violations of the AIBA rules for which he was sanctioned;*
 - C. *the third question, to be addressed in the event the Panel finds that Gen. Jantararoj could be found to have committed violations of the AIBA rules, is whether a sanction, as decided by the Disciplinary Commission, could be imposed on ABAT's officers;*
 - D. *the fourth question, to be addressed in the event the Panel finds that a sanction could be imposed on the Appellants, concerns the measure thereof.*
30. The Panel shall consider each of said questions separately. In light of the conclusion above, the mentioned questions shall be answered only with respect to the DC Decision and the Appeal Decision.
- A. *Have the decisions sanctioning the Appellants been adopted by the competent bodies?*
31. The decisions suspending Gen. Jantararoj (for 24 months) and the ABAT officers (for 12 months) have been adopted by the Disciplinary Commission and by the Executive Committee acting as body of appeal. The Appellants submit that the Disciplinary Commission was not the competent body within AIBA to adopt a decision to suspend Gen. Jantararoj, a member of the Executive Committee, and ABAT, a Member Federation: the competence to suspend Gen. Jantararoj would have remained with the Executive Committee (Articles 8 and 22 (j) of the 2008 Statutes and Articles 38 para. 1 (l) of the 2010 Statutes); the competence to suspend ABAT would have remained with the Congress (Articles 37 para. 1 (m) of the 2008 Statutes).
32. The Panel does not agree with the Appellants and notes that the provisions contained in the 2008 Statutes did not grant exclusive competence to the Executive Committee or the Congress to suspend an ExCo member or a Member Federation. The possibility to impose disciplinary sanctions, including the suspension, on ExCo members or Member Federations was also granted, in fact, to the Disciplinary Commission.
33. The AIBA Disciplinary Code, in fact, sets substantive and procedural rules applicable by the Disciplinary Commission *inter alia* to "Members" (i.e., Member Federations) and "any officials", including EC members (Article 2); the sanctions contemplated (e.g., warning, fine, suspension form the exercise of activities relating to boxing, etc.) are applicable to any "person" within the AIBA jurisdiction, and therefore also, for instance, to the EC members. At the same time, Article 3 para. 2 of Disciplinary Code provides that Members can be sanctioned disciplinarily

by the Disciplinary Commission for the behaviour of their boxers, trainers and seconds, officials, persons or organizations charged with a function during an official event or a competition; Articles 40, 50 and 52, then, allow the Disciplinary Commission to impose on Member Federations the sanction of “*suspension*” for a series of infringements.

34. In any case, the Panel notes that Gen. Jantararoj, at the time the DC Decision was adopted, was no longer a member of the Executive Committee; and that the 2010 Statutes, in force at the time the DC Decision and the Appeal Decision were passed, expressly granted the Disciplinary Commission the power to suspend a Member Federation (Article 17 para. 1).

35. As a result of the foregoing, the Panel holds that the Disciplinary Committee was competent to issue a decision (the DC Decision) sanctioning the Appellants. The Appeal Decision, then, was rendered by the Executive Committee acting as (“ineffective”) appeal authority under the 2010 Statutes. The challenge to the DC Decision and to the Appeal Decision in such respect must therefore be dismissed.

B. *Could Gen. Jantararoj be found responsible for the violations of the AIBA rules for which he was sanctioned?*

36. In the DC Decision, the Disciplinary Commission found that Gen. Jantararoj, by sending the email dated 26 September 2010, had committed “*punishable acts*” under:

- Article 3 of the Disciplinary Code, because he “*failed to ‘respect the entirety of the Statutes and regulations of AIBA’; failed to ‘submit to the final decisions of AIBA’ and failed to ‘respect the principles of honesty, integrity and sportsmanship’*”;
- Article 46 of the Disciplinary Code, because he “*failed to respect decisions*”;
- Article 47 of the Disciplinary Code, because he “*disparaged AIBA’s reputation and interests*”.

37. On the other hand, the Disciplinary Commission held that Gen. Jantararoj was not responsible of “*forgery*”, “*because the senders did not represent that the forms they were sending would be original or genuine (the message uses the wording ‘example forms’ for them)*”.

