



Arbitration CAS ad hoc Division (OG London) 12/002 Joseph Ward v. International Olympic Committee (IOC), International Boxing Association (AIBA) & Association of National Olympic Committees (ANOC), award of 26 July 2012

Panel: Prof. Massimo Coccia (Italy), President; Prof. Martin Schimke (Germany); Ms Maidie Oliveau (USA)

Boxing

Qualification for the Olympic Games

Admissibility of the application

Interpretation of a rule

1. **An applicant to the CAS ad hoc Division cannot rely on a CAS award rendered during previous Olympic Games to mean that s/he, through an exploration designed to learn the rationale for a decision with which s/he disagrees, can extend the time when a “dispute arose” into the period identified in Rule 1 of the CAS Arbitration Rules for the Olympic Games. It is thus incumbent on the applicant to file an appeal within 21 days of the date the applicant was made aware of the fact that a decision has been made and has received the full explanation.**
2. **When interpreting a contract, one first has to look at the text; if the text is not clear, then at what the parties intended; if that cannot be established, then how the contract should be interpreted in an objective manner. The same criteria should, so far as possible, apply when statutes or similar instruments are interpreted. If the text is not clear, a CAS panel has to interpret the rule in question in keeping with the perceived intention of the rule maker, and not in a way that frustrates it.**

The Applicant, Mr Joseph Ward, is an 18-year old boxer of Irish nationality, competing at international level in the light heavyweight category (up to 81 kg). Mr Ward is a member of the Irish Amateur Boxing Association (IABA), which in turn is a member of the International Boxing Association (AIBA).

Mr Ward’s application to this CAS ad hoc Division concerns the qualification process for the boxing events of the 2012 London Olympic Games, which was administered by AIBA in agreement with the International Olympic Committee (IOC). Mr Ward did not qualify for the Olympic Games and contends that the qualification process was tarnished by an incorrect application of the qualification rules and even by an attack on his personality rights.

In the boxing Olympic qualification system, the first five slots for the 2012 London Games, for all weight categories, were assigned to the 5 winners of the World Series of Boxing Individual Championships in May 2011. Mr Ward did not obtain qualification through this avenue.

Then, in October 2011, the 2011 AIBA Men's World Boxing Championship qualified in the light heavyweight category the best 10 boxers from different NOCs. Mr Ward was eliminated by an Iranian athlete in the third round and finished 16th in the competition, thus not qualifying for the Olympic Games.

The European boxers had another opportunity to qualify for the 2012 London Olympic Games by taking part in the AIBA European Boxing Olympic Qualification Tournament (the "Qualification Tournament"), held in Trabzon, Turkey on 15-21 April 2012. In that Tournament Mr Ward was eliminated by a Turkish boxer and, once again, he did not reach the stage of the competition needed to qualify for the Olympic Games. The Irish Amateur Boxing Association (IABA) protested to AIBA about the refereeing but no formal rejection of the complaint was issued.

On 18 April 2012, the IABA Chairman wrote to AIBA in order to "*ask that Mr Ward be considered for inclusion in the Olympics in 2012 under the tripartite selection quota or any other avenue*".

Subsequently, the Tripartite Commission – composed of the IOC, AIBA and the Association of National Olympic Committees (ANOC) – assigned 7 of the 8 available men's slots for the Olympic Games. Among those 7 athletes was one 81 kg boxer, Mr Bosko Draskovic of Montenegro.

As the eighth place was vacant, the Tripartite Commission returned it to AIBA which allocated it to Mr Zdenek Chladek of the Czech Republic, a boxer in the 64 kg category, as he was the next best ranked boxer, not yet qualified.

On 19 and 20 June 2012, the Executive Director of AIBA reported to IABA that Mr Ward had not been given a spot. In particular, he stated that "*it was IOC to select Montenegro boxer for this weight category*". On 22 June 2012, IABA complained to AIBA about the non-selection of Mr Ward. On the same day, the AIBA Executive Director answered that as "*this decision was done by IOC, I appreciate if you or your NOC contact IOC directly to verify. AIBA has nothing to do with this anymore*".

