



Arbitration CAS ad hoc Division (OG Rio) 16/009 Russian Weightlifting Federation (RWF) v. International Weightlifting Federation (IWF), award of 5 August 2016 (operative part of 3 August 2016)

Panel: Prof. Ulrich Haas (Germany), President; Mrs Carol Roberts (Canada); The Hon. Annabelle Bennett (Australia)

Weightlifting

Ban of a national federation from participating in the Olympic Games by the international federation

Need of a sufficient legal basis

Interpretation of Art. 12.4 of the IWF Anti-Doping Policy

1. **A suspension of an entire federation from participation in the Olympic Games at least requires an explicit and unambiguous legal basis.**
2. **Article 12.4 ADP does not require an ADRV to be established in relation to individual athletes in order for the IWF to be entitled to take action against a member federation. It suffices that there is conduct connected or associated with doping in order to apply it. The provision, thus, does not require that the whole results management process (including hearings and CAS procedures) be concluded, before the provision can be applied. The provision is furthermore not limited to the conduct of individual athletes.**

1 PARTIES

- 1.1 The Applicant in the case CAS OG 16/009 is the Russian Weightlifting Federation (hereinafter, the “RWF”).
- 1.2 The Respondent is the International Weightlifting Federation (hereinafter, the “IWF”), the organisation responsible for the sport of weightlifting, having its headquarters in Lausanne, Switzerland.

2 FACTS

- 2.1 The elements set out below are a summary of the main relevant facts as established by the Panel by way of a chronology on the basis of the submissions of the parties. Additional facts may be set out, where relevant, in the legal considerations of the present award.

2.2 On 24 July 2016, the IOC took a decision concerning the eligibility of Russian athletes for competing in the Games of the XXXI Olympiad in Rio de Janeiro.

2.3 The IOC Executive Board decided that:

- “1. *The IOC will not accept any entry of any Russian athlete in the Olympic Games Rio 2016 unless such athlete can meet the conditions set out below.*
2. *Entry will be accepted by the IOC only if an athlete is able to provide evidence to the full satisfaction of his or her International Federation (IF) in relation to the following criteria:*
 - *The IFs, when establishing their pool of eligible Russian athletes, to apply the World Anti-Doping Code and other principles agreed by the Olympic Summit (21 June 2016).*
 - *The absence of a positive national anti-doping test cannot be considered sufficient by the IFs.*
 - *The IFs should carry out an individual analysis of each athlete’s anti-doping record, taking into account only reliable adequate international tests, and the specificities of the athlete’s sport and its rules, in order to ensure a level playing field.*
 - *The IFs to examine the information contained in the IP Report, and for such purpose seek from WADA the names of athletes and National Federations (NFs) implicated. Nobody implicated, be it an athlete, an official, or an NF, may be accepted for entry or accreditation for the Olympic Games.*
 - *The IFs will also have to apply their respective rules in relation to sanctioning of entire NFs.*
3. *The ROC is not allowed to enter any athlete for the Olympic Games Rio 2016 who has ever been sanctioned for doping, even if he or she has served the sanction.*
4. *The IOC will accept any entry by the ROC only if the athlete’s IF is satisfied that the evidence provided meets conditions 2 and 3 above and if it is upheld by an expert from the CAS list of arbitrators appointed by an ICAS Member, independent from any sports organisation involved in the Olympic Games Rio 2016.*
5. *The entry of any Russian athlete ultimately accepted by the IOC will be subject to a rigorous additional out-of-competition testing programme in coordination with the relevant IF and WADA. Any non-availability for this programme will lead to the immediate withdrawal of the accreditation by the IOC”*

(emphasis added).

2.4 The IOC Executive Board stated that the presumption of innocence cannot be applied to Russian athletes in any of the 28 Olympic summer sports but also stated that, according to the rules of natural justice, individual justice has to be applied and that this means “*that each affected athlete must be given the opportunity to rebut the applicability of the collective responsibility in his or her individual case*”.

