



Tribunal Arbitral du Sport
Court of Arbitration for Sport

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Ms Maidie Oliveau, Attorney-at-law, Los Angeles, California, USA
Arbitrators: Prof. Richard H. McLaren, Barrister in London, Canada
Mr Alan Sullivan QC, Barrister in Sydney, Australia

in the arbitration between

World Anti-Doping Agency (WADA) (the “Appellant”), Montréal, Québec, Canada
Represented by Mr François Kaiser and Mr Claude Ramoni

Versus

Australian Sports Anti-doping Authority (ASADA) (the “first-named Respondent”), Curtin
ACT, Australia
Represented by its Senior General Counsel, Mr Richard Redman, Mr John Marshall SC and Mr
Darren Mullaly

Australian Weightlifting Federation (AWF) (the “second-named Respondent”), Hawthorn
VIC, Australia
Represented by its Chief Executive Officer, Mr Matthew Curtain and its officer, Mr Boris Kayser

Mr Aleksan Karapetyn (the “third-named Respondent”), Dandenong North, Victoria,
Australia.
Acting as the Athlete’s spokesperson was his coach, Mr Peter Ikosidekas.

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1. The Parties

1. The Appellant, WADA, is the international independent organization whose mandate is to promote, coordinate, and monitor the fight against doping in sport in all its forms.
2. The first-named Respondent, ASADA, has the legislative authority to investigate possible violations of the anti-doping rules under the National Anti-Doping scheme established under the Australian Sports Anti-Doping Act 2006 (the Act) for athletes and support persons under the jurisdiction of the AWF. ASADA has the responsibility to make findings in relation to such investigations; to notify the athlete, support person and the AWF of its findings and its recommendations as to the consequences of such findings; and to present its findings and its recommendations as to consequences at hearings of the Court of Arbitration for Sport and other sporting tribunals.
3. The second-named Respondent, AWF, is the national federation for weightlifting in Australia, affiliated with the International Weightlifting Federation (IWF).
4. The third-named Respondent, Aleksan Karapetyan is a 37 year old professional weightlifter, in the 94 kg class, and has represented Australia at the 2000 Olympic Games and the 2002 and 2006 Commonwealth Games.

2. The Facts

5. From 24-26 June 2005, Mr Karapetyan participated in the Mermet Cup in the United States. On 26 June 2005, Mr Karapetyan submitted to an in competition doping control test. *No adverse analytical result was reported from that doping control by the WADA accredited University of California, Los Angeles Olympic Analytical Laboratory (the "UCLA Lab") until almost a year later on 12 June 2006 after the electronic data file from the initial screen of the sample was re-run at the request of ASADA. On 12 June 2006 the UCLA Lab reported an adverse analytical finding for Benzylpiperazine (BZP) arising from the 26 June 2005 doping control. It should be noted that BZP was not specifically listed as a category S6 Stimulant on the WADA Prohibited List until 2007. Prior to that time it would only have been included on the Prohibited List in Section S6-Stimulant by way of the catch all provision: "and other substances with a similar chemical structure or similar biological effect". There is no requirement for WADA accredited laboratories to analyze samples for those prohibited substances which are not specifically listed on the Prohibited List.*
6. The Lab had been instructed to re-run the electronic data file due to findings resulting from an investigation commissioned on 17 March 2006 by ASADA, AWF, and the Australian Sports Commission ("ASC") to look into Australian Weightlifting doping issues as a result of four Australian weightlifters testing positive for the prohibited stimulant BZP in October 2005. The third-named

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Respondent was not one of the weightlifters being investigated. The principal investigator's report is dated December 2006.

