



Arbitration CAS 2016/A/4701 Weightlifting Federation of the Republic of Kazakhstan (WFRK) v. International Weightlifting Federation (IWF), award of 10 March 2017

Panel: Mr Romano Subiotto Q.C. (United Kingdom), President; Mr Michele Bernasconi (Switzerland); Mr Hans Nater (Switzerland)

Weightlifting

Suspension of a national federation for having brought the sport of weightlifting into disrepute

Right to be heard

Circumstances proper to bring a sport into “disrepute”

Proportionality of the measure

1. In case an international federation publishes clarifications of its current standing practice regarding certain aspects of anti-doping rule violations, without however taking any decisions based on that interpretation against any member federation, the right to be heard of the member federations concerned has not been violated.
2. The term “disrepute” which is part of the requirement under Article 12.4 of the IWF Anti-Doping Policy of bringing “*the sport of weightlifting into disrepute*” is unambiguous as it refers to the loss of reputation or dishonour. In principle, multiple anti-doping rule violations within a certain period of time by a certain number of athletes at certain events, combined with a proven failure of a national member federation to administer a proper anti-doping program, may constitute circumstances that bring the sport into disrepute.
3. A policy implemented by an international federation which foresees that in case 3 or more athletes of a national federation have confirmed anti-doping rule violations in the combined re-analysis process of the past two editions of the Olympic Games, the respective national federation is suspended for one year for having brought the sport into disrepute complies with the principle of proportionality.

I. THE PARTIES

1. The Appellant, the Weightlifting Federation of the Republic of Kazakhstan (“WFRK”), is the national governing body for the sport of Weightlifting in the Republic of Kazakhstan. It is a member federation of the International Weightlifting Federation and has its headquarters in Astana, Kazakhstan.

2. The Respondent is the International Weightlifting Federation (“IWF”), the governing body for the sport of weightlifting worldwide. It is registered in Lausanne, Switzerland but with its head office in Budapest, Hungary.

II. FACTUAL BACKGROUND

3. The International Olympic Committee (“IOC”) decided in 2016 to re-analyse the samples collected during the 2008 and 2012 Olympic Games, in order to detect with improved analytical methods any prohibited substances, which could not be found previously.
4. This reanalysis resulted in 90 samples testing positive for prohibited substances, including 46 belonging to weightlifters, 10 of which from Kazakhstan. More than 20% of the positive samples recorded were from athletes affiliated with the WFRK.
5. Five Kazakh weightlifters competing in the 2008 Beijing Olympics tested positive for stanozolol, a prohibited steroid. Another five athletes participating in the 2012 London Olympics tested positive for stanozolol (along with other steroids for some of the weightlifters).
6. On the 22-23 June 2016, the IWF Executive Board had a two day meeting in Tbilisi, Georgia.
7. During the course of the meeting, the IWF Executive Board adopted a decision, which it published on the IWF official website, stating the following:
 8. *“5. The IWF Executive Board has decided that National Federations confirmed to have produced 3 or more Anti-Doping Rule Violations in the combined re-analysis process of the 2008 and 2012 Olympic Games shall be suspended for 1 year. Countries thus subject are: KAZ, RUS, BLR”.*
9. On 5 July 2016, the WFRK wrote to the IWF requesting confirmation that the suspension decided by the IWF Executive Board on 22 June 2016 would not come into force prior to the CAS delivering its decision on the validity of the ban.
10. On 8 July 2016, the IWF responded that no measures would be taken prior to finalization of the pending procedures before the IOC and CAS, and that the IWF Executive Board decision was not a decision appealable to CAS. On the same day, the WFRK responded to the IWF stating that it did not agree with the IWF’s conclusion that the IWF Executive Board’s decision was not a decision subject to a possible appeal.
11. On 14 August 2016, during the 2016 Olympic Games in Rio, an extraordinary IWF Executive Board meeting was convened in order to further discuss the IWF’s decision, where the Executive Board decided that, in case of three or more anti-doping rule violations in the combined reanalyses process of the 2008 and 2012 Olympic Games, the following rights of national member federations shall be suspended:
 - Right to participate at IWF Events with Athletes and Technical Officials;

- Right to organize IWF Events, IWF Congress, IWF Executive Board meetings, meetings of IWF Commissions and Committees;
 - Right to participate in the Congress with voting right;
 - Right to submit proposals for inclusion in the Agenda of the Congress;
 - Right to take part in and benefit from the IWF Development program apart from Education and Anti-Doping Seminars;
 - Right to submit proposals if any for the modification of the IWF Constitution, Technical and Competition Rules & Regulations whenever requested.
12. Further, the IWF Executive Board decided that all the member federations which were suspended would nevertheless keep the right to nominate candidates for elections, so as to guarantee that such federations would not face an extended suspension beyond the envisaged one-year suspension due to the IWF elections for the period 2017-2021 being scheduled for May 2017.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

13. On 11 July 2016, the Appellant filed its Statement of Appeal with the Court of Arbitration for Sport (the “CAS”) against the decision issued by the IWF Executive Board on 22 June 2016, in accordance with Article R47 of the Code of Sports-related Arbitration (the “Code”).
14. On 29 July 2016, the Appellant submitted its Appeal Brief with the CAS, in accordance with Article R51 of the Code.
15. On 24 August 2016, the Respondent filed its answer with the CAS, in accordance with Article R55 of the Code.
16. On 20 September 2016, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, confirmed that the Panel was constituted pursuant to Article R54 of the Code as follows:
- President: Mr Romano F. Subiotto Q.C., Solicitor-Advocate in Brussels Belgium and London, United Kingdom.
- Arbitrators: Mr Michele Bernasconi, Attorney-at-law in Zurich, Switzerland.
Mr Hans Nater, Attorney-at-law in Zurich, Switzerland.
17. On 20 January 2017, the Appellant signed and returned the order of procedure to the CAS Court Office. On 23 January 2017, the Respondent signed and returned the order of procedure to the CAS Court Office.
18. In accordance with Article R56 of the Code, an oral hearing was held in Lausanne, Switzerland, on 27 January 2017. The panel was assisted by Mr Brent J. Nowicki, CAS Managing counsel, and Mr Magnus Wallsten, *ad hoc* Clerk, and joined by the following persons:

For the WFRK:

- Mr Claude Ramoni, Counsel.
- Ms Natalie St Cyr Clarke, Counsel.
- Mr Omar Mustafin, WFRK Secretary General.
- Mr Vibhu Malaviya.
- Ms Tioana Zivkovic.

For the IWF:

- Mr Ross Wenzel, Counsel.
- Mr Nicolas Zbinden, Counsel.
- Ms Eva Nyirfa, IWF Legal Counsel.

