



Arbitration CAS 2016/A/4698 Belarusian Weightlifting Union (BWU) v. International Weightlifting Federation (IWF), award dated 10 March 2017

Panel: Mr Romano Subiotto QC (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

Tempus regit actum

Right to be heard

Autonomy of associations under Swiss law

Principle of ne bis in idem

Conduct in relation to doping or anti-doping rule violations under Article 12.4 IWF Anti-Doping Policy

“Disrepute” in the meaning of Article 12.4 IWF Anti-Doping Policy

1. The principle of *tempus regit actum*, according to which new rules cannot act with retrospective effect and cannot be applicable to facts arising before the new rules were adopted, is not infringed in case an international federation publishes clarifications of its current standing practice regarding certain aspects of anti-doping rule violations, without however introducing retroactive rules concerning past anti-doping rule violations.
2. In case the rules of an international federation provide the federation’s executive board with discretion to take action in order to protect the reputation and integrity of the sport and the federation in question 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 national member federation, the right to be heard of the national member federations concerned has not been violated. Conversely, a decision based on the new practice *e.g.* to suspend a national member federation for a period of one year cannot be taken without hearing such national member federation.
3. Under Swiss law, associations have a significant degree of autonomy and the right to regulate and determine their own affairs. One 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. Furthermore, the implementation of the respective rules also lies within the disciplinary powers of the competent bodies of the association in question.
4. The principle of *ne bis in idem* requires the establishment of three factors in order to be applicable: a) identity of purpose; b) identity of parties; and c) identity of facts. A policy adopted by an international federation in response to anti-doping rule violations

committed by one of its members in the course of the last two editions of the Olympic Games does not have identity of purpose or facts with sanctions imposed on the same national member federation regarding anti-doping rule violations committed by the national member federation's athletes at one of the same two editions of the Olympic Games.

5. 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 may 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 of the IWF Anti-Doping Policy.
6. 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. Furthermore, in principle, multiple anti-doping rule violations by a certain number of athletes of one national member federation committed within a certain period of time at certain events, combined with a proven failure of the corresponding national member federation to administer a proper anti-doping program may constitute circumstances that bring the sport into disrepute.

I. THE PARTIES

1. The Appellant is the Belarusian Weightlifting Union ("BWU"), the national governing body for the sport of weightlifting in the Republic of Belarus. It is a member of the International Weightlifting Federation, and is headquartered in Minsk, Belarus.
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. On 5 June 2013, the BWU received a letter from the IWF with regard to a violation of the IWF Anti-Doping rules committed by athletes affiliated with the BWU. The letter imposed a penalty fine of USD 150,000 on the BWU. On 12 November 2013, the BWU made a payment of USD 75,000 in favour of the IWF. On 27 December 2013, the BWU made a payment of USD 69,500 in favour of the IWF.
4. Within the context of the 2016 re-testing procedures initiated by the International Olympic Committee ("IOC"), in connection with the 2008 and 2012 Olympic Games, a total of 90

samples tested positive for prohibited substances under the World Anti-Doping Code (the “WADC”). Among these samples, 47 came from weightlifters, 7 of which were Belarusian.

5. From the 2008 Beijing Olympic Games, three Belarusian weightlifters, I. (4th), N. (silver medal), and A. (silver medal), tested positive to two prohibited steroids: dehydrochloromethyltestosterone (turinabol) and/or stanozol.
6. From the 2012 London Olympic Games, four Belarusian weightlifters, D. (4th), M. (silver medal), Y. (9th), and I. (bronze medal), tested positive for similar prohibited steroids.
7. Statistically, in the Beijing Olympics, 33% of the Belarusian delegation tested positive for a prohibited substance. In the London Olympics, 50% of the Belarusian delegation tested positive for a prohibited substance.
8. On 26 May 2016, the National Olympic Committee of the Republic of Belarus received from the IOC an Adverse Analytical Finding Notification letter with regard to the athletes having tested positive during the 2012 London Olympics. The letter stated the following:

“This letter, together with the Notification Letter to the Athlete, shall serve as notification to your NOC pursuant to Art. 6.2.6 of the International Olympic Committee Anti-Doping Rules applicable to the Games of the XXX Olympiad, London 2012 (IOC ADR 2012)”.