On 28 June 2012, Mr Ward's solicitor wrote to the IOC stating as follows:

"Our above named client was not selected as next best boxer to compete in the 81 kg division of the upcoming London Olympics. We understand from the International Boxing Association ('AIBA') that the decision not to select our client was in fact made by the International Olympic Committee ('IOC'). In the circumstances we would be obliged if you would confirm that the decision was in fact made by the IOC. Furthermore and in the event that AIBA is correct, you might confirm the basis upon which this decision was made".

On 2 July 2012, the IOC answered giving the reasons Mr Ward had not been selected. In particular, the IOC explained that

- "*Ireland is not eligible for Tripartite Commission Invitation Places, which are reserved for NOCs with delegation of 6 or less athletes at the last two editions of the Olympic Games*",

- *“7 out of 8 places available were allocated by the Tripartite Commission to eligible NOCs. 1 place was returned to AIBA (64 kg)”*,
- *“the sole place which was not allocated by the Commission was in the 64 kg weight division, it was allocated to the next best ranked athlete at the Baku 2011 World Championships in the 64kg weight category. For the 81 kg category in which Mr Ward competes, an athlete from an eligible NOC received the invitation place; the reallocation process was therefore not activated”*.

On 5 July, Mr Ward’s solicitor wrote again to the IOC stating that his client was *“greatly distressed not to be competing in the forthcoming Olympic Games”* and requesting confirmation that the Tripartite Commission had awarded the 81 kg place to the Montenegrin boxer Bosko Draskovic.

On 6 July 2012, the IOC confirmed that the Tripartite Commission’s invitation for the 81 kg category had gone to an athlete from Montenegro, specifying that the Montenegro NOC could receive the invitation place because it had only *“a total of 6 individual athletes in Beijing (as team quotas are not included within the calculations)”*.

On 11 July 2012, Mr Ward’s solicitor wrote to the IOC stating that *“the Tripartite Commission misinterpreted the applicable rules when awarding Mr Bosko Draskovic a Tripartite Invitation Place for the forthcoming Olympics”*, that *“the Montenegrin Olympic Committee had a total of 19 athletes competing at the Olympics, which included 6 individual athletes and 13 members of the water polo team”* and asking the IOC to acknowledge that *“the Tripartite Commission committed an error”* and to *“immediately return this quota place to AIBA for reallocation”*.

The IOC answered on 13 July 2012 giving some details as to the principles followed by the Tripartite Commission and providing some documentation. On the same day, Mr Ward’s solicitor asked for a copy of the rules and regulations on which the IOC had based its decision.

On 16 July 2012, the IOC answered explaining again the functioning of the Tripartite Commission and giving some further clarifications.

On 19 July 2012, the Applicant wrote to the IOC stating that he was going to present an application to the CAS ad hoc Division.

On 24 July 2012, at noon, Mr Ward filed with the CAS ad hoc Division his 38-page application with numerous exhibits. He specified that his application was *“against a decision of IOC, AIBA and ANOC not to annul an invitation place granted by the Tripartite Commission to Mr Bosko Draskovic”* and *“against a decision of AIBA not to recognize the Applicant as the boxer to whom Mr Draskovic’s place must be allocated in the event that his Tripartite Invitation Place is withdrawn”*.

Mr Ward also requested, in case the CAS deemed the application not to be within the jurisdiction of the ad hoc Division, that the CAS treat the application as an appeal and follow the rules of the regular CAS appellate procedure on an expedited basis.

The CAS Court Office communicated the application to the IOC, AIBA, and ANOC as Respondents, and to the Montenegrin Olympic Committee, the Olympic Council of Ireland and, through the Montenegro's Chef de Mission, the Montenegrin boxer Mr Brasko Draskovic as Interested Parties.

After a request for extension, the CAS granted the Respondents and Interested Parties until 5 pm on 25 July 2012 to file their written submissions and convened the hearing for 9 pm on the same day. Both the IOC and AIBA filed written submissions with some exhibits. ANOC filed a one-page letter and said that it adopted the submissions of the IOC.