19. Before the hearing was concluded, all parties confirmed that they did not have any objection to the constitution and conduct of the Panel or to the procedure adopted by the Panel and that their right to be heard has been respected.
20. The Panel has carefully taken into account in its decision all of the submissions, evidence, and arguments presented by the parties, even if they have not been specifically summarised or referred to in the present arbitral award.

IV. JURISDICTION

21. Article R47 of the Code provides the following:

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

22. The Appellant submits that Article 13.6 of the IWF Anti-Doping Policy (“ADP”) 2015 states:

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

23. The Respondent submits that at the time of the Appeal there was no effective decision taken against the Appellant. Any decision by the Respondent was subject to the results of proceedings brought by the IOC for anti-doping rule violations.
24. However, the Respondent states that even though such decision has neither been taken nor has been notified to the Appellant, because the disciplinary proceedings launched by the IOC were pending at the time of the current Appeal, the Respondent accepts that CAS adjudicate the present proceedings. Finally, the Respondent explicitly asked the present Panel to use the frame

of the present procedure to provide, as far as possible, some guidance to the parties not only as to the matter at issue, *i.e.* the validity of the Policy, but also any future implementation of it.

25. On the basis of the above, it is undisputed that CAS has jurisdiction over the present case.

V. ADMISSIBILITY

26. Article R49 of the Code provides:

“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against”.

27. The Appellant filed its Statement of Appeal within 21 days of the decision. Admissibility is not contested by the IWF. In particular, the IWF has not raised any issue regarding the fact that the WFRK is appealing against a legislative decision and not against a sanction of the IWF.

28. Consequently, the present appeal is admissible.

VI. APPLICABLE LAW AND REGULATIONS

29. Article R58 of the Code provides:

30. *“The panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*

31. The applicable regulations are the rules governing the IWF. These regulations are the IWF Constitution and Bye-Laws and the IWF ADP.

32. The current version of the IWF ADP is the 2015 version, and is the version on which the IWF Executive Board based its Article 12.4 decision. This provision was also found in the 2013 version, and in Article 16.3.2 of the 2005 version.

33. Additionally, the IWF has its registered seat in Lausanne, Switzerland. Pursuant to Article 1.2 of the IWF Constitution, Swiss law is applicable on a subsidiary basis.

VII. SCOPE OF THE PANEL'S REVIEW

34. According to Article R57 of the Code, 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.

VIII. SUBMISSIONS OF THE PARTIES

A. Appellant's Submissions and Requests for Relief

i. Submissions

35. The WFRK argues that the decision under appeal violates the IWF's Constitution and the principle of proportionality. No disciplinary process was initiated or finalised against the WFRK, the WFRK did not breach any of the IWF's rules, and the IWF could not impose a strict liability on the WFRK for things outside its control.

Non-adherence to the IWF Constitution

36. The WFRK submits that the first criterion for a federation to impose sanctions is the principle of legality. This requires the federation to adhere to its own laws and is derived from Article 75 of the Swiss Civil Code ("Swiss CC"). Article 75 of the Swiss CC is a mandatory provision and is intended to safeguard membership rights from unlawful infringements by the association. The rights and obligations of the WFRK are enshrined in Article 3 of the IWF Constitution.
37. The WFRK argues that the IWF Executive Board has the authority to suspend a national federation and, pursuant to Article 3.1.4 IWF Constitution, a federation can only be suspended from the IWF by a resolution of the IWF Executive Board. This provision does not give the IWF Executive Board the unfettered capacity to suspend a member federation. Rather, suspension is permitted either when a federation violates Article 3.4 of the IWF Constitution (in accordance with Article 38 of the IWF Constitution) or when there has been interference from a national government and a suspension is necessary to protect weightlifting under Article 3.9 of the IWF Constitution.
38. The suspension must be based on Article 3.8 of the IWF Constitution to be in line with the IWF Constitution, and Article 12.4 IWF ADP must conform to Article 3.8 of the IWF Constitution.
39. The WFRK submits that the national federations' obligations contained in Article 3.4 IWF Constitution does not include explicit obligations on the part of the WFRK to seek out and identify anti-doping violations, test athletes, or re-test athletes. A breach of Article 3.4 of the IWF Constitution does include the non-compliance with the IWF ADP but the IWF ADP itself does not contain any obligations on the part of the national federation with regard to testing. According to Article 5.2.1 of the IWF ADP, it is the responsibility of the IWF to conduct such tests as they have in- and out-of-competition testing authority. The WFRK had no possibility to detect any positive samples from the athletes concerned.
40. Article 12.4 of the IWF ADP is only breached if the conduct of the member federation has led or contributed to the commitment of the anti-doping violation. The WFRK argues that there has been no alleged conduct on the part of the WFRK that has led to the commitment of the anti-doping violations. Consequently, the sole reason for the suspension would be the fact of having more than three anti-doping violations resulting from the IOC retesting procedure. Yet, having more than three anti-doping violations does not per se violate the IWF ADP. The

WFRK argues that it has fulfilled all its obligations under Article 3.4 IWF Constitution, including accepting and fully complying with the IWF ADP. As a result, the IWF Executive Board could not legally suspend the WFRK.

41. Furthermore, the WFRK submits that there was no recommendation on the part of the Membership Commission to suspend it, a requirement under Article 3.8.1 of the IWF Constitution. The absence of this requirement in Article 12.4 IWF ADP does not mean that the decision under challenge is valid. Rather, in such case Article 12.4 IWF ADP does not adhere to Article 3.8.1 IWF Constitution, which is the basis for sanctioning member federations with suspensions for violations or non-compliance with the IWF ADP.
42. The WFRK submits that Article 12.4 IWF ADP should be declared null and void, or at least inapplicable, to the extent it does not comply with the IWF Constitution. The IWF Executive Board violated the IWF Constitution when it decided to suspend the WFRK without a recommendation from the Membership Commission.
43. Additionally, the By-law to Article 3.8 of the IWF Constitution states that any decision must be notified to the relevant party in writing. The IWF thus violated its own constitution when it failed to notify its decision to the WFRK, whether in writing or otherwise. A news article on its website does not suffice, as the by-law to Article 3.8 of the IWF Constitution implies that the decision communicated will be accompanied by some reasoning.
44. Therefore, the WFRK submits that the IWF decision violates the IWF Constitution and should be declared null and void.

