



**Arbitration CAS 2009/A/1971 Jae Joon Yoo v. International Amateur Boxing Association (AIBA), award of 26 March 2010 (operative part of 22 January 2010)**

Panel: Judge James Robert Reid QC (United Kingdom), President; Mr Michele Bernasconi (Switzerland); Prof. Ulrich Haas (Germany)

*Boxing*

*Disciplinary sanctions against members of a national federation*

*Jurisdiction of the AIBA Disciplinary Commission to impose sanctions*

*Jurisdiction of the AIBA's Executive Committee to suspend members of a national federation*

*Procedural defects in the constitution of the AIBA Disciplinary Commission and procedural rights of a party*

*Failure to respect a valid decision rendered by an IF's Executive Committee*

1. According to the AIBA Disciplinary Code, the Disciplinary Commission benefits from a general jurisdiction in sanctioning *“any breach which does not fall under the jurisdiction of another body”*. This jurisdiction however only concerns pure disciplinary proceedings. In such a context, the Disciplinary Commission and its Chairman indeed benefit from a general jurisdiction, and therefore have jurisdiction to order provisory measures such as the suspension of a boxer or of any person breaching the applicable rules.
2. The AIBA Statutes ground the AIBA's Executive Committee's jurisdiction to suspend members of a national federation, hence the official persons representing one of its federation members, which in its opinion falls into the scope of the above-mentioned definition.
3. Article 12 of the AIBA Procedural Rules enables the Chairman to consider that some procedural steps can be taken by one or two of the other members of the Disciplinary Commission. This provision probably contemplates investigation measures which can be delegated when it appears not necessary that the complete Commission deals with it. However, it is doubtful that the authority can be incompletely constituted when it has to carry out procedural steps which are essential for the authority to make up its mind on the case on which it has to rule. In any case, any procedural defects can be cured in the further proceedings before AIBA Appeal Commission and before CAS, as long as both bodies are fully entitled to hold a trial *de novo*, evaluating all facts, including new facts, which have not been mentioned by the parties before, and all legal issues involved in the dispute.
4. The misconduct of knowingly failing to respect a valid decision rendered by the AIBA's Executive Committee Bureau cannot be reduced to a simple failure to comply with a decision taken by a body of AIBA, as foreseen by Article 46, but clearly constitutes an active and serious violation of the AIBA Statutes, and therefore falls into the scope of application of Article 45.

Mr. Jae Joon Yoo (the “Appellant”) was elected President of the Korean Amateur Boxing Federation on 19 January 2009. The Korean Amateur Boxing Federation (KABF) is the organization leading and supervising amateur boxing in Korea.

The Association Internationale de Boxe Amateur (AIBA or the “Respondent”) is an association pursuant to Articles 60 et seq. of the Swiss Civil Code, having its seat in Lausanne, Switzerland. One of its objects is to improve, promote, and spread worldwide the sport of boxing in all its forms, as well as to regulate boxing in all its aspects by adopting measures and rules to ensure that AIBA Statutes, regulations, directives, Code of Ethics, Technical and Competition Rules, and decisions are enforced.

On 8 January 2009, the Appellant registered as a candidate for the 19<sup>th</sup> KABF Presidential election; he was then elected President of KABF on 19 January 2009 by the competent Representative Committee.

By memorandum dated 4 March 2009, AIBA informed KABF that it had received a petition according to which the election had been conducted in an inappropriate and unethical way, and that legal steps were about to be taken in that regard.

Therefore, the AIBA Executive Committee decided to withhold recognition of the elected KABF Administration until all legal proceedings were over.

Finally, AIBA ordered KABF to stop criticizing AIBA and spreading wrong information which might damage AIBA’s image and reputation.

By letters of 6 and 9 March 2009, signed by the Appellant, KABF denied that its election had been performed in any unfair or unethical way and expressed its intention to maintain a good relationship with AIBA.

By letter of 30 April 2009, AIBA’s President informed the Korean Olympic Committee of the complaints it received regarding the Appellant’s election as President of KABF.

In the same correspondence, he specified that the AIBA Executive Committee Bureau had decided to request the AIBA Disciplinary Commission to investigate these circumstances.

Moreover, AIBA requested the Korean Olympic Committee to suspend the recognition of the Appellant as new president of KABF as long as the AIBA Disciplinary Commission’s investigations were ongoing.