The hearing started at 9 pm and ended at about 1:30 am of the following day. The Applicant was represented by Frank Walsh and David Casserly; the IOC was represented by Francois Carrard, Andre Sabbah (IOC Legal Counsel) and Christophe Dubi (IOC Director – Sports Department); AIBA was represented by Paul Harris QC, Julian Pike, Tom Rudkin, Áine Power (AIBA Legal Manager) and Ameline Gerbel (AIBA Development Director); the Montenegrin NOC was represented by Daniel Saoul, James Eighteen and Ben Rees.

At the outset of the hearing the parties confirmed that they had no objection as to the composition of the Panel. After the parties' oral submissions on jurisdiction and a short recess, the Panel communicated that it did not deem to have jurisdiction on the Applicant's second claim (related to the alleged corrupt practices at the April 2012 European Olympic Qualification Tournament) and thus decided that it would not entertain any submission or evidence on this issue.

The Applicant offered to provide testimony from Eddie Bolger (Applicant's personal coach), Joseph Ward (the Applicant himself) and an anonymous witness; and the IOC offered Olivier Niamkey (IOC Head of Athletes Section) and Isabella Burczak (IOC Project Manager) as witnesses. The anonymous witness and the Applicant's coach were not heard because their evidence related to the second claim, that the Panel had excluded from the discussion. The other witnesses were not ultimately called to give evidence by agreement of all the parties and the Panel.

At the end of the hearing, the parties acknowledged that they were treated equally and that their right to be heard had been respected.

The Applicant sets forth two distinct claims: first of all, that the qualification process was flawed; second that his personality rights were violated because the refereeing in the April Olympic Qualification Tournament in Turkey was corrupt and, thus, he was unjustly eliminated.

In relation to the first claim, the Applicant states that the Montenegrin Olympic Committee should not have been considered as an eligible NOC and that, as a consequence, that place for the 81 kg category should have been reallocated by AIBA, in accordance with the applicable AIBA Qualification System, to *"the next best ranked athlete at the 2011 AIBA Men's World Boxing Championship, not yet qualified"*.

In this connection, Mr Ward contends that he is the next best ranked athlete at the 2011 AIBA Men's World Boxing Championship because, at the time of that competition, he was the best placed athlete in the AIBA world ranking that was not yet qualified for the Olympics. He argues that the word *"ranked"* is different from *"placed"* and thus this is a reference to the results at the 2011 AIBA Men's World Boxing Championship, where he finished 16th.

As to the second claim, the Applicant contends that an anonymous witness can give evidence supporting his allegations of corruption and, according to established CAS jurisprudence, corruption is an exceptional situation which can lead to the annulment of field-of-play decisions.

AIBA wholly contests Mr Ward's application, stating that there is no jurisdiction – because of the non-compliance with the 10-day and 21-day time limits – and that the qualification process was done in accordance with the rules and that, in any event Mr Ward has no standing and cannot be put into the Olympic Games by the Panel.

The IOC concurred with AIBA's submissions.

LAW

Jurisdiction

1. The Appellant claims that the jurisdiction of the CAS ad hoc Division arises out of Article 61 of the Olympic Charter and of Article 63 of the AIBA Statutes.
2. Article 61.2 of the Olympic Charter provides as follows:
“61 Dispute Resolution
[...]
2. Any dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport (CAS), in accordance with the Code of Sports-Related Arbitration”.
3. Article 63.2 of the AIBA Statutes provides:
“63. COURT OF ARBITRATION FOR SPORT
[...]
63.2 Notwithstanding anything to the contrary contained in Article 63.1, AIBA recognizes the jurisdiction of CAS in relation to any dispute covered by Rule 59 [now 61] of the Olympic Charter. Each Confederation and National Federation must recognize the jurisdiction of CAS in relation to any dispute covered by Rule 59 [now 61] of the Olympic Charter. AIBA, National Federations, Confederations, Officials and Boxers must comply with the decisions passed by CAS in relation to disputes covered by Rule 59 [now 61] of the Olympic Charter”.
4. In addition to the above provisions, the Applicant relies upon the consistent jurisprudence of the CAS ad hoc Division (in particular, CAS OG 04/006), according to which International Federations such as AIBA are bound by the CAS arbitration clause set out in the Olympic Charter.