Non-adherence to general legal principles – No disciplinary process

45. The WFRK argues that Swiss law provides that a sanction can only be imposed if the rights to be heard and to be treated equally are respected. The WFRK had no opportunity to defend itself as the IWF did not initiate or conduct a disciplinary process. As a result, the WFRK's right to be heard was violated.
46. The WFRK further notes that the IWF ADP of 2015 is itself in violation of Article 29 of the Swiss Constitution with respect to the right to be heard. Article 12.4 IWF ADP 2015 which provides for the imposition of discretionary sanctions does not envisage disciplinary proceedings prior to the imposition of sanctions.
47. The lack of disciplinary process also violates the principle of equal treatment. The WFRK argues that the IWF took one criteria for sanctioning and failed to consider the separate circumstances and culpability of the federations implicated under the IWF's decision. This constitutes a violation of the principle of equal treatment and a violation of Article 29 of the Swiss Constitution.

Non-adherence to general legal principles – No violation of Article 12.4 IWF ADP

48. Article 12.4 IWF ADP states:

“If any Member Federation or members or officials thereof, by reason of conduct connected with or associated with doping or anti-doping rule violations, brings the sport of weightlifting into disrepute, the IWF Executive Board may, in its discretion, take such action as it deems fit to protect the reputation and integrity of the sport”.

49. The WFRK submits that the elements of the offence must be: 1) the conduct of the member federation or its members or officials, which; 2) brings the sport of weightlifting into disrepute. These criteria are cumulative and both must be satisfied in order for the IWF Executive Board to consider a sanction.

50. The wording of the first element implies that there must be some behaviour or action on the part of the federation, its members, or officials that is more than the mere commitment of an anti-doping violation by an athlete or other person affiliated with the federation. It implies some involvement on the part of the federation in the commitment of an anti-doping violation, such as a cover-up for a positive test or systematic doping that is supported by the federation. Article 12.4 IWF ADP does not permit the punishment of a federation merely for having anti-doping violations associated with it, without any other additional or aggravating conduct or circumstances. The decision under challenge did not take such additional conduct or circumstances into account.

51. The WFRK also submits that in recent years there have been substantial changes within the WFRK, and no officials and management members of the WFRK, who were in place during the 2008 and 2012 Olympic Games, are currently part of the WFRK. Additionally, the Kazakh National Anti-Doping Centre was established in 2013 with information and education being provided at national level to Kazakh athletes and it is deemed compliant by the World Anti-Doping Agency (“WADA”). In 2014, a new law prohibiting doping and providing for the necessary legal and regulatory framework for an efficient fight against doping in Kazakhstan was promulgated, and the WFRK is doing its best to ensure that its athletes are regularly tested. Therefore, the WFRK finds that its conduct and that of its officials is no way associated or connected with doping practices.

52. The first condition of Article 12.4 IWF ADP is not met and the allegation that the sport of weightlifting has been brought into disrepute should also fail. It is wrong and unfair to put the blame on the WFRK as it has done nothing which could bring the sport of weightlifting into disrepute.

Non-adherence to general legal principles – Breach of the principle of legality

53. The WFRK argues that the decision under challenge distinguishes between offences discovered further to the retesting of samples provided on the occasion of the Olympic Games and other offences discovered on other occasions.

54. The positive doping tests conducted as part of the IOC’s re-testing measures do not result from sophisticated new doping methods which were undetectable at the time of the 2008 and 2012

Olympic Games but concern well-known steroids. The detection methods for steroids have been the same for at least the past 20 years. However, the devices used by the laboratories are much more sensitive today, with the minimum limit for most anabolic steroids being reduced from 10ng/mL to 5ng/ml as of 1 January 2013. A reason for the different outcome of the re-tested samples is the greater sensitivity of the testing apparatus. Additionally, the testing apparatus is also able to identify new metabolites of said prohibited substances, which can be detected for a longer period than other metabolites.

55. The positive cases resulting from the retesting procedure show a very low concentration of prohibited substances or metabolites. The WFRK argues that such low concentrations are compatible with the inadvertent intake of a prohibited substance by the use of a contaminated supplement. The 2015 World Anti-Doping Code (the “WADC”) and the 2015 IWF ADP took this into consideration by implementing a new specific regulation allowing a substantially reduced sanction for contaminated supplements, down to a warning only, even if the prohibited substance is an anabolic steroid. The IWF ADP contains no provision that offences discovered upon the retesting of samples should result in harsher sanctions than other offences.
56. Further, the WADC expressly requires its signatories to accept the mandatory parts of the code without any substantive changes. This includes the definition of doping, Anti-Doping Rule Violations (“ADRVs”), and the sanctions for such offences. There is no provision under the World-Anti Doping Code providing for any distinction based on the type of competition during which a sample is taken. On the contrary, the whole concept of the WADC is to fix a strict and harmonised set of sanctions to be imposed in all circumstances.
57. The WFRK submits that the decision challenged imposes an additional sanction in the case of the retesting of samples collected on the occasion of the 2008 and 2012 Olympic Games, breaching the principle of legality and the WADC.

Non-adherence to general legal principles – Impermissible substantive changes from the World Anti-Doping Code

58. The WFRK submits that the changes made by the IWF to the IWF ADP are not compatible with the mandatory rules of the WADC, and should therefore be deemed null and void. The Appellant concedes that the text of Article 12 of the WADC gives some freedom to signatories to impose sanctions on national federations. However, the sanctions imposed on individuals and on teams are included in the mandatory sections of the WADC.
59. The decision under challenge bans all athletes affiliated with the WFRK, no matter their age, level, gender, or doping record, from any and all IWF activities for a period of one year. This constitutes a sanction imposed on individuals and teams.
60. The WFRK argues that nothing in the WADC permits the imposition of a period of ineligibility on an individual for the wrongdoing of another individual. Article 11 of the WADC provides for target testing or disqualification, loss of points and the like in the case of several positive doping tests within a team in a team sport.

61. Even if weightlifting is not a team sport within the meaning of the WADC, sanctioning a full federation, including all its affiliated athletes and officials, in the case of positive doping tests of some athletes affiliated with this federation, would constitute an unauthorised substantive change of the fixed set of sanctions provided for by the WADC. The WFRK argues that the decision is not about imposing a sanction on the Appellant due to its own wrongdoing, but rather to make the Appellant and its affiliated members liable for ADRVs committed years ago by some affiliated athletes.

