



Arbitration CAS 2015/A/4129 Demir Demirev, Stoyan Enev, Ivaylo Filev, Maya Ivanove, Milka Maneva, Ivan Markov, Dian Minchev, Asen Muradiov, Ferdi Nazif, Nadezha-May Nguen & Vladimir Urumov v. International Weightlifting Federation (IWF), award of 6 October 2015 (operative part of 25 August 2015)

Panel: Judge James Reid QC (United Kingdom), President; Mr Luc Argand (Switzerland); Prof. Ulrich Haas (Germany)

*Weightlifting*

*Doping (stanozolol)*

*Condition to grant a stay of the arbitration proceedings*

*Burden and standard of proof*

*No significant fault or negligence under the 2015 WADAC*

*Degree of fault*

1. Under the applicable Swiss law, the alleged existence of criminal proceedings does not constitute a mandatory ground for staying an arbitration proceedings especially where no issue was raised by the appeal that it was beyond the competence of the CAS panel to determine on the evidence before it.
2. Under the applicable anti-doping rules, in order to benefit from an eliminated or reduced sanction, the burden of proof is placed on the athlete to establish that the violation of the anti-doping rules was not intentional and/or that he/she bears no fault or negligence or no significant fault or negligence. The standard of proof is the balance of probabilities. In this respect, while sabotage theories produced by an athlete - which could entitle an athlete to be absolved from any penalty- may be possible, they are not sufficient in the absence of evidence showing that it is more likely than not that a prohibited substance was introduced as a deliberate act of sabotage. On the other hand, if an athlete establish that the source of the prohibited substance is a contaminated supplement, the athlete will be entitled to benefit from the no significant fault or negligence regime.
3. Under the WADA Code 2015 adopted by the IFs, the standard sanction for a first anti-doping violation is 4 years ineligibility for a first offence. In cases where an athlete can establish no significant fault or negligence and that the detected prohibited substance came from a contaminated product, then the period of ineligibility shall be, at a minimum, a reprimand and no period of ineligibility, and at a maximum, two years of ineligibility, depending on the athlete's degree of fault. This is substantially more generous to the athlete than the provision under which, in other cases where the athlete can establish no significant fault or negligence, the penalty may be reduced to a minimum of one half of the standard period of ineligibility, that is to say 2 years.

4. **The fact for an athlete to comply with the directions of a team doctor in taking a product does not absolve him/her from all liability. Similarly, it is not sufficient for an athlete to declare on a doping control form in the most general and anodyne of terms the type of supplements he/she claimed to be taking. It behoves those who choose to enter on complicated regimes of supplements in an endeavour to maximise their performance to take the greatest care not only in what they take, but in how they declare it. However, the fact that a supplement had been used over a substantial period without any adverse consequences weighs substantially in the favour of an athlete. However, even if an athlete cannot be expected to carry out regular analysis of each new batch, there should be evidence of care being taken by an athlete to ensure the product was and continued to be appropriate.**

## **I THE PARTIES**

1. International Weightlifting Federation (“IWF”) is the international body governing the sport of weightlifting. It is a signatory of the World Anti-Doping Code (“WADC”). It is a not for profit organization governed by Article 60 *et seq.* of the Swiss Civil Code and its Constitution, and having its seat in Lausanne, Switzerland.
2. Mr Demir Demirev, Mr Stoyan Enev, Mr Ivaylo Filev, Ms Maya Ivanove, Ms Milka Maneva, Mr Ivan Markov, Mr Dian Minchev, Mr Asen Muradiov, Mr Ferdi Nazif, Ms Nadezha-May Nguen and Mr Vladimir Urumov (collectively “the Athletes”) are international athletes in the weightlifting discipline affiliated to the Bulgarian Weightlifting Federation which is a member of the IWF. As such the Athlete is bound by the terms of the IWF Anti-Doping Policy (“IWF ADP”).

## **II FACTUAL BACKGROUND**

3. Below is a summary of the relevant facts and allegations based on the parties’ written submissions, pleadings and evidence adduced. Additional facts and allegations found in the parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel have considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in the Award only to the submissions and evidence it considers necessary to explain its reasoning.
4. In March 2015 the Athletes were in training for the European Championships which were to take place on 10 to 18 April 2015 in Tbilisi, Georgia. On 2 March 2015 they all supplied out-of-competition urine samples in Sofia, Bulgaria. On the doping control forms most of the Athletes declared they had taken prescription or non-prescription medications or supplements over the preceding seven days.