“The result of the analysis of the A-Sample provided by said athlete upon the occasion of the Olympic Games London 2012, has given rise to an Adverse Analytical Finding, and the IOC has decided to proceed to a confirmation on the B-Sample (unless the Athlete accepts the Adverse Analytical Finding). Further, disciplinary proceedings have been initiated and an IOC Disciplinary Commission has been constituted”.

9. On 10 June 2016, the Swiss Laboratory for Doping Analysis established the presence of prohibited substances in the B-samples of the athletes in question. On the same day, the National Olympic Committee of the Republic of Belarus received from the IWF Notification of Suspension in relation to the athletes.
10. On the 22-23 June 2016, the IWF Executive Board had a two day meeting in Tbilisi, Georgia.
11. During the course of the meeting, the IWF Executive Board passed a decision regarding the 2016 Rio Olympic Games, which it published on the IWF official website. The decision included the following:

“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”.
12. On 29 June 2016, the BWU Secretary General sent a letter to the IWF asking for the provision of an official copy of the IWF Executive Board’s decision and the official protocol of the meeting.
13. On 30 June 2016, the IWF responded by email to the Appellant’s request with the following:

“Please note that as for now the relevant decision of the IWF Executive Board is a pending one and none of the Federations are considered as suspended until the result management procedures of at least three cases are finished with an anti-doping rule violation”.

14. 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 re-analyses 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; and
 - Right to submit proposals if any for the modification of the IWF Constitution, Technical and Competition Rules & Regulations whenever requested.
15. 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

16. On 8 July 2016, in accordance with Articles R47 *et seq.* of the Code of Sports-related Arbitration (the “Code”), the Appellant filed its Statement of Appeal (to be considered as its Appeal Brief) with the Court of Arbitration for Sport (the “CAS”) against the decision issued by the IWF Executive Board on 22 June 2016.
17. On 24 August 2016, in accordance with Article R55 of the Code, the Respondent filed its answer with the CAS.
18. On 20 September 2016, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, confirmed that the Panel constituted pursuant to Article R54 of the Code was 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.

19. On 23 January 2017, the Appellant and Respondent both signed and returned the order of procedure to the CAS Court Office.
20. In accordance with Article R57 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 BWU:

- Mr Vasili Valazhynets, Counsel.
- Ms Natallia Hryva, Counsel.
- Ms Maryia Zhurava, Counsel.
- Mr Anatol Kotau, Secretary General Belarus National Olympic Committee.

For the IWF:

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

21. Before the hearing was concluded, all parties expressly stated 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.
22. 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

23. 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”.

24. The Appellant submits that Article 13.2.1 of the IWF Anti-Doping Policy (“ADP”) of 2009 stated:

“In cases arising from competition in an International event or in cases involving International-level Athletes, the decision may be appealed exclusively to CAS in accordance with the provisions applicable before such court”.

25. Additionally, Article 13.6 of the IWF ADP 2015 states:

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

26. The Appellant also submits that Article 61.2 of the Olympic Charter provides:

“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, in accordance with the Code of Sports-Related Arbitration”.

27. 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.

28. However, the Respondent states that even though such decision has neither been taken nor has it 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.

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

V. ADMISSIBILITY

30. 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”.

31. 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 BWU is appealing against a legislative decision and not against a sanction of the IWF.

32. Consequently, the present appeal is admissible.

VI. APPLICABLE LAW AND REGULATIONS

33. Article R58 of the Code provides:

“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”.