2.5 Following the IOC Executive Board’s decision, the IWF Executive Board during its extraordinary meeting on 29 July 2016 took the decision “*to ban the Russian Weightlifting Federation from recommending/entering/participating with athletes and Technical official at Rio Olympic Games 2016*”

(hereinafter, the “Appealed Decision”). The Appealed Decision took effect on 29 July 2016. The grounds provided for the Appealed Decision were – *inter alia* – as follows:

“The IWF Executive Board carefully studied question of the participation of Russian weightlifters in the Olympic Games Rio. The study included the

- *World Anti-Doping Agency (WADA)’s Independent Person (IP) Report by Prof. Richard McLaren,*
- *IOC decision concerning the participation of Russian athletes in the Olympic Games in Rio 2016,*
- *Statistics (Re-analytical cases from the Beijing and London Olympic Games). Anti-Doping statistics concerning Russian athletes,*
- *IWF Anti-Doping Policy,*
- *WADA Code,*
- *Olympic Charter,*
- *IOC, WADA communications*

According to the IOC decision concerning the participation of Russian athletes in the Olympic Games in Rio 2016, which set the eligibility criteria for the Russian athletes to participate at the Games the IWF Executive Board evaluated the nominated athletes’ eligibility.

8 (Eight) athletes were nominated by the Russian Olympic Committee (ROC) to compete in the Rio Olympic Games weightlifting events.

Ms Tatiana Kashirina’s and Ms Anastasi Romanova’s nominations were already withdrawn by the ROC due to prior anti-doping rule violations.

[Four (4) additional athletes] were listed in the McLaren Report as beneficiaries of the Disappearing Positive Methodology System. ...

Further to the above, we would like to highlight the extremely shocking and disappointing statistics regarding the Russian weightlifters:

As of today there are 7 confirmed AAFs for Russian weightlifters from the combined reanalysis process of London and Beijing, while the second wave of Beijing reanalysis is not yet in a stage when the names and countries involved can be publicly disclosed.

...

The IOC asked the International Federations to ‘apply their respective rules in relation to the sanctioning of entire NF’s’

According to Article 12.4 of the IWF Anti-doping Policy,

‘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’.

The IWF Executive Board confirmed with high majority that the Russian Weightlifting Federation and Russian weightlifters brought the weightlifting sport into disrepute”.

3 CAS PROCEEDINGS

- 3.1 On 1 August 2016 at 9.15 am (time of Rio de Janeiro), the RWF filed an application with the CAS Ad Hoc Division against the IWF. The Applicant also mentioned as interested parties the Russian Olympic Committee (hereinafter, the “ROC”).
- 3.2 At 10.30 am (time of Rio de Janeiro), the Court Office of the CAS Ad Hoc Division notified the application from the RWF.
- 3.3 On 1 August 2016, the Parties and the Interested Party were informed that the President of the CAS Ad Hoc Division had decided to appoint the following arbitrators: Prof. Dr. Ulrich Haas (President); The Hon. Dr. Annabelle Bennett A.O. S.C. and Ms Carol Roberts (arbitrators).
- 3.4 The Panel allowed the Respondent to file a response to the Applicants’ application by 2 August 2016, 3.00 pm (time of Rio de Janeiro). The Interested Party was granted a similar deadline to file an *amicus curiae* brief.
- 3.5 The Parties were also summoned at a hearing to be held on 3 August 2016, 9.00 am (time of Rio de Janeiro).
- 3.6 On 2 August 2016 at 2.20 pm (time of Rio de Janeiro), the IWF filed its submission.
- 3.7 On 2 August 2016 at 4.10 pm (time of Rio de Janeiro), ROC filed an *amicus curia* brief.
- 3.8 On 3 August 2016, at 9:00 am (time of Rio de Janeiro), the hearing took place at the temporary offices of the CAS Ad Hoc Division. The following persons attended the hearing: for the Applicant, Mr Artem Patsev, Counsel; for IWF, Mr Attila Adamfi, IWF Director General and Dr. Eva Nyirfa, IWF Legal department and Mr Yvan Henzer, Counsel. William Sternheimer also attended the hearing on behalf of CAS.

4 PARTIES’ REQUESTS FOR RELIEF

- 4.1 The Parties’ submissions and arguments shall only be referred to in the sections below if and when necessary, even though all such submissions and arguments have been considered.

a. Applicant’s Requests for Relief

- 4.2 The Applicant’s request for relief is as follows:

“1. This Application is allowed;

2. *The IWF EB decision of 29 July 2016 imposing a blanket ban on the IWF and its athletes from the Games of the XXXI Olympiad, in Rio de Janeiro, in 2016 is invalid and unenforceable and shall be set aside.*
3. *The RF and its athletes subject to the criteria set by the IOC EB decision of 24 July 2016 are allowed to participate at the Games of the XXXI Olympiad, in Rio de Janeiro, in 2016.*
4. *Alternatively (by way of recommendation), the RWF quota to be allocated through invitation in addition to the quota already re-allocated by the IWF to other NOCs”.*

b. Respondent’s Request for Relief

4.3 The Respondent’s request for relief is as follows:

“The Appeal filed by the Russian Weightlifting Federation is dismissed”.