5. Specifically:
  - a) Demir Demirev: “vitamini, amino acid”.
  - b) Stoyan Enev: “vitamin amino”.
  - c) Ivaylo Filev “polivftamin, aminokiselini”.
  - d) Maya Ivanova: “vitamin, aminoacid, diclak”.
  - e) Milka Maneva: “vitamins, amino, diclak”.
  - f) Ivan Markov: “Vitamini, amino kiselini, lirotolon i. art”.(written in Cyrillic script).
  - g) Dian Minchev: “vitamins, aminoacid”.
  - h) Asen Muradov: “NO” (indicating that he had taken no medication/supplement).
  - i) Ferdi Nazif: “vitamin, aminoacid” (in Cyrillic script).
  - j) Nadezhda-Mey Nguen: “vitamins, aminoacid”
  - k) Vladimir Urumov “polivitamins, aminokiselini”
6. None of the Athletes mentioned having taken a supplement called Trybest.
7. None of the medications/supplements mentioned by the Appellants were supposed to contain prohibited substances.
8. Ivan Ivanov, coach, signed the forms as accompanying person for Demir Demirev, Maya Ivanova, Ivan Markov, Dian Minchev, Asen Muradov and Nadezhda-Mey Nguen. Stoyan Enev, Ivaylo Filev, Ferdi Nazif, Vladimir Urumov and Milka Maneva were not accompanied for the doping control.
9. The Athletes and, in the cases where Mr Ivanov was present, the accompanying person certified that the sample collection was conducted in accordance with the relevant procedure and that the information given by them on the Doping Control Form was complete and accurate.
10. The Athletes’ body samples were taken to the Institut für Biochemie of the Deutsche Sporthochschule Köln, in Germany (“the laboratory”), where they were analysed.
11. All the Athletes participated in the Bulgarian State championships, which took place in Siiven, Bulgaria on 17 March 2015. Ivaylo Filev also participated in the German national championships on 6 and 7 March 2015.
12. By reports dated 18 March 2015, the laboratory reported, for all the Athletes, Adverse Analytical Findings (AAFs) of 3’-hydroxystanozoloj glucuronide and mentioned that the presence of this substance was consistent with the administration of the prohibited substance stanozolol, an S1.1 anabolic agent in the WADA Prohibited List: 3’-hydroxystanozolol glucuronide is a stanozolol metabolite. According to a letter from the Bulgarian Drug Agency in Bulgaria stanozolol is only available on medical prescription.
13. By notices titled “Report on Adverse Analytical Finding”, dated 19 March 2015, the IWF informed the athletes of the AAFs,, that they were provisionally suspended from any weightlifting activity and that they might request the analysis of the B-samples and a hearing

before the IWF Hearing Panel.

14. The B-samples' analyses, requested by the Bulgarian Weightlifting Federation, were conducted by the laboratory. By reports of the B-sample's analyses, on 17, 22 and 24 April 2015, the laboratory concluded that the results were the same as for the A-sample analyses.
15. It is not disputed that the laboratory is and was at all times a WADA accredited laboratory and conducted the tests according to the applicable rules.
16. In the meantime, on 26 March 2015, the BWF requested the IWF to have a supplement called Trybest, supplied by Trybest Pharma in Sofia, Bulgaria, analysed by an accredited laboratory, and on 27 March 2015, the IWF agreed. It requested the BWF to send "*the (open) supplements used by the athletes ... and originally packed, unused supplements with the same charge or LOT numbers and same expiry dates*" to the laboratory for analysis.
17. Dr. Kolev mentioned that this supplement was administered to the athletes on every training day, in particular on 28 February 2015 as the last administration before the doping control, and confirmed on 9 April 2015 that one open box and one originally packed box of Trybest had been sent to the laboratory.
18. On 22 April 2015, the laboratory informed the IWF that "in all analysed capsules stanozolol was detected" and that "*stanozolol was not declared as ingredient on the label of the TRYBEST products*". The amount of stanozolol found in the capsules analysed varied between 1.7 and 4.2micrograms.
19. At the beginning of April 2015, the Athletes provided "Explanation letters" to the IWF. They all stated that they never attempted to take any prohibited substance, but only dietary supplements, amino acids and vitamins such e.g. as "Trybest" (explicitly mentioned in all the statements). They all said that they were unpleasantly surprised by the result of the doping control, that they had no explanation for the findings and were greatly concerned for their sports careers.
20. Following a request by the BWF, Dr. Hans Geyer, deputy head of the Cologne laboratory, reported on 7 May 2015 that "*based on the available data and data of further investigations (administration studies) and under consideration of the administration of several capsules of Trybest per day for several days ..., of different concentrations of stanozolol in the Trybest capsules ... and the differences in the individual metabolism, it cannot be excluded that the detected concentrations of 3'-hydroxystanozolol glucuronide in the 11 urine samples ... are due to the administration of Trybest capsules in the declared regimen (...). However, the detected concentrations of 3'-hydroxystanozolol glucuronide in the 11 urine samples may also be due to the application of higher doses of stanozolol (orally or per injection) a longer time period before the 2nd of March 2015*".
21. On 11 May 2015, Dr. Kolev confirmed on behalf of the BWF and the athletes that the last administration date of Trybest before the test was 28 February 2015, that the athletes had not taken the supplement on 1 March 2015 because it was a Sunday or on 2 March before the test