Non-adherence to general legal principles – Proportionality

62. The decision challenged fails in any event to comply with the principle of proportionality, even if it were found that the IWF Executive Board could impose a sanction pursuant to Article 12.4 IWF ADP.
63. A sanction is proportionate if it does not exceed what is reasonably required to achieve a legitimate aim. The sanction must be capable of achieving the envisaged goal; be necessary to reach the envisaged goal; and the constraints which the affected person will suffer as a consequence of the sanction must be justified by the overall interest in achieving the envisaged goal.
64. The WFRK contends that the decision challenged contains no reasoning and no evidence as to the conduct of the federation or its member or officials. Rather, the basis of the ban is only three or more ADRVs by member athletes as a result of the IOC retesting procedure. The WFRK also claims there is a complete lack of evidence of the IWF being brought into disrepute, let alone by any conduct of the WFRK.
65. In contrast, the WFRK states that the possible ADRVs taken into account by the IWF Executive Board occurred either four or eight years ago. Some of the athletes currently competing for the WFRK were not competing at the time of these alleged violations and consequently have nothing to do with the violations. There are provisions to deal with anti-doping violations by individual athletes. However, in this instance the athletes who have not committed any anti-doping violations will be paying for the conduct of other athletes unrelated to them.
66. The WFRK further argues that the IWF Executive Board decision is disproportionate compared to the sanctions imposed by the IWF in other doping cases. The IWF imposes proportionate sanctions for “light” doping offences, which last for a couple of months, but less than one year. It would therefore be unfair and disproportionate that clean Kazakh weightlifters would be subject to a longer period of ineligibility despite having no positive doping tests.
67. Additionally, where systematic doping is suspected, it would be prudent to immediately suspend a national federation until the extent of the doping is revealed, based on its failure to comply with its anti-doping obligations and its obligations in the IWF Constitution. However, no such system has been alleged in this case and there is no professed need to prevent continued doping.
68. The purpose of the decision is not to punish the conduct of the federation, as required by Article 12.4 IWF ADP and neither is it to prevent systematic doping. The sole purpose of the

decision, according to the WFRK, is to fulfil a political agenda and appear to be tough in the face of the issues that are consuming the world of sport at the moment.

69. The WFRK argues that this case can be distinguished from the ban on the Bulgarian weightlifting team which was prevented from taking part in the 2016 Rio Olympics, a single event, for having more than nine positive doping tests. That decision was made pursuant to the Special Anti-Doping Policy for the Olympic Games of Rio 2016 and does not prevent weightlifters from Bulgaria from participating in other competitions.
70. The WFRK contrasts this with the decision challenged. No IWF rule provides that a positive doping result from a re-test should produce a more serious sanction than if an anti-doping violation is detected at the time of the sample collection. Under the decision, the WFRK would not just be banned from taking part in one competition but suspended from all competitions and other IWF activities for one year.
71. According to the WFRK the IWF Executive Board decision does nothing to aid anti-doping compliance in Kazakhstan. The WFRK should not be sanctioned for the inability of the IOC and relevant laboratories to detect prohibited substances at the relevant time (2008 and 2012). Therefore, the decision should be annulled or the sanction envisaged significantly reduced.

Strict liability

72. The WFRK also submits that the challenged decision would violate Swiss public policy on the basis of the illegality of strict liability.
73. Article 12.4 IWF ADP requires the conduct of the federation, and the WFRK argues that such conduct was not taken into account by the IWF. Therefore, the challenged decision is tantamount to strict liability as, without demonstrating any fault, the WFRK was sanctioned based on positive doping tests of its affiliated athletes.
74. Strict liability violates the fundamental principle *nulla poena sine culpa*. The Appellant concedes that the CAS has admitted in several instances that strict liability may be imposed in many circumstances. However, an athlete having committed an ADRV can benefit from a reduced sanction or no sanction at all, other than the disqualification of results, if the athlete can prove no fault or negligence. Strict liability of the Appellant under the decision breaches the IWF ADP and the principles deriving from the WADC. Additionally, the challenged decision would also be contrary to the principle of *nulla poena sine culpa* under Swiss law for any sanction other than the disqualification of results.

ii. Requests for Relief

75. In accordance with the amendments made to its requests for relief at the oral hearing, the Appellant requests the Panel to rule that:
 - 1) *The decision of the International Weightlifting Federation Executive Board of 22 June 2016, that National Federations confirmed to have produced 3 or more Anti-Doping Rule Violations in the*

combined re-analysis process of the 2008 and 2012 Olympic Games shall be suspended for 1 year, is annulled.

- 2) *The Weightlifting Federation of the Republic of Kazakhstan is not subject to any suspension.*
- 3) *The International Weightlifting Federation shall be ordered to reimburse the Weightlifting Federation of the Republic of Kazakhstan the minimum CAS court office fee of CHF 1000.*
- 4) *The International Weightlifting Federation shall be ordered to pay the Weightlifting Federation of the Republic of Kazakhstan a contribution towards the legal and other costs incurred in the framework of these proceedings in an amount to be determined at the discretion of the Panel.*

B. The Respondent's Submissions and Requests for Relief

i. Submissions

76. The IWF submits that the decision under appeal (the IWF Executive Board's decision of 22 June 2016) was in fact a policy (the "Policy"), or an expression of a standard practice, which was not intended to be applied against the Appellant before the IOC issues final and binding decisions sanctioning at least three Kazakh athletes further to ADRVs committed on the occasion of the 2008 and 2012 Olympic Games. The IWF intended to notify a proper and reasoned decision to the Appellant only if and when three Kazakh weightlifters were definitely found to have committed ADRVs.

The autonomy of the association

77. The IWF claims that the Policy is fully justified, but also that it has the autonomy – as a Swiss association – to adopt such Policy, without interference from a Court. Furthermore, the Policy is fully compliant with the IWF Constitution and the IWF Anti-Doping Policy, and must be upheld.
78. The IWF is a Swiss association regulated by Article 60 *et seq.* of the Swiss CC. Under Swiss law, associations benefit from significant autonomy. Article 23 of the Federal Constitution of the Swiss Confederation creates a margin of autonomy enabling persons or entities to regulate themselves and exercise an activity within social organizations outside the scope of State interference. Associations are autonomous and can adopt binding rules for their members, almost without any restrictions. Under Swiss law, associations have been granted an extremely high measure of freedom, with the term "freedom of association" having particular significance under Swiss law.
79. In particular, an association may issue rules relating to the creation of an autonomous order, which constitutes one of the expressions of the private autonomy of associations. The association may regulate every matter related to the association's purpose. The right to regulate and determine its own affairs is considered essential for an association.
80. The IWF argues that a ruling authority must review a challenge to a decision taken by an association with a certain restraint when the matter is related to technical issues or when the association is granted discretion in the decision making process. As a result, the freedom of an

association to take decisions must be preserved to the highest possible extent, provided of course that such decisions remain within the limits of the law.

81. Any restriction must have a legal basis because the freedom of association is protected by the Swiss Constitution. Significant restrictions must have their basis in a federal act, and any restriction must be justified in the public interest. In the case at hand, the Policy was adopted sovereignly by the IWF. The Appellant cannot invoke any public interest to claim the annulment of the Policy. On the contrary, the Policy is justified by a public interest: the fight against doping.
82. In view of the above, the IWF submits that there is no reason to set aside or declare null and void the Policy.