34. The applicable regulations are the rules governing the IWF. These regulations are the IWF Constitution and Bye-Laws and the IWF ADP.
35. 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.
36. 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

37. 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

38. The BWU argues that the decision under appeal was made in breach of fundamental rights, such as the principle of *tempus regit actum*, the right to be heard, the principle of good faith, the principle of equal treatment and proportionality, and the principle of *ne bis in idem*.

Violation of the principle of *tempus regit actum*

39. The BWU argues that the decision under appeal violates the principle of *tempus regit actum*. According to this principle, new rules cannot act with retrospective effect and cannot be applicable to facts arising before the new rules were adopted.
40. The BWU argues that there was no provision that a national federation with 3 or more athletes committing Anti-Doping Rule Violations (“ADRVs”) in the combined re-analysis of the 2008 and 2012 Olympic Games shall be suspended for one year. This new rule was adopted by the IWF Executive Board only on 22 June 2016.
41. According to the principle of *tempus regit actum*, this new rule may only concern future ADRVs, but not conduct which took place before (CAS 2008/A/1545).

Violation of the right to be heard

42. The BWU states that the right to be heard is a fundamental and general principle, which derives from the elementary rules of natural justice and due process. Moreover, the IWF is subject to Swiss law, as a legal entity established under Swiss law and domiciled in Switzerland. According to Swiss law, sporting associations have a particular degree of autonomy to regulate their own affairs with regard to their members, subject, however, to the need to comply with certain rules and principles, in particular the right to be heard.
43. The BWU argues the practice of CAS with regard to this issue is consistent and clear and based on the provision that any proceedings, measures, or disciplinary actions taken by an international federation vis-à-vis a national federation should respect the right to be heard (CAS 2013/A/3256; CAS 2012/A/2740; CAS 2010/A/2275).
44. The BWU alleges that the decision made by the IWF was rendered without giving any possibility to the BWU to present its point of view and its interests and hence violates its right to be heard.

Violation of the principle of good faith

45. The BUW argues that the decision of the IWF constitutes a violation of the principle of good faith and, in particular, the principle of *venire contra factum proprium*, as recognized by Swiss law. This principle provides that when the conduct of one party has led to legitimate expectations on the part of the second party, the first party is barred from changing its course of action to the detriment of the second party (CAS OG 14/002; CAS 2008/O/1455; CAS 2002/O/410; CAS 98/200).
46. The BWU states that the new rule according to which national federations confirmed to have produced three or more ADRVs in the combined re-analysis of the 2008 and 2012 Olympic Games shall be suspended for one year was adopted one month before the 2016 Rio Olympic Games, and does not fall within the framework of normal activity and practice of the IWF. The BWU was unable to predict such an outcome, and therefore, the decision of the IWF is in breach of the principle of *venire contra factum proprium*.

Violation of the principle of equal treatment and proportionality

47. The BWU argues that the IWF, as an association established under Swiss law, must abide by the principle of equal treatment, which requires that any sport organization treat its members equally, in particular, when issuing rules and using its discretion.
48. Additionally, the BWU states that the IWF must abide by the principle of proportionality, as recognized by Swiss law.
49. The BWU alleges that only the Republic of Belarus, the Russian Federation, and the Republic of Kazakhstan were subject to the sanction of the new rule, and this was inconsistent with the principle of equal treatment and proportionality. The BWU states that according to the IWF's own statistics, within the period of 2008 and 2015, countries including Armenia had 12 anti-

doping rule violations, Moldova had 11, Iraq had 10, Ukraine had 10, Thailand had 9, Albania had 7, North Korea had 7, and Georgia had 6 violations, citing several other countries in addition.

50. The BWU alleges that the IWF Executive Board has adopted its rule to target national federations which already had three or more ADRVs in the two previous Olympic Games committed by their affiliated athletes.
51. The BWU also argues that no legislation or sports law jurisprudence distinguishes the legal effect and danger of an ADRV during the Olympic Games and violations during other sports competitions. There are no grounds for considering that ADRVs during the Olympic Games are more serious than at other times.

