



Tribunal Arbitral du Sport  
Court of Arbitration for Sport

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Lausanne, 23 October 2018/AQ/mc

**Re: CAS 2018/A/5949 Kazakhstan Boxing Federation v. International Boxing Association (AIBA)**

Dear Madam, dear Sirs,

Please find enclosed an Order on Provisional measures rendered by the President of the CAS Appeals Arbitration Division.

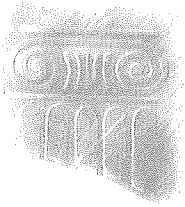
You will receive an original copy of the Order in due course.

Please be advised that I remain at the Parties' disposal for any further information.

Yours faithfully,

Antonio DE QUESADA  
Counsel to the CAS

Enc.



Tribunal Arbitral du Sport  
Court of Arbitration for Sport

**CAS 2018/A/5949 Kazakhstan Boxing Federation v. International Boxing Association (AIBA)**

**ORDER**

**on Request for Provisional Measures**

issued by the

**President of the Appeals Arbitration Division of the  
Court of Arbitration for Sport**

in the arbitration between

**Kazakhstan Boxing Federation, Kazakhstan**

Represented by Mr Phillippe Ciocca Lukas and Mr Mathieu Granges, Python, Geneva, Switzerland

-Applicant-

and

**International Boxing Association (AIBA), Switzerland**

Represented by Mr Philippe Bärtsch, Mr Christopher Boog and Ms Anna Kozmenko, Schellenberg Wittmer, Geneva, Switzerland

- Respondent-

## **I. THE PARTIES**

1. The Kazakhstan Boxing Federation (the “Applicant”) is the governing body of boxing in Kazakhstan.
2. The International Boxing Federation (the “Respondent” or “AIBA”) is the governing body of boxing worldwide.

## **II. THE FACTS**

3. On 12 and 13 July 2018, the AIBA Executive Committee (the “EC”) met in Abu Dhabi, U.A.E., and agreed on the AIBA electoral procedure to be followed for the election of AIBA’s President, Vice-Presidents and Executive Committee Members at the upcoming AIBA Congress in Moscow of 2 and 3 November 2018 (the “AIBA Congress”).
4. By letter dated 13 August 2018, the AIBA Executive Director communicated the dates of the AIBA Congress to the National Federations eligible to participate at such Congress. Furthermore, such National Federations were advised that all documentation related to the AIBA Congress will be sent to them by 24 August 2018.
5. By letter dated 20 August 2018<sup>1</sup>, AIBA provided to the National Federations eligible to participate at the AIBA Congress the Election Procedure, the relevant Application Forms for the election as well as to the Guidelines to such election. In accordance with these Guidelines:
  - *The forms must be sent either via courier service, express mail or registered mail in order for the AIBA HQ’s Office to acknowledge receipt of these forms;*
  - *the forms must be received at the AIBA no later than 23 September 2018 [...] Keep in mind that 23<sup>rd</sup> September is a Sunday, therefore, make sure that you have mailed your documents early enough to ensure that they will arrive prior to midnight September 23<sup>rd</sup>.*
6. On 21 September 2018, the Applicant requested an extension of the time limit for AIBA to receive the Nomination Forms until 24 September 2018.
7. On 21 September 2018, AIBA responded the Applicant that no one at the AIBA Headquarters has any authority to extend a deadline provided in accordance with the AIBA Statutes.

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<sup>1</sup> The Applicant contested that such communication was timely received by some National Federations.

8. On 24 September 2018, the Applicant sent a new letter to the AIBA Election Committee expressing its concerns regarding AIBA's late submission of documents related to the AIBA Congress which, in its opinion, infringed the AIBA Statutes. As a result, the Applicant insisted on its request for a 1-day extension of the time limit for AIBA to receive the Nomination Forms (i.e. until 24 September 2018).
9. On 26 September 2018, the Respondent informed the Applicant that the Election Committee was reviewing all applications in accordance with the AIBA Statutes.
10. On 28 September 2018, the Applicant sent a letter to the Respondent which relevant part reads as follows:

*Should Mr Serik Konakbayev not be confirmed as one the candidates for the AIBA presidency, as per the list which will be published by AIBA on October 3, 2018 – despite the fact that more than 20 National Federations have returned their nomination form in favor of Mr Serik Konakbayev – the Kazakhstan Boxing Federation hereby requests AIBA to issue a formal decision in such respect. Such decision must contain the number of nomination forms in favor of Mr Serik Konakbayev which have been approved by the Election Committee and detailed explanations as to why the other nomination forms sent in favor of Mr Serik Konakbayev would have not been accepted by the Election Committee. My client would like to stress the Election Committee that it is of utmost importance for the Kazakhstan Boxing Federation that the 2018 Congress can be conducted smoothly and without delay. It is of equal importance though that National Federations are being treated equally, fairly and with transparency. Hence, as at least 34 National Federations have returned their nomination forms in favor of Mr Serik Konakbayev, the National Federations must be given a choice of candidates for the AIBA Presidency, one of which must be Mr Serik Konakbayev. Should it is not the case, unfortunately my client will have no other choice than appealing AIBA's decision and/or contesting the validity of the election procedure for the AIBA Presidency.*

11. On 1 October 2018, the AIBA Election Committee issued the "2018 AIBA Congress – List of Approved Candidates". In accordance with such list, Mr Konakbayev as well as Mr Ninvalle were considered ineligible to run for the election for AIBA President as they were not included in the list. The AIBA Election Committee considered that the only eligible candidate to run for AIBA President was its current interim President, Mr Gafur Rahimov. Furthermore, Mr Gonçalves was considered ineligible to run for the election of AIBA Vice President.

12. On 3 October 2018, the 2018 AIBA Congress – List of Approved Candidates” was published on AIBA’s website (the “Decision”).

### **III. PROCEEDINGS BEFORE THE CAS AND THE PARTIES’ SUBMISSIONS**

13. On 10 October 2018, the Applicant filed with the Court of Arbitration for Sport (the “CAS”) an urgent request for provisional measures, pursuant to Article R37 of the Code of Sports-related Arbitration (the “Code”), seeking the following relief:
  - *Stay the election process for the AIBA Presidency until a final award is rendered by the CAS at the end of the appeal procedure, which will be initiated by the Applicant in accordance with Article R49 CAS Rules;*
  - *Stay the election process for the AIBA Vice Presidency until a final award is rendered by the CAS at the end of the appeal procedure, which will be initiated by the Applicant in accordance with Article R49 CAS Rules;*
  - *Stay the election process for the AIBA Executive Committee until a final award is rendered by the CAS at the end of the appeal procedure, which will be initiated by the Applicant in accordance with Article R49 CAS Rules;*
  - *Order AIBA to immediately publish the operative part of the decision on provisional measures rendered by CAS on AIBA’s website and inform the National Federations by email of this decision;*
14. By letter dated 10 October 2018, the CAS Court Office invited the Respondent to file its position on the Applicant’s requests for provisional measures within 3 days of receipt of such letter by courier, in view of the urgency alleged by the Applicant.
15. On 12 October 2018, the CAS Court Office attached to the Parties’ attention the media release published by the AIBA in accordance to which the Respondent stated that *AIBA supports fast-tracking CAS hearing* and asked the Parties if they were discussing the possibility to agree on an expedited procedure. The Applicant answered to the CAS Court Office the following: *Any expedited procedure is premature*. The Respondent concurred with such response.
16. On 12 October 2018, the Respondent requested a 2-day extension of its deadline to provide its position on the Applicant’s request for provisional measures, which was then granted by the CAS Court Office, pursuant to Article R32 of the Code.

17. On 15 October 2018, the CAS Court Office informed the Applicant that an expedited procedural calendar was agreed by the Parties in the matter *CAS 2018/A/5947 Serik Konakbayev v. International Boxing Association (AIBA)* and that, in accordance with such calendar, the operative part of the award in such matter will be rendered either on 29 or 30 October 2018. In view of such situation, the Applicant was invited to inform the CAS Court Office whether it wished to maintain its request for provisional measures.
18. On 16 October 2018, the Applicant informed the CAS Court Office that it maintained its request for provisional measures.
19. On 16 October 2018, the Respondent asked for a further 2-day extension of its time limit to provide its position on the Applicant's request for provisional measures.
20. On 16 October 2018, the Applicant filed a written submission supplementing its request for provisional measures. Furthermore, the Applicant informed the CAS Court Office that it would agree with only 1-day extension of the Respondent's time limit to provide its position on the Applicant's request for provisional measures.
21. On 16 October 2018, the President of the CAS Appeals Arbitration Division granted the extension requested by the Respondent.
22. On the same date, on the grounds of the Applicant's further submission on provisional measures, the Respondent requested an extension of its time limit to provide its position on the Applicant's request for provisional measures until Monday 22 October 2018. Thereafter, the Applicant informed the CAS Court Office that it agreed to such request but only until Monday 22 October 2018 at noon.
23. On the same date, the President of the CAS Appeals Arbitration Division decided to extend the Respondent's time limit to provide its position on provisional measures until Monday 22 October 2018 at 13h00 (CET).
24. On 22 October 2018, the Respondent filed its answer to the Applicant's request for provisional measures at 12h55 (CET), objecting to such request.
25. On 22 October 2018, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division, or her Deputy, will render an Order on a Request for Provisional Measures in due course.