The compliance with the IWF Constitution

83. The IWF submits that the Appellant's claim with regard to the Policy and its compliance with the IWF Constitution is flawed because disciplinary sanctions, like a suspension of membership, can also derive from the IWF ADP, whose application the IWF Constitution expressly reserves.
84. The fight against doping is a fundamental objective of the IWF and it is duly enshrined in its statutes, namely Article 2.1.2 of the IWF Constitution. Pursuant to Article 3.3.2 of the IWF Constitution, a mandatory requirement for membership is the complete recognition of the IWF Constitution and by-laws, technical rules and regulations, competition rules and regulations, and the IWF ADP. As a member federation, the WFRK has the duty to recognize the IWF ADP and to comply with it.
85. A member federation is subject to disciplinary procedures when it violates anti-doping rules. These procedures are not those found in the IWF Constitution, but rather those foreseen in the IWF ADP. Article 12.1 of the IWF Constitution specifies "*violations of anti-doping regulations are not subject to the disciplinary procedures set forth hereunder*". The IWF Constitution fully refers to the IWF ADP within the context of the fight against doping. Contrary to the Appellant's submission, membership can be suspended not only pursuant to Article 3.4 of the IWF Constitution, but also pursuant to the IWF ADP.
86. The IWF argues that Article 12.4 IWF ADP does not contradict the IWF Constitution. On the contrary, the IWF constitution clearly reserves the disciplinary procedures provided for under the IWF ADP, and case CAS in OG 16/09 previously upheld a suspension from the Olympic Games based on Article 12.4 IWF ADP without any reservation due to a supposed constitutional issue.
87. Therefore, the IWF submits that the Policy and Article 12.4 IWF ADP are both valid under the IWF Constitution.

The disciplinary process

88. The IWF argues that Article 12.4 of the IWF ADP grants the IWF Executive Board full discretion to take any action it deems fit to protect the reputation and integrity of the sport. The IWF Executive Board had no requirement to hear all of its member federations before adopting

the Policy. This is particularly true here since the Policy is simple: three or more ADRVs within the context of the IOC's reanalyses result in a one-year suspension of membership (subject to the right to nominate candidates for elections). As a result, there is no need to investigate the facts nor to hear the respective federation, which also means that the right to be heard is not relevant in this instance.

89. Additionally, the Appellant cannot complain of a violation of its right to be heard since the Appellant decided to challenge the Policy before such Policy was effectively applied through the issuance and notification of a reasoned decision.
90. The IWF states that it always made it clear that no decision would be enforced against the Appellant before the IOC's ADRV procedure was completed. Therefore, every Kazakh weightlifter would have the opportunity to be heard before the IOC Disciplinary Commission and, therefore, prior to the implementation of the Policy.
91. Furthermore, the IWF argues that, in any event, the right to be heard in this instance is not decisive as the Appellant can test the Policy before CAS in the present proceedings. Article R57 of the Code gives the Panel full power to review the facts and the law, which cures any internal procedural deficiencies. Therefore, CAS would in any event cure any violation of the Appellant's right to be heard, *quod non*, which cannot render the Policy null and void.
92. The IWF also argues that the Appellant's argument regarding an alleged violation of the principle of equal treatment is ill-founded. The Policy is a standard practice that applies, equally, to any member federation with more than three ADRVs from the IOC re-testing procedure, which is why the IWF communicated in clear terms, at the time of the IWF's media release on 22 June 2016, that the three members concerned were (at that stage) Russia, Belarus, and Kazakhstan. Those members, whose situations were the same, were all treated equally.

The violation of Article 12.4 IWF Anti-Doping Policy

93. The IWF submits that the Appellant's argument that "*there must be some behaviour or action on the part of the federation*" in order to constitute conduct under Article 12.4 IWF ADP is contrived. At the time of the Appeal, before the completion of the IOC re-testing procedure, ten samples provided by Kazakh athletes have tested positive for prohibited substances. Moreover, of these athletes, seven were medal winners, five of whom with gold medals. The members affiliated with the WFRK were cheaters, enhancing their performance by ingesting prohibited steroids.
94. These weightlifters all tested positive for stanozolol, as well as oral turinabol or oxandrolone in some instances. The similarities in the prohibited substances ingested across the Kazakh athletes indicate, according to the IWF, that the athletes were part of centrally dictated program.
95. The WFRK was significantly negligent as it did not educate its athletes with respect to the fight against doping and did not implement any measure to fight doping amongst its members, or chose to ignore the doping methods adopted by its athletes.
96. The conduct of the Appellant may be passive or active; but in all cases the Appellant should bear a responsibility for the ADRVs committed by its member weightlifters. It is irrelevant for

the Appellant to point out that new officials are now in charge of managing weightlifting in Kazakhstan. As an association, the WFRK must bear responsibility for the past behaviour of its officials and/or athletes.

97. The IWF rejects any attempt by the WFRK to shift its responsibility onto the IWF. The samples of the Kazakh weightlifters were negative at the time of the 2008 Beijing and 2012 London Olympic Games solely due to the methods of detection being less effective than those today. In 2008 and 2012, the detection window for the steroids, when ingested in small doses, was only of a few days. Recently, new methods of detection are able to detect steroids for a much longer period. Until 2012, the Kazakh weightlifters knew that they would test negative if they stopped ingesting their prohibited substances a week before the event. However, the samples of the Kazakh weightlifters revealed the presence of steroids since long-term metabolites can now be detected.
98. The IWF submits that it bears no blame for the advancement of testing techniques applied by WADA-accredited laboratories since the 2008 and 2012 Olympic Games.

The legality of the Policy

99. The WFRK possibly faces a one-year suspension of most of its membership rights (subject to the right to nominate candidates for elections) due to the behaviour of its athletes during the 2008 Beijing and 2012 London Olympic Games. However, in this context, the position of athletes and the position of a national federation should be distinguished.
100. The athletes' results will be disqualified by the IOC should the adverse analytical findings be confirmed. Additionally, the athletes will be sanctioned with a period of ineligibility by the IWF. The sanctions are the same regardless of whether the athletes were tested in 2016 or at the time of the 2008 or 2012 Olympic Games.
101. The IWF submits that its position is coherent and in line with its rules. Having been made aware that ten Kazakh weightlifters were doping during the last two Olympic Games, it was legitimate for it to consider that such an extreme situation brought the sport of weightlifting into disrepute. In particular the Olympic Games is the most prestigious and most popular competition for a sport like weightlifting, with the vast majority of countries only broadcasting weightlifting on this occasion. The IWF submits that the disqualification of ten Olympic athletes affiliated with the same federation effectively brought the sport of weightlifting into disrepute.
102. Consequently, the IWF submits that the Policy complies with the principle of legality as it is clearly based on Article 12.4 IWF ADP.

