



Arbitration CAS ad hoc Division (O.G. Sydney) 00/010 Alan Tsagaev / International Weightlifting Federation (IWF), award of 25 September 2000

Panel: Mr. Jan Paulsson (France), President; Mr. Stephan Netzle (Switzerland); Mr. Thomas Lee (Malaysia)

Weightlifting

Exclusion of a National Weightlifting Federation due to three positive doping cases

Lack of legal basis for such sanction

Although an international federation may have certain general discretionary powers to govern its sport even in the absence of specific provisions in the statutes or regulations, a suspension of an entire federation from participation in the Olympic Games, including innocent athletes who have not committed a doping offence or any other violation of the applicable rules, at least requires an explicit, and unambiguous legal basis.

This case was initiated by Mr. Alan Tzagaev (the Applicant) seeking a declaration that he may compete in the 2000 Sydney Olympic Games as a member of the Bulgarian weightlifting team.

On 22 September 2000, the Executive Board of the International Weightlifting Federation (IWF), meeting in an extraordinary session, reached the following decision, as communicated to the BWF in a letter dated 24 September 2000 worded as follows:

“Dear Colleagues,

In the light of the three positive tests recorded by the Bulgarian weightlifters at the Sydney Olympic Games, and further to their disqualification by the IOC, the International Weightlifting Federation Executive Board met in an extraordinary meeting on 22 September 2000, and has determined:

- 1. The Bulgarian Weightlifting Federation is suspended forthwith for a period of not less than 12 months, pending further investigation.*
- 2. The Bulgarian Weightlifting Federation must present a detailed project – supported by their National Olympic Committee and National Sports Authorities – ensuring the elimination of the use of doping among their athletes.*
- 3. All remaining lifters as well as officials from Bulgaria will not be allowed to take part in the Olympic Games.*

Yours sincerely,

Dr. Tamas Ajan

General Secretary”

The Applicant was thus excluded from the Games even though he was not one of the athletes who tested positive.

The application which instituted the present proceedings was filed in the evening of 24 September 2000. A hearing was conducted in the morning of 25 September 2000. In the course of the hearing, two documents were introduced into the record.

First, a joint letter from the President and General Secretary of the IWF to the IOC Sports Director, dated 22 September 2000 and worded as follows:

“Dear Mr. Felli,

Following the disqualification of the three weightlifters due to positive tests at the Games, the IWF Executive Board held an extraordinary meeting. At this meeting it resolved to suspend the Bulgarian Weightlifting Federation with immediate effect and not to consent to the participation of the remaining four Bulgarian weightlifters.

We herewith ask the IOC Executive Board and the IOC Sports to support our decision and take the necessary steps.

As a further explanation, we believe we have to add that the IWF has dealt with the Romanian and the Bulgarian issues on different grounds. The Romanian positive tests were returned on the occasion of out-of-competition testing under the auspices of the IWF and so we applied our relevant rules. On the other hand, the disqualification of the Bulgarian weightlifters was a result of positive tests returned by athletes who lifted on the Olympic platform.

The IWF confirms that it intends to maintain control over its sport and send out a very strong and unambiguous message that it does not tolerate the use of doping at the Olympic Games.

For your information, we are also enclosing our Press Communiqué.

Best regards,

Gottfried Schodl, IWF President

Dr. Tamas Ajan, IWF General Secretary”

Second, the response by Mr. Felli, also dated 22 September 2000 and worded as follows:

“Dear Tamas,

We have just received your fax regarding the IWF Executive Board decision to suspend the Bulgarian weightlifting federation with immediate effect and disqualify the remaining four Bulgarian weightlifters at the Sydney 2000 Olympic Games.

We would greatly appreciate your confirmation of the IWF regulations under which this decision has been taken.

We appreciate your prompt reply to this request.

Yours sincerely,

Gilbert Felli, Sports Director”

Mr. Coffa, IWF Vice-president, informed the Panel that he could establish no trace of any reply by the IWF to Mr. Felli's fax, nor any follow-up by Mr. Felli.

The Claimant contends that he cannot lawfully be barred from competing due to offences committed by other athletes, given that he is not in default personally; indeed his exclusion was not justified by reference to any relevant regulations.

The Respondent answers that its decision of 22 September 2000 was founded on its Anti-Doping Policy which allows suspension of a national federation if its members are guilty of repeated offences. Moreover, an athlete representing a suspended federation may not compete while it is suspended. At any rate, the Respondent insists that it has the "inherent" authority to discipline its members in order to achieve its anti-doping objectives and to defend the reputation of its sport.

