



Arbitration CAS 2015/A/4160 World Anti-Doping Agency (WADA) v. International Weightlifting Federation (IWF) & Davit Gogia, award of 17 March 2016

Panel: Mr Jacques Radoux (Luxembourg), President; Mr Alexander McLin (Switzerland); Mr Mark Hovell (United Kingdom)

Weightlifting

Doping (stanozolol)

Determination of the standard applicable sanction and of the sanction applicable for a second anti-doping rule violation

Absence of reduction of the standard applicable sanction justified by proportionality

1. Where an athlete has not established, on the balance of probabilities, how a non-specified substance entered his body and has not produced any corroborating evidence - in addition to his word - which establishes to the comfortable satisfaction of the hearing body the absence of intent from his side to enhance sport performance, it is not sufficient for him to simply assert a state of fact for the panel to accept as true. Considering that the athlete did not offer substantial assistance in discovering or establishing anti-doping rule violations, did not admit an anti-doping rule violation in the absence of other evidence or promptly admitted an anti-doping rule violation after being confronted with a violation, he cannot obtain a reduction of the period of ineligibility under the IWF Anti-Doping Policy (ADP). Therefore, the standard period of ineligibility to be imposed upon the athlete is of four years, and this sanction must be increased to eight years if it is the athlete's second anti-doping rule violation.
2. Bearing in mind that the athlete was suspended for two years because he admittedly used a prohibited non specified substance 2 years before and was caught using the same prohibited substance five days after the end of his first ban, there are not sufficient grounds to even consider the possibility of reducing the standard sanction on the basis of proportionality, simply because the athlete *"devotes a large part of his life to weightlifting"*. Such an argument is applicable to most – if not to all – international athletes. Furthermore, neither the athlete nor its federation brought forward any personal circumstances of the athlete, which could lead the panel to examine the issue relating to the proportionality of the anti-doping sanctions set out by the IWF ADP.

I. THE PARTIES

1. The World Anti-Doping Agency ("WADA") is a Swiss private-law foundation. Its seat is in Lausanne, Switzerland, and its headquarters are in Montreal, Canada. WADA was created in 1999 to promote, coordinate and monitor the fight against doping in sport in all its forms.

2. The International Weightlifting Federation (“IWF”), or together with Mr. Davit Gogia, the “Respondents”) is the IOC-recognized international sports federation with seat in Lausanne, Switzerland, and headquarters in Budapest, Hungary. The IWF was founded in 1905 to promote weightlifting and serve as the international federation for the sport of weightlifting.
3. Mr. Davit Gogia (the “Athlete” or, together with the IWF the “Respondents”), born on 2 June 1990, is of Georgian nationality. He is a weightlifter and a member of the Georgian Weightlifting national team, which is affiliated to the IWF.

II. FACTUAL BACKGROUND

A. Background facts

4. Below is a summary of the relevant facts and allegations based on the Parties’ written and oral submissions, pleadings, and evidence adduced. References to additional facts and allegations found in the Parties’ written and oral submissions, pleadings, and evidence will be made, where relevant, in connection with the legal analysis that follows. While the Panel has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, it refers in its award only to the submissions and evidence it deems necessary to explain its reasoning.

B. The Athlete’s adverse analytical findings

5. On 31 October 2013, the Athlete was sanctioned with a 24-month period of ineligibility in relation with an adverse analytical finding for stanozolol arising out of an in-competition drug test performed on 13 April 2013, during the European Weightlifting Championships in Tirana, Albania.
6. The Athlete’s suspension following his first anti-doping rule violation ended on 13 April 2015.
7. On 18 April 2015, the Athlete was subject to an in-competition doping control during the 2015 European Weightlifting Championships, in Tbilisi, Georgia (the “2015 European Championships”), which is an IWF event under the terms of the applicable IWF Anti-Doping Policy (“IWF ADP”).
8. The WADA-accredited “*Deutsche Sporthochschule Köln Institute für Biochemie*” in Cologne, Germany, (the “Laboratory”) was instructed to conduct the analysis of the Athlete’s urine samples.
9. In its analytical report dated 6 May 2015, the Laboratory confirmed that it detected in the Athlete’s samples the presence of 3’-hydroxystanozolol glucuronide, which “*is consistent with the administration of the prohibited substance stanozolol*”.

10. It is not disputed that stanozolol is a non-specified substance, included in the category S1.1. a) (“*Exogenous Anabolic Androgenic Steroids*”) on the 2015 WADA Prohibited List. The substance is prohibited both in- and out-of-competition.
11. On 7 May 2015, the IWF informed the Athlete of the adverse analytical finding and provisionally suspended him.
12. In a statement dated 11 May 2015, the national weightlifting federation of Georgia (“GEOWF”) expressed its surprise at the Athlete’s positive result as the latter tested negative in two recent tests taken on 20 February and on 31 March 2015 respectively. The GEOWF claimed that the last test results could only be incorrect and requested the analysis of the B-sample, which was carried out on 28 May 2015 in the presence of the Athlete’s representative. The confirmatory analysis corroborated the Athlete’s positive A test for 3’-hydroxystanozolol glucuronide.