Violation of the principle of *ne bis in idem*

52. The BWU argues that it was already subject to sanctions for anti-doping rule violations in connection with the 2012 London Olympics. The fact that the BWU is suffering another punishment partially because of the same infringements of 2012 is contradictory to the principle of *ne bis in idem*, as recognized by Swiss law.

ii. Requests for Relief

53. According to the amendments made to its requests for relief at the oral hearing, the Appellant requests the Panel to rule that:
 - 1) To uphold the appeal filed by the Belarusian Weightlifting Union;
 - 2) To annul and set aside the appealed decision issued by IWF Executive Board on 22 June 2016;
 - 3) Order the International Weightlifting Federation to bear all the costs incurred with the present appeal procedure.

B. The Respondent's Submissions and Requests for Relief

i. Submissions

54. 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 Belarusian 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 Belarusian weightlifters were definitely found to have committed ADRVs.

The autonomy of the association

55. 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.
56. The IWF is a Swiss association regulated by Article 60 *et seq.* of the Swiss Civil Code. 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.
57. In particular, an association has the competence to issue rules relating to the creation of an autonomous order and constitutes one of the expressions of the private autonomy of associations. Every matter related to the association’s purpose may be regulated by the association itself. The right to regulate and determine its own affairs is considered essential for an association.
58. The IWF argues that when a decision taken by an association is challenged, the ruling authority shall review the case 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.
59. Since the freedom of association is protected by the Swiss Constitution, any restriction must have a legal basis. 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.
60. In view of the above, the IWF submits that there is no reason to set aside or declare null and void the Policy.

Tempus regit actum

61. The IWF argues that the Appellant was not aware that the Policy is based on Article 12.4 IWF ADP because the Appellant did not wait to be notified with a binding and reasoned decision before filing the present appeal.
62. The IWF Executive Board took considerable time before adopting the Policy to implement the best solution and had duly assessed the exceptional circumstances of the current situation, which placed the sport of weightlifting in a shameful position. All the Executive Board

Members had been granted the opportunity to express their ideas. After lengthy discussions, the Executive Board Members unanimously agreed that the multiple doping cases revealed by the re-analysis process conducted by the IOC caused an “*unprecedented situation which is a great threat to the sport itself*”. The Executive Board Members were all of the opinion that “*strong measures must be applied in order to keep the weightlifting sport in the Olympic Games*”.

63. After deliberation the Executive Board Members passed the following policy:

“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 to suspension are: KAZ, RUS, BLR”.

64. The IWF states that the Policy is not a new rule with retroactive application, but is, rather, based on a clear provision: Article 12.4 of the IWF ADP, which already featured in the IWF ADP in 2008 and in 2012. The current version of this rule 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. Without limiting the discretion of the IWF Executive Board to impose a penalty that it considers just and proper in all the circumstances, the Executive Board may:

- a) Ban all or some of the officials of that Member Federation from participating in any IWF activities for a period of up to two (2) years, and/ or*
- b) Suspend the Member Federation from participating in any activities for a period of up to two (2) years, and/ or*
- c) Fine the Member Federation in an amount of up to \$100,000 USF (one hundred thousand US dollars). In default of payment, the IWF Executive Board may suspend the Member Federation for a period of up to two years”.*

65. Consequently, the IWF maintains that the Policy has a proper legal basis, contrary to the Appellant’s submission that the Policy has no legal grounding.

66. The Executive Board Members were entitled to rely on Article 12.4 of the IWF ADP to decide on a one-year suspension of the membership rights (subject to the right to nominate candidates for elections) of all the national federations which have brought the sport of weightlifting into disrepute. The IWF refers to a recent case (CAS OG 16/009) where the CAS Panel found that Article 12.4 of the IWF ADP is a sufficient regulatory basis for such action and that the term “disrepute” is not ambiguous: it refers to the loss of reputation or dishonour.

