



**Arbitration CAS 2010/A/2298 Jae Joon Yoo v. International Boxing Association (AIBA), award of 12 July 2011**

Panel: Judge Conny Jörneklint (Sweden), President; Mrs Sophie Dion (France); Mr Luc Argand (Switzerland)

*Boxing*

*Disciplinary sanctions against the president of a member association*

*Principle tempus regit actum*

*Presumption of innocence*

*Standard of proof*

*Limits of the freedom of expression within a sports federation*

1. The applicable substantive rules are identified by reference to the principle “*tempus regit actum*”: in order to determine whether an act constitutes a disciplinary infringement, the panel applies the law in force at the time the act was committed. In other words, new regulations, unless they are more favourable to the athlete (“*lex mitior*” principle), do not apply retroactively to facts that occurred prior to their entry into force, but only for the future.
2. As a general principle, it is the association imposing a sanction which has the burden of proof that a rule-violation has been committed. However, the presumption of innocence is a criminal law concept and is not the one applicable in this instance.
3. The party bearing the burden of proof, in order to satisfy it, does not need to establish “beyond a reasonable doubt” the facts that it alleges to have occurred; it simply needs to convince the panel that an allegation is true on the “balance of probabilities”, i.e. that the occurrence of the circumstances on which it relies is more probable than their non-occurrence.
4. In order to maintain a sound debate within a sport federation it is important that there is latitude to express criticism of the workings of the federation and its leadership. There is an inherent benefit in the freedom of expression which allows such criticism, for organisations cannot be expected to develop in isolation from the opinions and critique of their members. Such opinions and criticism ensure that organisations are self-critical and achieve insight from their own members and wider elements of society, leading to progressive organisational decision-making. It is only in cases where such criticism and commentary go resolutely beyond the bounds of robust debate that disciplinary provisions of sporting codes should be invoked. And even then, the organisation should be slow to invoke such articles, both for the unfairness of the result on individuals concerned, and for the stifling effect that an overly-restrictive interpretation of the provisions would have on the organisation itself.

Mr. Jae Joon Yoo (“the Appellant”) was elected President of the Korean Amateur Boxing Federation (KABF) on 19 January 2009. The KABF is the national sporting federation that regulates amateur boxing in Korea, and is affiliated to the International Boxing Association.

The International Boxing Association (AIBA, “the Respondent”) is an association formed pursuant to articles 60 *et seq.* of the Swiss Civil Code, having its seat in Lausanne, Switzerland. It has among its objects the promotion and regulation of the sport of boxing in all its forms.

Two previous disputes had arisen between the parties and were subject to proceedings before the Court of Arbitration for Sport (CAS). The first concerned a fine and suspension that was imposed on the Appellant by the AIBA Appeal Commission on 10 September 2010, for 18 months from 31 July 2009. This was reduced to a six-month suspension in the case CAS 2009/A/1971.

Before the decision of the CAS was notified to the parties in CAS 2009/A/1971, the Appeal Commission of the Respondent had issued a new decision on 14 December 2009 imposing an additional fine and three month suspension on the Appellant herein for non-compliance with the original suspension. The Respondent appealed that second decision to the CAS, and those second proceedings were subject to a Consent Award, CAS 2010/A/2040.

The settlement agreement endorsed by the CAS in that case provided that a further suspension of the Appellant from 1 February 2010 to 30 June 2010 would be accepted by the Appellant to cover all conduct by him up to 18 June 2010, and that no further disciplinary actions would be taken by the Respondent based on facts that occurred prior to that date.

On 30 June 2010, the President of the Respondent, Mr. Ching-Kuo Wu, wrote to the KABF to require a new election of the KABF President and administration, stating that if plans for such election were not received by 5 July 2010, AIBA would:

*“deeply consider making decisions which your National Federation will be forced to follow. It is AIBA’s mission not to tolerate to leave a boxing family suffering by the non-existence of leadership and development programs for the future for such a long time. AIBA has given its recognition to KABF to be a member of AIBA in order to develop the sport of boxing and protect the best interests and benefits of the boxers. If these duties continue to be tarnished by your National Federation, it is inevitable for AIBA to step in”.*

On 2 July 2010, in a correspondence to all National Federations of the Respondent, the Executive Director of the Respondent, Mr. Ho Kim, confirmed that the 2010 AIBA Congress would be held in Busan, Korea, and outlined the programme of events.