C. The Disciplinary Proceedings before the IWF

13. On 12 May 2015, the IWF summoned the Athlete to appear to a hearing to be held on 10 June 2015, in Wroclaw, Poland.
14. On 10 June 2015, the Athlete, assisted by Mr. George Asanidze, first coach with the GEOWF, was heard by the members of the IWF Hearing Panel, composed of Mr. Pierre Cornu, Mr. Hasan Akkus and Mr. Milan Mihajlovic.
15. In his defence, the Athlete filed the following written statement:

(...) My name is Davit Gogia, and today to my great regret I am an ex-member of Georgian weightlifters’ team. In 2013, I had an honor to participate in European championships in Tirana, and won the bronze medal in 105 kg. category. As well as all, I undertook the doping test and the result came positive. I was young and stupid - despite of the strict instruction from my coaches, I did use Stanozolol during my training period. As 22 year old youth, I acted immature and irresponsible. I realized the significance of this mistake, when I was dismissed from the team, striped of my medal and scholarship. I lost everything. I understand and take the full responsibility for my behavior, which resulted in two year disqualification, but I was also hopeful to get the chance to make things right. Once, out of the National team, I set up a weight room at home, back in my village and started training, because weightlifting is my life. I was determined to recover my bad reputation, day by day realizing that I would never do anything disrespectful to me or the team. I avoided to consume food and even drink water from the public food stores.

After the two year disqualification period was over, I referred to the Georgian Weightlifting Federation with request to allow me participation and registration with the International Weightlifting Federation. I was ready to take doping test (with my past accident I had to do it twice) and as expected both of them, one in 2015 February 20 and second on March 31, were negative. (please find the attachment). I was sure that the results would be clear because I was determined never to take any illegal stuff and never compromise my chances to participate in a World class tournaments. Besides, I knew for sure I would be tested at the championships.

Going back to the championship was equal to the second birth. I participated in European championships in 2015 April, in Tbilisi and won the bronze medal in the snatch, which I brought with me and 9th place in total. I obviously took the doping test and to my absolute astonishment, got it positive. I had nothing to hide so I requested the B-sample analysis. This analysis took place in Koln, on 28th of May, with the presence of our team head doctor Zurab Kakhabrishvili. The results were identical, which makes me wander (sic). You do not need to be a genius to realize, that taking this substance for someone like me would mean not only the end of my sport career, but the end of any meaning of my life.

Dear friends, I suppose everyone will agree, that this is beyond any logic to take the substance and consciously face a lifelong ban. Once again I honestly declare, that I have not taken any illegal substance, and my documents are proving this. I am confused and urging you to help in clarification of this outstanding situation.

Only a week ago I turned 25, and I am not really sure what kind of life is ahead of me but adamant that my life is without a purpose if I can not be a weightlifter. (...).

16. In a decision dated 10 June 2015, the IWF Hearing Panel observed that the Athlete did not contest the accuracy of the testing methods or the test results and positive findings. As regards to the Athlete's right to be heard, the IWF Hearing Panel indicated that the latter was given the opportunity to present his case at the hearing and Mr. George Asanidze was able to make remarks.
17. On the merits, the IWF Hearing Panel found that the IWF had met the burden of establishing that an anti-doping rule violation had occurred. It considered that the Athlete failed to ensure that no prohibited substance entered his body and that he had to take the responsibility for any prohibited substance or its metabolites found to be present in his samples. The IWF Hearing Panel found unconvincing the Athlete's explanations on how stanozolol entered his system. In this regard, it stated the following:

[The Athlete] just hinted that someone could have put stanozolol into a drink, but without further explanation. He mentioned that maybe stanozolol was still present in his body from the time, two years ago, when he had taken some, but this is not consistent with the fact that two doping controls - and one of them where the analysis was made at the Cologne laboratory - were negative in February and March 2015. The athlete explained that he was taking 15 to 20 different supplements, but added that his whole team was taking the same, and the test regarding the other Georgian athlete tested during the European Championships proved negative. Mr. Asanidze explained that his federation was searching for explanations, but did not find any up to now. The Panel does not know when and how the administration of stanozolol to the athlete happened. It probably happened after the two doping controls which the athlete had, undergone on 20 February and 31 March 2015, but before the testing at the IWF European Championships on 18 April 2015 (...).