By letter of 13 May 2009 sent to the Appellant, AIBA firstly transmitted a copy of its above-mentioned correspondence to KABF, to confirm that investigations were being conducted regarding the KABF presidency election’s process.

By the same letter AIBA also expressed its concern about an overweight boxer, who had been allowed by KABF to participate in the National Qualifying Tournament for the AIBA World Junior Championships in Masan in April 2009, in violation of AIBA's Technical & Competition Rules.

Because of these two allegations, AIBA informed KABF of its decision to suspend KABF members, who were therefore not allowed to participate in any AIBA events in any official capacity until a final decision by the AIBA Disciplinary Commission is taken.

On 17 June 2009, the Seoul Prosecutor's Office (Eastern District), which was requested to conduct the necessary investigations in connection with the alleged irregular election, issued a decision by which it refused to prosecute the Appellant, stating that there was a lack of supporting evidence.

Lieutenant Jong Ho Lee, in charge of these investigations, even expressed the opinion that he felt that the accusations raised against the Appellant resulted from typical factional strife often found in many sports federations in Korea, and was aimed at preventing the Appellant from performing his duties as President of KABF and obtaining the appointment of a new President whom his opponents supported.

AIBA World Junior Championships took place in Yerevan, Armenia from 23 to 30 May 2009. KABF sent a delegation of 11 persons, composed of seven boxers, and 4 so-called "members of the delegation", namely one head coach, one team coach, one doctor team as well as one extra coach.

The appointed team doctor was Mr. Woo Sik Shin. The parties disagree as to whether Mr. Shin benefited from sufficient qualifications to take medical responsibility for the Korean delegation's boxers.

According to two e-mails produced by AIBA, Mr. Woo Sik Shin was firstly designated as team manager of the Korean delegation on 13 May 2009, before being listed as the team doctor on 15 May 2009.

By letter of 23 May 2009 signed by Mr Osvaldo Bisbal, its technical delegate to the World Junior Championships in Armenia, AIBA was informed that Mr. Shin had been registered by KABF as its team doctor.

The latter, according to the same letter, when he was called to attend the Medical meeting of 23 May 2009, confirmed that he was not a doctor and stated by written declaration of 22 May 2009 that he could not fulfill any duties concerning medical operations as a team doctor.

By letter of 27 May 2009 sent to KABF, AIBA firstly recalled that, according to its letter of 13 May 2009, all members of KABF had been suspended and prohibited from taking part in any official AIBA event until AIBA Disciplinary Commission's final decision regarding the aforementioned overweight boxer issue in the qualifying tournament held in Masan.

In the same correspondence, AIBA referred to the sending of an unqualified person as team doctor for the 2009 World Junior Championships in Armenia, which was brought to its attention by its technical delegate to the World Junior Championships.

Consequently, AIBA informed KABF of its decision to put the Appellant for review by the AIBA Disciplinary Commission for both the so called overweight boxer and fake doctor issues and to suspend KABF from participating in any AIBA official events until AIBA Disciplinary Commission's final decision after its investigations on these issues.

According to an e-mail sent by KABF to AIBA on 3 July 2009, KABF and the Appellant were notified by an official letter of 2 July 2009 from AIBA that the case was going to be investigated in Seoul.

In an e-mail of 5 July 2009, the Appellant expressly stated that KABF acknowledged that the AIBA Disciplinary Commission Hearing would investigate on both the "overweight boxer" and on the "fake doctor" cases.

In the same e-mail, the Appellant made several requests, on behalf of KABF. They were that the latter should be authorized to be supported by its lawyer during the forthcoming hearing, and that officials of the Korean Olympic Committee, the President of KABF, an interpreter and a representative of KABF be given permission to attend it. Moreover, the Appellant requested that the hearing be video recorded.

By letter of 8 July 2009, the Chairman of the AIBA Disciplinary Commission dismissed most of the Appellant's procedural requests and only accepted that KABF be supported by its lawyer on the occasion of the hearing.

From 6 to 10 July 2009 the President (Professor Piermarco Zen-Ruffinen) and one of the members of the Disciplinary Commission came to Seoul, Korea, to investigate the case.

On 8 and 9 July 2009, the AIBA Disciplinary Commission, in its above-mentioned composition, held a hearing at the Intercontinental Coex Hotel in Seoul. Several witnesses were heard, notably the Appellant, in his capacity as elected KABF president, as well as Mr. Woo Sik Shin, the so called "fake doctor".