On 7 July 2010, the interim President of the KABF, who was in the role of the Appellant pending the Appellant’s suspension finishing, wrote to the President of the Respondent stating that there were proceedings before the Korean national courts which prevented the election of a new president, and that in any event, the KABF understood that pursuant to a consent award of the CAS, the Appellant could take up his position again from 1 July 2010. The KABF went on to ask the Respondent for a copy of the consent award of the CAS.

On 16 July 2010, the President of the Respondent informed all the Respondent's National Member Federations that in an extraordinary meeting in Marrakech on 9-11 July 2010, the location of the 2010 AIBA Congress had been changed to Almaty, Kazakhstan, and that the 2011 World Championships, which had previously been scheduled to take place in Korea, had been changed to Baku, Azerbaijan.

There was adverse comment in the media following these decisions, including an article in a Korean Sunday newspaper on 16 August 2010 that quoted the Appellant herein as saying the decisions were:

*“a very cruel action made by AIBA. Yoo also showed disappointment toward passive attitude shown by Ministry of Culture and Tourism and Korean Sports Council over AIBA's tyranny.*

*«AIBA's tyranny over KABF continues because KABF's unsupportive action toward president Ching-Kuo Wu who is seeking re-election of president of AIBA in 2010 AIBA Congress. AIBA requested 2 million dollar host-city fee payment from Busan, prior to announcement of cancellation, I advised Busan not to pay the host-city payment because I understood that President Wu was going to use that money for his presidential campaign. Because Busan did not accept AIBA's request, AIBA cancelled Busan's host city rights» said Jae-Jun Yoo”.*

On 24 August 2010, the AIBA Executive Committee Bureau, chaired by the AIBA President, considered the above article, and “decided to put this act of Mr. Yoo for review by the AIBA Disciplinary Commission as the Bureau felt strongly this newspaper article is seriously damaging the image and reputation of both AIBA and the AIBA President. In addition the EC Bureau decided to bring Mr. Yoo and the Korean Newspaper to the Korean Court for both civil and criminal cases”. These decisions were notified to the Chairman of the AIBA Disciplinary Commission.

On 2 September 2010, the Disciplinary Commission of the Respondent notified the Appellant of this procedure, and sought contact details, details of any legal representation and forwarding the submission by the AIBA Executive Director. Written submissions were requested from the Appellant which were to include a factual explanation, a list of witnesses, the conclusions requested, evidence relied upon and whether a hearing before the Disciplinary Commission was sought.

By letter dated 30 September 2010, the Appellant replied, stating that he “did not aid both AIBA and the AIBA President well. I apologise for that again”. He went on to state that he had never met the journalist who wrote the article, that he had only had one telephone conversation with him “a few months before 2010 Congress in Busan was cancelled, but I never mentioned anything about 2 million dollar host-city fee of World Boxing Championships”.

On 21 October 2010 the AIBA Disciplinary Commission imposed a fine of CHF 10,000 and a suspension of three years from all boxing activities on the Appellant.

The Disciplinary Commission stated that:

1. *The Disciplinary Commission (DC) has jurisdiction in this matter pursuant to Articles 26 and 27 of the AIBA Disciplinary Code and Chapter II of the Organizational and Procedural Rules of the Judicial Authorities of AIBA.*

2. *Mr. Yoo does not deny all of the statements attributed to him in the Korean newspaper, article which disparages both AIBA and its President. The DC cannot believe him when he denies mentioning a USD 2 million host-city fee: all the article is about this money and so are most of Mr. Yoo's comments, which are quoted by the journalist. Mr. Yoo does not deny that he accused President Wu of wanting to use the host-city fee "for his presidential campaign". He admits that the article did cause damage to the image and reputation of AIBA and President Wu.*
3. *The DC finds that Mr. Yoo's statements, quoted in the Korean newspaper, adversely impact AIBA's reputation and interests, in violation of Articles 3 and 47 of the AIBA Disciplinary Code: any reader would come to the conclusion that AIBA may be governed by "tyranny", which is certainly not a compliment; this obviously impacts seriously AIBA's reputation. Mr. Yoo's statements also severely undermine the honor of AIBA's President, Dr. Wu, in violation of Article 49 of the AIBA Disciplinary Code: it is quite obvious that these statements present President Wu as a man who would be ready to use association's money for personal purposes, which would by the way constitute a criminal offence. Mr. Yoo offered no evidence to support all his statements, for obvious reasons ...".*

On 29 October 2010, the Appellant appealed this decision to the AIBA Executive Committee functioning as the Appeal Authority. By letter dated the 8 November 2010, the Appellant was told that *"the AIBA Executive Committee, in its meeting held on October 30, 2010 in Almaty, Kazakhstan, has rejected your appeal against the decision of the AIBA Disciplinary Commission dated October 21, 2010. Therefore, such decision is definitive"*. This is the decision against which this Appeal has been lodged.