18. After having considered that a) stanozolol was a prohibited non-specified substance, b) the standard period of ineligibility was four years, c) the Athlete failed to explain how the prohibited substance entered his system or that he had committed no fault or negligence, d) the sanction must be increased to eight years of ineligibility because it was the Athlete's second anti-doping rule violation, the IWF Hearing Panel held the following:

Finally, the Panel must examine if the sanction resulting from the strict application of article 10 IWF ADP would infringe the principle of proportionality, given the circumstances of the specific case. The Panel finds that in the specific case, concerning an athlete who devotes a large part of his life to weightlifting, eight years of suspension would be out of proportion. The Panel considers that five years of ineligibility is proportional and still in line with the IWF ADP.

Therefore, the Panel finds that a five (5) years' period of ineligibility must be imposed on the athlete. The Panel is aware of the negative impact of this sanction on the athlete's life, but notes that this cannot be considered as a mitigating circumstance with regard to the application of article 10 IWF ADP.

19. As a result, on 10 June 2015, the IWF Hearing Panel issued the following decision:

The Panel imposes a sanction of ineligibility of five (5) years from the date of this decision, with that period to be reduced by the time for which the athlete was provisionally suspended.

End date of suspension: 6 May 2020.

The Panel imposes the disqualification of all individual results and the forfeiture of all medals, points and prizes achieved by the athlete in the 2015 European Championships, in Tbilisi/ Georgia, and in any other competition he may have participated in between 18 April 2015 and 7 May 2015.

The GEOWF and/or the athlete will pay the costs of the proceedings, which will be invoiced by the IWF.

20. On 10 July 2015, WADA received the case file relating to the decision issued by the IWF Hearing Panel (the "Appealed Decision").

III. SUMMARY OF THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

21. On 27 July 2015, WADA filed its appeal brief with the Court of Arbitration for Sport ("CAS") in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (the "Code"). Within such statement of appeal, WADA appointed Mr. Alexander McLin, Attorney-at-law in Geneva, Switzerland as arbitrator.
22. On 30 July 2015, WADA requested the CAS Court Office to consider its document filed on 27 July 2015 as a combined statement of appeal and appeal brief in accordance with Article R51 of the Code.
23. On 3 August 2015, the CAS Court Office *inter alia* invited the Respondents to jointly nominate an arbitrator from the list of CAS arbitrators within ten days, failing which the President of the CAS Appeals Arbitration Division, or her Deputy, would proceed with the appointment *in lieu* of the Respondents. Moreover, the CAS Court Office noted that *"the address provided for Mr. Gogia on the Statement of Appeal/ Appeal Brief is incomplete and therefore, the Appellant requests that the National Weightlifting Federation of Georgia (the "National Federation") accepted service of this appeal on behalf of the Athlete. Consequently, at the direction of the Appellant, the IWF is kindly asked to forward the attached letter and enclosures to Mr. Gogia. The National Federation is kindly asked to provide the CAS Court Office with*

proof of service on Mr. Gogia at its earliest convenience. Also, for purposes of future communication, the National Federation is asked to provide the CAS Court Office with Mr. Gogia's address, email, facsimile, etc".

24. On 13 August 2015, the IWF informed the CAS Court Office that in spite of its effort, it had not been able to contact the Athlete in order to appoint a joint arbitrator. Under these circumstances, it assumed that the Athlete had *"no suggestion as for the nomination and that [it] may nominate an arbitrator by [its] own choice"*. As a consequence, the IWF nominated Mr. Mark Hovell as an arbitrator but also specified that it would not object *"if the President of the CAS Appeals Arbitration Division would consider that the case should be submitted to a sole arbitrator"*.
25. On 14 August 2015, the CAS Court Office acknowledged receipt of the IWF's letter dated 13 August 2015 and gave three days to the Athlete to state whether he objected to the nomination of Mr. Mark Hovell on behalf of the Respondents. It drew his attention to the fact that his silence in this respect would be deemed approval of Mr. Mark Hovell's nomination.
26. On 19 August 2015, the IWF filed its answer in accordance with Article R55 of the Code.
27. The Athlete failed to submit his answer within the given time limit.
28. On 21 August 2015, the CAS Court Office invited a) the Parties to state by 1 September 2015 whether their preference was for a hearing to be held and b) the GEOWF to confirm that all correspondence in this appeal had been forwarded to the Athlete and to provide the CAS Court Office with his contact details as soon as possible.
29. On 15 September 2015, the CAS Court Office informed the Parties that the Panel to hear the case had been constituted as follows: Mr. Jacques Radoux, President of the Panel, Mr. Alexander McLin and Mr. Mark Hovell, arbitrators.
30. On 15 October 2015, the Athlete emailed the CAS Court Office for the first time and inquired as to the stage of the present arbitral proceedings. In his email, he declared a) that he was assisted by a *"Georgian Advocate"* and b) that he still did not know how the prohibited substance entered his body. On that occasion, the Athlete also filed a one-page document issued on 6 October 2015 by the GEOWF, whereby the latter apparently confirmed that the Athlete's case was still under review at national level.
31. WADA and IWF agreed to admit the Athlete's email and enclosure of 15 October 2015 in the file and to give him an opportunity to submit an answer.
32. On 4 November 2015, pursuant to Article R55 of the Code and following the agreement of WADA and the IWF, the Panel invited the Athlete to submit his answer by 16 November 2015.
33. On 16 November 2015, the Athlete filed his answer in accordance with Article R55 of the Code.
34. On 25, respectively 27 November 2015, WADA and the IWF confirmed to the CAS Court Office that they preferred for the matter to be decided solely on the basis of the Parties' written

submissions, whereas, on 27 November 2015, the Athlete expressed his preference for a hearing to be held.