67. The Executive Board Members used their discretion to decide that there is disrepute when three or more athletes belonging to the same federation have been tested positive in the IOC’s re-analysis process. Such a decision is certainly not arbitrary. Moreover, it cannot be seriously contested that the sport of weightlifting is brought in disrepute when the vast majority of a

delegation of athletes participating in the most prestigious sport competition are committing anti-doping rule violations.

Right to be heard

68. The IWF argues that Article 12.4 of the IWF ADP grants the IWF Executive Board with full discretion to take any action it deems fit to protect the reputation and integrity of the sport. In light of this discretion, the IWF Executive Board had no duty to hear the concerned federations before adopting the Policy. This is particularly true in the case at hand since the Policy is simple: three or more anti-doping rule violations within the context of the IOC's re-analyses result in a one-year membership suspension for the federation in question (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.
69. Moreover, 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.
70. The IWF argues that it made clear that no decision would be enforced against the Appellant before the IOC's retesting procedure was completed. Consequently, every weightlifter would have the opportunity to be heard before the IOC Disciplinary Committee and, therefore, prior to the implementation of the Policy.
71. The IWF also 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, a violation of the Appellant's right to be heard, *quod non*, would in any event be cured by CAS and cannot render the Policy null and void.

Good faith

72. The IWF rejects the allegation that it adopted the Policy in breach of the principle of *venire contra factum*, good faith, and procedural fairness.
73. The IWF states that the Appellant's submission is misconceived as the Appellant believed that it was suspended one month before the 2016 Rio Olympic Games based on a new rule. The IWF states that the Appellant was not suspended at the time of the filing of the appeal and has sent Belarusian weightlifters to the 2016 Rio Olympic Games. Additionally, the Policy was not based on a new rule, but on a rule which already existed in 2008, namely Article 12.4 of the IWF ADP, which allows the IWF Executive Board to suspend a federation when such federation brings the sport of weightlifting into disrepute.
74. The IWF argues that it has not acted in bad faith, but, rather, that it has simply applied a rule and issued the Policy in full compliance with the IWF ADP. There is no bad faith by applying a sanction, which is foreseen by the IWF ADP, to a national federation which brings the sport of weightlifting into disrepute. In fact, the IWF contends that it would infringe its own rules

and lose credibility if it had remained inactive vis-à-vis federations, which significantly damage the image of sport and which violate the fundamental values of sport.

Equal treatment and proportionality

75. The IWF argues that the Policy adopted by the IWF Executive Board complies with the IWF ADP and is fair and non-discriminatory because all IWF members are treated equally. The national federations with less than three anti-doping rule violations within the re-analysis process will not be sanctioned; those with three or more will receive the same sanction.
76. Additionally, a very significant number of the weightlifters selected by the Appellant 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 which is wholly unacceptable to the IWF.
77. 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 issued on 23 August 2016 regarding the ban of the Russian athletes from the Paralympic Games, where it was found that such a ban was appropriate given the circumstances.

Ne bis in idem

78. The IWF argues that the principle of *ne bis in idem* is a general principle of criminal law which prevents an individual from being sanctioned a second time for facts already judged and sanctioned.
79. The Policy is a disciplinary, and evidently not a penal, sanction. Therefore, the IWF argues that there is significant doubt as to whether the principle of *ne bis in idem* may apply in disciplinary proceedings, as recognized by the *Valverde* case before the Swiss Federal Court.
80. The IWF contends that the *ne bis in idem* principle would not be violated even if it were applicable here. The principle is applicable only when three factors are established:
 - a. Identity of purpose;
 - b. Identity of parties,
 - c. Identity of facts.
81. The IWF argues that the Policy is based on facts which have been recently revealed further to the IOC's re-analysis of samples. The Respondent was made aware that the Belarusian weightlifters had committed anti-doping rule violations only a few weeks before the IWF Executive Board meeting in Tbilisi. Consequently, these new facts justified a strong reaction by the IWF.