On 2 September 2010, the AIBA President wrote to the KABF informing the organisation that the AIBA Executive Committee Bureau had taken the decision to provisionally exclude the KABF as an AIBA Member as of that date on the basis of Article 17 of the AIBA Statutes, citing the behaviour of the Appellant and the members of KABF, and stating that the reason that AIBA had decided to relocate the 2010 Congress and the 2011 AIBA World Championships was because the Appellant and members of KABF had intended to damage the events. The Appellant resigned from the Presidency of KABF on 9 September 2010. On 30 September 2010, subsequent to the election of a new president by the KABF, AIBA reinstated KABF as one of its Member.

A Statement of Appeal was filed by the Appellant on 8 December 2010. The Appeal Brief was submitted on 20 December 2010. The Respondent filed its answer on 12 January 2011, and with it filed a request for suspension of the CAS procedure on the basis of ongoing litigation in Korea.

By letter dated 28 January 2011, the parties were informed that the Panel had decided not to hold a hearing in the present matter. The Respondent, which initially requested a hearing in order to hear as a witness the journalist who wrote the article in the Korean Sunday newspaper on 16 August 2010, was afforded an opportunity to file a witness statement from the said journalist. The Panel also decided to allow the parties to file final submissions.

On 28 March 2011, the Appellant filed his final submission and on 8 April 2011, the Respondent filed its final submission.

On 11 and 15 April 2011 respectively, the Appellant and the Respondent signed an Order of Procedure by which they confirmed their agreement that the Panel could decide this matter on the basis of the written submissions, and that their right to be heard had been respected.

## LAW

### Jurisdiction of the CAS

1. Article R47 of the Code provides as follows:

*“An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body”.*

2. Articles 59 and 60 of the AIBA Statutes (effective from 19 February 2008), state as follows:

*“Article 59 Court of Arbitration for Sport (CAS)*

*1 AIBA recognizes the Court of Arbitration for Sport (CAS), with headquarters in Lausanne, Switzerland, as the only authority to resolve appeals, after exhaustion of all other appeals, against decisions made by AIBA’s legal bodies and against decisions made by AIBA’s Confederations, and National Federations.*

*CAS however, will not deal with appeals arising from:*

- a) violations of Technical & Competition Rules;*
- b) suspension of up to three months (with the exception of doping decisions).*

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

*3 Appeals must be filed in accordance with the provisions of the CAS Code of Sports-Related Arbitration. Appeals shall be lodged with CAS within 30 days of notification of the written decision in question. The appeal shall not have a injunctive effect (sic.). The appropriate AIBA body or CAS may order the appeal to have injunctive effect.*

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

*Article 60 Recognition of CAS*

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

3. Article 70 of the Organization and Procedural Rules of the Judicial Authorities of AIBA (effective from 29 January 2010) (“the Procedural Rules”) states as follows:

*“Article 70 Court of Arbitration for Sport (CAS)*

1. *Once all of the internal channels have been exhausted, the decisions of the judicial authorities of AIBA are subject to an appeal to the Court of Arbitration for Sport (CAS), the headquarters of which are in Lausanne (Switzerland), except for the cases dealing with:*
  - *the breach of sporting rules;*
  - *suspension of less than or equal to three months and fines less than or equal to CHF 500.--, except in doping cases;*
  - *decisions against which an appeal to an ordinary court of the country is mandatory in the country in which AIBA, its Confederations or Members are seated.*
2. *The provisions of the CAS Code of Sports-Related Arbitration shall apply to the appeal proceedings. The CAS shall primarily apply the AIBA Statutes, Bylaws and regulations and subsidiarily Swiss law.*