According to the Appellant, he was not authorised by the AIBA Disciplinary Commission to attend the witnesses' hearings, despite the request he had made in that regard.

According to the Respondent, whose appreciation of the situation derives from the decision of 31 July 2009 issued by the AIBA Disciplinary Commission, the Appellant's behavior on the occasion of the hearing was inappropriate.

In particular he invited the members of the Disciplinary Commission for dinner to discuss the case, became very angry as the first of the two scheduled hearings was cancelled, influenced two witnesses, Mr. Hyon Kyo Park and Mr. Yong Bin Kim, both of whom refused to testify claiming they were not allowed to by the Appellant, interrupted the hearing by entering into the hearing room despite

demands by the President to leave the room, instructed his interpreter to ask the two above-mentioned witnesses to leave the hearing room and telephoned Mr. Woo Sik Shin (the “fake doctor”) to brief him as to what to say.

The two present members of the AIBA Disciplinary Commission expressed the view that they had the unpleasant impression that the Appellant wanted to manipulate them as well as the witnesses, and that he wanted to impose an “official” version of the facts.

Subsequently to this hearing, a decision of 31 July 2009 (supposedly after a hearing of that date) was rendered by the AIBA Disciplinary Commission, composed by its President and its two members, which stated as follows:

*“The Disciplinary Commission rules that:*

1. *Mr. Jae Joon Yoo shall pay a fine of CHF 2'000.- and be suspended from all boxing activities at AIBA, continental and national level, for one and a half year (18 months), beginning on July 31, 2009.*
2. *The costs of the proceedings, fixed at CHF 4'000.-, shall be borne by Mr. Jae Joon Yoo.*
3. *There will be no award for legal fees (sic).*
4. *Any appeal against this decision will not suspend its entering into effect.*
5. *The present decision shall be communicated to the party and to the Office of the AIBA”.*

Within the three days deadline provided by Article 62 of AIBA Procedural Rules, the Appellant filed a declaration of appeal against the decision of 31 July 2009 rendered by the AIBA Disciplinary Commission, and completed the declaration by submitting a submission in appeal on 10 August 2009.

On 10 September 2009, the AIBA Appeal Commission issued a decision, notified to the Appellant’s counsel on 23 September 2009, rejecting the Appellant’s appeal and confirming the decision taken by the AIBA Disciplinary Commission on 31 July 2009, which reads as follows:

*“The Appeal Commission rules that:*

1. *The decision of the Disciplinary Commission of 31 July 2009 is affirmed.*
2. *The added costs of the proceedings, fixed at CHF 2'000 for the appeal procedure shall be borne by Mr. Yoo.*
3. *There will be no award for legal fees.*
4. *The present decision will be communicated to the party and to the Office of AIBA”.*

On 9 October 2009, the Appellant filed both a statement of appeal and an appeal brief with the Court of Arbitration for Sport (CAS). He challenged the decision of 10 September 2009 rendered by the AIBA Appeal Commission, submitting the following requests for relief:

*“Mr Jae Joon Yoo applies that the Court of Arbitration for Sports rules as follows:*

- I. *The decision issued on 10 September 2009 by the AIBA Appeal Commission is annulled.*

- II. *No disciplinary sanction shall be imposed on Jae Joon Yoo for the facts described in the decisions issued on 31 July 2009 by the AIBA Disciplinary Commission and on 10 September 2009 by the AIBA Appeal Commission.*
- III. *AIBA shall reimburse all procedural costs imposed on Jae Joon Yoo in the decisions issued on 31 July 2009 by the AIBA Disciplinary Commission and on 10 September 2009 by the AIBA Appeal Commission, for an amount of CHF 6'000 (six thousand Swiss francs).*
- IV. *AIBA shall pay all arbitration costs, if any, and shall in any event be ordered to reimburse the minimum CAS Court Office fee of CHF 500 paid by Jae Joon Yoo.*
- V. *AIBA shall be ordered to pay to the KABF a contribution towards the legal and other costs incurred by the latter in an amount to be determined at the discretion of the Panel”.*

On 5 November 2009, AIBA filed an answer, with the following requests for relief:

*“AIBA respectfully seeks the following relief:*

1. *A declaration that the Decision of the Appeal Commission dated 10 September 2009 is confirmed.*
2. *An order that Mr Jae Joon Yoo pay all costs of the arbitration as well as legal costs incurred by AIBA To reject in full the appeal submitted by the Appellant against the decision of the FIFA Special Committee dated 14 February 2008”.*

A hearing was held on 18 January 2010 in Zurich, Switzerland. At the outset of the hearing, the parties declared that they had no objection with regard to the composition of the Panel.

