



**Arbitration CAS 2015/A/4319 Bulgarian Weightlifting Federation (BWF) v. International Weightlifting Federation (IWF), award of 15 February 2016 (operative part of 29 January 2016)**

Panel: Prof. Martin Schimke (Germany), Sole Arbitrator

*Weightlifting*

*Disciplinary proceedings by an International Federation against a Member Federation*

*Unlawfulness of sanctions imposed by bodies lacking a legal basis to impose sanctions*

*Principle of ne bis in idem*

*Additional sanctions*

1. If the rules of an International Federation foresee that its Executive Board may sanction a Member Federation for failure to comply with the regulations of the International Federation, in the absence of any delegation by the Executive Board to impose sanctions, no other body than the Executive Board may impose the sanctions foreseen on the Member Federation. If challenged, any sanctions imposed by any other body have to be set aside.
2. For the principle of *ne bis in idem* to apply there are three specific requirements to be fulfilled: an identity of the object, of the parties and of the facts.
3. In circumstances where an athlete is suspended from competing following an anti-doping violation committed by him and later on, the same athlete is prevented from taking part in the ensuing Olympic Games due to the fact that he is affiliated to a National Federation that has been banned from entering athletes for the Olympic Games because that National Federation has not been able to effectively fight doping within its organisation, no additional sanction is imposed on the respective athlete; this is because the athlete's ban is not a direct consequence of the fact that he, individually, had committed an anti-doping rule violation. Put differently, the fact that the individual athlete is prevented from participating in the Olympic Games is a mere "collateral damage" that is justified by the overarching objectives to protect the values of sport and to ensure that general education is provided by National Federations to its affiliated members.

## I. PARTIES

1. The Bulgarian Weightlifting Federation (hereinafter: the “Appellant” or the “BWF”) is the national governing body of weightlifting in the Republic of Bulgaria. The BWF is affiliated to the International Weightlifting Federation.
2. The International Weightlifting Federation (hereinafter: the “Respondent” or the “IWF”) is the international governing body of weightlifting. The IWF has its registered seat in Lausanne, Switzerland, but its secretariat is based in Budapest, Hungary. The IWF exercises regulatory, supervisory and disciplinary functions over confederations, national associations and athletes worldwide.

## II. FACTUAL BACKGROUND

### A. Background Facts

3. Below is a summary of the main relevant facts, as established on the basis of the parties’ written submissions, the evidence examined in the course of the present appeal arbitration proceedings and during the hearing. This background is set out for the sole purpose of providing a synopsis of the matter in dispute.
4. On 2 March 2015, 11 athletes of the BWF supplied bodily samples during an out-of-competition doping control.
5. On 19 March 2015, the 11 BWF athletes were provisionally suspended of any weightlifting activity because their bodily samples contained “3’-hydroxystanozolol glucuronide”.
6. On 10 June 2015, the IWF Hearing Panel rendered its decision in respect of the 11 BWF athletes, imposing a period of ineligibility of 18 months on 4 BWF athletes because for them the violation constituted a second anti-doping rule violation, and a period of ineligibility of 9 months on the other 7 BWF athletes. In its reasoning, the IWF Hearing Panel, *inter alia*, determined the following:

*“[t]he Panel finds that the athletes bear no significant fault or negligence, on a balance of probabilities. Trybest had been used for several years by the Bulgarian team, without problems with anti-doping testing. The athletes and their entourage had reasons to believe that the supplement was safe. But taking 15 to 20 different supplements was a risk factor they should have considered. Also, they did not mention Trybest on the Doping Control Form, which they should have”.*
7. On 6 October 2015, following an appeal filed by the 11 BWF athletes, the Court of Arbitration for Sport issued its reasoned arbitral award, confirming the decision rendered by the IWF Hearing Panel on 10 June 2015.
8. On 9 November 2015, Dr Tamás Aján, President of the IWF and IOC Honorary Member, sent a letter (hereinafter: the “Appealed Decision”) to the BWF, informing it as follows:

*“Since all the respective deadlines have expired regarding the final CAS decision sent to the respective Parties on the 6<sup>th</sup> October 2015 I am compelled to inform you as follows.*

*Following the 11 Anti-Doping Rule Violations of [...] the following applies to the Weightlifting Federation of Bulgaria.*

**IWF ADP 12.3.1:**

*12.3.1 Three or more violations of these Anti-Doping rules (other than the violations involving Articles 2.4 and 10.3) are committed by Athletes or other Persons affiliated with a National Federation **within a Calendar year** in testing conducted by IWF or Anti-Doping Organizations other than the National Federation or its National Anti-Doping Organization.*

*In such event the IF Executive Board will:*

- (a) Ban all or any team officials from that Member Federation for participation in any IWF activities for a period of up to two years and*
- (b) Fine the National Federation as follows:*

**7) 9 or more violations 500,000 USD; In default of payment of the fine the Member Federation will be suspended for 4 years from the date of default.**

- a) All the fines stated under 12.3.1. shall be paid within 6 months from the receipt of the IWF decision.*
- b) Until the fine is paid in full the National Federation concerned is suspended from all weightlifting activities within the IWF including participation in any IWF event.**

*Further to the above in line with the Special Anti-Doping Rules your Federation/National Olympic Committee (“NOC”) shall not be permitted to enter competitors for the next ensuing Youth Olympic/Olympic Games. If such MF is permitted to compete in any Olympic Qualifying event prior to the next ensuing Youth Olympic/Olympic Games, the MF shall not secure any Olympic qualifying points in such event.*

*The Total amount of **500,000 USD** shall be paid to the following IWF account in 30 days from the receipt of this letter:*

*[...]*

*Within this 30 days your Athletes are eligible to compete on IWF Events.*

*This letter does not include the financial obligations rendered by the CAS award as a contribution toward the costs the IWF has sustained in connection with the CAS arbitration proceedings”.*

9. On 19 November 2015, the IWF Executive Board convened for a meeting in Houston, United States of America. According to a summary of such meeting published on the website of the IWF, *inter alia*, the following was reported:

*“The Executive Board received the detailed report from the IWF Anti-Doping Commission regarding the 2015 statistics and cases as well as further issues.*

*Due to the special Anti-Doping Policy for Rio 2016, the EB confirmed that Bulgaria is not eligible to participate in the upcoming Olympic Games and decided to withdraw 1 quota from Romania due to the multiple positive cases in the qualification period”.*

10. The official Minutes of the IWF Executive Board Meeting, that were first provided by the IWF together with its Answer in these appeal arbitration proceedings before CAS, determine the following in this respect:

*“6.5.1 Bulgaria: 9+ violations in 1 Calendar year (Olympic Qualification) – relevant Rules quoted that MF can be suspended up to 4 years. Plus and must: such MF/NOC is not allowed to enter competitors to the next ensuing Olympic Games. In case such MF participates in a competition, no Olympic qualifying points to be scored by that MF.*