#### **IV. PARTIES' POSITION ON THE REQUEST FOR PROVISIONAL MEASURES**

##### **A) THE APPLICANT**

26. The Applicant argues that the conditions listed in Article R37 of the Code for granting his request for four different provisional measures have been met in the case at hand. The Applicant does not make any distinction among its four specific requests and provides its position as follows:

- The irreparable harm condition is met. According to the Decision, the only eligible candidate to run for AIBA President is Mr Rahimov. Consequently, AIBA deprived the Applicant from its right to vote for an eligible candidate, who meets all the requirements provided for by the AIBA Regulations (the Applicant refers to Mr Konakbayev). Furthermore, it appears that some candidates were nominated to run for the position of AIBA Vice President and AIBA Executive Members but were not approved. The Applicant is therefore deprived from its right to elect the AIBA Vice President and AIBA Executive Members in a fair, equitable and transparent election. The Applicant specifically refers to the non-approval of Mr Gonçalves for running as AIBA Vice President and of Mr Steve Ninvalle for running as AIBA President and the AIBA Executive Committee.
- The IOC confirmed that Mr Rahimov is not an eligible candidate and shall not run for AIBA President. If Mr Rahimov is elected, AIBA would definitely lose all IOC funding and will no longer be recognized as an International Federation by the IOC. Consequently, it is of utmost importance to stay the election for AIBA President.
- As to the likelihood of success on the merits, the Decision shall be null due to many irregularities which took place in the election procedure in violation of the AIBA Regulations. Therefore, there is no doubt that the CAS will grant the appeal which will be filed against the Decision and set aside such Decision of the Election Committee on the candidates approved to stand for the election for AIBA President, Vice President and Executive Committee Members.
- It is the Applicant's interest but also AIBA's interest that the elections should be conducted fairly, transparently and without violation of the AIBA Regulations. For such reason only, the provisional measures shall be granted.
- Furthermore, by approving one sole candidate, whose eligibility is contested by the Applicant and also the IOC, AIBA deprived the Applicant to vote for eligible candidates for AIBA President. The entire election process is further impaired by the election procedure for both AIBA Vice President and AIBA Executive

Members which has been breached, and which violates the Applicant's right to elect AIBA President, Vice President and Executive Members.

- If the election is not stayed, Mr Rahimov will be in any event elected as AIBA President at the AIBA Congress and IOC will no longer recognize AIBA as an International Federation.
- The stay of the election process until a final award is rendered by the CAS on the Applicant's appeal is therefore in the best interest of both the Applicant and the Respondent.

#### **B) THE RESPONDENT**

27. The Respondent objects to the application for provisional measures, providing the following arguments:

- The President of the CAS Appeals Arbitration has no jurisdiction to render an Order on Provisional measures on the grounds of the Appellant's lack of standing to appeal.
- The Applicant's request for relief is not necessary since Mr Konakbayev has already challenged his non-inclusion in the list of candidates running for AIBA President.
- The Applicant would not suffer any irreparable harm if the request is not granted. If the Applicant were to succeed on the merits of its case, the election process would have to be repeated.
- The Applicant should not be allowed to benefit the fact that the IOC may be seeking to put political pressure on AIBA and in no event does this constitute irreparable harm to the Applicant.
- The Applicant has no likelihood of success on the merits. In the present case, the Applicant appears to have difficulties to formulate its case on the merits. All the arguments raised by the Applicant are both factually and legally flawed.
- The Applicant has no legitimate interest in the relief it requests. Furthermore, the Applicant has no own interest. The sole purpose of its application is to reverse the fact that Mr Konakbayev did not receive sufficient nominations to run for President. Furthermore, the fact that the IOC has voiced concerns



regarding the election of one candidate can in no way justify that AIBA disregards its own regulations.

- In the unlikely event the Applicant prevails on its request for provisional measures, it would have to be ordered to pay security for costs.