38. Contrary to the DC Decision, and the Appeal Decision which confirmed it, the Panel notes, with respect to the infringements of which Gen. Jantararoj was held responsible, that:

a) as to the “*failure to respect decisions*” (Article 46 of the Disciplinary Code):

in AIBA’s opinion, Gen. Jantararoj, by sending the email of 26 September 2010, failed to respect the AIBA decisions that had suspended the “*membership rights*” of those Member Federations which had not paid the 2010 fee. The Panel does not agree with such submission:

- Article 46 of the Disciplinary Code confirms that it is a disciplinary duty of all persons within AIBA jurisdiction to fully comply with the decisions of the AIBA’s bodies and allows a reaction to the failure thereof. As recognized by the Swiss Federal Tribunal (judgment of 5 January 2007, 4P.240/2006), Swiss law, in fact, allows the imposition

of sanctions in order to protect an essential interest of an association, i.e. the full compliance by the affiliates of the decisions rendered by its bodies. As such, Article 46 is applicable to the conduct of those AIBA affiliates who, however bound by a decision of an AIBA body, fail to respect it, *“after having been given a warning to respect the decision in a last delay”*;

- the conduct of Gen. Jantararoj does not fall within the scope of such provision and therefore cannot be sanctioned thereunder, for several reasons. First, the AIBA decisions suspending the *“membership rights”* of some Member Federations was not addressed to Gen. Jantararoj: the behaviour of Gen. Jantararoj, therefore, could not in itself constitute a breach of those decisions. Second, as shown at the hearing of 4 July 2011, there is no evidence that, at the time the email of 26 September 2010 was sent, Gen. Jantararoj was aware of the decisions adopted in July 2010 by the Executive Committee. Third, the email of Gen. Jantararoj invited the Member Federations to which it was addressed to pay the annual fee, so as to be allowed to regain their *“membership rights”*, and not to disregard the AIBA decisions suspending them. Fourth, no warning was given to Gen. Jantararoj inviting him to comply with the AIBA decisions, as required by Article 46 of the Disciplinary Code;
- b) as to the *“disparagement of AIBA’s reputation and interests”* (Article 47 of the Disciplinary Code):
- in AIBA’s opinion, Gen. Jantararoj, by sending the email of 26 September 2010, *“disparaged AIBA’s reputation and interests”*. The Panel does neither agree with such submission. The Panel, in fact, notes that:
- the email had a very limited circulation: it was in fact sent to only a few Member Federations;
 - the DC Decision itself indicated that the email was *“prone to damage AIBA’s reputation ... in case the message became public”*, therefore recognizing that it was not public at the moment it was sent;
 - the existence of the email was revealed to all Member Federations only by the AIBA President, in his letter of 27 September 2010;
 - the email invited the Member Federations to which it was sent to pay the annual fee to AIBA, in order to take part in the 2010 Congress: such invitation is obviously not contrary to AIBA’s interests, which are satisfied by the payment of annual fees and the largest possible participation in its Congress;
 - the *“political interest”* behind the email, i.e. the invitation to vote for certain candidates, cannot be held to be against the AIBA’s interests;
- c) as to the violation of other *“principles of conduct”*:
- violation of the obligation to *“respect the entirety of the Statutes, Bylaws and regulations of AIBA”* (Article 3 para. 1 first bullet point of the Disciplinary Code):
 - the email sent by Gen. Jantararoj invited the Member Federations to which it was addressed to comply with the AIBA rules, by paying the annual fees and did not

challenge the power of AIBA to suspend those Members that had not paid their dues;