*As it had previously been agreed by the EB, the fine payment was automatically sent to the Bulgarian Federation at the beginning of November after all the relevant appeal deadlines had expired, along with the Rio 2016 ban as quoted from the Special Anti-Doping Policy for the Olympic Games of Rio 2016. Bulgaria was allowed to compete in the 2015 IWF World Championships (the payment deadline has not yet expired) but in line with the Special Anti-Doping Rules it shall not secure any qualification points.*

*[...]*

*The EB approved the aforementioned decisions.*

*6.5.1 – Unanimously reconfirmed”.*

### **III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

11. On 30 November 2015, the BWF lodged a Statement of Appeal with the Court of Arbitration for Sport (hereinafter: the “CAS”) in accordance with Article R48 of the CAS Code of Sports-related Arbitration (hereinafter: the “CAS Code”). In this submission, the BWF applied for a stay of the Appealed Decision, that the proceedings be conducted in an expedited manner and for the arbitration to be submitted to a sole arbitrator. The BWF challenged the Appealed Decision, submitting the following requests for relief:

*“1. To set aside the decision of the IWF for imposition of the fine on the BWF at the amount of USD 500,000 communicated on 9 November 2015 by the IWF President including by declaring the said decision null and void or unlawful;*

2. *Alternatively to point 1 and only if the request in point 1 is not granted, to reduce the amount of the fine for being excessive;*
  3. *To set aside the decision of the IWF for imposition of the ban on the BWF for entering competitors for the next ensuing Youth Olympic/Olympic Games including by declaring the said decision null and void or unlawful;*
  4. *To order the stay of the execution of the appealed decision;*
  5. *Alternatively to point 4 and only if the requested conservatory measure in point 4 is not granted, to proceed in an expedited manner and render the decision as soon as possible, which ideally would mean for the Appellant before the end of January 2016 at the latest;*
  6. *To pronounce the award without costs on the ground of R65 of the CAS Code;*
  7. *To order contribution to the legal and other expenses of the Appellant related to the present procedure”.*
12. On 3 December 2015, the CAS Court Office enclosed a public preliminary decision rendered by CAS where the question of the stay of the execution of a monetary award was decided upon and informed the BWF that, according to CAS jurisprudence, a decision of a financial nature issued by a private Swiss association is not enforceable while under appeal. The BWF was invited to inform the CAS Court Office whether it wished to maintain or withdraw its application for a stay in respect of the fine.
  13. On 4 December 2015, the BWF withdrew its request for a stay in respect of the fine.
  14. On 7 December 2015, the IWF accepted the BWF’s request for the arbitration to be submitted to a sole arbitrator.
  15. On 10 December 2015, pursuant to Article R51 of the CAS Code, the BWF requested CAS to consider the Statement of Appeal as its Appeal Brief and nominated Prof. Dr. Martin Schimke, Attorney-at-Law in Düsseldorf, Germany, as sole arbitrator.
  16. On 14 December 2015, the IWF informed the CAS Court Office of its agreement to the appointment of Prof. Dr. Schimke as sole arbitrator and that the parties had agreed on the following procedural calendar:  
  
*“31 December 2015: filing of the Answer by the Respondent  
5 January 2016: the Appellant informs CAS whether a hearing is requested or not  
20/22/25 January 2016: possible hearing dates  
29 January 2016: CAS issues the operative part of the award  
13 February 2016: notification of the reasoned decision”.*

Furthermore, the parties agreed that the IWF would publish the following information on its website and that the BWF, in light of this publication, accepted to withdraw its application for a stay of the challenged decision:

*“As announced by the Court of Arbitration for Sport (CAS) in a media release dated 8 December 2015, the Bulgarian Weightlifting Federation has filed an appeal at CAS against a decision issued by the International Weightlifting Federation on 9 November 2015 in which it was fined USD 500,000 and banned from entering the next youth Olympic and Olympic Games after 11 of its athletes were found to have committed anti-doping rule violations [...]. The Parties have agreed on a procedural calendar in order to have this arbitration adjudicated in an expedited manner. The CAS is expected to issue its decision by end of January 2016. Until then, the qualifications for Rio 2016 Olympic Games will not become final”.*

17. On 16 December 2015, the BWF confirmed its agreement to the procedural calendar presented by the IWF and withdrew its request for a stay of the Appealed Decision.
18. On 21 December 2015, in accordance with Article R54 of the CAS Code, and on behalf of the President of the CAS Appeal Arbitration Division, the CAS Court Office informed the parties that the arbitral tribunal appointed to decide the present matter was constituted as follows:
  - Prof. Dr. Martin Schimke, Attorney-at-Law in Düsseldorf, Germany, as Sole Arbitrator.
19. On 31 December 2015, in accordance with the procedural calendar agreed upon by the parties and Article R55 of the CAS Code, the IWF filed its Answer, requesting CAS to decide as follows:
  - I. The Appeal by the Bulgarian Weightlifting Federation is dismissed.*
  - II. The International Weightlifting Federation is granted an award for costs”.*
20. On 5 January 2016, in accordance with the procedural calendar agreed upon by the parties, the BWF informed the CAS Court Office to consider it necessary for a hearing to be held.
21. On 13 January 2016, both parties returned duly signed copies of the Order of Procedure to the CAS Court Office.
22. On 25 January 2016, a hearing was held in Lausanne, Switzerland. At the outset of the hearing both parties confirmed that they had no objection to the constitution and composition of the arbitral tribunal.
23. In addition to the Sole Arbitrator, Mr Antonio De Quesada, Counsel to the CAS, and Mr Dennis Koolaard, *Ad hoc Clerk*, the following persons attended the hearing:

For the BWF:

- Mr Nedelcho Kolev, President of the BWF;

- Dr Boris Kolev, Counsel;
- Ms Elena Todorovska, Counsel;
- Ms Michaela Mihaylova, Interpreter

For the IWF:

- Dr Magdolina Trombitàs, IWF Legal Counsel;
  - Mr Yvan Henzer, Counsel.
24. No witnesses or experts were heard. The parties had ample opportunity to present their case, submit their arguments and answer the questions posed by the Sole Arbitrator.
  25. Before the hearing was concluded, both parties expressly stated that they did not have any objection with the procedure adopted and that their right to be heard had been respected.
  26. The Sole Arbitrator confirms that he carefully heard and took into account in his decision all of the submissions, evidence, and arguments presented by the parties during the hearing, even if they have not been specifically summarised or referred to in the present arbitral award.
  27. On 29 January 2016, in accordance with the procedural calendar agreed upon by the parties, the operative part of the award was communicated to the parties by facsimile.