35. On 4 December 2015, the Parties were informed that the Panel had decided to hold a hearing which was scheduled for 9 February 2016, following the agreement of the parties.
36. On 11 and 12 January and 2 February 2016, the IWF, WADA and the Athlete respectively signed and returned the Order of Procedure in this appeal.
37. The hearing was held on 9 February 2016 at the CAS premises in Lausanne. The Panel members were present and assisted by Mr. Brent J. Nowicki, Counsel to the CAS, and Mr. Patrick Grandjean, *ad hoc* Clerk.
38. At the outset of the hearing, the Parties confirmed that they did not have any objection as to the composition of the Panel.
39. The following persons attended the hearing:
 - For WADA: Mr. Ross Wenzel and Mr. Nicolas Zbinden (counsel).
 - For the IWF: Mr. Pierre Cornu (counsel).
 - For the Athlete: Mr. Irakli Narmania (counsel).
40. After the Parties' final arguments, the Panel closed the hearing and announced that its award would be rendered in due course. At the conclusion of the hearing, all Parties accepted that their rights before the Panel had been fully respected. The Panel reserved its award, which takes account of all the arguments and material admitted before it including, but not restricted to, those summarised herein.

IV. SUBMISSIONS OF THE PARTIES

A. The Appeal

41. WADA submitted the following requests for relief:

WADA hereby respectfully requests the CAS to rule:

1. *The Appeal of WADA is admissible.*
2. *The decision rendered by the IWF Hearing Panel on 10 June 2015, in the matter of [the Athlete], is set aside.*
3. *[The Athlete] is sanctioned with an eight-year period of ineligibility starting on the date on which the CAS award enters into force. Any period of ineligibility, whether imposed on, or voluntarily accepted by, [the Athlete] before the entry into force of the CAS award, shall be credited against the total period of ineligibility to be served.*

4. *All competitive results obtained by [the Athlete] from 18 April 2015 through the commencement of the applicable period of ineligibility shall be disqualified with all of the resulting consequences including forfeiture of any medals, points and prizes.*
5. *WADA is granted an award for costs.*

42. WADA's submission, in essence, may be summarized as follows:

- The appeal of the WADA is admissible and was filed in a timely manner.
- It is not disputed that stanozolol is a non-specified substance, included in the category S1.1. a) ("*Exogenous Anabolic Androgenic Steroids*") on the 2015 WADA Prohibited List. The substance is prohibited both in- and out-of-competition and was detected in the bodily sample provided by the Athlete. In addition, all the Parties have accepted that no breach of the chain of custody occurred in the present case.
- It is the second time that the Athlete tested positive for stanozolol. Bearing in mind that the Athlete did not establish on a balance of probability the origin of the prohibited substance in his sample, the period of ineligibility should be set at 8 years.
- The IWF Hearing Panel arbitrarily reduced the period of ineligibility to 5 years in light of the principle of proportionality. However, it failed to support its finding with convincing arguments. In the present case, there are no mitigating factors for such a reduction of the sanction. The principle of proportionality must be applied with extreme reserve and is not justified in the Athlete's case.

B. The Answers

a) *The IWF*

43. The IWF submitted the following requests for relief:

In light of the foregoing, [the IWF] respectfully (...) requests the Panel to decide that:

1. *The appeal is dismissed.*
2. *The [IWF] is granted a contribution for expenses, at the discretion of the Panel and to be paid by the Appellant.*

44. In essence, the IWF submitted that a five-year ban is fair and proportionate given the following facts:

- At the hearing before the IWF Hearing Panel, the Athlete was only assisted by his coach and, consequently, did not benefit from an effective legal defence.
- The IWF Hearing Panel "*had some doubts about the way the substance may have entered the Athlete's body and the Athlete's personal responsibility in the matter: the Athlete was tested twice times prior to 18 April 2015, i.e. on 20 February and 31 March 2015. Taking into consideration the substance*

involved, it seemed unlikely that the Athlete would take it knowingly just before the competition where he could be almost sure that he would be tested. In addition to that, it is common knowledge in weightlifting that the IWF uses the best laboratories and due to the analysis of the long term metabolites, this kind of anabolic substance can be detected for months. The Athlete's oral statement left the Panel with the feeling that he probably had no intention to use prohibited substances right before the given competition".