7. On 21 March 2006, Mr Karapetyn participated in the 2006 Commonwealth Games, where he won a gold medal. Mr Karapetyn learned of the above investigation and some of its findings after the Commonwealth Games, because the investigated weightlifters had named him as taking the same product which had caused their positive drug tests.
8. In addition to the in competition test at the Commonwealth Games, Mr Karapetyn also submitted to doping control on 20 February and 12 April 2006, one month before and one month after the Commonwealth Games. No adverse analytical findings were reported by the WADA accredited doping control laboratory in Australia in relation to those tests. The analysis on all three occasions included a screen for BZP.
9. On 13 April 2006, an ASADA investigator interviewed Mr Karapetyn as part of the independent investigation. As a result of that interview ASADA was able to confirm that Mr Karapetyn had used the same supplement during the Mermet Cup as the four weightlifters that tested positive in October 2005. The principal investigator concluded that Mr Karapetyn's consumption of the BZP was inadvertent and that the BZP had been wrongly placed into the product consumed by Mr Karapetyn by the manufacturer and was not included on the label of the product. He had been using a contaminated supplement.
10. By letter dated 28 November 2006, ASADA advised Mr Karapetyn that the UCLA Lab reported the sample he provided at the Mermet Cup in 2005 to be positive for BZP.
11. By letter dated 19 January 2007 (and then again by letter dated 2 February 2007, due to an initial incorrect address), ASADA advised Mr Karapetyn that it had determined that he had committed an anti-doping rule violation, namely use of the prohibited substance BZP, in connection with the Mermet Cup weightlifting event in the USA in June 2005. In those letters, Mr Karapetyn was advised of his right to appeal to the Administrative Appeal Tribunal for a review of the ASADA decision and also of his right to a hearing before the Court of Arbitration for Sport (CAS).
12. By email dated 1 February 2007, ASADA responded to the following concerns raised by AWF: 1. Why didn't the lab test for BZP in the first instance; and 2. the absence of a "B" sample. In reply to the first question, ASADA explained that at the time of the Mermet Cup sample, BZP was not a target substance in the UCLA Lab screening procedure. In reply to the second question, ASADA replied that Mr Karapetyn's anti-doping rule violation is "Use or Attempted Use of a Prohibited Substance or Prohibited Method" in violation of article 5.2 of the AWF 2004 Anti-Doping Policy (the Policy) and that the sample is evidence of "Use" for the purposes of article 5.2 of the Policy. Under article 6.2 of the Policy, facts relating to anti-doping rule violations may be established by any reliable means. As such, ASADA determined that the presence of BZP in Mr

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Karapetyn's sample dated 26 June 2005, amongst other information gathered, was evidence of an anti-doping rule violation of "Use".

13. By letter dated 5 April 2007, after consultations with a senior barrister who was provided the submissions by AWF, and having not heard from Mr Karapetyn, ASADA advised Mr Karapetyn of the consequences imposed due to the anti-doping rule violation. The sanction was two (2) years of ineligibility with the start date of 22 March 2006, to expire on 22 March 2008. In addition, ASADA determined that Mr Karapetyn's individual results obtained in the Mermet Cup were disqualified, with all resulting consequences, including forfeiture of any medals, points and prizes. The letter then states:

"However, your results between 27 June 2005 to 22 March 2006 are not disqualified. In making the determination, ASADA gave consideration to Article 13.8 of the Policy. ASADA took into consideration the circumstances of your use of BZP, the nature of the substance BZP, as well as the fact that use of BZP in June 2005 would not have been any benefit to you in later competitions, and that there was no proof of any subsequent use by you of the substance. As such, in ASADA's view, under Article 13.8 fairness requires that your results between 27 June 2005 to March 2006 are not disqualified."

14. On 15 April 2007, WADA received the above letter reflecting ASADA's decision.
15. On 4 May 2007, WADA filed its statement of appeal with CAS against ASADA, AWF, and Mr Karapetyn based on ASADA's decision.
16. The sole issue appealed by WADA is whether Mr Karapetyn's individual results in all competitions subsequent to the Mermet Cup of 24-26 June 2005 should be disqualified, under article 13.8 of the Policy.