#### **IV. SUBMISSIONS OF THE PARTIES**

28. The BWF's submissions, in essence, may be summarised as follows:
  - The BWF maintains that the Appealed Decision is void because it was not rendered by the IWF Executive Board, while article 12.3.1 of the IWF Anti-Doping Policy (hereinafter: the "ADP") determines that the IWF Executive Board is competent to impose a fine. Finally, the BWF argues that the IWF may elect to take additional disciplinary measures against member federations, such as the imposition of fines. It is not clear what the IWF Executive Board would have decided in case the matter was submitted to it.
  - The BWF argues that the financial sanction imposed on it infringes its right to develop an economic activity. This right derives from article 28 of the Swiss Civil Code and applies to the BWF as it is a non-for-profit legal entity in the context of the Bulgarian Law on Physical Education and Sport (hereinafter: the "LPES"). The BWF maintains that it received an approximate amount of USD 600,000 as financing on the basis of contracts signed with the Bulgarian Ministry of Sport. This financing was allegedly suspended and finally terminated because of the doping convictions of the BWF athletes. The BWF submits that the fine will inevitably lead to the end of the BWF as a sports federation. In the context of its right to develop an economic activity, the BWF

purports that the strict liability principle that is applicable if an athlete is tested positive does not apply in case of a case of imposition of a sanction on a sporting body for doping violations of its affiliated athletes. No overriding interest has ever been admitted by Swiss courts justifying the introduction of strict liability for sports federations with regard to doping offences of their affiliated athletes. Although the BWF admits that it formally gave its consent to the IWF for infringing such rights, it argues that the IWF allegedly enjoyed a dominant position, which allowed it to set the fine at an extremely high level. As a result, the BWF submits that the consent should be considered as invalid.

- The BWF refers to CAS jurisprudence in submitting that a fine imposed by an association shall be considered equivalent to a penalty clause governed by article 160-163 of the Swiss Code of Obligations, reason for which a court may reduce the fine if it considers the fine to be excessive. The severity of a penalty must be proportionate to the offence committed. The BWF argues that the principle of proportionality has not been built into the system of the IWF ADP and must therefore be applied by CAS in respect of the fine imposed on the BWF. The system of sanctions with fixed amounts of fines, dependent on the number of violations, excludes the possibility of taking into account the individual circumstances of the cases as well as the degree of fault of the officials of the federation for the purpose of determination of the fine. In this context, the BWF remarks that even if an athlete is able to establish no fault or negligence and the sanctions on the athlete are eliminated, still an anti-doping rule violation is committed and can be counted in the context of article 12 of the IWF ADP.
- The BWF maintains that, in assessing the proportionality of the fine, it must be taken into account that the 11 athletes who tested positive for “*3-hydroxystanozolol glucuronide*” on 2 March 2015 in out-of-competition testing, received significantly reduced sanctions in comparison with the maximum applicable sanctions for such offences. The reason for the reduced sanctions was that it was proven in the relevant proceedings that the adverse analytical findings were due to a contaminated food supplement called “*Trybest*”. Seven of the athletes were sanctioned with 9 months of ineligibility and the rest four athletes received 18 months of ineligibility only because the offence was second for them. In addition, no disciplinary proceedings were imposed against BWF officials. The BWF also argues that although the IWF was compelled to ban BWF team officials, it did not do so. This can only be explained in the sense that the IWF applied the principle of proportionality in this respect. The BWF maintains that this principle should also have been applied in respect of the fine. As to the excessiveness of the fine, the BWF also contends that the fine of USD 500,000 is 10 times higher than the maximum amount of fine that can be imposed in wrestling, 25 times higher than in judo and 50 times higher than in boxing. The fine is also excessive because it is very close to the financing received by the BWF and the Bulgarian Ministry of Sport, which was roughly USD 600,000. Also, the BWF reiterates its argument in respect of the abuse of a dominant position of the IWF in adopting such fine in its regulations. The BWF also refers to the circumstances under which the maximum fine of USD 500,000 was previously imposed on the Azerbaijan Weightlifting Federation and the Kazakh

Weightlifting Federation by the IWF, arguing that such cases were much more severe as the present since two year periods of ineligibility were imposed on all the athletes in such cases. As such, the BWF submits that the fine should be reduced to USD 100,000 as a maximum.

- As to the ban imposed on BWF athletes to compete in the next ensuing Olympic Games, the BWF maintains that such ban is null and void because the IWF lacked competence to impose such sanction. The BWF argues that the eligibility of athletes to participate in IWF Calendar Events is a matter concerning athletes and not the sporting bodies. Such ban is not provided in the IWF ADP, but in the Qualification System for Weightlifting for the Games of the XXXI Olympiad – Rio 2016 (hereinafter: the “Qualification System”). This is a disguised sanction on the athletes of such federation and not a sanction on a sporting body. With respect to the 7 athletes whose ineligibility periods will have expired before the Olympic Games, the ban contradicts the principle of *ne bis in idem*. This rule is similar to the rule that was originally adopted in Rule 45 of the Olympic Charter, but that was abrogated following the CAS Award in CAS 2011/O/2422. The effect of refusing an athlete entry to the Games is imposing a further sanction on him for the same offence. The so-called eligibility rule in Part C.1 of the Qualification System therefore in fact constitutes a sanction. No such rule is presumably implemented by any other sport to be presented at the Olympic Games in Rio de Janeiro.
- Furthermore, the BWF argues that the IWF Executive Board committed a violation of the principle of equal treatment. The Azerbaijan Weightlifting Federation was fined with USD 500,000, but despite the fact that the Qualification System was already effective, it was not banned from entering competitors at the Olympic Games.
- Finally, the BWF argues that point 1 of the Medical and Anti-doping requirements of the Qualification System regarding the ban is inapplicable, because such ban is to be applied only “*in addition*” to the potential suspension of the member federation for a period of up to 4 years. However, the BWF’s membership has not been suspended because, instead, a fine was imposed. Combining the fine with the ban is also lacking common sense because exactly the possibility for participating at the Olympic Games can serve as a powerful incentive for payment of the fine.

29. The IWF’s submissions, in essence, may be summarised as follows:

- The IWF maintains that the failure of the BWF to manage the fight against doping in Bulgaria is not only alarming, but also damages significantly the image of weightlifting worldwide. In this context, the IWF took its responsibility and imposed proper measures. The 11 Bulgarian athletes have been sanctioned by the IWF Hearing Panel. Regarding the BWF, the IWF applied its rules strictly: pursuant to article 12.3.1 of the IWF ADP, a fine of USD 500,000 has been imposed on the BWF. Moreover, the IWF Executive Board banned the BWF from entering competitors to the upcoming Olympic

Games in Rio 2016 in application of the Qualification System. In this respect, the IWF clarifies that the ban does not concern the upcoming 2018 Youth Olympic Games.