- The standard period of ineligibility of eight years is too harsh and would not be in proportion with the Athlete's fault and guilt.
- An eight-year ban is also disproportionate "given the specificities of the weightlifting sport, in particular the low frequency of the IWF and national calendar events, and the Athlete's age".

b) *The Athlete*

45. The Athlete submitted the following requests for relief:

"Therefore I ask to the court in case of confirmation of my guiltiness the disqualification against me to be legal and proportionally equal for violated Anti-Doping rules".

46. The Athlete's submission, in essence, may be summarized as follows:

- An eight-year period of ineligibility is not acceptable.
- He did not take any prohibited substance during the 2015 European Championships.
- The fact that he tested positive for stanozolol in April 2015 can only be explained by the fact that this substance was still in his body following its administration in April 2013, for which he was sanctioned for the first time.
- Certain medication and substances are effective only one month after their administration. He was subject to doping control tests on 20 February and 31 March 2015 and no adverse analytical finding was reported. The Athlete seemed to suggest that under these circumstances, it would have made no sense for him to take such prohibited substance for the 2015 European Championships, which took place less than a month after his last doping control.
- The GEOWF is currently investigating his case. In this context he underwent a new doping control on 15 October 2015. Should his sample be reported as negative, this would establish that he did not take any prohibited substance during the 2015 European Championships. The Panel will be notified of the results of the investigation carried out by the GEOWF as soon as available.
- The Athlete is ready to take any test needed to prove his innocence.
- The Athlete *"think[s] that the request of eight-year disqualification against [him] issued by [WADA] is not relevant to the World Anti-Doping requirements. And if [his] guiltiness and even negligence will be confirmed, the fact revealed after examination is not a violation of the Anti-Doping rules considered by the Articles 2.7 and 2.8 of the World Anti-Doping Code. [He] did not act pre-intentionally, that give a possibility to reduce the sanction".*

V. APPLICABLE LAW

47. Article R58 of the Code provides the following:

The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.

48. The Athlete tested positive following an in-competition doping control carried out during the 2015 European Championships, which is an IWF event. At that time, he was a member of the Georgian Weightlifting national team, which is affiliated to the IWF.
49. In the present matter, there was no agreement among the Parties regarding the application of any particular law.
50. Considering that the IWF has its registered seat in Lausanne, Switzerland (see Article 1.2.1 of the IWF Constitution), the IWF regulations shall apply primarily and Swiss law shall apply complementarily. It can be observed that, at the hearing, the IWF made several arguments based on Swiss law, which were fully endorsed by the Athlete's representative.
51. In light of the foregoing, the 2015 edition of the IWF ADP is applicable (see Article 20.7 of the IWF ADP) to the Athlete (see chapter entitled "Scope of these Anti-Doping Rules" of the IWF ADP).

VI. JURISDICTION

52. 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.

53. The jurisdiction of CAS, which is not disputed, derives from Article 12.9 of the IWF Constitution, Articles 13 *et seq.* of the IWF ADP Code.
54. It follows that the CAS has jurisdiction to decide on the present dispute.
55. Under Article R57 of the Code, the Panel has the full power to review the facts and the law.

VII. ADMISSIBILITY

56. Article R49 of the Code provides as follows:

In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.

57. The IWF ADP provides so far as material as follows:

13.2.1 Appeals Involving International-Level Athletes, IWF Events or IWF decisions

In cases arising from participation in an IWF Event, in cases involving International-Level Athletes or in cases when a decision is issued by IWF concerning International-Level Athletes or National-Level Athletes, the decision may be appealed exclusively to CAS.

13.2.3 Persons Entitled to Appeal

In cases under Article 13.2.1, the following parties shall have the right to appeal to CAS:

(...)

(f) WADA.

13.7.1 Appeals to CAS

(...)

The above notwithstanding, the filing deadline for an appeal filed by WADA shall be the later of:

Twenty-one days after the last day on which any other party in the case could have appealed; or

Twenty-one days after WADA's receipt of the complete file relating to the decision.

58. The Athlete underwent an in-competition doping control during the 2015 European Championships, which is an IWF event. On 10 June 2015, the IWF Hearing Panel issued the Appealed Decision.

59. It is undisputed that WADA received the complete file on 10 July 2015 and lodged its statement of appeal with the CAS within 21 days, *i.e.* on 27 July 2015.

60. Under these circumstances, the appeal of WADA is admissible as its combined statement of appeal and appeal brief was submitted within the deadline provided by Article 13.7.1 of the IWF ADP. It complies with all the other requirements set forth by Articles 13.2.1 and 13.2.3 of the IWF ADP and by Article R48 of the Code.