was conducted. The Athletes had taken Trybest on training days from 24 February to 19 March 2015, except for 3 March (National Day in Bulgaria), 14 and 15 March (days of rest before the State Championship), and 17 March (State Championship). He stated that the doses were reduced in the period between 12 and 19 March 2015, because of a delay in the next delivery of Trybest. Mr Filev took part in the national championship in Germany on 6 and 7 March 2015 and did not take Trybest on these dates. Mr Muradov was ill on 9, 10 and 11 March 2015 and did not take the supplement then. According to Dr. Kolev's information, the Athletes immediately discontinued the use of Trybest after the notification of the results of the doping test on 19 March 2015.

22. On 15 May 2015 the Bulgarian authorities instituted a criminal investigation alleging that an *"unknown perpetrator from unknown date to 2 March 2015 prepared food for common use in such a way that dangerous to health substances were created or fell into them"*. This investigation apparently concerns the finding of stanozolol in Trybest. There is no evidence as to the progress, if any, of that investigation or of when it might be concluded.
23. The Athletes requested a hearing before the IWF Hearing Panel. The hearing was held on 10 June 2015. At the hearing the Athletes accepted the accuracy of the AAFs reported by the laboratory and that the IWF has established anti-doping rule violations of article 2.1 IWF ADP and that they were responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. They argued, however, that they bore no fault or negligence, so that the otherwise applicable period of ineligibility should be eliminated in accordance with Article 10.4 IWF ADP. They argued that Trybest was an established supplement which had been used for many years without any adverse analytical findings and that the findings in their cases had been caused because some unknown person or persons had deliberately sabotaged the particular batch of Trybest.
24. The IWF Hearing Panel did not accept this submission. It found, on the balance of probabilities, that the Athletes had established that the prohibited substance entered their system, through the ingestion of the supplement Trybest given to them by the BWF staff during a training camp in Bulgaria, but did not find that the possibility of sabotage has been established on the balance of probabilities. The Panel expressed the view that it was far more likely that *"for some reason – e.g. commercial"* – Trybest containing stanozolol was produced during a certain time by the firm and was then marketed. Therefore the Panel considered that the most likely reason why stanozolol was found in the samples given by the athletes was that they were administered contaminated supplements, but not as a result of deliberate sabotage. The Panel considered that on a balance of probabilities the Athletes bore no significant fault or negligence, because Trybest had been used for several years by the Bulgarian team, without problems with anti-doping testing. The athletes and their entourage therefore had reason to believe that the supplement was safe. But taking 15 to 20 different supplements was a risk factor they should have considered. In addition they did not mention Trybest on the Doping Control Forms, which they should have. Taking these factors into account and bearing in mind the terms of Article 10.5.1 and 10.5.2 IWF ADP the Panel applied the same sanction of 9 months of ineligibility to all the Athletes being sanctioned for a first violation, and for the Athletes who have been sanctioned before, an increased sanction in accordance with article 10.7.1 IWF ADP of 18 months ineligibility. In each case the period of

provisional suspension was to be credited and the individual results the Athletes achieved between the testing and the provisional suspension disqualified.