LAW

1. These proceedings are governed by the CAS Arbitration Rules for the Games of the XXVII Olympiad in Sydney (the "ad hoc Rules") of CAS enacted by the International Council of Arbitration for Sport ("ICAS") on 29 November 1999. They are further subject to Chapter 12 of the Swiss Private International Law Act of 18 December 1987 as a result of the express choice of law contained in Article 17 ad hoc Rules and the choice of Lausanne, Switzerland, as the seat of the ad hoc Division and of its panels of Arbitrators, pursuant to Article 7 of the ad hoc Rules.
2. The jurisdiction of the ad hoc Division is based on the entry form signed by all participants in the Olympic Games and on Rule 74 of the Olympic Charter.
3. Article 17 of the ad hoc Rules requires the Panel to decide the dispute "*pursuant to the Olympic Charter, the applicable regulations, general principles of law and the rules of law, the application of which it deems appropriate*".
4. According to Article 16 of the ad hoc Rules, the Panel has "*full power to establish the facts on which the application is based*".
5. As an initial matter, it may be noted that Rule 50 of the Olympic Charter vests the power of "withdrawing accreditation from any person who infringes" the Charter in the IOC Executive Board. An illustration was provided by the three Bulgarian weightlifters who tested positive. Their exclusion from the Games was decided by the IOC, not the IWF. As Coffa put it, "*once an athlete is entered into the Games, he becomes the property of the IOC*".
6. This is the context in which the Panel understands the IWF's fax to Mr. Felli, requesting the IOC's Executive Board to "take the necessary steps". Since the IOC has not acted on this

communication otherwise than by questioning the legal basis of the IWF decision, it might be suggested that the Applicant has not yet suffered an adverse decision from which he needs to appeal.

7. The fact is, however, that the Claimant clearly has a dispute with the Respondent; that the Respondent seeks – and indeed purports to have achieved – his exclusion; that his exclusion would be avoided if his application were to succeed; and above all that the schedule for his event requires clarity with respect to his status within a matter of hours. The Panel therefore deems it appropriate and necessary that it decide upon the challenge to the decision taken by the IWF Executive Board, and to determine whether it could have the effect of barring the Applicant from these Games.
8. The Applicant's position is that it would be sufficient to conclude that point 3 of the Executive Board's decision is void, on the basis that even if point 1 were to stand – i.e. the BWF is deemed to be suspended – the athlete could nevertheless compete provided that the individual prohibition directed to him were lifted. It was only as an alternative position, i.e. if this argument were unsuccessful, that the Applicant also argues for the invalidation of point 1.
9. The hypothesis of an athlete competing notwithstanding the suspension of his national federation raises complex issues. Article 19.18 of the IWF's Constitution contemplates that athletes of suspended national federations may not compete in international events (such as an Olympic Games), but it does not go on to specify the position of an athlete who was validly entered in the Games by a national federation whose suspension occurred only thereafter. Once a competitor has been accredited, it is not clear that his status as an Olympic participant can be affected by anyone but the IOC, irrespective of the status of his national federation.
10. Given this difficulty, the Panel has first proceeded to examine the validity of point 1 to see whether the outcome is clearer with respect to that element of the Executive Board's decision.
11. The difficulty of assessing the viability of point 1 in the absence of point 3 disappears if one looks at the problem the other way around. Since point 3 necessarily builds on point 1, the invalidity of point 1 subsumes that of point 3. In other words, if the BWF was not validly suspended, the reason for barring the athlete disappears.
12. Nor is there any difficulty in the proposition that the Applicant, rather than the BWF, seeks to achieve the invalidation of point 1. The Applicant has a clear individual interest in establishing the invalidity of the suspension of his national federation. Acceptance of his argument in this respect, and for the purposes of defending his individual interests, does not necessarily inure to the benefit of the BWF; nor would a rejection necessarily preclude the BWF from mounting a successful independent challenge. In the course of the hearings, the BWF and the Bulgarian Olympic Committee (BOC) sought leave to amend the application in this case to appear as joint claimants. The IWF questioned the authority of the representatives of the BWF and the BOC to take such action. The Panel sees no need to examine or rule upon this matter since it considers that the validity of point 1 may be challenged by the Applicant

insofar as it relates to his purported exclusion. Accordingly the BWF and the BOC remain “interested third parties” without any ruling as to the effectiveness of their purported appearance into joint claimants.