#### V. JURISDICTION OF THE CAS AND ADMISSIBILITY

28. In accordance with Swiss Private International Law Act (Article 186), the CAS has power to decide upon its own jurisdiction.
29. The extent of the jurisdictional analysis at this point is to assess whether, on a *prima facie* basis, the CAS can be satisfied that it has jurisdiction to hear the application. The final decision on jurisdiction will be made by the Panel in its award.
30. Article R47 of the Code states that, “*An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.*”
31. In the absence of a specific arbitration agreement, in order for the CAS to have jurisdiction to hear an appeal, the statutes or regulations of the sports-related body from whose decision the appeal is being made must expressly recognize the CAS as an arbitral body of appeal.
32. According to Article R49 of the Code, “*In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties.*”
33. Article 67.1 of the AIBA Statutes provides for an appeal to the CAS against the Decision within a deadline of 30 days from the receipt of the latter.

34. The Decision was published on AIBA's website on 3 October 2018. At this stage, the Applicant has only filed a request for provisional measures which was done on 10 October 2018.
35. Pursuant to Article R37 of the Code, "*No party may apply for provisional or conservatory measures under these Procedural Rules before all internal legal remedies provided for in the rules of the federation or sports-body concerned have been exhausted*".
36. The President of the CAS Appeals Division notes that the Applicant contends that there are no further legal remedies provided for in the AIBA Regulations to contest the Decision. The Respondent does not contest it.
37. The Respondent has raised objections as to the jurisdiction of the CAS and the admissibility of the application on the grounds that the Appellant has no standing to appeal. In this regard, the President of the CAS Appeals Arbitration wishes to rely on CAS consistent jurisprudence in accordance to which, under Swiss Law, the issue of the standing of appeal is a matter on the merits and not one on jurisdiction.
38. Therefore, the President of the CAS Appeals Arbitration Division is satisfied that, *prima facie*, CAS has jurisdiction to decide on the present dispute and that the application for provisional measures is admissible, without prejudice to any final decisions on these issues taken by the Panel once appointed.

## **VI. LEGAL DISCUSSION**

39. Pursuant to Article 183 of the Swiss Federal Act on Private International Law (PILA), an international arbitral tribunal in Switzerland is empowered to order a request for provisional measures at the request of one party (*Sauf convention contraire, le tribunal arbitral peut ordonner des mesures provisionnelles ou des mesures conservatoires à la demande d'une parties*).
40. Pursuant Article R37 of the Code, the President of the CAS Appeals Arbitration Division is competent to consider an application for provisional measures if the Panel is not yet constituted.
41. The President of the CAS Appeals Arbitration Division reminds the relevant criteria for successfully grounding a request for provisional measures: according to well established CAS jurisprudence, provisional relief may be granted if (1) the party seeking such relief would suffer irreparable harm if the relief is not granted, (2) that party has a likelihood

of success on the merits of the appeal, and (3) the interests of the Applicant outweigh those of the other party (award of 15 September 2003, *CAS 2003/O/486*; order of 25 May 2001, *CAS 2001/A/329*; order of 15 March 2001, *CAS 2001/A/324*; order of 12 July 2007, *CAS 2007/A/1317*; and order of 6 April 2010, *CAS 2010/A/2071*).

42. The three requirements for the grant of provisional measures (*i.e.* irreparable harm, likelihood of success on the merits of the appeal and balance of interests) are cumulative (order of 12 December 2007, *CAS 2007/A/1403*; order of 27 October 2007, *TAS 2007/A/1397*; and order of 6 April 2010, *CAS 2010/A/2071*).
43. The President of the CAS Appeals Arbitration Division notes that the Applicant requested to be granted 4 different provisional measures: (i) stay the election for AIBA President until a final award is rendered by the CAS, (ii) stay the election for AIBA Vice President until a final award is rendered by the CAS, (iii) stay the election for AIBA Executive Committee, (iv) order AIBA to publish the operative part of the decision on provisional measures rendered by CAS on AIBA's website.

#### Irreparable harm

44. In accordance with CAS jurisprudence, as a general rule, when deciding whether to grant a request for provisional measures, the CAS considers whether the measure is useful to protect the applicant from substantial damage that would be difficult to remedy at a later stage ("irreparable harm" test): "*The Appellant must demonstrate that the requested measures are necessary in order to protect his position from damage or risks that would be impossible, or very difficult, to remedy or cancel at a later stage.*" (*CAS 2007/A/1370-1376, CAS 2008/A/1630*).
45. At this stage, the President of the CAS Appeals Arbitration Division needs to determine whether the Applicant would suffer irreparable harm if the Applicant's request for four different provisional measures is not granted.
46. Regarding the first request for provisional measures (*i.e.* to stay the election for AIBA President), the President of the CAS Appeals Arbitration notes that such request is based mainly on the fact that Mr Konakbayev and Mr Ninvalle are not included in the list of candidates running for AIBA President.
47. With respect to Mr Konakbayev, the CAS Court Office has already informed the Applicant that Mr Konakbayev has filed a separate appeal seeking to be included in the list of eligible candidates for AIBA President. In accordance with the expedited procedural calendar agreed by the parties in the procedure *CAS 2018/A/5947 Serik*