25. The result of the hearing was communicated to the Athletes on 15 June 2015.
26. The evidence relating to Trybest established that it was a product supplied by Trybest Nutrition Bulgaria EOOD, the general manager of which was Mr Mario Marinov. He is also general manager of Trybest Pharma EOOD and Trybest BG EOOD. According to Mr Marinov Trybest is manufactured from high quality Bulgarian tribulus, zinc oxide and arginine. He had taken over the traditional family business from his uncle who had been producing the product for 25 years. Curiously the file placed before CAS contained a *“Notice for Putting on the Market of a Food Supplement”* addressed to the Bulgarian Food Safety Agency which states *“We hereby notify you that as per 20.05.2014 we are to put on the market in the Republic of Bulgaria for the first time the food supplement Trybest”*.
27. Trybest was widely advertised as being used by the Bulgarian weightlifting team and members of the team wore T-shirts featuring Trybest at the 2012 London Olympic games.
28. The last delivery of Trybest to the Bulgarian Weightlifting Federation was made on 24 February 2015 by Mr Marinov personally. The order was for 12 boxes each, it seems, of 60 capsules and formed part of a larger order for, in all, seven different products. The price per box was 34 Bulgarian lev. The lev is worth approximately €0.51. There was an order for a further delivery on 16 March 2015 of, inter alia, 17 boxes of Trybest capsules but this did not take place because Mr Marinov was in Italy on urgent family business.
29. According to Mr Marinov he had always sourced his materials for Trybest from the same suppliers and had “strong and confident” business relationships with them. In January 2015 he had gone to the Philippines with his uncle so his uncle could receive medical treatment there.
30. His evidence was that the actual manufacturing process was carried out by Arkadia Herba OOD (“Arkadia”) at its premises in Novi Han. He had obtained the tribulus used in the suspect batch of Trybest in November 2014 and stored it with the arginine. The storage was at the Arkadia premises. He visited the premises on occasion to speak to the management there but he never inspected the production facility. He thought that there were about 20 people employed there and he believed about 10 would have been concerned with the production process.
31. Arkadia used their machines for producing products for various companies. He would usually order 1000 packets at a time. It appeared from the invoices exhibited that at an early stage the capsules were boxed in boxes of 100 capsules but later were boxed in boxes of 60 capsules. They were packed in sheets of plastic bubbles. Orders would be placed depending on the availability of tribulus, which was seasonal, of the necessary arginine and zinc oxide, and the need to replenish stocks. So far as the batch containing stanozolol was concerned, he had ordered only 250 packets because he was short of funds at the time. He had telephoned in February 2015. The order had been placed urgently because he needed the stock to fulfil the requirements of the Bulgarian weightlifting team who were running short of supplies. Usually

he would place one or two orders a year for the manufacture of Trybest.

32. As to the sales of Trybest, these were usually in small amounts to individuals although he sold tribulus in bulk to Medi Herb, Australia where it ranked 25<sup>th</sup> out of 500 products in terms of sales. Trybest was marketed in Bulgaria and the European Union and had been exported to numerous other countries such as Australia, Canada, USA, South Korea and Israel. He received about 200 orders a year, generally for small amounts, between one and seven boxes, but and there had been a time in 2011-12 when he had had bigger orders from New York, maybe for 100 boxes. He had received one order in January 2015.
33. Mr Marinov had had patent issues with one of the largest pharmaceutical companies in the Balkans and his personal view was that it was this that had led to sabotage.