During the hearing, the parties made full oral submissions. No witness or experts were called by the parties.

As permitted by the Panel, the Appellant was contacted by conference call and was assisted by an interpreter. Questions were asked of the Appellant by his counsel, by the Respondent’s counsel and by the members of the Panel. He globally confirmed the position taken in his submissions. Further questions were also asked by the Panel of the Respondent.

Although he denied having ever been notified of the schedule of the hearing held in Seoul before the AIBA Disciplinary Commission, the Appellant was perfectly aware that such hearing would be about both the “overweight boxer” and the “fake doctor” issues. He confirmed he has been heard by this body.

Despite the fact that he did not contest the content of the minutes of the hearings, he explained to the Panel that he was not given the opportunity to express his ideas, since the AIBA Disciplinary Commission only accepted yes/no answers.

The Appellant confirmed that Mr. Sik’s official position among KABF is Director of International Affairs of KABF and that he had never participated in a competition as team doctor in the past.

The Appellant also specified that the decision to register Mr. Sik as team doctor of the Korean delegation to the AIBA Junior Championships was taken by the International Committee of KABF, composed of 6 members, notably of the Appellant, but not of Mr. Sik.

The Appellant contested having ever tried to obstruct the instruction of the case during the hearings in Seoul in July 2009, as well as having tried to influence the AIBA Disciplinary Commission or third parties in any manner. He stated that the accusation contained in paragraph 38 of the AIBA Disciplinary Commission's decision of 31 July 2009, regarding his alleged attempt to contact a witness by telephone, was not true.

He clarified that the two witnesses who had refused to be heard had done so because his procedural requests had not been satisfied by the AIBA Disciplinary Commission.

He explained the global situation as a presumed political conspiracy aimed at removing him from his presidential position of KABF.

The Panel asked the representative of AIBA, about the conditions in which the hearing of 31 July 2009 was held by the AIBA Disciplinary Commission before it took its decision of the same date.

AIBA's representative confirmed that the Appellant had not been notified of this hearing, as a formal hearing was not considered necessary in the conditions provided by Article 51 of the AIBA Procedural Rules. To his knowledge, the parties were not requested to deposit written submission before this final hearing.

To the question of knowing why the Appellant was excluded from the whole hearing held in Seoul in July 2009, and notably the examination of the witnesses, AIBA's representative clarified that this decision had been taken in accordance with Article 25 of the AIBA Procedural Rules. The Disciplinary Commission had considered the overriding private interest of the witnesses not to be in front of the Appellant and to speak freely.

To the knowledge of the AIBA's representative, the Appellant was not given the opportunity to discuss the charges contemplated in the decision of 31 July 2009, because things were clear and there was no need to conduct further investigations.

To a further question by the Panel, wondering whether actions had been taken toward Mr Sik, Mr Downes specified that a proceeding was currently pending against him for the "fake doctor" issue.

## LAW

### CAS Jurisdiction

1. The jurisdiction of CAS, which is not disputed, derives from Articles. 59 and following of the AIBA Statutes in their version in force as of 19 February 2008 and Article R47 of the Code of Sports-related Arbitration (“the Code”). It is further confirmed by the order of procedure duly signed by the parties. Consequently, CAS has jurisdiction to decide the present dispute.
2. Under Article R57 of the Code, the Panel has the full power to review the facts and the law. The Panel, therefore, in the exercise of its jurisdiction, does not examine only the formal aspects of the appealed decision, but holds a trial *de novo*, evaluating all facts, including new facts, which had not been mentioned by the parties before, and all legal issues involved in the dispute.
3. The appeal was filed within the 30 days deadline provided by Article 59, paragraph 3 of the AIBA Statutes. It complies with the requirements of Article R48 of the Code.
4. It follows that the appeal filed by Mr Jae Joon Yoo is admissible, which is also undisputed.

### Applicable Law

5. Article R58 of the Code provides that the Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate.
6. Article 59, paragraph 4 of the AIBA Statutes, in their version in force, provides that CAS shall primarily apply the various Regulations of AIBA, and the Swiss law.
7. By seising CAS, exercising its jurisdiction depending on being bound to the AIBA regulations, the Appellant accepted that he was bound by these regulations. As a result, subject to the primacy of the applicable AIBA regulations, Swiss Law applies subsidiarily.