The compliance with the World-Anti Doping Code

103. In a letter of 3 November 2014, WADA confirmed to the IWF that the IWF ADP was in line with the 2015 WADC. In particular, the IWF ADP fully complies with Article 10 and 11 of the WADC relating to sanctions and are implemented in the anti-doping rules of international federations without any substantive changes.

104. The IWF submits that the Appellant's arguments are ill-founded because the Appellant assumes that suspension from membership would be similar to a period of ineligibility imposed upon individuals.
105. An athlete cannot compete in any capacity at all, and cannot train with a team or use the facilities of a club or other member organisation of the IWF when the athlete is ineligible due to an ADRV. By contrast, a suspension from membership restricts the member's ability to exercise its rights under Article 3.5 of the IWF Constitution.
106. The WFRK affiliated weightlifters can participate in the events which are not part of the IWF calendar should the WFRK be suspended from membership (subject to the right to nominate candidates for elections). For example, they can still participate in national competitions organised by the WFRK and they can still train in the official structures of the WFRK. Effectively, the athletes are still able to practice their sport at a national level.
107. The sanctions under the Policy cannot be compared with a period of ineligibility imposed on an individual due to an ADRV. Therefore, the Policy is compliant with the WADC.

Proportionality

108. The IWF submits that the vast majority of weightlifters selected by the WFRK to enter the 2008 Beijing and 2012 London Olympic Games were dopers. These athletes behaved in a manner which fundamentally contradicts the essence of sport and is wholly unacceptable to the IWF.
109. The IWF submits that the circumstances speak for themselves, and that a one-year suspension of membership (subject to the right to nominate candidates for elections) is proportionate. The IWF also refers to the CAS award 2016/A/4745 where it was found that the ban of Russian athletes from the Paralympic Games was appropriate and proportionate given the circumstances.

The fault or negligence of the Appellant

110. The IWF rejects the Appellant's assertion that the Policy would be tantamount to strict liability.
111. The IWF argues that the WFRK cannot shift any blame onto its affiliated weightlifters. The Policy is based on a fault of the WFRK, whether active behaviour (endorsing a doping program), or passive conduct (failing to comply with the duty to educate the weightlifters and to fight against doping).
112. In both instances, the IWF submits that the WFRK bears a responsibility for being unable to eradicate a culture of doping amongst its affiliated athletes.

ii. Requests for Relief

113. The Respondent requests the Panel to rule that:

- 1) *The Appeal filed by the Weightlifting Federation of the Republic of Kazakhstan is dismissed.*

- 2) *The International Weightlifting Federation is granted an award for costs.*

IX. MERITS

A. Preliminary issue

114. The first issue, which the Panel must decide, is whether the IWF Executive Board decision of 22 June 2016 is in itself a new IWF rule or whether it is a Policy interpreting an existing IWF rule.

115. The relevant part of the 22 June 2016 IWF Executive Board decision states:

“5. The IWF Executive Board has decided that National Federations confirmed to have produced 3 or more Anti-Doping Rule Violations in the combined re-analysis process of the 2008 and 2012 Olympic Games shall be suspended for 1 year. Countries thus subject are: KAZ, RUS, BLR”.

116. The IWF letter to the Appellant of 8 July 2016 prior to the submission of the present appeal, provides:

“[We] would like to inform you ... that the policy recently adopted by the IWF Executive Board with respect to the reanalysis process of the 2008 and 2012 Olympic Games will not become effective before the IOC decisions against the concerned athletes are final and binding.

This means that the IWF will wait until the 21-day time limit for the filing of an appeal with CAS is expired or until a CAS award is issued, before taking any effective measures.

Since as of today, none of the Kazakh cases are closed, and the chance that the federation is suspended before the Games is close to zero.

In the meantime, the policy has been challenged by the Russian Weightlifting Federation. In light of this new element, the IWF, irrespective of the reanalysis process, is currently not in a position to enforce its policy and will wait until CAS issues a ruling on the validity of the policy”.

117. Additionally, the IWF informed the WFRK, in its letter of 18 July 2016, that the IWF Executive Board decision was a policy based on Article 12.4 of the IWF ADP. The WFRK also acknowledged at the oral hearing that it had not yet faced any sanction by the IWF on the basis of the 22 June 2016 IWF Executive Board decision.

118. Another CAS Panel recently found that the *“decision taken by the IWF Executive Board on 22 June 2016 the purpose of which was to establish a (new) standing practice for the future based on Article 12.4 ADP. This was a policy interpreting Article 12.4 ADP, NOT the application Article 12.4 ADP”* (CAS OG 16/09). The present Panel agrees with that understanding of the 22 June 2016 IWF Executive Board decision.

119. Consequently, the matter for the Panel to decide in the present proceedings is the validity of the standing practice or Policy adopted by the IWF Executive Board on 22 June 2016 interpreting Article 12.4 IWF ADP. Regarding additional remarks on a future application of the

Policy by the IWF, the Panel wishes to state that on one side it has well understood the request expressed by the IWF that the present award may also provide some guidance on such future implementation, if any, of the Policy. On the other side, the Panel is reluctant to anticipate the legal considerations that the competent disciplinary bodies of the IWF and, possibly, other CAS Panels will make when issuing a sanction against a national member federation and review such a disciplinary decision, respectively. Therefore, the Panel will provide some considerations concerning the future application of the Policy only when this is necessary to avoid a possible misunderstanding of any statement of the present Award.

B. Validity of the Policy

120. The Appellant submits that the Policy is invalid based on several grounds. Each of these will be assessed in turn.

(i) Non-adherence to the IWF Constitution

121. The Appellant's argument is flawed because it presumes that Article 3.8 of the IWF Constitution provides the only basis on which a member federation may be suspended. In fact, Article 12.1 of the IWF Constitution provides that “[v]iolations of anti-doping regulations are not subject to the disciplinary procedures set forth hereunder”. Within the context of anti-doping, the IWF Constitution refers to the IWF ADP for the administration of disciplinary procedures and sanctions. Consequently, the Panel notes that there are several ways in which a member federation may be suspended by the IWF, including the IWF ADP.

122. The Policy is based on Article 12.4 IWF ADP which explicitly stipulates that a possible sanction may be to “[s]uspend the Member Federation from participating in any activities for a period of up to two (2) years”. Therefore, the sanction envisaged by the Policy clearly falls within the scope of Article 12.4 IWF ADP, and the Panel finds that the application of the disciplinary sanction contemplated by the Policy (a one-year suspension with a retained right to nominate candidates for IWF elections) does not violate or contradict the IWF Constitution.

123. Additionally, the lack of an explicit obligation for a member federation to seek out and identify anti-doping violations and to test athletes does not absolve the WFRK from any consequence should its member athletes engage in doping. As was established above, there are several ways in which a member federation may be suspended. The lack of an explicit requirement in the IWF Constitution does not impact the assessment of the WFRK's obligations under the IWF ADP.