### **III. PROCEEDINGS BEFORE THE CAS**

34. The Appellants filed their Statement of Appeal with the CAS on 6 July 2015. By their Statement of Appeal the Athletes sought provisional measures pending the determination of the appeal as well as substantive relief. Inter alia the Athletes sought a stay of the decision appealed against and of the appeal proceedings until the end of criminal proceedings said to be ongoing in Bulgaria.
35. By letter dated 13 July 2015 the Respondent opposed the provisional measures sought save that it indicated it would be prepared for the appeals to be dealt with as an expedited procedure.
36. By letter dated 15 July 2015 the CAS directed an expedited procedure with a hearing to be conducted between 19 and 26 August 2015 and the operative part of the Award to be rendered by 31 August 2015, and that the Panel once constituted should decide on the Appellants' request to suspend the proceedings pending the outcome of the criminal proceedings in Bulgaria and, if it decided to suspend the proceedings, to decide on the Appellants' request to stay the decision appealed against.
37. On 27 July 2015 the Appellants informed the CAS that its statement of appeal together with its annexes and exhibits and enclosures should be considered as its Appeal Brief and notified the CAS of the witnesses they proposed to call.
38. On 6 August 2015 the Panel was constituted of His Honour James Robert Reid QC, Mr Luc Argand and Mr Ulrich Haas.
39. On 10 August 2015 the Panel determined that the proceedings would not be suspended pending the outcome of any criminal proceedings in Bulgaria and the hearing of the appeal was fixed for 24 August 2015.
40. On 14 August 2015 the Respondent filed its Answer to the Appeal Brief.

41. At the hearing the Appellants were represented by Dr Boris Kolev, attorney-at-law, assisted by Ms Elena Trodorvska, attorney-at-law, and Ms Michaela Mihaylova, interpreter. Mr Nedelcho, President of BWF was in attendance. The Athletes called Dr Ivan Hristov Ivanov, doctor of the Bulgarian national weightlifting team, and Mr Mario Marinov, the owner of the company Trybest Nutrition Bulgaria EOOD, as witnesses. The Respondent was represented by Mr Pierre Cornu, attorney-at-law.

#### **IV THE PARTIES' SUBMISSIONS**

42. On behalf of the Appellants in summary it was submitted:
- The Athletes did not contest the analytical findings. However any period of ineligibility should be eliminated under article 10.4 of the ADP on the grounds that the Athletes were not guilty of any fault or negligence.
  - On the balance of probabilities the Athletes had demonstrated that the stanozolol had been administered to them in the Trybest capsules they had been given in their training camp.
  - Trybest was a supplement which had been used regularly over about four years during which time the Athletes had submitted to many anti-doping tests without any adverse findings.
  - The fact that the Athletes took a considerable number of supplements, mainly of individual vitamins, did not require them to be more diligent than they would otherwise have been.
  - The Athletes did not specifically name Trybest as something they had taken on the anti-doping test forms was because the team doctor told them merely to enter the generic types of supplement which they were taking. Many of the Athletes were barely literate and it would have been imposing too heavy a burden on them to expect them to name the various substances they were taking.
  - The level of stanazolol found on analysis in the various capsules analysed was so small that it would not have been capable of improving performance.
  - The varying amounts of stanozolol found in the capsules analysed suggested was inconsistent with the substance having been added in the regular course of manufacture. If it had been, one would have expected a far greater consistency in the amounts found in each capsule.
  - The evidence established on the balance of probabilities that the manufacturing process had been sabotaged deliberately by some third party. In these circumstances the Athletes were guilty of no fault or negligence and accordingly they should not be subject to any period of ineligibility.
  - In the alternative, even if sabotage was not established, the Athletes were guilty of no significant fault or negligence (as the IWF Hearing panel had accepted) and the period of ineligibility should be reduced to no more than 4 months in the case of those Athletes with no previous findings of anti-doping offences and 8 months for the remainder. These



were the appropriate penalties in the light of the fact that the Bulgarian weightlifting team had been using Trybest for a number of years without any adverse anti-doping test results.

43. On behalf of the Respondent it was submitted that, while it was accepted that on the balance of probabilities the Athletes had established that the reason for the AAFs was that the Trybest capsules contained some stanozolol, the evidence did not establish sabotage in the manufacture: the more likely explanation was that the manufacturer had for commercial reasons decided to add some stanozolol to the product. The Appellants' submission disclosed no error in the view taken by the IWF Hearing Panel. The evidence produced in support of the allegation of sabotage was no more than speculation. The fact that the substance had apparently been taken for some time without adverse effects being detected was a mitigating factor, but the failure to disclose that the Athletes had taken Trybest was an aggravating factor. In all the circumstances the penalty imposed by the Hearing Panel was, if anything, a light one.