5. Article 1 of the CAS Arbitration Rules for the Olympic Games (the “Ad Hoc Rules”) provides as follows:

“Article 1. Application of the Present Rules and Jurisdiction of the Court of Arbitration for Sport (CAS)

The purpose of the present Rules is to provide, in the interests of the athletes and of sport, for the resolution by arbitration of any disputes covered by Rule 61 of the Olympic Charter, insofar as they arise during the Olympic Games or during a period of ten days preceding the Opening Ceremony of the Olympic Games.

In the case of a request for arbitration against a decision pronounced by the IOC, an NOC, an International Federation or an Organising Committee for the Olympic Games, the claimant must, before filing such request, have exhausted all the internal remedies available to him/her pursuant to the statutes or regulations of the sports body concerned, unless the time needed to exhaust the internal remedies would make the appeal to the CAS Ad Hoc Division ineffective”.

6. In the award rendered in the case CAS OG 06/002, the Panel considered the appropriate application of this provision in some detail, as follows:

“The Panel is satisfied that the CAS has jurisdiction to hear this case but it must verify whether this is a dispute which should be referred to the regular CAS procedure or whether it may be dealt with by this CAS ad hoc Division.

The first condition precedent for the jurisdiction of the CAS ad hoc Division is that the dispute has to have arisen during the Olympic Games or during the period of 10 days preceding the Opening Ceremony, which for the 2006 Olympic Winter Games is on 10 February 2006.

The Panel, therefore, has to decide whether the dispute arose within the period of 10 days preceding 10 February 2006, that is on or after 31 January 2006. The official announcement of the disputed Decision occurred by publication on the Respondent’s web site on 28 January 2006. Ms Schuler received a written explanation of her exclusion on 1 February 2006. Then Ms Schuler considered the issue, and having done so, made this appeal through her attorney-at-law on 6 February 2006.

It was open to Ms Schuler to accept the Swiss Olympic’s determination or decide to appeal. Accordingly, in the Panel’s opinion, it would not be possible to say that a dispute had arisen until Ms Schuler had decided to appeal and had filed notice of her appeal. That notice was given within the 10 days preceding the Opening Ceremony and, also, well within the 21 days permitted for a regular appeal to the CAS Appeal Division.

The second condition precedent is that the dispute has arisen “on the occasion of” or “in connection with” the Olympic Games, as required by Rule 61 of the Olympic Charter. The Panel is satisfied that this second condition has also been met, as Ms Schuler has not been included in the Swiss Olympic team and is seeking as relief her selection for, and thus her participation in, the half-pipe snowboard competition of the 2006 Olympic Winter Games.

Accordingly, the Panel finds that the CAS ad hoc Division has jurisdiction to hear this appeal”.

7. In this case, as of 28 June 2012 the Applicant already knew that he had not been awarded a place for the Olympic Games and had sought legal advice (see the letter of Mr Ward’s solicitor to the IOC dated 28 June 2012, *supra*: “You will be aware that our ... client was not selected as the next best boxer to compete in the 81kg division of the upcoming London Olympics”).