- As to the fine, the IWF argues that the amount of the fine depends on one unique factor: the number of violations committed by the member federation. This criterion is the only relevant factor to determine the quantum of the fine. This rule leaves no discretion to the IWF; a fine is automatically imposed on the member federation when 3 or more anti-doping rule violations are committed.
- As to the BWF's argument that the IWF President was not competent to render the Appealed Decision, the IWF submits that nothing prevents the IWF President from representing the IWF Executive Board towards member federations. It is common practice for the IWF President to communicate decisions of the IWF Executive Board with respect to article 12.3.1 of the IWF ADP to member federations. Given the total absence of leeway in determining the sanction given to the deciding body, it made sense for the IWF Executive Board to delegate its competence to its president; had the decision been made by the IWF Executive Board or the IWF President, the outcome would have been strictly identical. In this context, the IWF Executive Board confirmed the terms of the Appealed Decision during its meeting in Houston, United States of America, on 17-18 November 2015.
- The IWF also maintains that the Appealed Decision complies with the personality rights of the BWF. In this respect, the IWF maintains that, by its very nature, a sanction always affects the personality rights of the sanctioned party. Within the field of the fight against doping, it is accepted that sanctions imposed further to anti-doping rule violations are justified by an overriding interest in the protection of the athletes' fundamental right to participate in doping free sport and to promote health, fairness and equality for athletes worldwide. Article 10.10 of the World Anti-Doping Code (hereinafter: the "WADA Code") especially allows anti-doping organisations to provide for financial sanctions, in their own rules, on account of anti-doping rule violations. In addition, the IWF argues that the BWF clearly accepted and undertook to comply with the system of sanctions provided for under article 12.3.1 of the IWF ADP.
- As to the abuse of a dominant position, the IWF maintains that one cannot consider in the same way a professional sportsman, who does not have a choice but to accept the rules of its federation to participate in the competitions and carry out his professional career, and a legal entity such as a member federation. At no time did the BWF use its membership rights to challenge the system of sanctions specified in the IWF ADP. The BWF cannot on the one hand make use of its rights as a member of the IWF (right to vote during Congresses; right to enter competitors in IWF competitions, etc.) while on the other hand refuse to abide by its duties, including serving sanctions for violations of the federation's rules. To claim the contrary would manifestly breach the principle of *venire contra factum proprium*.

- The IWF also contends that the fine imposed was not disproportionate. In this respect, the IWF refers to CAS jurisprudence in arguing that a sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rules can be reviewed only when the sanction is evidently and grossly disproportionate to the offence. On this basis, the IWF purports that proportionality is not relevant to assess whether or not the amount of the fine imposed is justified as the IWF did not exercise any discretion but only applied the rules. It is true that the range of sanctions foreseen in the IWF ADP does not allow taking into account the individual circumstances of the case. The system however reflects the principle of proportionality: when a national federation adopts efficient measures in order to fight against doping, there will evidently be no sanctions under article 12.3.1 of the IWF ADP. In the case at hand, 11 athletes of the Bulgarian national team have been found guilty of doping. In the best case, the BWF has been very negligent by not educating its athletes. The IWF considers the BWF's references to financial sanctions imposed by other international sport federations irrelevant as each sport federation is free to adopt its own rules. The income generated from the Bulgarian government is irrelevant as it does not show whether the BWF perceived other resources.
- As to the ban imposed on the BWF from entering BWF athletes to participate in the Olympic Games in Rio de Janeiro, the IWF maintains that the IWF ADP is approved by the World Anti-Doping Agency (hereinafter: "WADA") and that the Qualification System was approved by the International Olympic Committee (hereinafter: the "IOC"). The ineligibility for the next Olympic Games relies on a clear legal basis: Article 12.3.1.c of the IWF ADP, which specifies that a member federation can be suspended from participation in any IWF activities for a period of up to 4 years in case of 9 or more anti-doping rule violations. The exclusion of the BWF fully complies with this provision. Contrary to the BWF's view, this provision is an eligibility rule and not a sanction. It is not the behaviour of Bulgarian athletes which is taken into consideration to decide whether or not they are eligible to participate in the next Olympic Games. Bulgarian athletes will not be eligible for the next Olympic Games because they belong to a federation which is unable to fight against doping properly.
- The IWF argues that the principle of *ne bis in idem* is only applicable if the system of qualification would be construed as a sanction, which is disputed. A disciplinary sanction is in any event not a sanction in the sense of criminal law and the requirements are not complied with. The purpose of the rule is not to sanction but to protect Olympism and the values of sport and provide general education. In contrast, a period of ineligibility imposed upon an athlete aims at punishing such athletes for a specific infringement such as an anti-doping rule violation. The aims prosecuted are different and the Qualification System does not constitute therefore a breach of the *ne bis in idem* principle. The IWF refers to jurisprudence of the Swiss Federal Tribunal in arguing that a preventive measure aiming at ensuring the proper organisation and conduct of the sports competition is distinct from a doping suspension, which has a repressive nature.

## V. JURISDICTION

30. The jurisdiction of CAS in respect of the financial sanction, which is not disputed, derives from articles 12.3.1.b.7 and 13.6 of the IWF Anti-Doping Policy (hereinafter: the “IWF ADP”), determining the following:

*“Three or more violations of these Anti-Doping rules (other than the violations involving Articles 2.4 and 10.3) are committed by Athletes or other Persons affiliated with a Member Federation within a Calendar year in Testing conducted by IWF or Anti-Doping Organizations other than the Member Federation or its National Anti-Doping Organization.*

*In such event the IWF Executive Board will: [...]*

*b) Fine the Member Federation as follows: [...]*

*7) 9 or more violations 500,000 USD; In default of payment of the fine the Member Federation will be suspended for 4 years from the date of default”.*

*“Decisions by IWF pursuant to Article 12 may be appealed exclusively to CAS by the Member Federation”.*

31. The jurisdiction of CAS in respect of the ban for entering competitors for the next ensuing Youth Olympic/Olympic Games, which is not disputed, derives from article 12.3 of the IWF ADP and Part C of the Qualification System for Weightlifting for the Games of the XXXI Olympiad – Rio 2016, determining the following:

*“IWF may elect to take additional disciplinary action against Member Federations with respect to recognition, the eligibility of its officials and Athletes to participate in IWF Calendar Events and fines based on the following: [this section is followed by article 12.3.1 of the IWF ADP mentioned above]”.*

*“To be eligible to participate in the qualification events for the Rio 2016 Olympic Games, all athletes must undergo anti-doping controls in accordance with the WADA-IWF Anti-Doping Policy, as follows:*

- 1. In accordance with the IWF Anti-Doping Policy (“ADP”) (12.3.1.G) if **nine (9) or more violations** of these Anti-Doping Rules (other than those under articles 2.4 or 10.3) are committed by Athletes or other Persons affiliated with a Member Federation (“MF”) **within a Calendar year period** in testing conducted by the IWF or Anti-Doping Organizations other than the National or its National Anti-Doping Organization, then the IWF Executive Board may suspend that MF’s membership for a period of up to four (4) years. In addition, such MF/National Olympic Committee (“NOC”) shall not be permitted to enter competitors for the next ensuing Youth Olympic/Olympic Games. If such MF is permitted to compete in any Olympic Qualifying event prior to the next ensuing Youth Olympic/Olympic Games, the MF shall not secure any Olympic qualifying points in such event”.*

32. In addition, as indicated above, no jurisdictional objection has been raised and both parties confirmed the jurisdiction of the CAS by signing the Order of Procedure.