82. As a result, there cannot be any *ne bis in idem* in this case as the facts underlying the Policy (seven doped Belarusian athletes) are new and have never caused any sanction in the past against the Appellant.
83. In view of the above, the IWF provides that the arguments raised by the Appellant are without merit and the BWU's appeal should be dismissed.

ii. Requests for Relief

84. The Respondent requests the Panel to rule that:
- 1) The Appeal filed by the Belarusian Weightlifting Union is dismissed.
 - 2) The International Weightlifting Federation is granted an award for costs.

IX. MERITS

A. Preliminary issue

85. 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.
86. 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".*
87. The IWF letter to the Appellant of 30 June 2016, prior to the submission of the present appeal, provides:
- "Please note that as for now the relevant decision of the IWF Executive Board is a pending one and none of the Federations are considered as suspended until the result management procedures of at least three cases are finished with an anti-doping rule violation".*
88. Additionally, the BWU was informed by the IWF, 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 BWU 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.
89. 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 16/009). The present Panel agrees with that understanding of the 22 June 2016 IWF Executive Board decision.

90. 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 the 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

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

(i) Violation of the principle of tempus regit actum

92. As indicated above, the Policy is not a new rule, but merely the interpretation of a standing practice with regard to an existing rule, namely Article 12.4 of the IWF ADP.

93. Article 12.4 of the IWF ADP explicitly provides:

“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. Without limiting the discretion of the IWF Executive Board to impose a penalty that it considers just and proper in all the circumstances, the Executive Board may:

- a) Ban all or some of the officials of that Member Federation from participating in any IWF activities for a period of up to two (2) years, and/or*
- b) Suspend the Member Federation from participating in any activities for a period of up to two (2) years”.*

94. The rule featured in the IWF ADP at the time of the 2008 and 2012 Olympics. The BWU has been subject to Article 12.4 IWF ADP for many years prior to the IWF Executive Board’s decision and the current sanctions envisaged by the Policy do not deviate from the rule which it is interpreting.

95. Consequently, the IWF Executive Board decision of 22 June 2016, interpreting Article 12.4 IWF ADP through the present Policy, did not introduce a retroactive rule concerning past anti-doping rule violations but rather clarified the IWF’s standing practice under Article 12.4 IWF ADP. The principle of *tempus regit actum* has, as a result, not been infringed by the IWF when stating and publishing the Policy.

(ii) Violation of the right to be heard

96. The right to be heard is a fundamental principle of due process which an association under Swiss law, such as the IWF must respect. Any decision imposing sanctions on the member of an association must comply with this right.
97. 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 BWU on the basis of Article 12.4 IWF ADP as interpreted by the Policy. In fact, it is undisputed between the parties that the BWU has not faced any sanction by the IWF on the basis of the Policy at the time of these proceedings. The BWU decided to submit its appeal prior to the imposition of any sanction through a decision, and it cannot therefore allege that a decision had been taken against it in violation of its right to be heard.
98. 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.
99. 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 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.

(iii) Violation of the principle of good faith

100. As stated, the Policy is an interpretation of Article 12.4 IWF ADP, a long-standing rule in the IWF regulations, which featured prior to the 2008 Beijing Olympics, rather than a new rule.
101. The Panel disagrees with the BWU's assessment of the Policy under the principle of *venire contra factum proprium*. Specifically, the BWU's claims that the Policy falls outside of the practice or framework of the IWF's normal activity is unconvincing.
102. Article 12.4 IWF ADP explicitly envisages the IWF Executive Board's adoption of discretionary measures to protect the sport's reputation, and adopting a standard practice, like the Policy, on how the IWF proposes to address past doping by the BWU's member athletes falls squarely within the framework of the activities of weightlifting's international governing body.
103. In any event, the BWU premised its claim on the assumption that it had been already sanctioned with the issuance of the Policy. However, in the course of the present proceedings it has been made clear and acknowledged by both parties at the oral hearing before CAS that the BWU has not yet faced a sanction and that it could participate in the 2016 Rio Olympics. As a result, the

Panel considers that the Policy by itself does not infringe the principle of good faith. Of course, this does not mean that the principle of good faith shall not be respected when the IWF will apply the Policy in the future.