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

4. The CAS has therefore jurisdiction to decide the present dispute between the parties. The jurisdiction of the CAS, which is not disputed by either party, has been confirmed by the signature of the Order of Procedure.
5. As these proceedings involve an appeal against decisions in a dispute relating to a disciplinary infringement, issued by an international federation (AIBA), whose statutes provide for an appeal to the CAS, they are considered and treated as appeal arbitration proceedings in a disciplinary case of international nature, in the meaning and for the purposes of the Code and in particular Article R65 thereof.
6. The statement of appeal was filed within the deadline set in the Statutes. No further recourse against the Decision on appeal is available within the structure of AIBA. Accordingly, the appeal filed by the Appellant is admissible.
7. According to Article R57 of the Code, the Panel has full power to review the facts and the law of the case. Furthermore, the Panel may issue a new decision which replaces the decision challenged, or may annul the decision and refer the case back to the previous instance.

## **Applicable Law**

8. Article R58 of the Code provides as follows:

*“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. In the latter case, the Panel shall give reasons for its decision”.*

9. Article 59.4 of the AIBA Statutes and article 70.2 of the Procedural Rules provide that the appeal shall be decided on the basis of the AIBA Statutes, bye-laws and regulations, and subsidiarily on the basis of Swiss law. The Panel shall decide the dispute accordingly.
10. The Panel identifies the applicable substantive rules by reference to the principle “*tempus regit actum*”: in order to determine whether an act constitutes a disciplinary infringement, the Panel applies the law in force at the time the act was committed. In other words, new regulations, unless they are more favourable to the athlete (“*lex mitior*” principle: advisory opinion CAS 94/128, rendered on 5 January 1995), do not apply retroactively to facts that occurred prior to their entry into force, but only for the future (CAS 2000/A/274, award of 19 October 2000).
11. In light of the above, in order to establish a disciplinary violation and its consequences, the Panel shall apply the AIBA rules in force in 2010, at the time the article complained of was published.

### **The Panel’s Findings on the Merits**

#### *A. Preliminary issue: the Respondent request for suspension of the CAS proceedings*

12. In conjunction with the Response, the Respondent also submitted a Request for Suspension of the proceedings before the CAS on 12 January 2011. It submitted that pursuant to Article 126 of the Swiss Civil Code, as there were criminal and civil proceedings issued by AIBA against the Appellant and the Korean Sunday newspaper before the domestic courts of Korea and these could influence the proceedings before the CAS.
13. The Appellant responded on 20 January 2011, submitting that it opposed the request for suspension on the basis that it was not directly significant to the present case, and that any delay in these proceedings would prejudice the Appellant.
14. By letter dated 28 January 2011, the parties were informed that the Panel had refused the request for suspension.

#### *B. Competence of the AIBA Executive Committee to render the decision of 8 November 2010*

15. According to Article 46 of the AIBA Statutes the judicial bodies of AIBA are the Athletes Eligibility Commission, the Disciplinary Commission and the Appeal Commission. The Panel notes that Article 29 of the AIBA Disciplinary Code states that “*The Executive Committee of AIBA will act as the Appeal Authority in all appeals against any decision of the Disciplinary Commission*”. The Panel also notes, however, that Article 16 of the AIBA Procedural Rules states that:

*“Any member of the authority called upon to rule, including any member of the Executive Committee, the court clerk and the secretarial assistant, must withdraw from the proceedings in the following circumstances:*