VIII. MERITS

61. WADA and the IWF agree that the standard period of ineligibility is 8 years. The Athlete seems to suggest that he bears “no fault or negligence” or “no significant fault or negligence”.
62. WADA is of the view that there are no reasons to reduce the standard period of ineligibility, whereas the Respondents find such a sanction to be disproportionate.
63. Under these circumstances, the Panel will consider if the standard period of ineligibility was correctly calculated by the IWF Hearing Panel and, then, resolve whether there is any motive to reduce this period of ineligibility on the basis of proportionality.

A. What is the standard sanction to be handed down in the present matter?

a) *The Applicable rules*

64. Bearing in mind that the substance detected in the Athlete’s bodily specimen was a non-specified substance, the IWF ADP provide so far as material as follows:

ARTICLE 2 - ANTI-DOPING RULE VIOLATIONS

(...)

Athletes or other Persons shall be responsible for knowing what constitutes an anti-doping rule violation and the substances and methods which have been included on the Prohibited List.

The following constitute anti-doping rule violations:

2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample

2.1.1 It is each Athlete’s personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete’s part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.

(...)

2.2 Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method

2.2.1 It is each Athlete’s personal duty to ensure that no Prohibited Substance enters his or her body and that no Prohibited Method is Used. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete’s part be demonstrated in order to establish an anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method.

(...)

ARTICLE 10 - SANCTIONS ON INDIVIDUALS

10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method

The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6:

10.2.1 The period of Ineligibility shall be four years where:

10.2.1.1 The anti-doping rule violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.

(...)

10.2.3 As used in Articles 10.2 and 10.3, the term “intentional” is meant to identify those Athletes who cheat. The term therefore requires that the Athlete or other Person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not intentional if the substance is a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered intentional if the substance is not a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance.

10.4 Elimination of the Period of Ineligibility where there is No Fault or Negligence

If an Athlete or other Person establishes in an individual case that he or she bears No Fault or Negligence, then the otherwise applicable period of Ineligibility shall be eliminated.

10.5 Reduction of the Period of Ineligibility based on No Significant Fault or Negligence

10.5.1 Reduction of Sanctions for Specified Substances or Contaminated Products for Violations of Article 2.1, 2.2 or 2.6.

(...)

10.5.2 Application of No Significant Fault or Negligence beyond the Application of Article 10.5.1

If an Athlete or other Person establishes in an individual case where Article 10.5.1 is not applicable that he or she bears No Significant Fault or Negligence, then, subject to further reduction or elimination as provided in Article 10.6, the otherwise applicable period of Ineligibility may be reduced based on the Athlete or other Person’s degree of Fault, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this Article may be no less than eight years.

10.6 Elimination, Reduction, or Suspension of Period of Ineligibility or other Consequences for Reasons Other than Fault

10.6.1 Substantial Assistance in Discovering or Establishing Anti-Doping Rule Violations

(...)

10.6.2 Admission of an Anti-Doping Rule Violation in the Absence of Other Evidence

(...)

10.6.3 Prompt Admission of an Anti-Doping Rule Violation after being Confronted with a Violation Sanctionable under Article 10.2.1 or Article 10.3.1

(...)

10.7 Multiple Violations

10.7.1 For an Athlete or other Person's second anti-doping rule violation, the period of Ineligibility shall be the greater of:

(...)

- c) twice the period of Ineligibility otherwise applicable to the second anti-doping rule violation treated as if it were a first violation, without taking into account any reduction under Article 10.6.*

The period of Ineligibility established above may then be further reduced by the application of Article 10.6.

b) In the Present Case

65. The following facts are undisputed:

- The IWF successfully established the presence of stanozolol in the Athlete's urine samples.
- Stanozolol is a non-specified substance, included in the category S1.1.a) ("*Exogenous Anabolic Androgenic Steroids*") on the 2015 WADA Prohibited List. The substance is prohibited both in- and out-of-competition.
- Before he tested positive for stanozolol in May 2015, the Athlete underwent two anti-doping controls, on 20 February and on 31 March 2015 respectively, which were reported as negative.
- The Athlete's offence must be sanctioned as a second anti-doping rule violation.

66. Under the IWF ADP, the burden of adducing exculpatory circumstances is placed on the Athlete. Pursuant to Article 3.1. of the IWF ADP, the standard of proof is the balance of probabilities.

67. In this regard, the Panel has to resolve whether the Athlete committed the offence with "*No Fault or Negligence*" and / or "*No Significant Fault or Negligence*".

68. The definition of "*No Fault or Negligence*" (page 90 of the IWF ADP) is as follows:

The Athlete or other Person's establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system.

69. The definition of “No Significant Fault or Negligence” (page 91 of the IWF ADP) is the following:

The Athlete or other Person’s establishing that his or her Fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or negligence, was not significant in relationship to the anti-doping rule violation. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system.