124. More specifically, Article 16.1 IWF ADP states that “All Member Federations and their members shall comply with these Anti-Doping Rules”, and taken in combination with Articles 16.2 *et seq.* of the IWF ADP, requires the member federation to implement effective mechanisms to combat any doping by its members. In sum, the Policy which interprets the application of Article 12.4 IWF ADP does not contravene the IWF Constitution.

(ii) *Non-adherence to general legal principles – No disciplinary process*

125. The right to be heard is a fundamental principle of due process an association under the Swiss Constitution, such as the IWF, must respect. Any decision imposing sanctions on the member of an association must comply with this right.
126. However, the Policy's validity is the issue, which the Panel must decide, and not any disciplinary decision that the IWF will take against a member federation like the WFRK on the basis of Article 12.4 IWF ADP as interpreted by the Policy. In fact, it is undisputed between the parties that the WFRK has not faced any sanction by the IWF on the basis of the Policy at the time of these proceedings. The WFRK decided to submit its appeal prior to the imposition of any sanction through a decision, and it cannot allege that a decision had been taken against it in violation of its right to be heard.
127. Concerning the right to be heard when the IWF Executive instituted the Policy, Article 12.4 IWF ADP states that the "*IWF Executive Board may, in its discretion, take such action as it deems fit to protect the reputation and integrity of the sport*". Importantly, Article 12.4 IWF ADP provides for the discretion of the IWF Executive Board to take action in order to protect the reputation and integrity of the sport, meaning that it was not required to hear all of its members prior to formulating the standard practice in the Policy.
128. Nevertheless, as explained below, the Panel urges the IWF to take due care that any disciplinary decision that the IWF will take in the future based on the Policy respects the procedural rights, in particular the right to be heard, which must be afforded to the members of an association under Swiss law. To clarify the above, the Panel feels appropriate to add that it cannot follow the legal reasoning of the IWF when it argues that a decision to suspend a national member federation for a period of one year can be taken without hearing such member federation.
129. As the IWF stated at the oral hearing, the Policy applies to all member federations and does not specifically target particular member federations. The 22 June 2016 IWF Executive Board press release named the member federations of Belarus, Kazakhstan, and Russia because the Policy concerned them at the time of the press release based on the IOC's retesting procedure. The press release was not a decision or sanction imposed on the three federations, and additional federations could be subject to the Policy as the retesting procedures continue. Finally, at the hearing the IWF did not dispute that the wording of the media release was, as in relation to the three named national member federations, from a technical legal perspective quite unfortunate or at least unclear.
130. Therefore, taking into consideration that the Policy can be applied to all national member federations of the IWF, the Panel finds that the Policy by itself does not breach the principle of equal treatment.

(iii) Non-adherence to general legal principles – No violation of Article 12.4 IWF ADP

131. The IWF points out that Article 12.4 IWF ADP applies if three criteria are met, namely:
- a. Conduct by officials or members of a federation;
 - b. Conduct in relation to doping or anti-doping rule violations; and
 - c. Bringing the sport into disrepute.
132. Member federations of the IWF must accept the IWF anti-doping rules, including the IWF ADP, as part of their membership obligations. Article 3.4.2 of the IWF Constitution requires that a member “[a]ccept and fully comply with the IWF Constitution, By-Laws, Technical and Competition Rules & Regulations and the Anti-Doping Policy”. Similarly, Article 16.1 of the IWF ADP states that “All Member Federations and their members shall comply with these Anti-Doping Rules”, and taken in combination with Articles 16.2 *et seq.* of the IWF ADP, requires the member federation to implement effective mechanisms to combat any doping by its members. Under the present circumstances, the Panel is satisfied that as a matter of principle, if proven, the failure of a national member federation to administer an effective anti-doping program with regard to its members (athletes, coaches, etc.), is a behaviour that can constitute a conduct by officials or a member of a federation in relation to doping or anti-doping rule violations for the purposes of Article 12.4 IWF ADP.
133. At the oral hearing, the WFRK argued that athletes should not be considered as members for the purposes of the IWF ADP as “Athlete” is a defined term under the regulations. Article 12.4 IWF ADP does not refer to “Athletes” but only “Member Federation or members or officials thereof”, therefore Article 12.4 IWF ADP should not apply in the present circumstances. However, the Panel finds that this line of argumentation is flawed. The IWF ADP specifies that its scope extends to “Athletes, Athlete Support Personnel and other Persons, each of whom is deemed, as a condition of his/ her membership, accreditation and/ or participation in the sport, to have agreed to be bound by these Anti-Doping Rules”, which leaves little doubt that Article 12.4 IWF ADP encompasses athletes even if not expressly mentioned.
134. Concerning the requirement that the sport of weightlifting be brought into disrepute, the Panel notes that another CAS Panel, in OG 16/09, found that the term “disrepute” is unambiguous, as “[i]t refers to the loss of reputation or dishonour”. The present Panel agrees with that understanding, and considers that the IWF Executive Board’s conclusion that in principle, multiple ADRVs within a certain period of time by a certain number of athletes at certain events, combined with a proven failure of a national member federation to administer a proper anti-doping program, may constitute circumstances that bring the sport into disrepute. The IOC retesting procedure has uncovered an extensive series of doping within weightlifting. In the Panel’s view, the WFRK has failed to demonstrate that the IWF’s conclusion that the conduct of a member federation and its athletes can bring the sport of weightlifting into disrepute was by itself incorrect or unreasonable. Whether this is the case for the WFRK is a matter that the competent bodies of the IWF and, possibly, CAS may decide once a decision of the IWF against the WFRK on the basis of the Policy will be taken, if any.

(iv) *Non-adherence to general legal principles – Breach of the principle of legality*

135. The issue before the Panel in the present matter is the validity of the Policy. The Policy is based on a finding of an ADRV by three athletes of a member federation in the context of the IOC re-testing of the samples from the 2008 and 2012 Olympics. Whether any of the underlying ADRVs to be established by the IOC are considered invalid does not impact the Policy itself as it is only once the ADRVs have been confirmed that the Policy would become applicable. Accordingly, the arguments submitted by the WFRK as to the prohibited substance thresholds required for an ADRV within the context of the IOC re-testing procedure are not relevant for the validity of the Policy.
136. As will be discussed below, WADA has approved the IWF ADP with regard to the WADC, including its mandatory definitions and sanctions. Similarly, with regard to the WFRK's claim, as to a distinction between samples taken at the Olympics in comparison to other competitions, confuses the sanctions envisaged for member federations and those envisaged to athletes.
137. As such, the Panel finds that the Policy does not breach the principle of legality.