### Merits

8. The Panel observes that the appeal concerns the decision of 10 September 2009 rendered by the AIBA Appeal Commission, confirming the decision of 31 July 2009 rendered by the AIBA Disciplinary Commission. This latter decision itself follows the very first **decision** issued in the case at stake by the AIBA Executive Committee Bureau on 13 May 2009, suspending all KABF members from participating in any AIBA event until the AIBA Disciplinary Commission’s decision on the requested investigations.



9. The Panel, in deciding this dispute, wishes to follow the sequence of events and will therefore resolve the various questions raised in the case at hand in the following order:
  - A. Can the decision of 13 May 2009 issued by the AIBA Executive Committee Bureau be held as valid?
  - B. Did the Appellant breach his obligation to cooperate with the AIBA Disciplinary Commission during the hearings held in Seoul in July 2009?
  - C. Does the Appellant incur any responsibility in connection with the “fake doctor” issue and if yes, did he as such fail to comply with the decision rendered by the AIBA Executive Committee Bureau of 13 May 2009, suspending KABF members from participating in any AIBA events?
  - D. If one of the aforementioned questions is to be answered in the affirmative, what is the appropriate sanction to be pronounced?

*A. Validity of the Decision of 13 May 2009 Issued by the AIBA Executive Committee Bureau*

10. The Appellant notably contends that the AIBA Executive Committee had no jurisdiction to order interim measures or pronounce sanctions pending the issuance of a decision by the Disciplinary Commission. In his view, according to the AIBA Statutes, the AIBA Disciplinary Code and to the AIBA Procedural Rules, the Disciplinary Commission would be the only judicial body of AIBA entitled to pronounce such measures. Therefore, the above-mentioned decision of the AIBA Executive Committee Bureau shall be held as null and void, with all the consequences it implies.
11. The Panel does not share the Appellant’s view.
12. It is correct that, according to the AIBA Disciplinary Code, notably its Articles 27 and following, the Disciplinary Commission benefits from a general jurisdiction in sanctioning “*any breach which does not fall under the jurisdiction of another body*”. This jurisdiction however only concerns pure disciplinary proceedings. In such a context, the Disciplinary Commission and its Chairman indeed benefit from a general jurisdiction, and therefore have jurisdiction to order provisory measures such as the suspension of a boxer or of any person breaching the applicable rules.
13. The Panel however notes that, in the case at hand, the disputed provisory suspension of all KABF members was originally mainly related to the doubts surrounding KABF presidential election’s process, which was subject to investigations led by the Korean Public Prosecutor.
14. Despite the fact that the decision of 13 May 2009 also refers to an additional complaint which had been brought to AIBA’s attention in connection with the alleged sending by KABF of an overweight boxer to the National Qualifying Tournament for the AIBA Junior World Championships, AIBA’s main concern was obviously bearing on the purported unfair election process. The so called “overweight boxer issue” was mentioned at the same time and

constituted an additional circumstance which was, from AIBA's point of view, symptomatic of the unsatisfactory atmosphere floating over KABF.

15. In other words, the suspension of the KABF members was not based on a standard purported breach of disciplinary rules, but on the main premises that the leading body of KABF might not have been fairly elected and would additionally have consciously violated essential technical rules.
16. Article 37 paragraph 1, letter m of the AIBA Statutes reads as follows:  
*“The Executive Committee has in particular the following duties:*  
...  
*m) suspend from office a member of the Executive Committee, of other bodies or of a permanent Commission; remove a member of a jurisdictional body or of a permanent Commission.*  
...”.
17. The Panel interprets this provision as grounding the AIBA's Executive Committee's jurisdiction to suspend KABF members, hence the official persons representing one of its federation member, which in its opinion falls into the scope of the above-mentioned definition.
18. The Panel is comforted in this appreciation by the fact that, at the stage of the decision issued on 13 May 2009, the main concern of AIBA was to make sure that KABF's representatives' election had been adequately performed, thus that its member federation was organically in line with AIBA's Statutes, by which KABF is indisputably bound.
19. It follows that the AIBA Executive Committee Bureau was entitled to issue its decision of 13 May 2009, as well as the provisory measures ordered thereon.
20. In any case, as set out below, should any criticism be made with regards to the way the decision of 13 May 2009 was taken by the AIBA Executive Committee Bureau, the purported defects have anyway been cured at further stages of the proceeding, the Appellant having been granted full opportunities to make any requests before the bodies which have been seised of the case at hand and, in any event, before CAS.
21. It follows that the decision issued on 13 May 2009 by the AIBA Executive Committee Bureau must be deemed valid, and that this decision was binding for KABF members, and in particular on the Appellant.