70. Before the IWF Hearing Panel, as well as in the present arbitral proceedings, the Athlete accepted that he used stanozolol in 2013. He claimed that the resulting 2-year ban served him as a lesson and that, ever since that moment, he “avoided to consume food and even drink water from the public food stores”. He explained that he was aware of the fact that a new positive finding “would mean not only the end of [his] sport career, but the end of any meaning of [his] life”. Under these circumstances, he contended that “everyone will agree, that this is beyond any logic to take the substance and consciously face a lifelong ban. Once again I honestly declare, that I have not taken any illegal substance (...)”. According to the Athlete, the presence of stanozolol could only be explained by the fact that this substance was still in his body following its administration in April 2013.
71. In the present case, the Athlete has not established, on the balance of probabilities, how the non-specified substance entered his body. In particular, he has not produced one shred of evidence to substantiate a) that traces of stanozolol could be detected in his bodily specimen two years after its administration, b) if, ever this should be the case, why he tested negative in the tests taken on 20 February and on 31 March 2015 respectively; *i.e.* before the positive finding resulting from the in-competition test performed on 18 April 2015, during the 2015 European Championships.
72. Likewise, the Athlete has not produced any corroborating evidence - in addition to his word - which establishes to the comfortable satisfaction of the Panel the absence of intent from his side to enhance sport performance. It is not sufficient for him to simply assert a state of fact for the Panel to accept it as true. In the present case, stanozolol was detected in the Athlete’s bodily specimen and it is widely acknowledged that such exogenous anabolic androgenic steroid is likely to exert beneficial effect on physical performance of weightlifters. The Athlete simply asserted that it would be “beyond any logic to take the substance and consciously face a lifelong ban”. Such an affirmation does not suffice to objectively demonstrate that he had no intention to enhance his sporting performance.
73. Finally, considering that the Athlete did not offer substantial assistance in discovering or establishing anti-doping rule violations, did not admit an anti-doping rule violation in the absence of other evidence or promptly admitted an anti-doping rule violation after being confronted with a violation sanctionable under Article 10.2.1 or Article 10.6.3, he cannot obtain a reduction of the period of ineligibility under Article 10.6 of the IWF ADP.
74. Based on the foregoing, the Panel concludes a) that the standard period of ineligibility to be imposed upon the Athlete is of four years (Article 10.2.1 of the IWF ADP), b) that there is no reduction possible based upon the IWF ADP and c) that this sanction must be increased to eight years according to Article 10.7.1 (c) of the IWF ADP as it is his second anti-doping rule violation.

B. Is there any motive to reduce the standard period of ineligibility imposed upon the Athlete on the basis of proportionality?

75. On the one hand, WADA claims that the principle of proportionality is embodied in the IWF ADP. According to WADA, there is no residual capacity of the judging body to apply the principle of proportionality beyond this set of rules, which offers sufficient flexibility to take into account the specific circumstances of each situation. On the other hand, the Respondents argue that the principle of proportionality allows a departure from the standard period of ineligibility as the sanctioning regime cannot be applied mechanically.
76. The IWF ADP are based on the revised 2015 World Anti-Doping Code (the “WADA Code”). They are aimed at enforcing anti-doping principles in a global and harmonized manner and are *“distinct in nature from criminal and civil laws, and are not intended to be subject to or limited by any national requirements and legal standards applicable to criminal or civil proceedings. When reviewing the facts and the law of a given case, all courts, arbitral tribunals and other adjudicating bodies should be aware of and respect the distinct nature of these Anti-Doping Rules implementing the Code and the fact that these rules represent the consensus of a broad spectrum of stakeholders around the world as to what is necessary to protect and ensure fair sport”* (see Preface of the IWF ADP, page 5).
77. The commentary to Article 10 of the IWF ADP explains that *“Harmonization of sanctions has been one of the most discussed and debated areas of anti-doping. Harmonization means that the same rules and criteria are applied to assess the unique facts of each case. Arguments against requiring harmonization of sanctions are based on differences between sports including, for example, the following: in some sports the Athletes are professionals making a sizable income from the sport and in others the Athletes are true amateurs; in those sports where an Athlete’s career is short, a standard period of Ineligibility has a much more significant effect on the Athlete than in sports where careers are traditionally much longer. A primary argument in favor of harmonization is that it is simply not right that two Athletes from the same country who test positive for the same Prohibited Substance under similar circumstances should receive different sanctions only because they participate in different sports. In addition, flexibility in sanctioning has often been viewed as an unacceptable opportunity for some sporting organizations to be more lenient with dopers. The lack of harmonization of sanctions has also frequently been the source of jurisdictional conflicts between International Federations, Member Federations and National Anti-Doping Organizations”*.
78. In the present case and in a general manner, the Respondents have neither proven nor raised any argument explaining for what reason the principle of proportionality could or should be applied in other circumstances than those provided for in the IWF ADP (or the WADA Code) and did not provide any explanation why the standard fixed sanction regime under the IWF ADP cannot be considered as taking sufficiently account of the principle of proportionality and would, therefore, be incompatible with the doctrine of proportionality and other fundamental principles of Swiss law as applied by the Swiss Federal Tribunal.
79. Further, and more specifically, the Respondents also failed to give convincing arguments as to the question which considerations led the IWF Hearing Panel to the finding that the standard period of ineligibility it would have to impose on the Athlete in the present case would be disproportionate. With regards to this aspect, it has to be recalled that the Appealed Decision simply states that *“Finally, the Panel must examine if the sanction resulting from the strict application of*