- *They have a personal interest in the outcome of the case;*

- *They have previously taken part in the same case in a different role, notably having acted as counsel to one of the parties or having participated in the case as an expert or witness;*
  - *They are married, or related by parenthood to one of the parties, or the counsel or a person that has already participated in the same case as an earlier authority;*
  - *That due to other circumstances, they do not consider themselves able to reach a decision in a totally independent or impartial manner”.*
16. The Panel notes that the AIBA Statutes were changed by Congress on 1 November 2010 and that the changes were effective immediately. The changes mean, inter alia, that according to a new Article 47 the judicial authority of AIBA is the Disciplinary Commission and that the Executive Committee shall act as the authority of appeal under the Disciplinary Code. As this amended rule was not in force at the time of the alleged infringement of the AIBA rules, this cannot be taken into consideration. This means that there was a contradiction between the Statutes and the Procedural Rules at the time of the publishing of the challenged article, in that the function of the Executive Committee was not previously specified as being the appeal authority for the Disciplinary Commission.
17. The Panel considers that the solution chosen by the AIBA in its new rules constituting the Executive Committee as the authority of appeal is very unfortunate. It means, among other things, that the AIBA Executive Committee according to Article 32 of the Disciplinary Code can make a complaint to the Disciplinary Commission in relation to an alleged infringement of that Code, impose a provisional suspension on any person or body who is alleged to have infringed that Code and after the decision of the Disciplinary Commission, examine the result of their own complaint to the Commission as the appeal authority. The Panel holds that this means that the Executive Committee in general cannot be independent in its review of any case in which it has proffered a complaint or imposed a provisional sanction.
18. The Panel holds that in this particular case the Executive Committee acted improperly as it did not show itself to be in compliance with Article 16 of the AIBA Procedural Rules. All members of the Executive Committee are members of the Executive Committee Bureau. The Executive Committee ratifies all decisions of the Executive Committee Bureau under Art. 39 para. 4 of the AIBA Statutes. The Executive Committee therefore ratified the decision to proffer the complaint about the Appellant. It further holds that the Executive Committee acted as the Appeal Authority pursuant to Art. 29 of the AIBA Disciplinary Code, and members of the Executive Committee Bureau were ostensibly party to that decision. The Panel also notes that the President of AIBA, about whom the allegedly improper comments were made by the Appellant, is a member of both the Executive Committee under Art. 33 of the AIBA Statutes, and of the Executive Committee Bureau, under Art. 39 of the AIBA Statutes. Without any indication or notice to the Appellant that certain members of the Executive Committee had withdrawn due to a conflict of interest, the Executive Committee was in conflict with Art. 16 of the AIBA Procedural Rules. The Panel observes that the appealed decision of the Executive Committee was taken on 30 October 2010.
19. The Panel also notes that the applicable version of the AIBA Statutes states at Art. 33 para. 3 that *“In principle, the member of the Executive Committee cannot be a member of a judicial body of AIBA”.*

This is in clear conflict with Art. 2 of the applicable version of the Procedural Rules, which lists the Executive Committee itself as a judicial authority of AIBA. The Panel has observed that this rule in Article 33 of the Statutes has been abrogated in the new version in force from 1 November 2010. This again shows that the solution chosen by AIBA in its new rules is not any guarantee of the integrity of the judicial system within the AIBA.

C. *Violation of the Procedural Rights of the Appellant*

20. Art. 25 of the Procedural Rules of AIBA state as follows:

*“Basic Procedural Rights*

1. *The fundamental rights of procedure are guaranteed to all parties, notably rights to equality without discrimination and the right to be heard (in particular the right to present one’s case, the right to access the case file, the right to provide and present evidence, to obtain a reasoned decision, and the right to legal representation) before a decision is made which affects their rights and obligations.*
2. *If the protection of an overriding public interest makes it necessary, the concerned authority may accept that evidence be shown to it in the absence of the parties. In this case, if the authority intends to use this proof against one or other of the parties, it must indicate the essence of the proof and give the party the opportunity to present counter-proof”.*

21. The Panel also notes that the rights to which the Appellant was entitled included obtaining a reasoned decision under this Article, and it finds that the decision notified to the Appellant by letter dated 8 November 2010 did not contain any reasons.

22. The Panel is in particular concerned that in a judicial process that was considering, *inter alia*, the alleged disparagement of AIBA’s reputation and interests, the procedures laid down by AIBA itself were not apparently followed, and the procedures that were ostensibly adopted lead to the possible contamination of that process and, ultimately, the final decision notified to the Appellant.

D. *Conclusion on procedural irregularities*

23. The Panel considers that such procedural irregularities necessarily result in the decision under appeal being set aside. However, the Panel considers that, as submitted by the Respondent, the CAS appellate arbitration procedure under Article R57 of the CAS Code entails a *trial de novo*. The Panel therefore proceeds to examine the merits of the appeal.

E. *Violation of Appellants presumption of Innocence*

24. Article 8 of the Swiss Civil Code states that *“In the absence of a special provision to the contrary, the burden of proving an alleged fact rests on the party who bases his claim on that fact”*. As a general principle, it is the association imposing a sanction which has the burden of proof that a rule-

violation has been committed. However, the presumption of innocence, as held by the CAS previously (see CAS 2005/C/976 & 986), is a criminal law concept and is not the one applicable in this instance.