33. It follows that CAS has jurisdiction to adjudicate on and decide the present dispute.

## **VI. ADMISSIBILITY**

34. The appeal was filed within the 21 days set by article 13.7.1 of the IWF ADP. The appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fees.

35. It follows that the appeal is admissible.

## **VII. APPLICABLE LAW**

36. Article R58 of the CAS 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, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*

37. The BWF maintains that the IWF ADP are primarily applicable and, subsidiarily, Swiss law as the IWF has its registered seat in Switzerland.

38. The IWF maintains that the IWF ADP are applicable to the merits of the case and that, since the IWF is a Swiss association, Swiss law applies subsidiarily.

39. The Sole Arbitrator is therefore satisfied to accept the primary application of the IWF ADP and, subsidiarily Swiss law.

## **VIII. MERITS**

### **A. The Main Issues**

40. The main issues to be resolved by the Sole Arbitrator are:

- i. Should the IWF President’s decision in respect of the fine of USD 500,000 imposed on the BWF be confirmed?
- ii. Should the IWF President’s decision in respect of the ban imposed on the BWF to enter BWF athletes to participate in the next ensuing Olympic Games be confirmed?
  - a. Could the ban imposed on the BWF to enter BWF athletes to participate in the next ensuing Olympic Games be imposed without the membership of the BWF also being suspended?

- b. Is the ban imposed on the BWF to enter BWF athletes to participate in the next ensuing Olympic Games legal?
- c. Does the ban imposed on the BWF to enter BWF athletes to participate in the next ensuing Olympic Games violate the principle of equality?
- d. Conclusion

*i. Should the IWF President's decision in respect of the fine of USD 500,000 imposed on the BWF be confirmed?*

41. The BWF maintains that the Appealed Decision is void because it was not rendered by the IWF Executive Board, while article 12.3.1 of the IWF ADP determines that only the IWF Executive Board is competent to impose the fine. Although the decision to ban the Bulgarian athletes from participating in the upcoming Olympic Games was duly confirmed by the IWF Executive Board, the imposition of the fine was not. If the decision to impose the fine on the BWF was made by the IWF President, this part of the Appealed Decision should be declared null and void. Finally, the BWF argues that the IWF may elect to take additional disciplinary measures against member federations, such as the imposition of fines. It is not clear what the IWF Executive Board would have decided in case the matter was submitted to it.
42. As to the BWF's argument that the IWF President was not competent to render the Appealed Decision, the IWF submits that nothing prevents the IWF President from representing the IWF Executive Board towards member federations. It is common practice for the IWF President to communicate decisions of the IWF Executive Board with respect to article 12.3.1 of the IWF ADP to member federations. Given the total absence of leeway in determining the sanction given to the deciding body, it made sense for the IWF Executive Board to delegate its competence to its president; had the decision been made by the IWF Executive Board or the IWF President, the outcome would have been strictly identical. In this context, the IWF Executive Board confirmed the terms of the Appealed Decision during its meeting in Houston, United States of America, on 17-18 November 2015.
43. The Sole Arbitrator observes that the IWF ADP determines the following:

*"12.3 IWF may elect to take additional disciplinary action against Member Federations with respect to the recognition, the eligibility of its officials and Athletes to participate in IWF Calendar Events and fines based on the following:*

*12.3.1 Three or more violations of these Anti-Doping rules (other than the violations involving Articles 2.4 and 10.3) are committed by Athletes or other Persons affiliated with a Member Federation within a Calendar year in Testing conducted by IWF or Anti-Doping Organizations other than the Member Federation or its National Anti-Doping Organization.*

*In such event the **IWF Executive Board** [Emphasis added by the Sole Arbitrator] will:*

- a) *Ban all or any team officials from that Member Federation for participation in any IWF activities for a period of up to two years and*

b) *Fine the Member Federation as follows:*

- 1) *3 violations 50,000 USD; In default of payment of the fine the Member Federation will be suspended for 1 year from the date of default.*
- 2) *4 violations 100,000 USD; In default of payment of the fine the Member Federation will be suspended for 1 year from the date of default.*
- 3) *5 violations 150,000 USD; In default of payment of the fine the Member Federation will be suspended for 2 years from the date of default.*
- 4) *6 violations 200,000 USD; In default of payment of the fine the Member Federation will be suspended for 2 years from the date of default.*
- 5) *7 violations 250,000 USD; In default of payment of the fine the Member Federation will be suspended for 3 years from the date of default.*
- 6) *8 violations 300,000 USD; In default of payment of the fine the Member Federation will be suspended for 3 years from the date of default.*
- 7) *9 or more violations 500,000 USD; In default of payment of the fine the Member Federation will be suspended for 4 years from the date of default.*

c) *or [Emphasis added by the Sole Arbitrator] suspend the Member Federation, from participation in any IWF activities for a period for up to four years in case of point 7 above.*

*All the fines stated under 12.3.1 shall be paid within 6 months from the receipt of the IWF decision.*

*Until the fine is paid in full the Member Federation concerned is suspended from all weightlifting activities within the IWF including participation in any IWF Calendar Event”.*

44. The Sole Arbitrator derives from the regulatory framework set out above that solely the IWF Executive Board is competent to impose any of the sanctions contemplated for in article 12.3.1 of the IWF ADP on member federations.
45. Different from the IWF’s view, the Sole Arbitrator does not find that the imposition of the fine is an automatic consequence of a certain number of anti-doping rule violations having been committed or that there would be a total absence of leeway in determining the sanction. Rather, the IWF Executive Board must decide between imposing a fine on the relevant member federation in accordance with article 12.3.1.b or to suspend the relevant member federation from participation in any IWF activities for a period of up to four years in accordance with article 12.3.1.c of the IWF ADP. The Sole Arbitrator finds that it can therefore not be said that the outcome would have been exactly the same, regardless of whether the decision would be taken by the IWF President or the IWF Executive Board.