8. Then, a written explanation of why he had not been selected was provided in full by the IOC on behalf of the Tripartite Commission on 2 July 2012 (see *supra*) and the Applicant objected by letter dated 11 July 2012 (see *supra*).
9. Therefore, at the latest, the “dispute arose” on 11 July 2012, when the Applicant objected formally, based on receipt of the rationale for the decision. Thus, the dispute did not arise within the time period required by Article 1 of the Ad Hoc Rules, which begins 17 July 2012. Indeed, on 11 July 2012 the Applicant through his solicitor clearly stated that he did not agree with the decision made, as he disputed the basis for the decision, thus having explicitly identified that a dispute had arisen. At that point, it is obvious, based on the facts of this case, that the Applicant took issue with the decision. The Panel is not saying that it is up to the athlete to decide when the issue arose, but rather that the facts will be examined in each case based on the good faith understanding of the athlete or other aggrieved party and the relevant facts giving rise to when the dispute arose. Another element in this analysis is that at no time did the IOC (acting on behalf of the Tripartite Commission) alter its rationale for the decision, but rather, the IOC sought to clarify the rationale based upon the specific questions of the Applicant.
10. An applicant to the CAS ad hoc Division cannot rely on CAS OG 06/002 to mean that s/he, through an exploration designed to learn the rationale for a decision with which s/he disagrees, can extend the time when a “dispute arose” into the period identified in Rule 1 of the Ad Hoc Rules. As set forth in CAS OG 06/002, Ms Schuler first received a written explanation of her exclusion on 1 February 2006. Then Ms Schuler considered the issue and, having done so, complained for the first time through her application on 6 February 2006, within the time period required by Rule 1 of the Ad Hoc Rules. That is distinct from this case. Even if the Panel accepts that “*a written explanation of [his] exclusion*” is required as Ms Schuler received, that written explanation was provided by the IOC on 2 July 2012 and, as said, the Applicant objected by letter dated 11 July 2012.
11. The next issue for decision by the Panel is whether the Applicant’s appeal was filed within the time limit for appeal set forth in the Code of Sports-related Arbitration (the “CAS Code”) for appeals, i.e. within 21 days from the date of the receipt of the decision appealed against (Article R41 of the CAS Code). The Applicant claims to have filed his application within this time limit. The Applicant’s basis for this claim rests on the argument that he cannot appeal against a decision without: (i) knowing the reasons behind the decision; and (ii) having completed the consultation process required by the “Qualification System Principles” for the XXX Games of the Olympiad, London 2012, section entitled “Issue Resolution”, which provides that “*Any dispute between the IF and the NOC should be resolved through the direct consultation process with the IOC*”.
12. Turning to the first part of this claim, the Panel finds that the Applicant was well aware that another boxer had been selected for the spot he hoped to be granted as evidenced by the 28 June letter from his solicitor to the IOC (*supra*) and was aware of the reasons therefor on receipt of the 2 July communication from the IOC (*supra*) and further expressed concerns with the basis of the decision on 11 July 2012 (see *supra*). Though the Applicant did then engage in an exchange of letters trying to determine who specifically had made that decision and the reasons for it, as well as requesting annulment of the decision (the “consultation process”), the

Applicant was well aware that a decision had been made as of 28 June and had the full explanation as of receipt of the 2 July letter. It was thus incumbent on the Applicant to file an appeal within 21 days of that date, which the Applicant did not do. In addition, the “consultation process” set out by the Qualification System Principles is meant for the International Federations and National Olympic Committees and is not a prior requirement to be met by athletes before filing an appeal.

13. The Panel thus finds that it lacks jurisdiction to deal with this application, either as an application under the Ad Hoc Rules or an appeal under the CAS Code. Nevertheless, as past ad hoc Division panels have done (CAS OG 02/005; CAS OG 02/003; CAS OG 08/001), we find that even if CAS had jurisdiction under either set of rules, the Panel would dismiss the appeal on the merits, as will be explained hereinafter.

Applicable Law

14. Under art. 17 of the Ad Hoc Rules, the Panel must decide the dispute “*pursuant to the Olympic Charter, the applicable regulations, general principles of law and the rules of law, the application of which it deems appropriate*”.
15. The Panel notes that the “applicable regulations” in this case are the rules and regulations of AIBA and the IOC.
16. In particular, the following rules, provisions and guidelines are or may be relevant to this case.
17. The IOC’s Information Paper for NOCs of the London Olympic Games reads as follows with regard to the Tripartite Commission Invitation Places:
3. NOC / ATHLETE ELIGIBILITY
Invitation places can only be allocated to NOCs with an average of six (6) or less athletes at the last two editions of the Olympic Games. Only eligible NOCs are permitted to make a request for their best athletes in the sports offering Invitation places.
Places that cannot be allocated to eligible NOCs will be returned to the concerned IF which will be responsible for their redistribution according to the principles defined in each qualification system.
It is important to note that there are specified minimum eligibility standards for athletes applying for, or receiving, Invitation places. These standards are defined, where applicable, in the qualification system of the sport concerned.
18. Section E of the AIBA Qualification System for the Games of the XXX Olympiad so reads in the relevant part:
CONFIRMATION PROCESS FOR QUOTA PLACES
At the conclusion of each qualifying event, the names of athletes who have gained qualification places will be communicated by AIBA to each NOC.

