



**Arbitration CAS 2018/A/5722 Weightlifting Federation of the Republic of Kazakhstan (WFRK), Karina Goricheva, Nadezhda Nogay & Rustem Sybay v. International Weightlifting Federation (IWF), award of 25 March 2019**

Panel: Prof. Luigi Fumagalli (Italy), President; Prof. Philippe Sands QC (United Kingdom); Prof. Martin Schimke (Germany)

*Weightlifting*

*Qualification Olympic Games*

*Arbitral tribunals' authority under Swiss Law to issue consent awards*

*Scope of review by the panel of the settlement agreement*

1. Under Swiss law, an arbitration tribunal sitting in Switzerland has authority to issue an award embodying the terms of the parties' settlement, if the parties agree to a termination of their dispute in this manner. A panel's ratification of such settlement and its incorporation into a consent arbitral award serves the purpose of vesting the settlement with a *res judicata* effect and of enabling the enforcement of the parties' agreement.
2. It is the task of a panel to verify the *bona fide* nature of the settlement agreement to ensure that the will of the parties has not been subject to any fraud and to confirm that the terms of the agreement are not contrary to public policy principles or mandatory rules of the law applicable to the dispute.

## I. BACKGROUND

### A. The Parties

1. The Weightlifting Federation of the Republic of Kazakhstan (the "WRFK") is the national weightlifting federation for the Republic of Kazakhstan. It is based in Astana, Kazakhstan. It is a member federation of the International Weightlifting Federation. Karina Goricheva, Nadezhda Nogay and Rustem Sybay are Kazakh weightlifters (the "Athletes") who have competed as internal level athletes. The Athletes and the WRFK are jointly referred to as the "Appellants".
2. The International Weightlifting Federation (the "IWF" or the "Respondent") is the international governing body for weightlifting. It has its headquarters in Budapest, Hungary but holds its seat in Lausanne, Switzerland.
3. The Appellants and the Respondent are jointly referred to as the "Parties".

## **B. The Dispute between the Parties**

4. On 27 March 2018, the IWF Executive Board adopted the qualification rules approved by the IOC for the Tokyo Olympic Games 2020.
5. Section C, item 3, of this document, which deals with athletes eligibility, states as follows:

*Number of participants per country*

*Subject to the specific Anti-Doping Rules and Regulations, all NOCs/MFs shall be eligible to qualify a minimum of one (1) male and one (1) female athlete for the Olympic Games Tokyo 2020.*

- a.) *Member Federations which have recorded ten (10) or more but less than twenty (20) violations of the IWF Anti-Doping Policy (IWF ADP) between the start of the 2008 Summer Olympic Games period and the end of the Tokyo 2020 qualification period sanctioned by IWF or Anti-Doping Organisations other than Member Federations, National Olympic Committees or National Anti-Doping Organisations shall be eligible to qualify one (1) additional Male and one (1) additional female athlete, altogether a maximum of two (2) male and two (2) female athletes;*
  - b.) *Member Federations which have recorded less than ten (10) violations of the IWF Anti-Doping Policy (IWF ADP) between the start of the 2008 Summer Olympic Games period and the end of the Tokyo 2020 qualification period sanctioned by IWF or Anti-Doping Organisations other than Member Federations, National Olympic Committees or National Anti-Doping Organisations shall be eligible to qualify three (3) additional male and three (3) additional female athlete, altogether a maximum of four (4) male and four (4) female athletes.*
6. On 14 April 2018, the IWF issued a press release notifying its members of the above-mentioned qualification rule (the “Qualification Rule”).

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

7. On 4 May 2018, pursuant to Article R47 and R48 of the Code of Sports-related Arbitration (the “Code”), the Appellants and Mr Albert Linder filed with the Court of Arbitration for Sport (the “CAS”) a statement of appeal against the IWF to challenge the Qualification Rule.
8. The statement of appeal contained the appointment of Mr Philippe Sands Q.C., and the following request for relief:

*I. This appeal is upheld.*

*II. The decision of the International Weightlifting Federation Executive Board to adopt the Qualification System for the Olympic Summer Games Tokyo 2020 is annulled.*

*III. Section C, item 3, of the IWF Qualification System for the Olympic Summer Games Tokyo 2020 is invalid and unenforceable.*

*IV. Alternatively, the Qualification System for the Olympic Summer Games Tokyo 2020 is limited in*

*scope insofar as past doping offences and positive cases that occurred before its adoption, on 27 March 2018, shall not be taken into consideration for qualification for the Olympic Summer Games Tokyo 2020.*

V. *The International Weightlifting Federation shall bear all the arbitration costs and shall be ordered to reimburse the Weightlifting Federation of the Republic of Kazakhstan the CAS court office fee.*

VI. *The International Weightlifting Federation shall be ordered to pay the Weightlifting Federation of the Republic of Kazakhstan a contribution towards the legal and other costs incurred in the framework of these proceedings in an amount to be determined at the discretion of the Panel”.*