46. The Sole Arbitrator finds the IWF's argument that the IWF Executive Board previously delegated such decision-making power to the IWF President not convincing in the absence of any proof to this effect. Nothing to this effect can be found in the letter of 9 November 2015, nor does it state that the IWF President is merely communicating a decision that had already been reached by the IWF Executive Board.
47. The competences of the IWF President are clearly delineated/listed in the By-Law to article 4.2.1.1 of the IWF Constitution, but this provision in no way entitles the President to represent the IWF Executive Board and/or to put himself in the position of it. The IWF Executive Board's sole jurisdiction also arises from article 3.9.1. of the IWF Constitution.
48. Finally, the Sole Arbitrator observes that the IWF President communicated the decision to the BWF on 9 November 2015, whereas the IWF Executive Board only convened on 19 November 2015. According to the list of IWF News in the Internet, the IWF Executive Board had not convened in the previous months. As such, the IWF President did not merely communicate the IWF Executive Board's decision to the BWF, but actually rendered such decision himself.
49. The Sole Arbitrator is aware of the discretion provided to CAS Panels by Article R57 of the CAS Code to decide *de novo*:

*"The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. [...]"*

50. The Sole Arbitrator observes that long-standing and consistent CAS jurisprudence determines the following in respect of the *de novo* competence of CAS in appeals proceedings:

*A de novo hearing is "a completely fresh hearing of the dispute between the parties, any allegation of denial of natural justice or any defect or procedural error even in violation of the principle of due process which may have occurred at first instance, whether within the sporting body or by the Ordinary Division CAS panel, will be cured by the arbitration proceedings before the appeal panel and the appeal panel is therefore not required to consider any such allegations" (CAS 2008/A/174, para 42; see also: MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, 2015, p. 508).*

51. However, although acknowledging his competence to render a new decision and replacing the decision challenged, the Sole Arbitrator finds that the fact that the Appealed Decision is rendered by the wrong body within the IWF in violation of the IWF Constitution, is not a procedural flaw that should be repaired by CAS without first allowing the competent body within the IWF to decide on this matter first, particularly considering the leeway of the IWF Executive Board to impose different sanctions on the BWF on the basis of the IWF ADP and the Qualification System.
52. Anticipating the situation that the IWF President's decision might be set aside due to the fact that the IWF President was not competent to render such decision by himself, the Sole Arbitrator invited both parties during the hearing to express their opinion on whether he would be competent to examine also the lawfulness of the possible decision of the IWF Executive

Board of 19 November 2015 in case the IWF President's decision would be set aside. The Sole Arbitrator also clearly indicated to the parties that if the decision of the IWF President would be set aside, it might be that this would leave the possible decision rendered by the IWF Executive Board on 19 November 2015 untouched and that it would possibly only be a matter of communicating this latter decision to the BWF for the same fine to be imposed again and that the BWF would then have to file a new independent appeal with CAS to challenge the fine imposed with such decision.

53. Whereas the IWF had no objection to the Sole Arbitrator looking into the lawfulness of the possible decision rendered by the IWF Executive Board on 19 November 2015, the BWF expressly reiterated its requests for relief and argued that if the IWF President's decision of 9 November 2015 would be annulled, the Sole Arbitrator was prevented from examining the legality of the possible IWF Executive Board's decision and the proportionality of the fine.
  54. In view of the above, the Sole Arbitrator finds that he is prevented from examining the lawfulness of the possible decision rendered by the IWF Executive Board on 19 November 2015 and is limited to examine the lawfulness of the decision rendered by the IWF President on 9 November 2015. Therefore, the scope of the present appeal proceedings is limited to the IWF President's decision dated 9 November 2015. Deciding otherwise would constitute a ruling *ultra petita*.
  55. Consequently, the Sole Arbitrator finds that the IWF President's decision in respect of the fine of USD 500,000 imposed on the BWF is to be set aside.
- ii. *Should the IWF President's decision in respect of the ban imposed on the BWF to enter BWF athletes to participate in the next ensuing Olympic Games be confirmed?***
56. The Sole Arbitrator observes that the parties initially had different views as to the legal basis for the IWF's ban on the BWF to enter competitors for the next ensuing Olympic Games. Whereas the BWF is of the view that such ban was based on part C.1 of the Qualification System, the IWF maintained that the basis was article 12.3.1.c of the IWF ADP. However, at the occasion of the hearing the IWF expressly confirmed that the ban was indeed based on part C.1 of the Qualification System.
  57. For the avoidance of doubt, the Sole Arbitrator fully agrees with the parties that the ban was clearly based on part C.1 of the Qualification System. Whereas article 12.3.1.c of the IWF ADP refers to the suspension of a member federation from participation in any IWF activities for a period of up to four years, part C.1 of the Qualification System refers specifically to the possibility of a member federation not being permitted to enter competitors for the next ensuing Olympic Games. In addition, the Sole Arbitrator observes that the Appealed Decision determines that "*in line with the Special Anti-Doping Rules your Federation/National Olympic Committee ("NOC") shall not be permitted to enter competitors for the next ensuing Youth Olympic/Olympic Games*", which the Sole Arbitrator considers to be a clear reference to the Qualification System.
  58. The Sole Arbitrator observes that part C.1 of the Qualification System determines the following:

*“In accordance with the IWF Anti-Doping Policy (“ADP”) (12.3.1.G) if **nine (9) or more violations** of these Anti-Doping Rules (other than those under articles 2.4 or 10.3) are committed by Athletes or other Persons affiliated with a Member Federation (“MF”) **within a Calendar year period** in testing conducted by the IWF or Anti-Doping Organizations other than the National [sic] or its National Anti-Doping Organization, then the IWF Executive Board may suspend that MF’s membership for a period of up to four (4) years. In addition, such MF/National Olympic Committee (“NOC”) shall not be permitted to enter competitors for the next ensuing Youth Olympic/Olympic Games. If such MF is permitted to compete in any Olympic Qualifying event prior to the next ensuing Youth Olympic/Olympic Games, the MF shall not secure any Olympic qualifying points in such event”.*

59. The Sole Arbitrator observes that, different from the fine, it is not explicitly stated in the IWF ADP or the Qualification System that the ban from entering athletes to the next ensuing Olympic Games had to be imposed by the IWF Executive Board. Indeed, since part C.1 of the Qualification System determines that such ban “shall” be imposed, there was in principle no discretion as to whether such sanction had to be imposed. Notwithstanding the question as to whether the IWF President was competent to take this decision by himself and to communicate his decision to the BWF by his letter dated 9 November 2015, in any event, the Sole Arbitrator observes that it is not disputed by the BWF and IWF that this decision to impose a ban on the BWF was duly confirmed by the IWF Executive Board in the meeting held on 19 November 2015, which is not the case in respect of the fine.
60. Furthermore, the IWF explicitly stated in its Answer that *“the ban does not concern the upcoming 2018 Youth Olympic Games”*.
- a) **Could the ban imposed on the BWF to enter BWF athletes to participate in the next ensuing Olympic Games be imposed without the membership of the BWF also being suspended?**
61. With reference to the words “in addition” in part C.1 of the Qualification System, the BWF maintains that a ban from entering athletes for the next ensuing Olympic Games is conditional upon whether the membership of the BWF would also have been suspended. Since it remained undisputed that the membership of the BWF was not suspended, the BWF argues that no ban from entering athletes could be imposed on it. In other words, the BWF argues that the second sanction mentioned in part C.1 of the Qualification System cannot be imposed without the first.
62. On the other hand, the IWF argues that whereas the word “may” in the sentence regarding the suspension of membership in part C.1 of the Qualification System indicates that it is not mandatory to suspend the membership of a federation, the word “shall” in the sentence regarding the ban from entering athletes for the next ensuing Olympic Games indicates that it is mandatory to impose this ban, even if membership is not suspended.
63. Although the Sole Arbitrator finds that the wording is not entirely clear, particularly because the words “in addition” may lead one to think that the suspension of membership is a precondition for the ban from entering athletes for the next ensuing Olympic Games, he adheres with the view of the IWF. The words “may” and “shall” make it clear that the first

sanction is optional, whereas the second is mandatory. As such, the second sanction can be imposed, even if the first one is not.