3. The Applicable Rules

17. The relevant provisions of the 2004 Policy are as follows:

Article 12 – AUTOMATIC DISQUALIFICATION OF INDIVIDUAL RESULTS

A violation of this Anti-Doping Policy in connection with an *In-Competition* test automatically leads to *Disqualification* of the individual result obtained in that *Competition* with all resulting consequences, including forfeiture of any medals, points and prizes.

13.6 Elimination or Reduction of Period of Ineligibility Based on Exceptional Circumstances

13.6.1 If the *Athlete* establishes in an individual case involving an *Anti-Doping Rule Violation* ... that he or she bears *No Fault or Negligence* for the violation, the otherwise applicable period of *Ineligibility* shall be eliminated....

13.6.2 ... If an *Athlete* establishes in an individual case involving an *Anti-Doping Rule Violation* ... that he or she bears *No Significant Fault or Negligence* for the violation, the otherwise applicable period of *Ineligibility* shall be eliminated....

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13.8 Disqualification of Results in Competitions Subsequent to Sample Collection.

In addition to the automatic *Disqualification* of the results in the *Competition* which produced the positive *Sample* under Article 12 (Automatic *Disqualification* of Individual Results), all other competitive results obtained from the date a positive *Sample* was collected (whether *In-Competition* or *Out-of-Competition*), or other *Doping* violation occurred through the commencement of any *Provisional Suspension* or *Ineligibility* period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting consequences including forfeiture of any medals, points and prizes.

13.9 Commencement of Ineligibility Period.

The period of *Ineligibility* shall start on the date of the hearing decision providing for *Ineligibility* or, if the hearing is waived, on the date *Ineligibility* is accepted or otherwise imposed. Any period of *Provisional Suspension* (whether imposed or voluntarily accepted) shall be credited against the total period of *Ineligibility* to be served. Where required by fairness, such as delays in the hearing process or other aspects of *Doping Control* not attributable to the *Athlete*, the body imposing the sanction may start the period of *Ineligibility* at an earlier date commencing as early as the date of *Sample* collection.

16.1 Decisions Subject to Appeals.

Decisions made under this Anti-Doping Policy may be appealed as set forth below in Article 16.2 through 16.4. Such decisions shall remain in effect while under appeal unless the appellate body orders otherwise. Before an appeal is commenced, any post-decision review authorized in Article 11.10 must be exhausted.

16.2 Appeals from Decisions Regarding Anti-Doping Rule Violations, Consequences, and Provisional Suspensions.

A decision that an *Anti-Doping Rule Violation* was committed, a decision imposing *Consequences for an Anti-Doping Rule Violation*, a decision that no *Anti-Doping Rule Violation* was committed, a decision that the IWF or AWF lacks jurisdiction to rule on an alleged *Anti-Doping Rule Violation* or its consequences ... may be appealed exclusively as provided in this Article 16.2. Notwithstanding any other provision herein, the only *Person* that may appeal from a *Provisional Suspension* is the *Athlete* or other *Person* upon whom the *Provisional Suspension* is imposed.

16.2.1 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.

16.2.1 A *Person* (including the AWF and those entitled to appeal under Article 13.2.3 of the Code) aggrieved of a determination of CAS under article 11 hereof may appeal that decision to the CAS.

DEFINITIONS

Consequences of Anti-Doping Rules Violations. An *Athlete's* or other *Person's* violation of an anti-doping rule may result in one or more of the following:

- (a) *Disqualification* means the *Athlete's* results in a particular *Competition* or *Event* are invalidated, with all resulting consequences including forfeiture of any medals, points and prizes;

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(b) *Ineligibility* means the *Athlete* or other *Person* is barred for a specified period of time from participating in any *Competition* or other activity or funding as provided in Article 10.5;...