(v) *Non-adherence to general legal principles – Impermissible substantive changes from the World Anti-Doping Code*

138. The Panel finds that the Appellant's argument is ill-founded in several respects. As submitted by the IWF, WADA had already confirmed in November 2014 that the IWF ADP was compliant with the WADC, including Article 10 and Article 11 relating to sanctions. Moreover, the WFRK's submission is premised on the Policy being a new rule of the IWF ADP. Yet, as noted above, the Policy is not a new rule of the IWF ADP but rather an interpretation of a standing practice with regard to an existing rule, namely Article 12.4 IWF ADP.
139. The Appellant also confuses the sanction envisaged by an application of the Policy with a sanction envisaged for an athlete who commits an ADRV. In effect, an athlete sanctioned with ineligibility cannot compete at all during that period and cannot train with a team or use the facilities of a club or other member organisation. In contrast, the suspension from membership of a national federation only results in the suspended member being unable to exercise its rights as found in the IWF Constitution. The IWF's application of the Policy in a decision against the WFRK would not result in all of the WFRK athletes being unable to compete at all or train in the WFRK's facilities. The athletes would only be restricted from participating in the IWF calendar events, but be free to participate in competitions and training at a national level for the duration of the sanction.
140. Therefore, the Panel finds that the Policy does not change or contravene the WADC.

(vi) *Non-adherence to general legal principles - Proportionality*

141. Under Swiss law an association has a great degree of autonomy and the essential right to regulate and determine its own affairs. As the CAS Panel in the award CAS 2011/A/2675 found, "[o]ne of the expressions of associations is the competence to issue rules to their own governance and their own

competitions. Swiss associations are deemed sovereign to issue their statutes and regulations". The Policy was issued in this context.

142. Article 12.4 IWF ADP provides that *"If any Member Federation or members or officials thereof, by reason of conduct connected with or associated with doping or anti-doping rule violations, brings the sport of weightlifting into disrepute, the IWF Executive Board may, in its discretion, take such action as it deems fit to protect the reputation and integrity of the sport"*. As the IWF explained at the oral hearing, the Olympics is the most important and prominent event within the sport of weightlifting, and the springboard for the sport for the following four years. The IWF relies heavily on the IOC for its own funding and the presence of widespread doping within weightlifting at the Olympics may likely compromise the sport of weightlifting's standing with the IOC in the future.
143. In essence, the context in which the IWF Executive Board adopted the Policy was very serious. At the time of the appeal, of the 90 samples which tested positive for prohibited substances as part of the IOC, 46 were from weightlifters, and 7 were from WFRK weightlifters. Additionally, several of the WFRK weightlifters that had tested positive for prohibited substances were medallists at the 2008 and 2012 Olympics. The weightlifting events at the previous Olympics had thus been rampant with doping and a great number of the results which were achieved at the time were fraudulent.
144. The Panel is not convinced by the WFRK's claim that the Policy by itself, infringes the principle of proportionality because the IWF Executive Board has taken a measure to address the widespread doping at the 2008 and 2012 Olympics rather than other competitions. The IWF Executive Board was acting within its discretion to interpret Article 12.4 IWF ADP in such a manner as to find that several ADRVs in the context of the Olympics committed by the member athletes of the federation in question was sufficient to bring the sport of weightlifting into disrepute. Moreover, the sanction envisaged by the Policy is a one-year suspension (subject to the right to nominate candidates for elections). Such a suspension, if and once imposed, would affect the WFRK and its athletes at an international level and does not prevent the WFRK weightlifters from competing at national level. Of course, the above considerations regarding the Policy itself do not mean that any future disciplinary decision taken by the IWF against a national member federation will not need to comply with the principle of proportionality. For instance, as debated at the hearing, the Panel would expect that the disciplinary bodies of the IWF will take into due consideration not only the number of ADRVs, but also their nature and importance, keeping in mind that the presence of some substances like steroids may be considered in a different way than, for example, recreational drugs. Also, the number of athletes involved may be considered relevant, as three ADRVs by three athletes may be regarded in a more serious manner than three ADRVs by a single athlete.
145. To conclude, the Panel finds that by itself, the Policy complies with the principle of proportionality, notwithstanding the fact that the Policy addresses only two Olympic Games. Whether or not the IWF and its national member federations will decide to issue similar policies for other events is a matter that cannot be decided by this Panel, but is in the legislative power of the competent bodies of the IWF.

(vii) Strict Liability

146. As has been noted above, member federations of the IWF are required to accept the IWF anti-doping rules, including the IWF ADP, as part of their membership obligations. Article 3.4.2 of the IWF Constitution requires that a member “[a]ccept and fully comply with the IWF Constitution, By-Laws, Technical and Competition Rules & Regulations and the Anti-Doping Policy”. Similarly, Article 16.1 IWF ADP states that “All Member Federations and their members shall comply with these Anti-Doping Rules”, and taken in combination with Articles 16.2 *et seq.* of the IWF ADP, requires the member federation to implement effective mechanisms to combat any doping by its members.
147. The Panel is of the view that it cannot be excluded that an evident failure by a national member federation, at the time of the 2008 and 2012 Olympics, to administer an effective anti-doping program with regard to its members is sufficient to constitute a conduct for the purposes of Article 12.4 IWF ADP. Importantly, it is conceivable that under ordinary circumstances a national member federation will not be easily in a position to shift the entire responsibility of such failure onto its member athletes while exonerating itself of any wrongdoing. For the purpose of adjudicating the case at hand, the Panel is satisfied that the Policy cannot be considered a violation of the Swiss public policy on the grounds that it imposes a strict liability.

C. Further remarks

148. As repeatedly mentioned in the present Award, as recognised by the parties, the issue of the validity of a subsequent IWF decision to sanction the WFRK or another member federation based on the Policy does not fall within the ambit of the current proceedings. The Panel notes that Swiss law affords a large degree of autonomy to associations in deciding the rules applicable to their members and that the implementation of the Policy remains within the disciplinary powers of the competent bodies of the IWF. Nevertheless, the Panel would urge the IWF to take due care that any decision based on the Policy complies with the applicable rules and with the rights of each national federation member of IWF, including the right to be heard and the proportionality of any sanction imposed.
149. To conclude, the Panel is satisfied that there are no reasons to set aside or declare null and void the Policy. Future disciplinary sanctions taken on its basis, if any, will have to comply with the applicable rules in order to sustain any judicial control. Therefore, the Appeal filed by the WFRK shall be dismissed. This conclusion makes it unnecessary to consider the other requests of the parties. Accordingly, all further other requests for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Appeal filed by the Weightlifting Federation of the Republic of Kazakhstan against the International Weightlifting Union is dismissed.

(...)

4. All further and other requests for relief are dismissed.