## V JURISDICTION OF THE CAS AND ADMISSIBILITY OF THE APPEAL

44. Article R47 of the Code of Sports-related Arbitration and Mediation Rules (hereinafter referred to as the "Code") provides as follows:
- "An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body".*
45. By Article 13.2.1 of the International Weightlifting Federation Anti-Doping Policy 2015 ("IWF ADP"):
- "In cases arising from participation in an IWF Event, in cases involving International-Level Athletes or in cases when a decision is issued by IWF concerning International-Level Athletes or National-Level Athletes, the decision may be appealed exclusively to CAS".*
46. By Article 13.7.1 of the IWF ADP the time for appealing to CAS is 21 days from the date of receipt of the decision by the appealing party. The Athletes received the decision of the Hearing Panel on 15 June 2015 and the Statement of Appeal was submitted to CAS on 2 July 2015 within the 21 day time limit.
47. It is common ground between the parties that as the decision appealed was issued by IWF and within the time limited for appealing, CAS has jurisdiction and the appeal is admissible.

## VI APPLICABLE LAW

48. Article R58 of the Code provides as follows:

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

49. Accordingly this matter falls to be decided according to the IWF ADP and, in the absence of any express choice of law by the parties, as the IWF has its seat in Switzerland, subsidiarily Swiss law.

## VII THE RELEVANT IWF ADP RULES

50. The edition of the IWF ADP in force at the material times is the 2015 IWF ADP which came into effect on 1 January 2015.

51. Article 2.1.1 IWF ADP provides:

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

52. Stanozolol is an anabolic agent and accordingly is not defined as a specified substance under article 4.2.2 IWF ADP. It follows that under to article 10.2.1 IWF ADP, the period of ineligibility imposed for a violation of article 2.1 IWF ADP shall basically be of four years, unless the athlete can establish that the anti-doping violation was not intentional.

53. Article 10.4 IWF ADP provides that if the athlete establishes that he or she bears no fault or negligence, the otherwise applicable period of ineligibility shall be eliminated.

54. Article 10.5.1 IWF ADP provides that in cases where the athletes can establish no significant fault or negligence and that the detected prohibited substance came from a contaminated product, then the period of ineligibility shall be, at a minimum, a reprimand and no period of ineligibility, and at a maximum, two years of ineligibility, depending on the athlete’s degree of fault.

55. By Article 10.5.2 IWF ADP, in cases where Article 10.5.1 does not apply, the sanction may be reduced to no less than one-half of the period of ineligibility otherwise applicable if the athlete establishes that he or she bears no significant fault or negligence.

56. The burden of proof is placed on the athlete to establish that the violation was not intentional and/or that he bears no fault or negligence or no significant fault or negligence under these

provisions. By Article 3.1 IWF ADP the standard of proof is the balance of probabilities.

57. Under Article 10.7.1 IWF ADP, the increased sanctions are applicable in the case of a second anti-doping violation.

### VIII. MERITS OF THE APPEAL

58. The Panel rejected the application by the Appellants to defer the hearing of the appeal until after the conclusion of the criminal proceedings instigated in Bulgaria and to stay the penalties imposed in the meanwhile. The decision whether to stay the proceedings was a procedural one to be made by the Panel. Under the applicable Swiss law the fact of criminal proceedings allegedly being under way does not constitute a mandatory ground for staying an arbitration proceedings. No issue was raised by the appeal that it was beyond the competence of the Panel to determine on the evidence before it. There was thus no compelling reason for granting a stay. As a matter of the exercise of the discretion of the Panel, there was no evidence as to the progress if any of the supposed criminal investigation nor was there evidence to suggest when the investigation might reach a conclusion. Even if it did reach a conclusion in a reasonable time frame, there was no certainty guarantee that the conclusion would be one that would determine any of the issues raised on the appeal. The Panel noted in passing (though it did not rely on this as a factor in its decision) that the criminal proceedings had been in existence at the time of the initial hearing but no application was made to postpone that hearing. Taking all the material factors into account the Panel took the view that the case for proceeding with the appeal, rather than leaving it in limbo for an indefinite future period was overwhelming.
59. The Panel is comfortably satisfied (as was very properly accepted by the Athletes) that the anti-doping violations on which the Respondent relied had occurred. The Athletes did not seek to challenge the findings of the IWF Hearing Panel in that regard.
60. The Appellants' primary case was that the Trybest capsules which they had taken were the source of the prohibited substance, stanozolol and that those capsules had been deliberately sabotaged in the course of manufacture. In these circumstances, it was said, there was no fault or negligence on the part of the Appellants, the appeal should be allowed and the applicable periods of ineligibility eliminated.
61. The factors on which the Athletes relied to establish a case of sabotage on the balance of probabilities were (1) that the Bulgarian weightlifting team had used stanozolol for some four years without any previous adverse test results; (2) that the level of stanozolol in the various capsules analysed differed markedly, suggesting that the substance had not been properly mixed in during the manufacturing process; (3) that there had been bitter disputes leading to protracted legal action between the present governing body of the sport in Bulgaria and its predecessor; (4) that there had been litigation over patent or similar matters between Mr Marinov's companies and other companies which might have led to his commercial competitors trying to sabotage production so as to damage his commercial reputation; (5) that the average wage in Bulgaria was very low (allegedly in the region of €200-300 per month) and so it would be easy