(iv) Violation of the principle of equal treatment and proportionality

104. The IWF stated at the oral hearing that 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 covered 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.
105. 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.
106. With regard to the principle of proportionality, Swiss law provides that an association has a significant degree of autonomy and the right to regulate and determine its own affairs. The CAS Panel in the award CAS 2011/A/2675 found that "[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.
107. 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. It attracts significant audience numbers and is 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.
108. 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 BWU weightlifters. Additionally, several of the BWU weightlifters, who had tested positive for prohibited substances, were medallists at the 2008 and 2012 Olympics. The weightlifting events at the previous Olympics had thus been compromised by doping and a great number of the results which were achieved at the time were fraudulent.
109. The Panel is not convinced by the BWU's claim that the Policy infringes by itself, the principle of proportionality because the IWF Executive Board took a measure to address the widespread

doping at the 2008 and 2012 Olympics rather than at 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 the ADRVs at the Olympics committed by the member athletes of the federation in question were 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 only affects the BWU and its athletes at an international level and does not prevent the BWU 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.

110. 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.

(v) *Violation of the principle of ne bis in idem*

111. The principle of *ne bis in idem* requires the establishment of three factors in order to be applicable:
- a. An identity of purpose;
 - b. An identity of parties; and
 - c. An identity of facts.
112. The Panel finds that the Policy, which was established within the context of the IOC's retesting procedure, does not have an identity of purpose or facts with the sanctions imposed on the BWU in June 2013 regarding ADRVs of its athletes at the 2012 Olympics. The Policy addresses the widespread doping within weightlifting during the previous two Olympics and applies to all national federations.
113. In any event, an implementation of the Policy is not a second sanction of an athlete that has already been subject of a disciplinary sanction, but a disciplinary measure taken by an international federation against one of its national members, to safeguard the interests of the federation and of the sport.

114. Consequently, the Panel finds that the Policy does not infringe the principle of *ne bis in idem*.

(vi) Violation of Article 12.4 IWF ADP

115. At the oral hearing, the BWU argued that the Policy contravenes, or at least does not correctly interpret, Article 12.4 IWF ADP, and, specifically, that Article 12.4 IWF ADP requires bringing the sport of weightlifting into disrepute and therefore implicitly requires conduct on the part of the Appellant (rather than ADRVs). The BWU alleges that it is not the subject of any conduct bringing the sport of weightlifting into disrepute, nor that the sport of weightlifting has suffered any disrepute.

116. 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.

117. 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 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 purposes of Article 12.4 IWF ADP.

118. Concerning the requirement that the sport of weightlifting be brought into disrepute, the Panel notes that another CAS Panel, in OG 16/009, 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 ADRV 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 BWU 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 BWU is a matter that the competent bodies of IWF and, possibly, CAS may decide once a decision of IWF against BWU on the basis of the Policy will be taken, if any.

(vii) Violation of the IWF Constitution

119. At the oral hearing, the BWU further argued that the Policy was in contradiction to the IWF Constitution and, in particular, Article 3.8 which provides for the suspension of an IWF member federation on the basis of a recommendation from the Membership Commission. The IWF Executive Board decision and the Policy, which contemplate the suspension of the BWU, did not involve the Membership Commission and therefore violates the IWF Constitution.
120. However, as the IWF contested, 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.
121. 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.

C. Further remarks

122. As repeatedly mention in the present Award, as recognised by the parties, the issue of the validity of a subsequent IWF decision to sanction the BWU 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 IFW, including the right to be heard and the proportionality of any sanction imposed.
123. 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 BWU shall be dismissed. This conclusion makes it unnecessary to consider the other requests of the parties. Accordingly, all further and other requests for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Appeal filed by the Belarusian Weightlifting Union against the International Weightlifting Union is dismissed.

(...)

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