9. On 18 May 2018, the CAS Court Office was informed that the Respondent nominated Professor Martin Schimke.
10. On 28 May 2018, the Appellants filed their Appeal Brief in accordance with Article R51 of the Code.
11. On 5 July 2018, the CAS Court Office informed the Parties that Professor Luigi Fumagalli was appointed as President of the Panel.
12. On 12 July 2018, the CAS Court Office informed the Parties that Ms Stéphanie De Dycker would assist the Panel in the present case as *ad hoc* clerk.
13. The IWF filed its Answer on 7 August 2018.
14. On 20 September 2018, the CAS Court Office sent to the Parties an Order of Procedure and confirmed that a hearing would be held on 4 October 2018 in Lausanne.
15. On 21 September 2018, the Appellants informed the CAS Court Office that they were not in state to pay the Respondent’s share of the advance of costs by the date of the hearing.
16. On 28 September 2018, the CAS Court Office informed the Parties that the hearing was cancelled.
17. On 19 October 2018, Mr Albert Linder withdrew his appeal.
18. On 30 October 2018, the Appellants informed the CAS Court Office of the payment of the Respondent’s share of the advance of costs.
19. On 29 November 2018, the CAS informed the Parties that a hearing would be held on 12 March 2019. On 30 November 2018, the CAS Court Office sent to the Parties an Order of Procedure, which was signed by the Parties and returned to the CAS Court Office on 6 and 7 December 2018.
20. On 5 March 2019, the Parties informed the CAS Court Office that they had entered into a Settlement Agreement on 2 March 2019 putting an end to their dispute and that Appellants thereby withdrew their appeal. As a result, the Parties requested the CAS to issue a consent

award embodying the text of the Settlement Agreement, or, alternatively, to include the content of the Settlement Agreement in a termination order by the CAS as well as to cancel the hearing of 12 March 2019.

21. On 6 March 2019, the CAS Court Office confirmed that, in view of the agreement reached between the Parties, the hearing in the present proceedings was cancelled and the Panel would issue a Consent Award.

### III. THE SETTLEMENT AGREEMENT

22. The Settlement Agreement executed on 2 March 2019 between the Appellants and the Respondent, which has been voluntarily submitted by the Parties to the Panel, and which has been confirmed to represent their agreement containing a complete, comprehensive and final resolution of their dispute, states as follows:

*“**WHEREAS** doping in sport is a major plague which concerns the entire international sports community, the Olympic Movement and regrettably most countries of the world.*

***WHEREAS** the sport of Weightlifting, an Olympic sport since 1896, governed by the IWF, has unfortunately been affected by doping for many years.*

***WHEREAS** Weightlifting in Kazakhstan has been severely hit by doping problems, which led to a high number of violations of anti-doping regulations and sanctions in the past.*

***WHEREAS** the IWF, with the support of the International Olympic Committee (IOC), has undertaken a particularly severe fight against doping in Weightlifting in order to maintain weightlifting in the program of the upcoming Olympic Games.*

***WHEREAS** the new leadership of the Weightlifting Federation of the Republic of Kazakhstan which assumed the role in 2013 has achieved significant progress and results for the past several years towards the eradication of doping in weightlifting in Kazakhstan and promoting clean sports by launching and supporting comprehensive reforms.*

***WHEREAS** the qualification rules adopted by IWF and approved by the IOC for the Tokyo Olympic Games 2020 are limiting the quotas available for weightlifters so that, for Kazakh weightlifters, such quota is limited to one male and one female due to past doping violations, and whereas such qualification rules adversely affect a number of national federations, including in particular the Weightlifting Federation of the Republic of Kazakhstan and its affiliated athletes, notably those young athletes who were not involved in past malpractice.*

***WHEREAS** the Appellants, including the WFRK, have challenged the qualification rules before the CAS. Thus, the Appellants and the IWF are currently divided in front of the Court of Arbitration for Sports (CAS) in the proceedings CAS 2018/A/5722.*

***WHEREAS** the parties have jointly reached the conclusion that it is essential, for the future of the fight against doping not only in Kazakhstan, but also worldwide, to bring an end to the above-mentioned litigation.*

**WHEREAS** the parties hereto are convinced that the objectives of the fight against doping will be better reached through a future intensified cooperation, in the best spirit of transparency, friendship, sportsmanship and mutual respect and understanding, and whereas to that effect, the parties hereto wish to bring an end to any pending litigation between them.

