



Arbitration CAS ad hoc Division (OG Tokyo) 20/002 Loredana Elena Toma v. International Weightlifting Federation (IWF), International Olympic Committee (IOC), Romanian Olympic and Sports Committee (ROSC), award of 18 July 2021

Panel: Mr Juan Pablo Arriagada (Chile), Sole Arbitrator

Weightlifting

Eligibility to participate in the Olympic Games

Jurisdiction of the CAS ad hoc Division

Expedited procedure

Request to participate as a neutral athlete

1. According to Article 1 of the CAS ad hoc Rules, the jurisdiction of the CAS ad hoc Division is limited to hear any dispute which arises during the Olympic Games or during a period of ten days preceding the Opening Ceremony of the Olympic Games. Taking into account that the Opening Ceremony of the Games of the XXXII Olympiad, in Tokyo, is scheduled to be held on 23 July 2021, the CAS Ad Hoc Division does not have jurisdiction to hear any dispute arising before 13 July 2021. A dispute that arose following a decision taken on 15 June 2021 is therefore outside the jurisdiction of the CAS ad hoc Division.
2. The refusal to agree to an expedited procedure is the right of any party. In response thereto, any party has the right to apply for provisional measures.
3. The decision to permit the participation of athletes under a neutral flag is a very exceptional and discretionary policy decision. Therefore, a request that CAS cause the IOC to be obliged to accept the entry of an athlete to compete as a neutral athlete in the Olympic Games is not within the scope of review of the CAS. Only once such a policy decision is made, can the rules implementing such participation be an appropriate topic for CAS review and adjudication.

1 PARTIES

- 1.1 The Applicant is Ms Loredana Elena Toma, a Romanian female weightlifter.
- 1.2 The First Respondent is the International Weightlifting Federation (hereinafter, the "IWF"), which is the worldwide governing body for weightlifting, has its headquarters in Lausanne, Switzerland.

- 1.3 The Second Respondent is the International Olympic Committee (hereinafter, the “IOC”), the organisation responsible for the Olympic Movement, having its headquarters in Lausanne, Switzerland. One of its primary responsibilities is to organise, plan, oversee and sanction the summer and winter Olympic Games, fulfilling the mission, role and responsibilities assigned by the Olympic Charter.
- 1.4 The Third Respondent is the Romanian Olympic and Sports Committee (hereinafter, the “ROSC”), which is the organization responsible for Romania's participation in the Olympic Games.

2 FACTS

- 2.1 The elements set out below are a summary of the main relevant facts as established by the Sole Arbitrator by way of a chronology on the basis of the submissions of the parties. Additional facts may be set out, where relevant, in the legal considerations of the present award
- 2.2 On 15 June 2021 the IWF Independent Member Federations Sanctioning Panel (hereinafter, the “IWF Sanctioning Panel”) issued a decision which imposed a one-year suspension against the Romanian Weightlifting Federation (hereinafter, the “RWF”) as a consequence of numerous Anti-Doping Rule Violations committed by its athletes in 2012. According to that decision, the RWF was *“suspended from participating in any activities for a period of one year, starting on the date of the decision (i.e. 15 June 2021)”* (hereinafter, the “IWF Decision”).
- 2.3 On 18 June 2021, following a publication issued by the IWF, the Applicant became aware that her personal international ranking had been annulled. Therefore, she was no longer eligible to participate in the Tokyo 2020 Olympic Games (hereinafter, the “Tokyo 2020 OG”).
- 2.4 On 1 July 2021 the Applicant sent a request to the IWF, seeking to be made eligible to participate in the Tokyo 2020 OG in any status, including as a neutral athlete (hereinafter, the “First Request”). In this request, the Applicant stated that *“absence of the IWF position in this regard will be considered as a denial decision from IWF at my request, with all the consequences that are occur from this denial decision”*.
- 2.5 On 9 July 2021, the Applicant lodged an appeal before the CAS against the IWF, ROSC and IOC with respect to the refusal and inactivity of the IWF to deal with the Appellant’s request of 1 July 2021 seeking her eligibility to participate in the Tokyo 2020 OG (CAS 2021/A/8144, hereinafter, “Case 8144”). The Applicant requested an expedited procedure.
- 2.6 The prayers for relief set forth in Case 8144 were as follows:

“1. this application is allowed.

2. the decision of the IWF of 2 July 2021 that confirms Ms Loredana’s ineligibility for participation in the Games of the XXXII Olympiad, in Tokyo, in 2021, is set aside.

3. Ms Loredana Elena Toma is eligible to participate in the Games of the XXXII Olympiad, in Tokyo, in 2021.

4. the Romanian Olympic and Sports Committee (COSR) is allowed to enter Ms Loredana Elena Toma for the Games of the XXXII Olympiad, in Tokyo, in 2021.