4. Summary of the Arbitral Proceedings

18. On 4 May 2007 the Appellant filed its statement of appeal.
19. On 15 May 2007 the Appellant filed its appeal brief.
20. On 5 June 2007 the first-named Respondent filed its answer.
21. On 5 June 2007 the second-named Respondent filed its answer.
22. The Appellant designated an arbitrator. The first-named Respondent requested the joint appointment of an arbitrator, who was appointed without objection from the second and third-named Respondents. The third arbitrator – the President – was in turn appointed by the President of the CAS Appeals Arbitration Division. Thus the Panel in the following composition was designated on 16 July 2007:

President: Maidie E. Oliveau
Attorney-at-law, Los Angeles, California, USA

Arbitrators: Richard H. McLaren
Barrister in London, Canada (Appellant's nominee)

Alan Sullivan
Barrister Q.C., Sydney, Australia (Respondents' nominee)

23. On 6 August 2007, the first-named Respondent, in response to a request by the Panel, provided to all the parties documents relevant to its decision of 5 April 2007, which is the subject of this appeal.
24. On 24 August 2007, the third-named Respondent sent a letter to the second-named Respondent which was forwarded to the CAS office on 30 August 2007 by the first-named Respondent.
25. On 10 September 2007, the Appellant filed an additional submission.
26. On 21 September 2007, the first-named Respondent filed a further submission in response.
27. On 5 October 2007, a Procedural Order was submitted to each of the parties for signature. This was signed by the second-named Respondent on 8 October 2007, by Appellant on 8 October 2007, and by the first-named Respondent with some amendments, on 15 October 2007.
28. In accordance with art. R28 of the Code of Sports-related Arbitration (the Code), the seat of the Panel is established at the Secretariat of the CAS, Chateau de Béthusy, Avenue de Beaumont 2, 1012 Lausanne, Switzerland

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29. On 16 October 2007, an oral hearing was held by telephone with the following persons present:

For Appellant: François Kaiser and Claude Ramoni of Carrard Paschoud Heim & Associés of Lausanne, Switzerland

For first-named Respondent: John Marshall SC and Darren Mullaly of Australian Sports Anti-Doping Authority

For second-named Respondent: Boris Kayser, Board Member of Australian Weightlifting Federation.

For third-named Respondent: Aleksan Karapetyn and his coach, Peter Ikosidekas

5. Appellant's Contentions

30. Appellant contends that fairness does not require ASADA to deviate from the general rule provided under article 13.8 of the Policy (which is identical to article 10.7 of the WADC), i.e. Mr Karapetyn's individual results in all competitions subsequent to the Mermet Cup of 24-26 June 2005 should be disqualified. It contends that the disqualification of results in competitions subsequent to sample collection provided for by article 13.8 of the Policy has to be seen as a rule and has been applied by CAS in several precedents even in cases where the fault of the athlete was not significant or when mitigating circumstances justified the start of the period of ineligibility earlier than at the date of the hearing (CAS 2004/A/690 Hipperdinger v/ATP; CAS 2006/A/1032 Karatancheva v/ITF; CAS 2006/A/1120 UCI v/Gonzalez & RFEC).
31. WADA argues that the sanctioning body may only elect not to disqualify results subsequent to the positive doping test when exceptional circumstances so require and cites cases where the athlete established exceptional circumstances, i.e. that he bore No Significant Fault or Negligence (CAS OG 06/001 WADA v/USADA, USBSF and Lund and CAS 2005/A/951 Cañas v/ATP) and the CAS Panels did not disqualify results subsequent to the positive test.
32. Appellant reviews the facts surrounding Mr Karapetyn's positive test results and asserts that they should be taken into account to confirm that fairness does not require ASADA to renounce disqualifying the results subsequent to the doping offence. To the contrary, because he testified during the investigation that he took several supplements to improve his performances without exercising any caution, some of them from unlabelled bottles, fairness does not require ASADA to renounce disqualifying the results obtained after the doping offense.
33. Appellant further contends that because ASADA decided not to disqualify the results obtained between the date of the anti-doping rule violation (26 June 2005) and the commencement of the period of ineligibility (22 March 2006), Mr Karapetyn was not actually sanctioned at all because he ceased competing as of 22 March 2006.
34. With respect to first-named Respondent's contention that only a decision "imposing" consequences can be appealed and not a decision of the opposite, i.e. refusing to impose