64. As such, the Sole Arbitrator finds that the argument invoked by the BWF must be dismissed as, on the basis of part C.1 of the Qualification System, a ban from entering athletes to the next Olympic Games shall be imposed regardless of whether the member federation is also suspended from the IWF membership.

**b) Is the ban imposed on the BWF to enter BWF athletes to participate in the next ensuing Olympic Games legal?**

65. The BWF maintains that the ban imposed on it must be set aside because the IWF lacked competence to impose such ban. Article 12.3 of the IWF ADP states that the IWF may elect to take additional disciplinary actions against member federations but that such actions may only be taken with respect to i) recognition; ii) the eligibility of its officials and athletes to participate in IWF Calendar Events; and iii) fines. The BWF submits that the eligibility of athletes to participate in IWF Calendar Events is a matter concerning athletes and not the sporting bodies. The BWF finds that this is a disguised sanction on the athletes of a federation and not a sanction on a sporting body. Article 12 of the WADA Code does not empower signatories such as the IWF to go beyond its scope and punish athletes in addition to the sanctions already imposed on them for the anti-doping rule violation.

66. The BWF also maintains that the ban contradicts the *ne bis in idem* principle in respect of the 7 BWF athletes whose periods of ineligibility will already have expired before the start of the Olympic Games in 2016. The BWF avers that this rule reinstates Rule 45 of the Olympic Charter (the so-called “Osaka Rule”), which was abrogated following the CAS award in CAS 2011/O/2422, stating the following:

*“Any person who has been sanctioned with a suspension of more than six months by any antidoping organization for any violation of any anti-doping regulations may not participate, in any capacity, in the next edition of the Games of the Olympiad and of the Olympic Winter Games following the date of expiry of such suspension”.*

67. In this respect, the IWF maintains that the IWF ADP were approved by WADA, whereby it was confirmed by WADA that “[t]his correspondence therefore constitutes your assurance that the draft 2015 IWF Anti-Doping Rules are in line with the 2015 World Anti-Doping Code”. In any event, the WADA Code is not self-executing. Should the IWF ADP not be considered in line with the WADA Code, the IWF ADP will nevertheless be applied. In addition, the IWF maintains that the Qualification System was approved by the IOC and that the ban imposed on the BWF fully complies with part C.1 of the Qualification System.

68. The IWF purports that part C.1 of the Qualification System is an eligibility rule and not a sanction. The IWF refers to CAS jurisprudence in maintaining that qualifying rules define certain attributes required of athletes desiring to be eligible to compete and certain formalities that must be met in order to compete. In contrast to qualifying rules are the rules that ban an athlete from participating and taking part in a competition due to prior undesirable behaviour

on the part of the athlete. Such a rule imposes a ban. In the case at hand it is not the behaviour of the individual Bulgarian athletes that is taken into consideration to decide whether or not they are eligible to participate in the next Olympic Games. Rather, the Bulgarian athletes will not be eligible to participate because they belong to a national federation which is unable to fight against doping properly. Equally, the IWF Executive Board can, by virtue of the IWF Statutes, expel a member federation. Since the IWF can deprive a federation of its membership, it can *a fortiori* also exclude a member (*i.e.* the affiliated athletes) from participating in the Olympic Games

69. In respect of the Osaka Rule, the IWF maintains that this rule was abrogated due to the fact that the WADA Code was incorporated in the IOC's Statutes and because the rule was not compliant with the WADA Code. The WADA Code has however not been incorporated in the IWF's Statutes.
70. As to the BWF's argument in respect of a violation of the *ne bis in idem* principle, the IWF argues that such principle is only applicable if the application of part C.1 of the Qualification System is construed as a sanction. With reference to CAS jurisprudence, the IWF maintains that it is far from obvious that the *ne bis in idem* principle applies to the sport disciplinary law. In any event, if such principle were applicable, the triple-identity test of i) an identity of purpose; ii) an identity of parties; and iii) an identity of facts, would not be complied with. The purpose of the ban imposed on the BWF to enter athletes to participate in the next Olympics is not to sanction but to protect Olympism and the values of sport and provide general education. The aims prosecuted are therefore different.
71. As to the principle of *ne bis in idem*, or double jeopardy, the Sole Arbitrator observes that this is a criminal law principle, but that it has been maintained that this principle can be applied in disciplinary proceedings before CAS "*as it can be argued that a severe sanction imposed in disciplinary proceedings should be subject to the same principle*" (CAS 2007/A/1396 & 1402, para. 118 of abstract published on CAS website) and that it has even been held that "*the principle of ne bis in idem is applicable to civil proceedings (OBERHAMMER/NAEGELI, in Oberhammer/Domej/Haas (Ed), Commentary on Swiss Civil Procedure, 2<sup>nd</sup> ed. 2014, Art. 236, no. 39 et seq.)*" (CAS 2013/A/3256, para. 156).
72. As maintained by the IWF, the Sole Arbitrator observes that the following has been determined in CAS jurisprudence about this principle:

*"It is noted that in one handbook on Swiss criminal law, it is said that there are three specific requirements to be fulfilled for this principle to apply: an identity of the object, of the parties and of the facts"* (CAS 2007/A/1396 & 1402, para. 119; with further references to: CAS 2008/A/1677; PIQUERREZ G., *Traité de procédure pénale Suisse*, 2<sup>nd</sup> ed., Zurich 2006, nr. 1541).
73. The Sole Arbitrator finds that no additional sanction is imposed on BWF athletes as the ban is not a direct consequence of the fact that they individually committed anti-doping rule violations. Rather, as rightly mentioned by the IWF, the BWF athletes are prevented from taking part in the Olympics because they are affiliated to a national federation that has been banned from

entering athletes for the Olympic Games because it has not been able to fight doping within its organisation effectively. The Sole Arbitrator considers the fact that individual BWF athletes are prevented from participating in the Olympic Games as a mere “collateral damage” that is justified by the overarching objectives to protect the values of sport and to ensure that general education is provided by national federations to its affiliated members.