to bribe an employee of the manufacturer to sabotage the production; and (6) the level of stanozolol found in the capsules was so low that it would not have made any difference to performance.

62. Neither individually nor collectively do these factors establish on the balance of probabilities that the capsules were sabotaged by the deliberate introduction of stanozolol. No evidence was called from anyone working at, or connected with, Arkadia. There was no evidence as to when the stanozolol might have been introduced. There was no evidence as to the security measures (if any) at the factory, the manufacturing process, the employees who were engaged in the process, how the saboteur would have known that when the manufacture of the capsules was to take place, or how the saboteur would have known that part of the batch would go to the Bulgarian weightlifting team.
63. A further problem with the sabotage theory is the unreliability of the supposed sabotage in achieving its aim, assuming that aim to have been commercial damage to Trybest (on Mr Marinov's view) or damage to the current leadership of the Bulgarian Weightlifting Federation (on another view). The batch of capsules being produced was comparatively small. Only a proportion of them were to be supplied to the Bulgarian weightlifting team. Other users would, it appeared from the evidence, have been likely to be bodybuilders who would have been unlikely to be subjected to any anti-doping testing regime. Even in the case of the capsules provided to the Bulgarian weightlifting team, detection would depend on members of the team being selected for out-of-competition testing at a time when, or shortly after, they were taking the capsules and those members then being able to establish that the stanozolol originated in the Trybest capsules and not some other source.
64. While the theories produced by the Appellants are possible, there is no evidence to show that it is more likely than not that the stanozolol was introduced as a deliberate act of sabotage rather than, for example, as a result of a commercial decision to try to enhance Trybest's properties or as a result of contamination during the manufacturing process (eg by the use of inadequately cleaned machinery after it had been used for the making of capsules containing stanozolol for medicinal purposes).
65. The view of the Panel is that the Athletes have established on the balance of probabilities that the source of the stanozolol which gave rise to the AAFs were the Trybest capsules which they took in the days before the sample collection, but not that the capsules had been deliberately sabotaged.

## **IX. THE SANCTION**

66. Athletes are responsible, under Article 2.1.1 IWF ADP, for ensuring that no Prohibited Substance enters their bodies. The standard sanction for violation of this rule is 4 years ineligibility for a first offence.