disqualification, Appellant contends that this reading of article 16.2 would be denying WADA's right of appeal as provided in the Policy. Appellant cites CAS awards providing that WADA's appeals were admissible under circumstances where the competent body did not impose consequences provided for in the applicable regulations (CAS 2006/A/1153 WADA v/Assis & FPF; CAS 2006/A/1142 & CAS 2007/A/1211 WADA v/FMF & Carmona; CAS 2006/A/113 WADA v/Stauber & Swiss Olympic; CAS OB 06/001 WADA v/Lund & USADA & USBSF).

35. In response to first-named Respondent's concerns regarding the extension of the Policy beyond medals, points and prizes bestowed by the AWF which the Policy clearly covers, to a competition governed by the Commonwealth Games Federation, WADA asserts that by virtue of the Commonwealth Games Federation being a signatory to the WADC, which contains the same provisions as the Policy, the Commonwealth Games Federation shall recognize any decision to disqualify results taken by AWF, ASADA or CAS in application of article 13.8 of the Policy and take the appropriate actions to have such decision implemented.

6. First-named Respondent's Contentions

36. ASADA argues that the focus of the appeal should be on whether it correctly applied the discretion it had under the phrase "*unless fairness requires otherwise*" in article 13.8 of the Policy and that it correctly determined that fairness required that Mr Karapetyan's competitive results through the period 27 June 2005 to 21 March 2006 ought not be disqualified for the reasons below:
- a. it would be a drastic step to strip an athlete of a gold medal won approximately 9 months after use of a stimulant occurred, particularly where such use could have no affect on the later competition. It would be different were it an anabolic steroid or hGH rather than a stimulant;
 - b. evidentiary material gathered during the investigation by ASADA into weightlifting supported the athlete's contention that the BZP consumption was inadvertent. There was little, if any, evidence upon which ASADA could conclude that the BZP use had been intentional. In fact, the lead investigator's conclusion was that the BZP had been wrongly placed into the product by the manufacturer and not included on the label of the product;
 - c. all medal winners at the Commonwealth Games were tested (including the athlete) and there was no positive test result; and
 - d. ASADA sought the opinion of the AWF, who advised that they believed it would be unfair for subsequent results to be affected.
37. The first-named Respondent further argues that an appeals court must not substitute its own conclusion for that of the decision-maker simply because it would have been minded to reach a different conclusion in circumstances where it was reasonably open to the decision-maker to reach its conclusion. Unless the Appellant can show that ASADA made error, or misapplied its discretion, then the fact that WADA would have reached a

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different decision had it been the body making the decision, is not grounds alone to overturn the decision of ASADA.