B. *The decision of 31 July 2009 Issued by the AIBA Disciplinary Commission*

22. The challenged decision confirms the one issued by the AIBA Disciplinary Commission on 31 July 2009.
  23. The Appellant firstly contends that this decision shall be held as null and void, as it has allegedly been taken by an incompletely constituted authority.
  24. The decision of 31 July 2009 then addresses two main issues which have to be dealt with by the Panel.
  25. On the one hand, the Disciplinary Commission focuses on the question of the claimed breach by the Appellant of his obligation to cooperate with said judicial body as well as instigation to non cooperation.
  26. On the other hand, the Disciplinary Commission also deals with the Appellant's alleged failure to comply with a decision rendered by AIBA, in the case at stake the AIBA Executive Committee Bureau's decision of 13 May 2009, suspending all KABF members. The purported failure to comply relies, from the Respondent's point of view, on the decision allegedly taken by the Appellant to send Mr Sik as team doctor to the AIBA World Junior Championships, despite the provisory ban imposed on KABF officials on participating in any AIBA events.
- a) Constitution of the AIBA Disciplinary Commission
27. The Appellant firstly claims that the decision issued on 31 July 2009 by the AIBA Disciplinary Commission shall be deemed null and void, as the latter authority was improperly constituted during the hearings held in Seoul on 8 and 9 July 2009.
  28. The Panel observes that the fact that the Disciplinary Commission was not completely constituted when it held its hearings in Seoul on 8 and 9 July 2009 is surprising from a procedural point of view.
  29. Article 5, paragraph 1, of the AIBA Procedural Rules states:  
*"To hear a case, the panels of the Commission shall consist of three members including the Chairman or the Vice-Chairman"*.
  30. Article 12 of the AIBA Procedural Rules reads as follows:  
*"The Chairman of the Authority called upon to rule shall conduct the proceedings and carry out all the necessary acts of investigation to reach a decision. The Chairman may delegate the examination of the case to another member of the Authority"*.
  31. The impact of the aforementioned provisions is subject to interpretation. Article 12 clearly enables the Chairman to consider that some procedural steps can be taken by one or two of the other members of the Commission. This provision probably contemplates investigation

measures which can be delegated when it appears not necessary that the complete Commission deals with it.

32. This being said, it is doubtful, in the Panel's opinion, that the authority can be incompletely constituted when it has to carry out procedural steps which are essential for the authority to make up its mind on the case on which it has to rule.
  33. The Panel holds that a situation like the one experienced in Seoul in which an incomplete authority not only carried out essential procedural steps, but conducted effectively the whole hearing in the absence of one of its member, despite the very clear composition provided by Article 5 of the AIBA Procedural Rules is irregular. The Panel also expresses its surprise that AIBA felt able to assert that the Disciplinary Commission held its hearing on 31 July 2009 when it issued its decision. The Appellant was never given notice of any such hearing nor was he afforded any opportunity to make representations to be considered at that hearing.
  34. Nevertheless, the question of the consequences of the aforementioned circumstances surrounding the hearings held in Seoul on 8 and 9 July 2009 and the decision of 31 July 2009 can be left open. It is clearly established that the Appellant had satisfactory opportunities to cure any procedural defects in the further proceedings he initiated, before AIBA Appeal Commission and before CAS, both bodies being fully entitled to hold a trial *de novo*, evaluating all facts, including new facts, which had not been mentioned by the parties before, and all legal issues involved in the dispute.
  35. Consequently, the Panel is satisfied that the alleged incomplete composition of the AIBA Disciplinary Commission and the failure to afford the Appellant an opportunity to present his case to the AIBA Disciplinary Commission does not require it to consider its decision of 31 July 2009 as invalid.
- b) The Appellant's procedural rights
36. The Appellant claims that his procedural rights were not been complied with before the AIBA Disciplinary Commission. He specifically claims that he was not allowed to be present during the examination of the witnesses and most of his procedural requests having been unduly dismissed by the Chairman of the Disciplinary Commission.
  37. The Panel observes that the Appellant was fully given the opportunity to make any requests before the AIBA Appeal Commission in the further procedural step he took as well as before CAS. Before these two authorities, the Appellant could have requested a full rehearing as well as any evidentiary measures.
  38. According to the letter of 14 August 2009 sent by the Appeal Commission to the Appellant's counsels, Mr Yoo was specifically invited to but refrained from making the appropriate requests.