5. the IOC is obliged to accept the entry of Ms Loredana Elena Toma to compete in the Games of the XXXII Olympiad, in Tokyo, in 2021.

6. the First Respondent is ordered to pay Ms Loredana Elena Toma the entirety of the arbitration costs and a fair contribution towards the legal fees and other costs incurred by her in the framework of these proceedings, in an amount to be determined at the discretion of the Panel”.

2.7 On 13 July 2021 the IWF informed the CAS that it did not agree to an expedited procedure.

2.8 On 14 July 2021 the Applicant sent a new letter to the IWF, reiterating her request made on 1 July 2021 (hereinafter, the “Second Request”).

2.9 The IWF did no reply to the abovementioned request.

3 CAS PROCEEDINGS

3.1 On 16 July 2021 at 16:30 (time of Tokyo), the Applicant filed an Application with the CAS Ad Hoc Division against the Respondents.

3.2 The Applicant challenges the lack of answer from the IWF concerning the Second Request. The specific prayer for relief says, in part:

“2. the decision of the IWF of 2 July 2021 that confirms Ms Loredana’s ineligibility for participation in the Games of the XXXII Olympiad, in Tokyo, in 2021, is set aside”.

3.3 On 17 July 2021, the CAS Ad Hoc Division notified the Respondents of the Application and invited them to file their Answers by 18 July 2021 at 14:00, time of Tokyo (18 July 2021 at 7:00, time of Lausanne).

3.4 On 17 July 2021 the CAS Ad Hoc Division notified the Parties of composition of the Arbitral Tribunal:

Mr. Juan Pablo Arriagada Aljaro, as Sole Arbitrator.

3.5 In the same communication, the Sole Arbitrator informed the parties that considering the purely legal nature of the dispute, no hearing would be held.

3.6 There were no objections to the Sole Arbitrator or to the Parties’ rights to be heard and treated equally in these proceedings.

4 PARTIES' SUBMISSIONS

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

4.2 The Applicant's request for relief is as follows:

"1. this application is allowed.

2. the decision of the IWF of 14 July 2021 that confirms Ms Loredana Elena Toma's ineligibility for participation in the Games of the XXXII Olympiad, in Tokyo, in 2021, is set aside.

3. Ms Loredana Elena Toma is eligible to participate in the Games of the XXXII Olympiad, in Tokyo, in 2021.

4. the Romanian Olympic and Sports Committee (ROSC) is allowed to enter Ms Loredana Elena Toma for the Games of the XXXII Olympiad, in Tokyo, in 2021.

5. the IOC is obliged to accept the entry of Ms Loredana Elena Toma to compete in the Games of the XXXII Olympiad, in Tokyo, in 2021.

6. the IWF is ordered to pay Ms Loredana Elena Toma the entirety of the arbitration costs and a fair contribution towards the legal fees and other costs incurred by her in the framework of these proceedings, in an amount to be determined at the discretion of the Panel".

4.3 The Respondents did not file any Answers to the Application within the given deadline.

5 JURISDICTION AND ADMISSIBILITY

5.1 Article 61.2 of the Olympic Charter ("OC") reads as follows:

"61 Dispute Resolution

[...]

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

5.2 Furthermore, the jurisdiction of the CAS ad hoc Division is established in Article 1 of the CAS ad hoc Rules (the "Rules") as follows:

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

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

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

- 5.3 The Applicant briefly explained that the CAS Ad Hoc Division has jurisdiction to hear her case, relying on (i) the clause inserted in the official entry form of the OG; and (ii) Article 61.2. of the OC.
- 5.4 The Sole Arbitrator considers that the CAS Ad Hoc Division has no jurisdiction in this matter, based on the following reasons.
- 5.5 According to Article 1 of the Rules, the Sole Arbitrator notes that the jurisdiction of the CAS Ad Hoc Division is limited to hear any dispute which arises during the Olympic Games or during a period of ten days preceding the Opening Ceremony of the Olympic Games. Taking into account that the Opening Ceremony of the Olympic Games is scheduled to be held on 23 July 2021, the CAS Ad Hoc Division will not have jurisdiction to hear any dispute arising before 13 July 2021.
- 5.6 Within that framework, the Sole Arbitrator notes that the Applicant contends that the appealed decision consists in the lack of answer from the IWF to her Second Request *“in form of refusal and inactivity”*. The Sole Arbitrator notes, however, that the Applicant is in fact challenging the IWF Decision, by which the latter imposed a one-year suspension on the RWF. The consequences of this decision, which was already challenged in CAS 2021/A/8050, is the reason the Applicant is ineligible to participate in the Tokyo 2020 OG.
- 5.7 As a matter of fact, in the appeal previously filed by the Applicant before CAS as Case 8144, she already requested that the CAS declare her eligible to participate in the Tokyo 2020 OG. However, as previously mentioned, her ineligibility derives exclusively from the IWF Decision, and not from the lack of answer to her First Request or Second Request.
- 5.8 Additionally, the Sole Arbitrator observes that the Applicant has artificially tried to create a new decision, in order to assign jurisdiction to the CAS Ad hoc Division. The consequences of the IWF Decision being sufficiently clear with respect to her ineligibility, since the suspension of the RWF applies obviously to its athletes, she decided to send the First Request seeking from the IWF a kind of clarification of her status. And she expressly stated: *“I respectfully and kindly ask the IWF to issue a decision on my request at the end of business in Lausanne, Switzerland, on 2 July 2021 at the latest... An absence of the IWF position in this regard will be considered as a denial decision from IWF at my request, with all the consequences that are occur from this denial decision”* (emphasis added).
- 5.9 It is an undisputed fact that the IWF did not answer the First Request, which motivated the Applicant to lodge an appeal to CAS on 9 July 2021 (i.e. Case 8144).