38. ASADA distinguishes the cases cited by the Appellant by asserting that WADA confuses the athlete's onus to prove exceptional circumstances under article 13.6 of the Policy, with the decision-maker's discretion regarding the disqualification of subsequent results in article 13.8 of the Policy. Article 13.6 of the Policy is a "stand alone" part of the Policy and can not be read as having affect or influence over 13.8 of the Policy. WADA seeks to link the two articles, i.e. non-disqualification of subsequent results with a finding of exceptional circumstances.
39. With respect to the Appellant's assertion that the athlete in this case has not been sanctioned at all for the doping offence, ASADA states that Mr Karapetyn ceased competing from weightlifting on 21 March 2006 for reasons of his own, not because he was retiring. Upon learning of the investigation, Mr Karapetyn elected to cease competing. He can not, based on the sanction imposed upon him, resume competing or coach others or gain other employment from his weightlifting skills were he to decide so to do, until his sanction expires. In any event, ASADA asserts this is not a relevant consideration for the Panel, provided the decision-maker exercised its discretion correctly.
40. ASADA suggests that an overall balance of all factors needs to be taken into account in dealing with the requirements of fairness. WADA has pointed to some matters but has not contrasted those with other relevant matters.
41. ASADA also contends that the provisions of article 16 of the Policy do not allow for its decision to be appealed, as the consequences appealed against do not fit within the definition of *Consequences* in the Policy. Rather, ASADA's decision not to disqualify Mr Karapetyn's results is the opposite of disqualification which is the grounds for WADA's appeal. The very nature of the decision made under article 13.8 of the Policy is not conducive to an appeal. It is a discretionary decision, unguided by specified criteria.
42. ASADA expressed a concern about the extension of the Policy beyond medals, points and prizes bestowed by the AWF which the Policy clearly covers, to a competition governed by the Commonwealth Games Federation. The sanctions imposed by the Policy can only have such force as the contract which incorporates them can have. In this instance, ASADA is concerned whether a CAS award may be enforced against the Commonwealth Games Federation by virtue of the Policy.
43. In addition, ASADA raised a concern based on the provisions of article 16.2.1 (the second such article) with respect to the unlimited number of appeals which could arise based on the right of appeal by a "Person" who might be aggrieved by CAS' decision. Specifically, any of the athletes whose medals are affected, or whom the appealing athlete believes should be affected by a competent body's decision, could appeal under this article. For example, the article reads as if the silver medallist at the Commonwealth Games has standing to appeal the decision of ASADA not to disqualify Mr Karapetyn, the gold medal winner's results, arguing that the silver medallist is aggrieved because the gold medallist's being disqualified would have resulted in the silver medallist receiving the gold medal.

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7. Second-named Respondent's Contentions

44. AWF was invited by ASADA to provide submissions to ASADA before the sanction was imposed and did so on 22 March 2007. AWF objected to the late testing for BZP in the 2005 sample provided by Mr Karapetyan, since the analysis for BZP was possible at the time but the UCLA Lab opted not to test for BZP. Based on the anti-doping rule violation being noticed only on 12 June 2006, AWF's counsel argued that the athlete was entitled to compete until he was informed of the result of the data review and to compete in the reasonable belief that his test of 26 June 2005 had resulted in no adverse analytical finding. Therefore, AWF contended that it would be most unfair if any of Mr Karapetyan's competition results between 26 June 2005 and 12 June 2006 was affected by the findings of the review of data on 12 June 2006. The second-named Respondent reiterates these objections and argues that fairness dictates that Mr Karapetyan's competition results between 26 June 2005 and 12 June 2006, including the 2006 Commonwealth Games gold medal, should not be affected.

8. Third-named Respondent's Contentions

45. Mr Karapetyn submitted his gold medal won in the 2006 Commonwealth Games should not be affected because of the use of BZP in connection with a sample provided at the Merrnet Cup on 26 June 2005. He reiterated the factors considered by ASADA in making its decision, i.e. the circumstances of the use; the nature of the substance; and the fact that using BZP in June 2005 would not have been any benefit to him in later events. He also stated that the ingestion of BZP was inadvertent from a contaminated source and as such he should retain his competition results from 27 June 2005 to 22 March 2006.

9. Jurisdiction

46. The competence of the CAS to act as an appeal body is based on art. R47 of the Code which provides that:

"A party may appeal from the decision of a disciplinary tribunal or similar body of a federation, association or sports body, insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports body."

47. The competence of the CAS is also based on the above-quoted article 16.2.1 of the Policy.

48. According to the Code, the appeal is admissible.

10. Applicable Law

49. Art. R58 of the Code provides:

"The Panel shall decide the disputes according to the applicable regulations and the rules of law chosen by the parties or, in absence of such choice,

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according to the law of the country in which the federation, association or sports body which has issued the challenged decision is domiciled."