5 JURISDICTION AND ADMISSIBILITY

5.1 Article 61.2 of the Olympic Charter provides as follows:

“61 Dispute Resolution

[...]

2. *Any dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport (CAS), in accordance with the Code of Sports-Related Arbitration”.*

5.2 In view of the above, the Panel considers that the CAS Ad Hoc Division has jurisdiction to hear the present matter. The jurisdiction of the CAS Ad Hoc Division was not contested in the written submissions and was expressly confirmed by all parties at the hearing.

5.3 Article 1 of the CAS Arbitration Rules for the Olympic Games (hereinafter the “CAS Ad Hoc Rules”) provides as follows:

“Article 1. Application of the Present Rules and Jurisdiction of the Court of Arbitration for Sport (CAS)

The purpose of the present Rules is to provide, in the interests of the athletes and of sport, for the resolution by arbitration of any disputes covered by Rule 61 of the Olympic Charter, insofar as they arise during the Olympic Games or during a period of ten days preceding the Opening Ceremony of the Olympic Games.

In the case of a request for arbitration against a decision pronounced by the IOC, an NOC, an International Federation or an Organising Committee for the Olympic Games, the claimant must, before filing such request, have exhausted all the internal remedies available to him/her pursuant to the statutes or regulations of the sports body concerned, unless the time needed to exhaust the internal remedies would make the appeal to the CAS Ad Hoc Division ineffective”.

- 5.4 In the case at hand the Appealed Decision was issued on 29 July 2016. The appeal against the Appealed Decision was filed on 1 August 2016. In its *amicus curiae* dated 2 August 2016, the ROC submitted that “*the present dispute is the subject of the regular CAS procedure*”. However, the ROC deferred in its submission to the CAS to decide the question of admissibility and stated that “*the ROC leaves [the question of admissibility] to the full discretion of the Panel*”. The parties present at the hearing were both in agreement that the prerequisites of Article 1 of the CAS Ad Hoc Rules were fulfilled. The Panel concurs with this view. In particular the Panel finds that the deadline provided therein has been met and that dispute arose “*during the Olympic Games or during a period of ten days preceding the Opening Ceremony of the Olympic Games*”. Consequently, the appeal is admissible.

6 APPLICABLE LAW

- 6.1 Under Article 17 of the CAS Ad Hoc Rules, the Panel must decide the dispute “*pursuant to the Olympic Charter, the applicable regulations, general principles of law and the rules of law, the application of which it deems appropriate*”.
- 6.2 The Panel notes that the “applicable regulations” in this case are the rules and regulations of the IWF, in particular the IWF Anti-Doping Policy (hereinafter, the “ADP”).
- 6.3 In particular, the Article 12.4 ADP is relevant to this case.

“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” (emphasis added).

7 DISCUSSION

a. *Legal framework*

- 7.1 These proceedings are governed by the Ad Hoc Rules enacted by the International Council of Arbitration for Sport (“ICAS”) on 14 October 2003. They are further governed by Chapter 12 of the Swiss Private International Law Act of 18 December 1987 (“PIL Act”). The PIL Act applies to this arbitration as a result of the express choice of law contained in Article 17 of the Ad Hoc Rules and as the result of the choice of Lausanne, Switzerland as the seat of the ad hoc Division and of its panels of Arbitrators, pursuant to Article 7 of the Ad Hoc Rules.
- 7.2 According to Article 16 of the Ad Hoc Rules, the Panel has “*full power to establish the facts on which the application is based*”.

b. Matter in dispute

- 7.3 The Applicant specified in the hearing that its application is solely directed against IWF's decision to "*ban the Russian Weightlifting Federation from recommending/entering/participating with athletes and technical Official at Rio Olympic Games 2016*". The Applicant in the hearing withdrew his third prayer of relief according to which it had originally requested that RWF's "*athletes subject for the criteria set by the IOC EB decision of 24 July 2016 are allowed to participate at the Games of the XXXI Olympiad, in Rio de Janeiro, in 2016*". The purpose of this request was – according to the Applicant – to put the RWF back in the legal position before the Appealed Decision had been issued. The Panel notes that this is not an application brought by individual athletes, nor was a lack of natural justice relied upon. Furthermore, the Applicant specified that it did not contest the eligibility criteria set out in the IOC EB decision of 24 July 2016.