- no indication is given in the DC Decision to explain under which perspective (additional to those specifically mentioned) Gen. Jantararoj violated such principle of conduct;
 - violation of the obligation to “*submit to the final decisions of AIBA*” (Article 3 para. 1 second bullet point of the Disciplinary Code):
 - such provision confirms that all the affiliates to AIBA are bound by the AIBA rules, and obliged to accept its decisions as part of their membership obligations;
 - Gen. Jantararoj’s conduct was not in contradiction with the rules binding him or in disregard of the AIBA power to set rules. The email of 26 September 2010, in fact, as mentioned, invited some Member Federations to comply with their financial duties towards AIBA, in a situation where the possibility to regain “*membership rights*” could not be ruled out;
 - violation of the obligation to “*respect the principles of honesty, integrity and sportsmanship*” (Article 3 para. 1 fourth bullet point of the Disciplinary Code):
 - the conduct of Gen. Jantararoj was not intended to deceive anybody, since he only invited some Member Federations to pay their dues to AIBA;
 - the possibility for the Member Federations that had not timely paid their dues to be admitted to the 2010 Congress even in the event of late payment was supported by a plain reading of the 2008 Statutes and by a legal opinion explaining them;
 - the Member Federations that eventually paid, even though late, their dues to AIBA, also following the email of Gen. Jantararoj, were eventually invited to attend the 2010 with an observer status.
39. As a result of the above, the Panel finds that Gen. Jantararoj could not be held responsible for the disciplinary infringements for which he was sanctioned. Actually, the conduct of Gen. Jantararoj could only be hypothetically considered to run against the obligation to “*at all times behave with respect towards each other*” (Article 3 para. 1 third bullet point of the Disciplinary Code). In the attachment to the email of 26 September 2010, in fact, Gen. Jantararoj described the AIBA’s position on the payment of annual dues to be misleading (“*you have been misled*”). The use of such expression, in the Panel’s opinion, shows a failure to “*behave with respect*” vis-à-vis the AIBA. Such infringement, however, was not imputed to Gen. Jantararoj; its existence was not even discussed in these arbitration proceedings. As a result, it cannot be affirmed by this Panel.
40. No sanction could therefore be imposed on Gen. Jantararoj by the AIBA disciplinary bodies, and must therefore be set aside. No sanction, in addition, should be imposed by this Panel. In any case, the period of suspension he has already served, between the Bureau Decision and the Order on Provisional measures issued on 28 October 2010, would be more than sufficient to cover any sanction that could be imposed on Gen. Jantararoj should an infringement of

Article 3 para. 1 third bullet point of the Disciplinary Code (violation of the obligation to “*at all times behave with respect towards each other*”) be found.

C. *Could a sanction be imposed on ABAT’s officers because of the violations of the AIBA rules for which Gen. Jantararoj was found responsible?*

41. As a result of the above conclusion, it follows that the Disciplinary Commission could not impose any suspension on “*ABAT officials (all ABAT representatives, except for athletes, coaches and referees & judges: President, Secretary General, Vice-President, Executive Committee Member, Secretary, Treasurer and anyone who holds a titled ABAT governance position, to include all board members)*”.

42. The Panel holds that also the sanction on ABAT must be set aside.

D. *What is the appropriate sanction to be imposed on the Appellants?*

43. In light of the foregoing, there is no need to answer this question.

Conclusion

44. The Panel finds that the DC Decision and the Appeal Decision are to be set aside. The appeals brought by the Appellants against them (CAS 2011/A/2385 and CAS 2011/A/2411) are therefore upheld. On the other hand, the Panel finds that it has no jurisdiction to hear the appeals brought against the Bureau Decision and the ExCo Decision. The appeals lodged in their respect (CAS 2010/A/2243 and CAS 2011/A/2358) are therefore dismissed.

The Court of Arbitration for Sport rules:

1. The appeals filed by General Taweep Jantararoj and the Amateur Boxing Association of Thailand against the decision of 25 March 2011 of the Disciplinary Commission of the International Boxing Association (AIBA) (CAS 2011/A/2385) and against the decision adopted on 17 April 2011 by the Executive Committee of the International Boxing Association (AIBA) (CAS 2011/A/2411) are granted.

2. The decision of 25 March 2011 of the Disciplinary Commission of the International Boxing Association (AIBA) and the decision adopted on 17 April 2011 by the Executive Committee of the International Boxing Association (AIBA) are set aside.

3. The CAS does not have jurisdiction to hear the appeals in the cases CAS 2011/A/2243 and CAS 2011/A/2358.
4. (...).
5. (...).
6. All other prayers for relief are dismissed.