13. In view of the above, the only substantive issue the Panel needs to resolve in order to rule on the present application is that of the validity of the IWF’s suspension of the BWF.
14. At the hearing, the IWF stated that according to Rule 14.6 of its Anti-Doping Policy it was entitled to suspend a member federation from competition for a period of one year after three positive doping tests within one year. In addition, it claimed that any international sports governing body had an inherent power to take appropriate action, including the suspension of a member federation, if the behaviour of a member federation is harmful to that particular sport.
15. The Applicant’s countered that Rule 14.6 of the Anti-Doping Policy requires that upon three positive doping tests within one year, the IWF must impose a fine of US\$ 50’000 on the respective member federation. A suspension may be imposed only in the event of non-payment of that fine. Furthermore the Applicant contests that existence of an inherent power of an international federation to suspend one of its member federations.
16. Rule 14.6 of the Anti-Doping Policy reads as follows:
“14.6 If a National Federation has three (3) offences ... within one calendar year, it will be fined US\$ 50’000 (fifty thousand US dollars) by the IWF. In the event of non-payment of the fine, the Federation will be suspended for a period of one (1) year from any international competition”.
17. The decision of the IWF Executive Board was taken, as noted above, at an extraordinary meeting of 22 September 2000 at which the President of the BOC also participated. According to the testimony of Mr. Coffa, Vice President of the IWF, the issue of a fine was never raised at that hearing.
18. The IWF did not request the BWF or the BOC to pay a fine. It was not put to them that suspension could be avoided by the payment of a fine. Mr. Coffa confirmed that the ground for the suspension of the BWF was *not* the non-payment of a fine, but the desire of the IWF “to maintain control over its sport and [to] send out a very strong and unambiguous message that it does not tolerate the use of doping at the Olympic Games”. This position was confirmed in the letter to the IOC signed by the President and the General Secretary of the IWF dated 22 September 2000 (see above). The same explanation was given by the General Secretary of the IWF at the press conference immediately after the IWF board meeting of 22 September 2000. As set out on the News internet page of the IWF of 22 September 2000, 17:57, the General Secretary made it very clear: *“There was not an option of Bulgaria paying the fine. We would not accept money. This is the Olympics, this is different”*. Mr. Coffa confirmed that this statement was accurately reported.
19. Rule 14.6 of the IWF Anti-Doping Policy does not provide the IWF Executive Board with an option to fine or suspend a national federation after three positive cases occur within one year. A suspension may be imposed only if the national federation fails to pay the fine. The

payment is not an obligation that applies automatically upon the occurrence of the third of three positive tests within one year; an explicit demand of the IWF is required. This interpretation derives from the proper understanding of the expression “it will be fined” as well as from Rule 14.5, which states that the fine to be paid by the national federation in any single case of doping “*must be paid to the IWF within thirty (30) days from the date of the demand*”.

20. Since neither the BWF nor the BOC were asked to pay a fine according to Rule 14.6, the sanction of non-payment of the fine may not apply.
21. Mr. Coffa testified that during the IWF Board meeting of 22 September 2000 the President of the BOC expressed his intention to withdraw the weightlifting team from the Olympic Games if the three positive tests were confirmed. No further evidence was submitted to support that assertion. Mr. Coffa obviously relied on hearsay. Moreover, the statement of the Secretary General of the BOC, if indeed made, could not be construed as a refusal of the BWF to pay the fine provided in Rule 14.6. The fact that the BOC did not seek to withdraw the entire weightlifting team from Olympic competition, but supported the application of Mr. Tzagaev, indicates the precise opposite.
22. Although an international federation may have certain general discretionary powers to govern its sport even in the absence of specific provisions in the statutes or regulations, the Panel is of the clear view that a suspension of an entire federation from participation in the Olympic Games, including innocent athletes who have not committed a doping offence or any other violation of the applicable rules, *at least* requires an explicit, and unambiguous legal basis.
23. In addition, since the rules of the IWF contain a specific clause governing the case of three positive cases within one year (i.e. Rule 14.6), the IWF may not invoke amorphous “inherent powers” if it fails to establish the requirements for a suspension of the BWF as defined in Rule 14.6.
24. The IWF argues with great insistence that in order to be effective an international body in its position must be acknowledged as having the inherent authority to discipline national federations who are causing damage to the sport and to its practitioners world-wide. The Panel fully understands the intensity of the IWF’s desire to be seen as acting forcefully to combat conduct which brings weightlifting into disrepute.
25. By the speed and the decisiveness of its actions in Sydney, the IWF has sought to send a strong message about its policy in the fight against doping. Laudable policy objectives, and alacrity in pursuing them, do not, however, obviate the fundamental and no less legitimate requirement of having a legal basis for disciplinary action. The Executive Committee’s decision of 22 September 2000 lacked a sufficient legal foundation and must therefore be annulled in its relevant portions as far as the Applicant is affected, i.e. by reference to items 1 and 3 thereof.

The CAS ad hoc Division rules:

The application is granted insofar as points 1 and 3 of the decision made by the International Weightlifting Federation Executive Board on 22 September 2000 are annulled for lack of legal basis, with the consequence that the Applicant is allowed to participate in these Olympic Games.