39. The comments made above regarding the procedural defects being satisfactorily cured also apply here.
  40. It follows that the decision issued on 31 July 2009 by AIBA's Disciplinary Commission must also be deemed valid.
- c) Non cooperation and Instigation to Non Cooperation issue
41. According to the decision of 31 July 2009, several criticisms were to be made of the Appellant in respect of his attitude during the hearing held in Seoul on 7 and 8 July 2009, which, in the AIBA Disciplinary Commission's opinion, was unacceptable, and intended to influence both the Commission and third parties. As such, the Appellant would have breached his obligation to cooperate during the proceedings held in Seoul in July 2009 both by his own actions and by instigating third parties to non cooperation.
  42. The Panel firstly notes that the hearings held in Seoul in July 2009 were supposed to concern both the "overweight boxer" and the "fake doctor" issues, as attested by the e-mails exchanged by the Appellant and the Respondent.
  43. It follows that all criticism made towards the Appellant's behaviour during the hearings held in Seoul strictly rely on the AIBA Disciplinary Commission's observations, as resulting from its decision of 31 July 2009. These observations are recorded in a document called "*Report of the hearings*" which appears to be an internal document drafted after the hearings held in Seoul, on 16 July 2009, which was not submitted to the Appellant. The latter was obviously not given the opportunity to discuss these very specific charges which partly grounded the sanction which the AIBA Appeal Committee finally confirmed in its challenged decision of 10 September 2009.
  44. The Respondent kept on claiming before CAS that the Appellant's attitude during these hearing in Seoul constituted a violation of his obligation to cooperate, hence a breach of the principles of conduct set out in Articles 3 and 4 of the AIBA's Procedural Code, which grounds part of the sanction imposed on him.
  45. During the hearing held before the CAS Panel in Zurich, the Appellant, contacted by conference call, clearly contested any misconduct which took place during the proceedings in Seoul.
  46. The Panel was surprised that the Respondent did not request that at least one member of the AIBA Disciplinary Commission be called as a witness in order to confirm orally the purported and formally contested misconduct of the Appellant.
  47. In such a context, and in the absence of any additional evidence than the facts gathered by the authority of first instance, the Panel cannot determine which version of the facts should be preferred.

48. In the Panel's opinion, the file does not contain any satisfactory evidence that the Appellant (i) sought to influence two witnesses, Mr Hyon Kyo Park and Mr Yong Bin Kim, who allegedly refused to be heard claiming they were not allowed to, (ii) interrupted the hearing by entering into the hearing room despite the injunctions by the President to leave the room, (iii) instructed his interpreter to ask the two above-mentioned witnesses to leave the hearing room and (iv) telephoned Mr Woo Sik Shin (the "fake doctor") to brief him as to what to say (Exhibit 4 produced by the Appellant).
49. The fact that the Appellant invited the Disciplinary Commission for dinner (allegedly to discuss the case), although not appropriate from a procedural point of view, merely appears – on the basis of the evidence presented to the Panel - as a demonstration of hospitality typical of the Appellant's culture and cannot in the absence of proper evidence in itself be held as an attempt to corrupt the Disciplinary Commission, as argued by the Respondent.
50. The Panel has similar reservations with regards to the procedural requests made by the Appellant and dismissed by the Chairman of the Disciplinary Commission, which the Respondent considers as constituting a breach of the Appellant's obligation to cooperate.
51. The fact that the Appellant attempted to submit rather wide procedural requests (mentioned in KABF's correspondence of 5 July 2009) cannot – on the basis of the evidence put before this Panel – be held as a misconducting behaviour. The Appellant did nothing but ask for legal representation and for procedural measures he considered necessary for his defence.
52. Besides, the Panel points out that, should the Appellant be considered as having had exaggerated procedural requirements, the AIBA Disciplinary Commission's position, *a priori* incompletely constituted when it held its hearings in Seoul, also deserves criticism.
53. It follows that the Appellant cannot be considered as having breached its obligation to cooperate during the proceedings in Seoul, neither to have instigated third parties to non cooperation.