*Konakbayev v. International Boxing Association*, a decision on the eligibility of Mr Konakbayev to run for AIBA President will be taken by the CAS Panel before the election takes place. Therefore, the possibility that Mr Konakbayev runs for AIBA President cannot be discarded at this stage.

48. With respect to the IOC concerns regarding AIBA governance, the President is not in the position to speculate about the consequences which may derive from an eventual election of Mr Rahimov as AIBA President and, specifically, the decisions that the IOC may eventually take regarding the recognition of AIBA as an International Federation.
49. With respect to AIBA's decision to exclude Mr Ninvalle as an eligible candidate for AIBA President, the President of the CAS Appeals Arbitration Division notes that, at this stage, Mr Ninvalle has not taken the legal remedies necessary to contest such decision (e.g. by filing an appeal with CAS against his exclusion from the list of candidates for AIBA President). Therefore, at this stage, the President of the CAS Appeals Arbitration Division can infer that Mr Ninvalle does not contest AIBA's decision to exclude him as a candidate for AIBA President. As a result, the President of the CAS Appeals Arbitration Division cannot see how the exclusion of Mr Ninvalle as a candidate for AIBA President would cause irreparable harm for the Applicant if Mr Ninvalle himself, who is affiliated to the Boxing Federation of Guyana, not Kazakhstan, does not contest such decision.
50. With respect to the second and third requests for provisional measures, the President of the CAS Appeals Arbitration Division notes that the Applicant states that "*it appears that some candidates were nominated and supported for the Vice President, but were only approved by the Election Committee for the Executive Committee, or not approved at all in violations of the election procedure rules.*" The President of the CAS Appeals Arbitration Division notes that this statement is based on mere speculations, not on concrete evidence, and shall be disregarded.
51. The President of the CAS Appeals Arbitration Division also notes that the Applicant refers to the exclusion of Mr Gonçalves as an eligible candidate for AIBA Vice President as well as to the exclusion of Mr Ninvalle for the AIBA Executive Committee to support its second and third requests for provisional measures. Neither Mr Gonçalves nor Mr Ninvalle have taken the legal remedies necessary to contest such exclusions (e.g. by filing an appeal with the CAS). As a result, the President of the CAS Appeals Arbitration Division cannot see how such exclusions would cause irreparable harm for the Applicant if the persons directly affected do not contest such exclusions. Furthermore, there is no impediment for the Applicant to exercise its right to vote for any of the eligible candidates for AIBA Vice President and AIBA Executive Members.

52. In light of the above and in view of the fact that the irreparable harm criteria is not met, the President of the CAS Appeals Arbitration Division finds that the Applicant's application for provisional measures shall be rejected.
53. According to the principle of procedural economy, the President of the CAS Appeals Arbitration Division does not have to review the other two criteria set out above.

#### **VII. PUBLICATION**

54. In view of the fact that the Respondent has not contested the publication of this Order as requested by the Applicant, the Respondent is ordered to publish this Order on its website.

#### **VIII. COSTS**

55. According to standard CAS practice, the cost of this part of the proceedings will be settled in the final award or in any other final disposition of this arbitration.

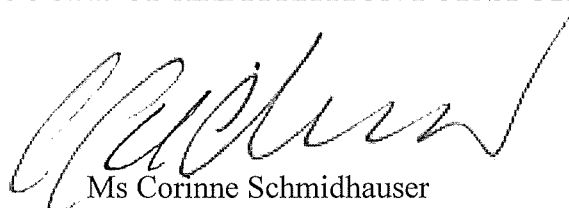
**ORDER**

The President of the CAS Appeals Arbitration Division, *in camera*, rules that:

1. The application for a request for provisional measures filed by the Kazakhstan Boxing Federation on 10 October 2018 is rejected.
2. AIBA is ordered to publish this Order on its website.
3. The costs deriving from the present order will be determined in the final award or in any other final disposition of this arbitration.

Lausanne, 23 October 2018

**THE COURT OF ARBITRATION FOR SPORT**



Ms Corinne Schmidhauser  
President of the Appeals Arbitration Division