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**NOW all parties hereby agree as follows:**

- I. *The International Weightlifting Federation hereby acknowledges the significant progress achieved and contribution provided by the Weightlifting Federation of the Republic of Kazakhstan in its fight against doping in Kazakhstan.*
- II. *The International Weightlifting Federation hereby further commends the Weightlifting Federation of the Republic of Kazakhstan and the Kazakhstan Sports Authorities for their determination to further cooperate and contribute to the overall global fight against doping in Sport.*
- III. *The International Weightlifting Federation and the Weightlifting Federation of the Republic of Kazakhstan hereby agree and undertake to establish and develop a determined cooperation for the fight against doping by instituting an open, transparent and permanent mutual cooperation through regular direct bilateral exchanges and consultations of their respective presidents or representatives. Such consultations shall take place at least once per year, beginning in 2019.*
- IV. *Subject to the IOC's ultimate authority in terms of entries at the Olympic Games, the International Weightlifting Federation undertakes to support the Weightlifting Federation of the Republic of Kazakhstan for a meeting between representatives of the IOC, the International Weightlifting Federation and the Weightlifting Federation of the Republic of Kazakhstan aiming at (i) presenting the efforts made by the Sport Authorities of Kazakhstan, including in particular the Weightlifting Federation of the Republic of Kazakhstan towards the eradication of doping in weightlifting in Kazakhstan and (ii) discussing the Tokyo 2020 Olympic Games Qualification System for the sport of weightlifting, including the quotas allocated to Kazakh weightlifters. If the discussions result in the IOC accepting a revised qualification system by IWF increasing the quotas allocated notably to Kazakh weightlifters for the Tokyo 2020 Olympic Games, IWF undertakes to review its Tokyo 2020 Olympic Games Qualification System in accordance with IOC's instructions.*
- V. *Subject to the IOC's ultimate authority in terms of entries at the Olympic Games, IWF undertakes that, going forward, with respect to the Paris 2024 Olympic Games and Los Angeles 2028 Olympic Games and future editions of the Olympic Games, doping offences committed and notified to the relevant athlete or other person affiliated to a member federation by 31 December 2016 will not be taken into consideration in order to determine the number of quotas available to such member federation, including the Weightlifting Federation of the Republic of Kazakhstan. The Appellants hereby agree that, provided that this undertaking is complied with, they will not challenge any future qualification system taking into consideration, as a criteria to allocate Olympic quotas, the number of possible doping offences notified to affiliated Kazakh weightlifters or other persons affiliated to the Weightlifting Federation of the Republic of Kazakhstan after 1 January 2017 (and sanctioned by IWF or any other anti-doping organization, except for the Kazakh NADO and the Weightlifting Federation of the Republic of Kazakhstan), whether committed before or after 1 January 2017.*

- VI. *In consideration for the IWF's statements and undertaking herein, the Weightlifting Federation of the Republic of Kazakhstan and all other Appellants hereby withdraw their appeal in the matter CAS 2018/A/5722 and accept that, subject to Section IV above, all decisions of the IWF and IOC in respect of the IWF Qualification System for the 2020 Tokyo Olympic Games are final. Each party will bear half of the costs of the CAS arbitration and will bear its own costs. The Appellants also undertake to withdraw their claim and procedure pending in front of the Tribunal d'arrondissement de Lausanne (nr. CC18.023059) within five days from signature of this settlement and agreement for future cooperation agreement.*
- VII. *The parties hereto hereby require that the content of this settlement and agreement for future cooperation be embodied in an arbitral award by CAS to be rendered by consent of all parties to the CAS procedure CAS 2018/A/5722, subsidiarily in a termination order by the CAS.*
- VIII. *The parties hereto shall authorize the CAS to publicize the content of the present settlement and agreement”.*

#### IV. RATIFICATION AND INCORPORATION OF THE SETTLEMENT AGREEMENT BY CAS

23. Under Swiss law, an arbitration tribunal sitting in Switzerland has authority to issue an award embodying the terms of the parties' settlement, if the contesting parties agree to a termination of their dispute in this manner. The Panel's ratification of their settlement and its incorporation into this consent award serves the purpose of vesting the settlement with a *res judicata* effect and of enabling the enforcement of their agreement.
24. It is the task of the Panel to verify the *bona fide* nature of the Settlement Agreement to ensure that the will of the Parties has not been subject to any fraud and to confirm that the terms of the Agreement are not contrary to public policy principles or mandatory rules of the law applicable to the dispute.
25. Having reviewed the terms of the Settlement Agreement, the pleadings of the respective Parties and the evidence submitted by them, the Panel finds no grounds to object or to disapprove the terms of the Settlement Agreement and is satisfied that the Settlement Agreement constitutes a *bona fide* settlement of the dispute brought to its attention.
26. In accordance with the mutual consent of the Parties, the Panel hereby directs the Parties to fully comply with all of the terms of the Settlement Agreement. This Consent Award terminates the CAS arbitration proceedings of this dispute, CAS 2018/A/5722 Weightlifting Federation of the Republic of Kazakhstan (WFRK) & Karina Goricheva, Nadezhda Nogay & Rustem Sybay v. International Weightlifting Federation (IWF).

## **ON THESE GROUNDS**

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

1. The Panel, with the consent of the Weightlifting Federation of the Republic of Kazakhstan, Karina Goricheva, Nadezhda Nogay and Rustem Sybay as well as the International Weightlifting Federation, hereby ratifies the Settlement Agreement executed by the Weightlifting Federation of the Republic of Kazakhstan, Karina Goricheva, Nadezhda Nogay and Rustem Sybay as well as the International Weightlifting Federation on 2 March 2019 and incorporates its terms into this arbitral award.

(...)

4. All other motions or prayers for relief are dismissed.