c. Merits

aa) Sufficient Legal Basis

- 7.4 The IWF based the ban of the RWF on Article 12.4 ADP. In CAS OG 00/010, the Panel found that "*a suspension of an entire federation from participation in the Olympic Games ... at least requires an explicit, and unambiguous legal basis*". This Panel finds that Article 12.4 ADP constitutes a sufficient legal basis to "*ban the RWF from recommending/entering/participating with athletes ... at the Rio Olympic Games 2016*".

- 7.5 The power of the IWF Executive Board, in its discretion, to take such action as it deems fit to protect the reputation and integrity of the sport, was not challenged by RWF.

bb) No estoppel from applying Article 12.4 ADP

- 7.6 In the hearing the Applicant referred to a pending CAS procedure (CAS 2016/A/4686) and to a letter issued by IWF on 8 July 2016 in the context of that procedure. The letter reads – *inter alia* – as follows:

"There is no effective decision taken against the Russian National Federation and there is absolutely no emergency to conduct an arbitration since the risk that the Appellant [the RWF] be suspended before the Olympic Games is close to zero since the decisions, assuming that they are issued on short notice, will in any event not become final and binding before the next Olympic Games (given the time-limit of 21 days to file an appeal to CAS). ... Furthermore, the IWF hereby declares that no suspension will be imposed upon the Russian Weightlifting Federation until the award is issued in the present case".

- 7.7 This Panel finds that neither the pending procedure in CAS 2016/A/4686 nor the letter issued in the context of these proceedings prevents the IWF from applying Article 12.4 ADP to the RWF. The matter in dispute in the procedure CAS 2016/A/4686 relates to a 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 of Article 12.4 ADP. According thereto, if "*three or more athletes*

are found guilty for having committed anti-doping rule violations within the reanalysis process initiated by the IOC in connection with 2008 and 2012 Olympic Games, the concerned national federations shall be suspended for one year". This new standing practice is under specific challenge before the CAS (2016/A/4686). The challenge is not directed against Article 12.4 ADP as such. The matter in dispute in this procedure before the Ad Hoc Division neither concerns the suspension of membership, nor did the IWF when issuing the ban take action against the RWF based on the (new) three-strikes-out policy. Instead, the matter in dispute before this Panel concerns whether or not the IWF is entitled to ban the RWF ("only") for the Rio Olympic Games based on Article 12.4 ADP. Consequently, neither the procedure CAS 2016/A/4686 nor the letter issued by IWF on 8 July 2016 in the context of said procedure, prevents the IWF from applying Article 12.4 ADP to the RWF.

cc) Proper construction, interpretation and application of Article 12.4 ADP

7.8 The Applicant submits that the IWF can only apply Article 12.4 ADP once an anti-doping rule violation by its athletes has been established. The latter requires that the athletes be given a fair procedure in the context of which their right to be heard must be respected. Furthermore, the Applicant submits that the presence of an adverse analytical finding (hereinafter, "AAF") in relation to its athletes is in itself not sufficient to assume that *"any person (and an athlete as well) has committed an anti-doping rule violation. The AAF is just the first step in a long disciplinary procedure"* that culminates in CAS rendering a final and binding decision whether or not the athlete has committed an anti-doping rule violation (hereinafter, "ADRV").

7.9 The Panel finds that Article 12.4 ADP does not require an ADRV to be established in relation to individual athletes in order for the IWF to be entitled to take action against a member federation. The wording of Article 12.4 ADP is clear in this respect. The provision not only refers to *"anti-doping rule violations"*, but to *"conduct connected with or associated with doping or anti-doping rule violations"* (emphasis added). Consequently, it suffices that there is conduct connected or associated with doping in order to apply Article 12.4 ADP to the RWF. The provision, thus, does not require that the whole results management process (including hearings and CAS procedures) be concluded, before the provision can be applied. The provision is furthermore not limited to the conduct of individual athletes.