19. Section F of the AIBA Qualification System for the Games of the XXX Olympiad so reads in the relevant part:

REALLOCATION OF UNUSED QUOTA PLACES

[...]

Any unused places within the reserved quota of places will be reallocated by the Tripartite Commission. Should the Tripartite Commission not be able to assign the places, the quota place will be allocated to the next best ranked athlete at the 2011 AIBA Men's World Boxing Championship, not yet qualified.

20. Appendix D of the AIBA Technical & Competition Rules so reads in the relevant part:

3. RESULTS PROTOCOL

3.1 In order to determine each place in a 3-Star Event, the Boxers ranking shall be classify as follows:

<i>Rank</i>	<i>Place</i>	<i>Result</i>
<i>1</i>	<i>1</i>	<i>Gold</i>
<i>2</i>	<i>2</i>	<i>Silver</i>
<i>3</i>	<i>3</i>	<i>Loser vs Gold in Semi-Final (SF)</i>
<i>3</i>	<i>4</i>	<i>Loser vs Silver in Semi-Final (SF)</i>
<i>5</i>	<i>5</i>	<i>Loser vs Gold in Quarter-Final (QF)</i>
<i>5</i>	<i>6</i>	<i>Loser vs Silver in Quarter-Final (QF)</i>
<i>5</i>	<i>7</i>	<i>Loser in QF vs Loser to Gold in SF</i>
<i>5</i>	<i>8</i>	<i>Loser in QF vs Loser to Silver in SF</i>
<i>9</i>	<i>9</i>	<i>Loser vs Gold in Round of 16</i>
<i>9</i>	<i>10</i>	<i>Loser vs Silver in Round of 16</i>

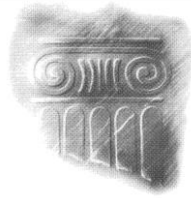
21. The XXX Games of the Olympiad, London 2012 Qualification System Principles reads in the relevant part:

"ISSUE RESOLUTION:

[...]

Any dispute between the IF and the NOC should be resolved through the direct consultation process with the IOC. CAS shall be the last step for the resolution of disputes.

[...]"



Discussion

A. *Legal framework*

22. These proceedings are governed by the Ad Hoc Rules enacted by the International Council of Arbitration for Sport (“ICAS”) on 14 October 2003. They are further governed by Chapter 12 of the Swiss Private International Law Act of 18 December 1987 (“PIL Act”). The PIL Act applies to this arbitration as a result of the express choice of law contained in art. 17 of the Ad Hoc Rules and as the result of the choice of Lausanne, Switzerland as the seat of the ad hoc Division and of its panels of Arbitrators, pursuant to art. 7 of the Ad Hoc Rules.
23. According to art. 16 of the Ad Hoc Rules, the Panel has “*full power to establish the facts on which the application is based*”.

B. *Merits*

24. According to Swiss doctrine as discussed in CAS case law (*see* CAS 2001/A/354 & CAS 2001/A/355 para. 7 *et seq.*; and CAS 2008/A/1502) when interpreting a contract, “*one first has to look at the text; if the text is not clear, then at what the parties intended; if that cannot be established, then how the contract should be interpreted in an objective manner. There is less unanimity, it seems, in Swiss doctrine and case law whether statutes or similar instruments should be interpreted in a like manner. But it is the Tribunal’s impression that the better and more prevalent view is that the same criteria should, so far as possible, apply*”.
25. The Panel adopts the approach set out above when looking at Section F of the AIBA Qualification System for the Games of the XXX Olympiad as set forth *supra* (the “Rule”). When interpreting the phrase “*next best ranked athlete at the 2011 AIBA Men’s World Boxing Championship*”, if the text is not clear, the Panel has to interpret the Rule in question in keeping with the perceived intention of the rule maker, and not in a way that frustrates it (CAS 2001/A/354 & CAS 2001/A/355, para. 7 with further references).
26. Applying these principles, the Panel has no doubt that the term “*ranked*” in the Rule, in the spirit of the Rule, and consistent with the perceived intention of the AIBA, relates to the *results* achieved at the 2011 AIBA’s Men’s World Championship.
27. In reaching this conclusion the Panel has taken into account the following factors:
 - The term “*at*” itself does not indicate at what point in time the ranking should be looked at, i.e. it does not necessarily support the Applicant’s submission. “*At*” could be understood to mean either “*at the beginning*” or also “*at the end*” of an event”.
 - It is clear from various AIBA regulations that the term “*ranking*” is, on the one hand, used in a broad sense covering sometimes the meaning “*result*” in a specific competition, as well as “*rank*” in the official AIBA World Ranking taking into account performances over a two-year period (which Ranking the AIBA posts regularly on its site); see the first