25. With respect to the regulation of the Swiss Civil Code it is the Panel's opinion that the obligation to establish the facts that would constitute a violation by the Appellant of the AIBA rules remains with AIBA. In other words, it is the Panel's duty to verify whether AIBA has proved that the Appellant committed infringements of the applicable regulations.
26. As to the standard of proof, it is the Panel's opinion that the party bearing the burden of proof, in order to satisfy it, does not need to establish "beyond a reasonable doubt" the facts that it alleges to have occurred; it simply needs to convince the Panel that an allegation is true on the "balance of probabilities", i.e. that the occurrence of the circumstances on which it relies is more probable than their non-occurrence (see CAS 2008/A/1370 & 1376, para. 127; CAS 2004/A/602, para. 5.15; TAS 2007/A/1411, para. 59).
27. In this respect, it must be noted that disciplinary rules enacted by sports authorities are private law (and not criminal law) rules (see on this point CAS 2005/C/841, para. 78). Consequently, in the Panel's view, any legal issue concerning the satisfaction of such burden of proof should be dealt with in the context of the principles of private law of the country where the interested sports authority is domiciled. In this respect, the Panel notes that in Swiss law (being the law subsidiarily applicable in these proceedings: para. 9 above) Article 8 of the Civil Code, which the Panel has referred to above, establishes the rule on the burden of proof ("*Chaque partie doit, si la loi ne prescrit le contraire, prouver les faits qu'elle allègue pour en déduire son droit*"), and allows the adjudicating body to base its decision also on natural inferences (see CAS 96/159 & 96/166, para. 16 and CAS 2010/A/2209).

F. *Violation of the Consent Award CAS 2010/A/2040*

28. The Panel cannot find that the Respondent has breached the agreement between the parties as reflected in the above Award. The article the subject matter of the disciplinary proceedings in this case centred around the decision of AIBA to move both the 2010 AIBA Congress and the 2011 World Boxing Championships from Busan, Korea, and the alleged comments of the Appellant concerns the decision taken by AIBA on 12 July 2010. The Panel notes that by letter dated 30 September 2010 the Appellant states that he only spoke to the journalist concerned "*a few months before 2010 AIBA Congress in Busan was cancelled*". However, the Panel finds that the Appellant must have had his conversation with the journalist concerned after the decision to move the Congress and the World Championships was taken, as reflected in the contents of the article of 16 August 2010, and therefore finds that the agreement between the parties as reflected in the Consent Award was not violated, as this only stated that all actions prior to 18 June 2010 were not to be the subject of further disciplinary sanction.

G. *Has AIBA established that the Appellant made the quoted statements?*

29. AIBA has referred to the article in the newspaper where the journalist attributes statements to the Appellant. As the article quotes the Appellant making these statements, the Panel considers this to be relatively strong evidence against the Appellant that he did make such statements. The Appellant has denied that he made most of these statements. He has admitted that he could have referred to AIBA's actions as cruel. AIBA has stated to that it is not possible for it to subpoena the journalist who wrote the article complained of as a witness, not even for a written testimony, because AIBA has brought an action before a Korean Court against both the Appellant and the Korean newspaper. The Appellant has not relied on evidence of any kind. The Panel considers that there was a possibility for the Appellant to act in some way to substantiate his denial regarding the quotations attributed to him. He could, for example, have sent out a press release where he rejected what the Korean Sunday newspaper had quoted him as saying, or he could have given interviews in other media in which he corrected the statements attributed to him by that newspaper. As he is a well known sports person in his native country he could easily have had access to the media. The Panel holds that the Appellant had an obligation to engage more fully with the Disciplinary process and before the CAS, in that he could and should have provided more supporting evidence of his position in relation to the comments in the article complained of. The Panel does acknowledge that proving that he did not state the comments as alleged is more difficult than proving that he took some action complained of, but even being mindful of such a distinction, as emphasised by the Appellant, the Panel considers that the Appellant did not adopt adequate measures in light of the article which attributed such statements to him.
30. In the absence of such further supporting evidence to make it less probable that he made those statements the Panel finds that the requisite standard of proof has been reached through the presentation of the article of 16 August 2010 with its quotations, and that the Panel finds that the article reflected the comments made by the Appellant.