article 10 IWF ADP would infringe the principle of proportionality, given the circumstances of the specific case. The Panel finds that in the specific case, concerning an athlete who devotes a large part of his life to weightlifting, eight years of suspension would be out of proportion. The Panel considers that five years of ineligibility is proportional and still in line with the IWF ADP”.

80. Bearing in mind that the Athlete was suspended for two years because he admittedly used stanozolol in 2013 and was caught using the same prohibited substance five days after the end of his first ban, the Panel finds that there are not sufficient grounds to even consider the possibility of reducing the standard sanction on the basis of proportionality, simply because the Athlete “*devotes a large part of his life to weightlifting*”. Such an argument is applicable to most – if not to all – international athletes.
81. During the present arbitral proceedings, the IWF conceded that its Hearing Panel could have elaborated in more detail why it decided to reduce the standard sanction. In its answer to the appeal brief and in response to a question from the Panel during the hearing, the IWF brought forward additional elements that allegedly led its Hearing Panel to apply the principle of proportionality in order to reduce the standard sanction. However, in the view of the Panel, these new elements not only were not supported by any evidence but also appeared to be highly subjective and/or speculative. Indeed, without adducing any evidence, the IWF limited itself to explaining that its Hearing Panel had taken into account the fact that a) the Athlete was not assisted by a competent legal representative during the proceedings, b) it had some doubts “*about the way the substance may have entered the Athlete’s body*”, c) “*it seemed unlikely that the Athlete would take [stanozolol] knowingly just before the competition where he could be almost sure that he would be tested*”, d) “[*the*] Athlete’s oral statement left the Panel with the feeling that he probably had no intention to use prohibited substances right before the given competition”, e) an eight-year ban is also disproportionate “*given the specificities of the weightlifting sport, in particular the low frequency of the IWF and national calendar events, and the Athlete’s age*”.
82. In light of the foregoing considerations, none of the Respondents brought forward any personal circumstances of the Athlete, which could lead the Panel to examine the issue relating to the proportionality of the anti-doping sanctions set out by the IWF ADP. Therefore, the related submissions of the Respondents can be dismissed without further consideration.

C. Conclusion

83. For the reasons exposed above, the Panel considers that the Respondents have not brought forward any valid argument or evidence likely to displace the presumption that, in the present case, an 8-year period of ineligibility for the Athlete’s second anti-doping rule violation is appropriate.
84. Article 10.10 of the IWF ADP provides that the period of ineligibility should start on the date of the final hearing providing for ineligibility, in this case the hearing before the Panel, *i.e.* 9 February 2016.

85. Under Article 10.10.3.1 of the IWF ADP, *“If a Provisional Suspension is imposed and respected by the Athlete or other Person, then the Athlete or other Person shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed. If a period of Ineligibility is served pursuant to a decision that is subsequently appealed, then the Athlete or other Person shall receive a credit for such period of Ineligibility served against any period of Ineligibility which may ultimately be imposed on appeal”*.
86. In the present case, the Athlete was provisionally suspended as of 7 May 2015. In light of the foregoing provision, that shall be the date or the beginning of the period of ineligibility.
87. As regards the disqualification of results and the forfeiture of all medals, points and prizes, the Appealed Decision is consistent with Article 10.1 of the IWF ADP and shall be upheld.
88. It follows that the appeal must be allowed and that the Appealed Decision is partially reformed in the sense that the Athlete is declared ineligible for a period of eight years running from 7 May 2015 until 6 May 2023, with credit given for any period of ineligibility already served by the Athlete.
89. This conclusion makes it unnecessary for the Panel to consider the other arguments and requests submitted by the Parties. Accordingly, all other prayers for reliefs are rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed on 27 July 2015 by the World Anti-Doping Agency against the decision of the IWF Hearing Panel dated 10 June 2015 is partially upheld.
2. The paragraphs 1 and 2 of the decision of the IWF Hearing Panel, dated 10 June 2015, are amended as follows:

Mr. Davit Gogia is suspended for a period of eight years running from 7 May 2015, with credit given for any period of ineligibility already served.

The remainder of the IWF decision of 10 June 2015 is confirmed.

3. (...)
4. (...)
5. All other motions or prayers for relief are dismissed