C. *The "Fake Doctor" Issue*

54. It is undisputed that the Appellant consciously sent Mr. Shin Woo Sik as team doctor of the Korean delegation to the AIBA World Junior Championships in Armenia. The Appellant recognised that Mr Sik was firstly appointed as team manager in a list prepared on 13 July 2009, and then appointed as team doctor in the list constituted on 15 July, 2009. These elements are attested in the minutes of the hearing of the Appellant of 9 July 2009 in Seoul, the contents of which the Appellant confirmed he fully agreed with on the occasion of the conference call held during the CAS hearing in Zurich.
55. The Appellant's however contended that he could in good faith think that he was entitled to send Mr Shik as a team doctor to the AIBA World Junior Championships in Armenia, as the decision rendered on 13 May 2009 by the AIBA Executive Committee Bureau only prevented

KABF's representatives from participating in AIBA events in an "official capacity" (emphasis added).

56. The Panel is unable to accept this argument. It is persuaded that the Appellant consciously tried to circumvent the ban imposed by the AIBA Executive Committee Bureau on representative members of KABF. As President of the KABF, and considering the extensive experience he benefits from among the sport family, the Appellant could not honestly have believed he was entitled to do so. By behaving as he did, the Appellant clearly intended to evade the effects of the above-mentioned decision, independently of its validity. As set out above, this decision was anyway binding.
57. The same observations apply to the arguments the Appellant attempts to raise in order to convince the Panel that he could in good faith believe that Mr Sik, benefiting from a chiropractor experience, could be considered as competent to be appointed as a team doctor. Mr Sik expressly stated by written declaration of 22 May 2009 that he could not fulfill any duties concerning medical operations as a team doctor. This could not be ignored by the Appellant.

D. *The Sanction*

58. The Panel considers that, by behaving as he did, the Appellant has indisputably breached Article 45 of the AIBA Procedural Rules, which reads as follows:  
*"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".*
59. The Appellant filed an ancillary claim according to which, should he be considered as in fault, he should be treated as having breached Article 46 of AIBA Procedural Rules, which reads as follows:  
*"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 least delay, and may also be suspended, excluded from a competition or banned from any boxing activity for 3 months to 6 months".*
60. The Panel observes that the Appellant, by sending Mr Sik as a team doctor to the AIBA World Junior Championships, failed to respect a valid decision rendered on 13 May 2009 by the AIBA Executive Committee Bureau. He consciously sent Mr Sik, of whom he knew he did not have the sufficient qualifications to provide adequate medical assistance, in the capacity of team doctor when he would have been unable to perform that function if any accident had occurred.
61. This misconduct cannot be reduced to a simple failure to comply with a decision taken by a body of AIBA, as foreseen by Article 46, but clearly constitutes an active and serious violation of the AIBA Statutes, and therefore falls into the scope of application of Article 45, which the Panel deems applicable.

62. However, the Panel takes into consideration the fact that the charges related to the purported failure to comply with the Appellant's obligation to cooperate and instigation to non cooperation retained by the Appeal Commission have to be left out of consideration.
63. On the balance, the Panel considers that the fine imposed on the Appellant should be maintained, but the period of suspension should be reduced to the minimum foreseen by Article 45 of the AIBA Procedural Rules, hence to six months.
64. Finally, when the Appellant attempted to circumvent the decision of 13 May 2009 by sending Mr Sik to the AIBA World Junior Championships, and so to evade the ban imposed on KABF officials prevented from taking part in any AIBA events, he was clearly not respecting the above-mentioned decision. In these circumstances the Panel is unable to conclude that the suspension effectively started before the decision of 31 July 2009 rendered by the Disciplinary Commission.
65. The Panel therefore deems appropriate to consider that the sanction effectively started as of 31 July 2009, as the Appellant did not comply with the decision of May 13, 2009 of the AIBA Executive Committee Bureau.
66. To sum up the Panel holds that the decision of the Appeal Commission is upheld in part and that accordingly all other or further arguments and prayers of relief are dismissed.

**The Court of Arbitration for Sport rules:**

1. The appeal of Mr Jae Joon Yoo against the decision issued on 10 September 2009 by the Appeal Commission of the International Amateur Boxing Association (AIBA) is admissible.
  2. The decision issued on 10 September 2009 by the Appeal Commission of the International Amateur Boxing Association (AIBA) is partially upheld and is in part varied.
  3. Mr Jae Joon Yoo shall be suspended from all boxing activities at AIBA, at both international and national levels, for a period of six months, as of 31 July 2009.
- (...)
6. All other or further claims are dismissed.