sentence where “*ranking*” is used to mean both “*rank*” and “*place*” (Results Protocol section set forth above in para. 20).

- On the other hand, the term “*ranked*” is also sometimes used in a narrower sense, namely as *placed* in a competition; see the AIBA Qualification System, Games of the XXX Olympiad Section D, which states “*All WSB boxers will be ranked through the result of the entire WSB team competition*” (emphasis added) and Section F, where a reference to “*best ranked NOC*” again means result.
 - The Rule, Section E, page 3, first sentence, says: “*At the conclusion of each qualifying event, the names of athletes who have gained qualification places will be communicated by AIBA to each NOC*”. Such wording indicates that the relevant point in time for the purposes of ranking is at the conclusion of the World Championship as it is at the conclusion of each qualifying event that athletes gain qualification places; in short the whole AIBA qualification process focuses on qualification through the latest results and not through rankings based also on old results.
28. Thus, the Panel finds that the Applicant is not the “*next best ranked athlete at the 2011 AIBA Men’s World Boxing Championship*” but rather he was “*ranked*” or had a result of 16th “*at*” the AIBA Men’s World Championship. This standard could have been more explicitly stated by AIBA in the Rule simply by using more specific terminology. As the 16th ranked, Applicant would not have qualified for any open slot had any such slot been made available based on his claim that the Montenegrin boxer was not eligible because of the size of the 2008 Olympic Montenegrin squad.
29. Having found that the Applicant is not the “*next best ranked athlete*”, the application on behalf of Mr Ward fails and there is no need to address the merits further. In particular, the Panel does not need to address the issue whether team athletes are to be included in the calculation made by the Tripartite Commission nor other related issues.
30. Finally, with respect to the Applicant’s claim based on an attack on his personality rights, the Panel dismissed this claim at the outset of the hearing for the following reasons. The European Boxing Olympic Qualification Tournament was held from 15 to 21 April 2012, which is outside the time constraints for appeal under either the CAS Code or the Ad Hoc Rules. The Applicant claimed to have learned of such corruption, and of the fact that the Irish protest was not entertained by AIBA, very recently; however, he did not provide any evidence of this. Thus, any claims based on the events at that tournament are not appropriate for consideration by the Panel, because they are clearly outside of the time period provided by the applicable CAS rules. The Applicant proffered an anonymous witness to support this claim, without having met the specific conditions for such a witness as identified by the panel in CAS 2009/A/1920. Specifically, there must be evidence that the personal safety of the witness must be at stake and the right to be heard and to a fair trial must be ensured through other means, namely by cross examination through “*audiovisual protection*” and by an in-depth check of the identity and the reputation of the anonymous witness by the panel. Prior to the hearing, the Applicant made no proffer to comply with any of these conditions. The Panel thus refused to hear from the anonymous witness and the Applicant provided no evidence otherwise to support his claim that corrupt practices or other legal issues arose on that occasion.

Conclusion

31. Mr Ward had two important opportunities to qualify through competitions which awarded spots for the Olympic Games: the 2011 World Boxing Championship and the 2012 European Boxing Olympic Qualification Tournament. Unfortunately, he was unable to fight in those tournaments at the level that could have been expected from him.
32. Mr Ward complained that he was treated unfairly at several stages in the qualification process but his case, for the reasons stated above, failed to pass this Panel's scrutiny.

On the basis of the foregoing facts and legal aspects, the ad hoc Division of the Court of Arbitration for Sport renders the following decision:

The application filed by Mr. Joseph Ward on 24 July 2012 is denied.