74. In this respect, the Sole Arbitrator considers it important that part C.1 of the Qualification System determines that a national federation is only not allowed to enter athletes if 9 or more violations of the IWF ADP are committed within a calendar year period “*in testing conducted by the IWF or Anti-Doping Organizations other than the National [sic] or its National Anti-Doping Organization*”. As such, anti-doping rule violations committed based on tests conducted by the national federation itself and the national anti-doping organisation are not counted. The Sole Arbitrator finds that it derives from such rule that the intention is for the national federations to actively combat doping within their organisations. The reason for the ban on the national federation is not so much that its affiliated members have been sanctioned for anti-doping rule violations, but rather that the national federation has been unsuccessful in finding anti-doping rule violations among its affiliated members while others could (*e.g.* if 9 or more BWF athletes would have committed anti-doping rule violations based on tests conducted by the BWF itself no ban would have been imposed on the BWF).
75. In view of the above, the Sole Arbitrator does not consider the ban imposed on the BWF to constitute a violation of the principle of *ne bis in idem* because it is imposed on the BWF and not on individual BWF athletes. As such, the parties are not identical. Also, as set out above, the object and the relevant facts for the imposition of the ban are different from the object and the facts that were decisive in the sanctions imposed on the BWF athletes for their individual anti-doping rule violations.
76. In any event, if individual BWF athletes were of the view that the ban imposed on the BWF would indirectly constitute a second sanction imposed on them and therefore a violation of the principle of *ne bis in idem*, the athletes should have challenged this ban by themselves. No violation of the *ne bis in idem* principle has been committed in respect of the BWF as this is the first measure taken in respect of the BWF.
77. For the same reasons, the Sole Arbitrator finds that part C.1 of the Qualification System needs to be differentiated from the Osaka Rule. The Osaka Rule was automatically applicable on athletes if they were found to have committed an anti-doping rule violation. As such, it constituted an additional sanction imposed on an individual athlete for having committed a single anti-doping rule violation, which is not the case here. Based on the Qualification System, if less than 9 BWF athletes are sanctioned for anti-doping rule violations, no direct consequences arise for any BWF athlete. Rather, BWF athletes that committed anti-doping rule violations are in principle allowed to participate in the Olympic Games, they are only excluded from participation if, in addition to their own violation, 8 or more anti-doping rule violations are committed by other BWF members in the same year.

78. Finally, the Sole Arbitrator does not find that article 12.3 of the IWF ADP is violated as this rule entitled the IWF to “*take additional disciplinary actions against Member Federations with respect to recognition, the eligibility of its officials and Athletes to participate in IWF Calendar Events and fines [...]*”. The ban imposed on the BWF is a measure against a national federation with respect to the eligibility of its athletes to participate in IWF calendar events.

79. Consequently, the Sole Arbitrator does not consider the ban imposed on the BWF to enter BWF athletes to participate in the next ensuing Olympic Games to be illegal.

**c) Does the ban imposed on the BWF to enter BWF athletes to participate in the next ensuing Olympic Games violate the principle of equality?**

80. Finally, the BWF argues that, on 1 April 2014, it was announced on the IWF official website that the IWF Executive Board unanimously decided to sanction the Azerbaijan Weightlifting Federation for multiple adverse analytical findings and imposed a ban of USD 500,000 on it. Notwithstanding the fine and the fact that the Qualification System was already approved and effective at the time, the Azerbaijan Weightlifting Federation was however not banned from entering competitors for the Olympic Games in 2016. The BWF considers that this clearly violates the principle of equal treatment.

81. At the occasion of the hearing, the IWF maintained that the Qualification System was not yet in force at the time of the violations of the Azerbaijan Weightlifting Federation and referred to page 10 of the Qualification System in this respect, determining that the qualification period only commenced on 19 June 2014.

82. The Sole Arbitrator observes that part G of the Qualification System determines that the qualification period runs from 19 June 2014 to 19 June 2015.

83. Since the sanction imposed on the Azerbaijan Weightlifting Federation was pronounced on 1 April 2014, *i.e.* before the commencement of the qualification period set out in the Qualification System, the Sole Arbitrator finds that the sanction imposed on the Azerbaijan Weightlifting Federation cannot be compared with the sanction imposed on the BWF as the applicable regulatory framework was different.

84. Consequently, the Sole Arbitrator finds that the ban imposed on the BWF to enter BWF athletes to participate in the next ensuing Olympic Games does not violate the principle of equality.

**d) Conclusion**

85. Finally, the Sole Arbitrator noted that part C.1 of the Qualification System determines the following: “[...] *such MF/National Olympic Committee (“NOC”) shall not be permitted to enter competitors [...]*”.

86. The Sole Arbitrator finds that such wording is not entirely accurate or appropriate as only National Olympic Committees are in principle entitled to enter athletes to participate in the Olympic Games. National federations are in principle only entitled to recommend athletes to

the National Olympic Committee for them to be entered by the National Olympic Committee, before the IOC finally decides whether such athletes are accepted or not.

87. The Sole Arbitrator observes that this is confirmed by article 5.3.3 of the IWF Technical and Competition Rules & Regulations and Rule 6 of the Olympic Charter, respectively determining the following:

*“A National Olympic Committee (NOC) may enter athletes to the Olympic Games and Youth Olympic Games in accordance with the relevant “Olympic Games Qualification Regulation””.*

*“The Olympic Games are competitions between athletes in individual or team events and not between countries. They bring together the athletes selected by their respective NOCs, whose entries have been accepted by the IOC”.*

88. After having drawn the attention of the parties to this issue during the hearing, the IWF clarified that it only has competence over its member federations and not over the Bulgarian National Olympic Committee.
89. In view of the above, the Sole Arbitrator is satisfied that the intention of the rule is clearly to prevent member federations from recommending any of its affiliated athletes to the relevant National Olympic Committee for them to be entered by the latter to participate in the Olympic Games. It is thus expected that the relevant National Olympic Committee will not enter any athletes of the banned member federation and that, should this nevertheless occur, the IOC will not accept the participation of such athletes.
90. In view of all the above, the Sole Arbitrator finds that the decision issued on 9 November 2015 by the IWF President for imposition of a ban on the BWF to “enter” competitors and/or to propose/recommend to the Bulgarian National Olympic Committee to enter competitors for the next ensuing Olympic Games is to be confirmed.

## **B. Conclusion**

91. Based on the foregoing, and after taking into due consideration all the evidence produced and all arguments made, the Sole Arbitrator finds that:
- i. The decision issued on 9 November 2015 by the IWF President for imposition of a fine in the amount of USD 500,000 on the BWF is set aside.
  - ii. The decision issued on 9 November 2015 by the IWF President for imposition of a ban on the BWF to “enter” competitors and/or to propose/recommend to the Bulgarian National Olympic Committee to enter competitors for the next ensuing Olympic Games is confirmed.
92. Any further claims or requests for relief are dismissed.

## ON THESE GROUNDS

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

1. The appeal filed by the Bulgarian Weightlifting Federation on 30 November 2015 against the decision issued on 9 November 2015 by the President of the International Weightlifting Federation is partially upheld.
  2. The decision issued on 9 November 2015 by the President of the International Weightlifting Federation for imposition of a fine in the amount of USD 500,000 on the Bulgarian Weightlifting Federation is set aside.
  3. The decision issued on 9 November 2015 by the President of the International Weightlifting Federation for imposition of a ban on the Bulgarian Weightlifting Federation to “enter” competitors and/or to propose/recommend to the Bulgarian National Olympic Committee to enter competitors for the next ensuing Olympic Games is confirmed.
- (...)
6. All other motions or prayers for relief are dismissed.