dd) The information considered by the IWF

7.10 In order to conclude that there was *"conduct connected with or associated with doping"* the IWF referred to various sources of information. First, the IWF based its decision on the information in the Independent Person's Report (hereinafter, "McLaren Report"). A centrepiece of this report is the finding concerning the so-called "Disappearing Positive Methodology". The latter is a centrally dictated program which used – *inter alia* – the Moscow laboratory to cover up doping. It follows from the McLaren Report that Russian weightlifting is a sport that was implicated in the Disappearing Positive Methodology. The McLaren Report submits that 117 Russian weightlifters were included in this centrally dictated program. Furthermore, the IWF based its

conclusions on the results from the retesting of the London and Beijing Olympics. According thereto the retesting of these samples turned out nine AAFs for Russian weightlifters.

- 7.11 The Panel finds that the above information constitutes “*conduct connected with or associated with doping*”. The Panel also finds that the information on which the IWF based its decision is – contrary to what the Applicant has submitted – on its face is sufficiently reliable. First, the Panel notes that the findings of the McLaren Report in relation to the “Disappearing Positive Methodology” meet – according to the report – a high threshold, because the standard of proof that was applied was “beyond reasonable doubt”.
- 7.12 The Panel further notes that the findings of the McLaren Report were taken seriously by the IOC and lead to the IOC Executive Board’s decision dated 24 July 2016 that enacted eligibility criteria specifically for Russian athletes, which is unique in the history of the Olympic Games. Also the findings were endorsed by WADA, the supreme authority in the world of sport to lead and coordinate the fight against doping and by other international federations, such as the IAAF. Furthermore, the information contained in the McLaren Report is also corroborated by the reanalysis of the athlete’s samples at the London and Beijing Olympics. All nine 9 Russian athletes have tested positive for the (same) substance Turinabol. This is a strong indication that they were part of a centrally dictated program. This is all the more true, since the substance Turinabol was described by (former head of the Moscow laboratory) Dr Rodchenko to be part of a “special cocktail” with which Russian athletes were doped. Finally, the Panel notes that the Applicant did not challenge the specific findings of the McLaren Report in relation to the Disappearing Positive Methodology.

ee) Bringing the sport in Disrepute

- 7.13 The Applicant submits that the information on which the IWF based its Appealed Decision is not sufficient to bring the sport of weightlifting into disrepute. The Panel is unable to agree that the term “disrepute” is ambiguous. It refers to loss of reputation or dishonour. The Panel finds that the IWF’s conclusion that the above facts bring the sport of weightlifting in disrepute is neither incompatible with the applicable provisions nor arbitrary. The findings in the McLaren Report constitute one of the biggest doping scandals in sports history. This scandal paired with the findings from the retesting of samples led the IWF to consider that the actions of the RWF and the Russian weightlifters brought the sport of weightlifting into disrepute, because it draws a picture of this sport as being doping infested. All of this clearly amounts to “*conduct connected with or associated with doping*” that can be attributed to Russian weightlifting. In the Panel’s view, the Applicant has failed to demonstrate that the IWF’s conclusion that, based on the evidence before it, the conduct of the RWF brought the sport of weightlifting in disrepute, was unreasonable.

ff) No violation of Equal Treatment

- 7.14 The Applicant has submitted that the Appealed Decision constitutes a breach of the principle of equal treatment. The retesting of the London and Beijing samples has not only resulted in

AAFs for Russian athletes, but also revealed AAFs for other member federations. The Panel notes that Russian weightlifters are not the only ones who have produced AAFs within the retesting programme. However, the Panel also notes that the situation in Russian weightlifting is – apparently – of a different dimension. It has not been reported nor submitted that other member federations are involved in a centrally dictated and managed doping program. Furthermore, the Panel notes that according to the McLaren Report, the impressive number of 61 Russian weightlifters benefitted from the Disappearing Positive Methodology. Finally, the Panel notes that the whole Russian delegation for the London Olympics was – according to the information provided – involved in doping.

- 7.15 The Applicant has not shown to the Panel that any other member federation has been involved in a similar doping scheme of such magnitude. Consequently, the Panel finds that there is no breach of equal treatment in the case at hand.

8 CONCLUSION

- 8.1 In view of all of the above the Panel finds that the Appealed Decision must be upheld and the appeal dismissed.

The ad hoc Division of the Court of Arbitration for Sport renders the following decision:

The application filed by the Russian Weightlifting Federation on 1 August 2016 is dismissed.