67. That sanction may be eliminated entirely where an athlete has been guilty of no fault or negligence under Article 10.4 IWF ADP. In the present case the Athletes relied on their submission that they had proved on the balance of probabilities that the Trybest capsules had been sabotaged as entitling them to be absolved from any penalty. Reference was made to CAS 2014/A/3475 in support of that submission. The facts of that case were very different from the present case, but in any event that submission fails *in limine* as the Athletes have failed to prove sabotage.
68. In cases where, as in the present cases, an athlete can establish no significant fault or negligence, for first offenders the penalty may be reduced to the minimum of a reprimand with no period of ineligibility and a maximum of two years ineligibility depending on the degree of fault. This is substantially more generous to the athlete than Art 10.5.2 IWF ADP under which, in other cases where the athlete can establish no significant fault or negligence, the penalty may be reduced to a minimum of one half of the standard period of ineligibility, that is to say 2 years.
69. In the present case the principle factors urged on behalf of the Athletes for a reduction of the penalty to the greatest extent permitted by the IWF ADP were that they had reason to believe that the capsules were safe, that they had taken them without any problem over a period of years, that they had done so under the direction of the team doctor, Dr Ivanov, and that, though they had not specifically mentioned Trybest as something they were taking on the doping control forms, the Athletes, subject to one exception had in general terms mentioned the categories of supplement into which Trybest fell. Finally it was submitted that the periods of ineligibility imposed would have very adverse consequences on their ability to qualify for the next Olympic Games in Rio de Janeiro.
70. The Panel accepts that this is a case in which a substantial reduction from the maximum penalty should be allowed to the Athletes. However it is unable to accept the proposition that the penalty should be reduced to a reprimand.
71. While the Panel accepts that the Athletes complied with the directions of the team doctor in taking Trybest, that does not absolve them from all liability. *"I was simply following orders"* is not an adequate defence.
72. Similarly, it is not sufficient for them to say that all but one of them declared in general terms that they were taking supplements of the class on which Trybest is one. They had chosen to enter on a regime which involved the taking a great number of supplements (up to 20 according to the evidence) and if they wished to be clear and frank with the doping control officials they should have identified those supplements rather than setting out in the most general and anodyne of terms types of supplement they claimed to be taking. It was suggested that some at least of the Athletes had limited literary skills but in the case of at least half of them they were accompanied by Mr Ivanov at the testing and there was no reason why he should not have assisted in correctly identifying the precise supplements which they were taking. It behoves those who choose to enter on complicated regimes of supplements in an endeavour to maximise their performance to take the greatest care not only in what they take, but in how they declare it.

73. The fact that Trybest had been used over a substantial period without any adverse consequences weighs substantially in the favour of the Athletes. However, it is not enough simply to say “*Well, we’ve not had problems before*”. In the case of a supplement which, on the evidence, was very much a niche product produced in small quantities and marketed to a limited market and, it would appear, a somewhat cavalier attitude to any sort of quality control by the proprietor of the brand, the Athlete (or those entrusted by him with his protection) cannot simply rely on saying “*Nothing has gone wrong before*”. Clearly the Athletes cannot be expected to carry out regular analysis of each new batch, but equally there was no evidence of any care being taken by them or on their behalf to ensure the product was and continued to be appropriate.
74. The IWF Hearing Panel delivered a reasoned and careful decision in this case. CAS has “*full power to review the facts and the law*” under Art R57 of the Code, and the Panel has done so. In doing so it has paid attention to the decision of the IWF Hearing Panel, and like that panel has come to the conclusion that the appropriate penalty in the case of those Athletes who are first offenders is one of 9 months ineligibility, that is to say considerably less than half the maximum penalty which could be imposed. The fact that the penalty may have adverse consequences on their chances of competing at the next Olympic Games may be unfortunate for them, but those who are found to have committed anti-doping offences cannot be heard to complain of the timing of their offences has particularly unfortunate consequences.
75. In the cases of the Athletes, Demir Demirev, Ivaylo Filev, Ivan Markov and Mika Maneva, who have been found to have committed a second anti-doping offence, it was not argued that a penalty double that of the penalty imposed on the first offenders was inappropriate. Accordingly the appropriate penalty in each of those cases is one of 18 months in accordance with Article 10.7.1 of the IWF ADP.
76. Allowance in each case must be given for the periods of provisional suspension, with the result that the suspensions of those Athletes subject to a period of 9 months Ineligibility will terminate on 18 December 2015 and those subject to a period of 18 months Ineligibility will determine on 18 September 2016.
77. In accordance with the IWF ADP the individual results achieved by the Athletes between the testing and their original suspension must be disqualified.

## **X. CONCLUSION**

78. It follows that the appeal must be dismissed and the decision of the Anti-Doping Panel is confirmed.

## **ON THESE GROUNDS**

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

1. The appeal filed on 6 July 2015 by Demir Demirev Stoyan Enev, Ivaylo Filev, Maya Ivanova, Milka Maneva, Ivan Markov, Dian Minchev, Asen Muradov, Ferdi Nazif, Nadezhda-Mey Nguen, and Vladimir Uromov against the decision rendered by the IWF Hearing Panel on 10 June 2015 is dismissed.
2. The decision rendered by the IWF Hearing Panel on 10 June 2015 is confirmed.
3. (...)
4. (...)
5. All other motions or prayers for relief are dismissed.