- 5.10 Despite the lack of answer, which in the Applicant's own words she considered a "*denial decision*", on 14 July 2021 the Applicant sent the Second Request to the IWF, relying on the same grounds of the First Request and asking again to be considered as eligible to participate, including as a neutral athlete, in Tokyo 2020 OG. It is evident to the Sole Arbitrator that this Second Request was a reaction to the IWF's refusal to proceed in an expedited basis in Case 8144, considering that the possible lack of response to the First Request would fall outside of the scope of the 10-day rule in Article 1 of the CAS Ad Hoc Rules.
- 5.11 At the same time, the Sole Arbitrator notes the inconsistency of the Applicant's position, because as it was previously mentioned, in the First Request, she stated, "*I respectfully and kindly ask the IWF to issue a decision on my request at the end of business in Lausanne, Switzerland, on 2 July 2021 at the latest... An absence of the IWF position in this regard will be considered as a denial decision from IWF at my request, with all the consequences that are occur from this denial decision*". The IWF did not reply to that request, which – according to her own words – should be considered as a denial decision. Despite that, the Applicant insisted on getting an answer she already knew and filed the Second Request.
- 5.12 However, in the view of the Sole Arbitrator, the conduct of the Applicant is understandable due to the urgency to have access to sports justice, trying to get some legal remedy to her situation. There is no need to explain the obvious haste the athlete had to employ in order to try and reverse the severe effects of a decision that undoubtedly was being imposed on her (and on her national teammates), considering the relevance of the OG in the sports career of any athlete.
- 5.13 From this perspective and considering that the IWF Decision against the RWF, which implied a sanction to all its affiliated athletes, was rendered particularly close to the date of the Tokyo 2020 OG, the Sole Arbitrator would have expected a more open and comprehensible approach from the IWF, accepting the expedited procedure proposed by the Applicant. However, the refusal to agree to an expedited procedure is the right of any party in that situation. And in response thereto, it is necessary to stress that, in any case, any party, including the Applicant, has the right to apply for provisional measures. Apparently, instead of doing so in Case 8144, the Applicant instead has attempted to access the Ad hoc Division, which was not the right option.
- 5.14 Notwithstanding all the above, the Sole Arbitrator highlights that the Applicant has requested that CAS cause the IOC to be "*obliged to accept the entry of Ms. Loredana Elena Toma to compete in the Games of the XXXI Olimpiad, in Tokyo, in 2021*". She has requested to compete as a neutral athlete. Notwithstanding her citations to the actions and explanations of the IAAF Council in 2015 with respect to permitting certain Russian athletes to compete as neutral athletes (or for that matter the actions and explanations of the IOC with respect to permitting certain Russian athletes to compete in the 2018 PyeongChang Olympic Winter Games), the request for this relief here is not within the scope of review of the Court of Arbitration for Sport since the decision to permit the participation of the athletes under a neutral flag is a very exceptional and discretionary policy decision. The Sole Arbitrator notes, however, that once such a policy

decision is made, then the rules implementing such participation would be – and have been – an appropriate topic for CAS review and adjudication.

- 5.15 Considering that the dispute arose on 15 June 2021, following the IWF Decision and the circumstances under which and fact that the Applicant filed her Application to Ad Hoc Division on 16 July 2021, the Sole Arbitrator determines that CAS Ad Hoc Division does not have jurisdiction to hear this case.

6 CONCLUSION

- 6.1 In view of the above considerations, the CAS Ad Hoc Division does not have jurisdiction to hear the Application.

DECISION

The Ad Hoc Division of the Court of Arbitration for Sport renders the following decision:

The CAS Ad Hoc Division does not have jurisdiction to hear the Application filed by Loredana Elena Toma.