H. *Does the statement of the Appellant constitute an infringement of the AIBA rules?*

31. The Panel now turns to consider whether the comments made by the Appellant in the article complained of merit a sanction, and what, if any, that sanction should be.
32. The Panel finds that the comments complained of in the article of 16 August 2010 are essentially two-fold: first, that the actions of AIBA in relocating the World Boxing Championships and the Congress were cruel and tyrannical, and secondly, that the President of AIBA was planning to use a host-city payment of USD 2 million for his re-election campaign: an allegation of corruption.
33. Within the sporting community, the concepts of fair play, ethics in sport, honesty, integrity and sportsmanship are vitally important, and these are reflected in the IOC Charter and the AIBA Statutes and AIBA Disciplinary Code. In order to maintain a sound debate within a sport federation it is important that there is latitude to express criticism of the workings of the

federation and its leadership. Such criticism must be allowed to be expressed, even if it is expressed in forceful terms. There is an inherent benefit in the freedom of expression which allows such criticism, for organisations cannot be expected to develop in isolation from the opinions and critique of their members. Such opinions and criticism ensure that organisations are self-critical and achieve insight from their own members and wider elements of society, leading to progressive organisational decision-making. It is only in cases where such criticism and commentary go resolutely beyond the bounds of robust debate that provisions of sporting codes such as Articles 3 and 47 of the AIBA Disciplinary Code should be invoked. The necessarily subjective elements of provisions for the punishment of behaving “*with respect towards each other*”, respecting “*the principles of honesty, integrity and sportsmanship*” and “Disparagement of AIBA’s reputation and interests” as provided in Articles 3 and 47 mean that the Respondent should be slow to invoke such articles, both for the unfairness of the result on individuals concerned, and for the stifling effect that an overly-restrictive interpretation of the provisions would have on the organisation itself.

34. In the light of the circumstances outlined, the Panel cannot find that the accusation that AIBA was “*very cruel*” and characterising AIBA’s actions in relocating the World Championships and the Congress as “*tyranny*” amounted to breaches of Art. 3 and 47 of the Disciplinary Code. The Panel does not find that these comments go beyond the level of robust commentary or criticism that any international sporting organisation should be able to accept.
35. The Panel does however consider that the statement alleging that the President of AIBA was corrupt, and that he was demanding money from the host-city Busan that he was going to in turn use for his presidential campaign, was indeed beyond the bounds of robust debate or acceptable criticism. Such allegations accusing a leader of a federation of substantial criminality are indeed apt to injure the interests of AIBA and undermine the honour of the President of the Respondent, do not reflect an adequate respect for the principles of honesty, integrity and sportsmanship and should be sanctioned.
36. Article 45 of the AIBA Disciplinary Code provides for a sanction of between CHF 1’000 and CHF 20’000, and the optional additional suspension of between six months and one year. Article 47 provides that if the infraction complained of under that Article is committed by a Confederation or a Member, it will be sanctioned with a fine of between CHF 1’000 and 10’000 or a suspension of between six months and two years. If the action complained of is committed by someone other than a Confederation or a Member, it will be punished by a fine of CHF 500 and 1’000, or a suspension of between six months and two years, or a temporary or definitive ban from any boxing activity.
37. The Panel considered all of the relevant factors and has decided that while this action of accusation was not at the lowest end of the scale, it was not the most serious allegation. The Panel further considered that there was a political context to the comments, which, while not excusing in any way their content, gave a reason as to why these comments were made.

## **Conclusion**

38. The Panel concludes that the proper sanction under Articles 3, 47 and Article 49 in all of the particular circumstances is a one-year suspension of the Appellant from all boxing activities at national and international level from the date of 21 October 2010, the date on which he was suspended by the Disciplinary Commission.
39. The Panel also considers that the fine of CHF 10,000 imposed upon the Appellant by the Disciplinary Commission, and upheld by the Executive Committee should be lifted, as should the order for the Appellant to pay the costs of CHF 2,000 of the Disciplinary Commission.

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

1. The appeal filed by the Appellant, Mr. Jae Joon Yoo on the 8 December 2010 is upheld in part.
2. The decision of the Respondent, the International Boxing Association (AIBA) of 30 October 2010 is hereby set aside.
3. Mr. Jae Joon Yoo is suspended from all boxing activities at national and international level for one year from 21 October 2010.
- (...)
6. All other requests for relief are rejected.