50. The "applicable regulations" in this case are the Policy of the AWF which incorporate the provisions of the WADC. ASADA, which issued the challenged decision, is domiciled in Australia so that, given no express choice of law, the applicable law would appear to be that of Australia. WADA asserts that, whichever law governs the applicable rules or regulations, the provisions of the WADC are to be construed in a manner that is consistent with Swiss law, as WADA has its seat in Switzerland. However no submissions have been made to the Panel which would indicate that the outcome is dependent on which rules of law are applicable and we see no reason to think the outcome would differ were Swiss law applicable rather than Australian law.
51. The applicable procedure in this case is the appeal procedure provided for by art. R47 *et seq* of the Code. Pursuant to art. R57 of the Code:

11. Analysts

52. On the preliminary issue, the decision of ASADA from which WADA appeals is that of 5 April 2007 by which ASADA did impose Consequences upon the athletes, namely ineligibility for two years and disqualification of the Mermet Cup results. WADA has appealed the decision to the extent it did not impose further or more stringent Consequences, namely disqualification of all results between 27 June 2005 and 22 March 2006. Since the decision appealed from did impose Consequences, the Panel finds that it falls within the provisions of article 16.2 of the Policy which allow for the appeal by WADA. Whether those Consequences are the imposition of disqualification or the exercise of discretion not to impose disqualification, the decision falls within the ordinary meaning of the wording used in article 16.2 of the Policy considered in the light of the obvious purpose of the provision and is therefore appealable. It is unnecessary for the Panel to address the question with respect to the application of the Policy to a competition governed by the Commonwealth Games Federation, based on the Panel's findings. The Panel does note however that the IWF with which AWF is affiliated also governs the rules of the competition at the Commonwealth Games, so that either under the regulations of the IWF or by virtue of the Commonwealth Games Federation being a signatory to the WADC, the Policy is enforceable with respect to the results at the Commonwealth Games. ASADA's request to the Panel with respect to article 16.2.1 (the second occurrence) does not require resolution in this appeal as it is a theoretical concern dealing with appeals which might arise but are not the subject of this appeal.
53. The primary issue for the Panel to determine is whether Mr Karapetyn's individual results in all competitions subsequent to the Mermet Cup of 24-26 June 2005 should be disqualified, under article 13.8 of the Policy.

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54. The decision making process of ASADA in the exercise of the discretion to determine what fairness requires under article 13.8 of the Policy was applied in good faith, without bias, error, or undue influence. ASADA took into consideration advice from the AWF and independent counsel and those factors which were relevant to its decision (referenced in ASADA's decision), balanced them against the principle of fairness and properly exercised its discretion. ASADA considered the athlete's inadvertent taking of the banned substance nine months before the Commonwealth Games, the fact that the stimulant in question has no lasting effect on the athlete's performance and that his doping control results one month before, during and after the Commonwealth Games were negative for any prohibited substances. In such circumstances it can not be said that ASADA has exercised its discretion in an inappropriate manner. Once the Panel reaches that conclusion, though the Panel has full power to review ASADA's decision and to act as the decision-maker, there is no basis for it to intervene and assert its own views of fairness, having found that the discretion was properly exercised by ASADA.
55. WADA's contention that it is a rule to disqualify results unless the athlete has shown exceptional circumstances has no basis in the language of the Policy. Article 13.8 of the Policy stands on its own with no specific conditions to the requirement of fairness. So long as the decision-maker exercises its discretion in good faith, without bias, error, or undue influence, article 13.8 extends to the decision-maker discretion to determine what fairness requires. WADA's further assertions that Mr Karapetyan ingested the prohibited substance without reading the label and therefore fairness requires the disqualification of his results is an incomplete view of the facts. In consideration of all the circumstances of this case, as referenced in ASADA's decision and the investigator's final report, ASADA properly applied its discretion.
56. There is no basis to WADA's assertion that Mr Karapetyan was not actually sanctioned because of the combination of Mr Karapetyan's results not being disqualified between 26 June 2005 and the commencement of his period of ineligibility and his ineligibility period commencing after he elected to cease competing. In fact, Mr Karapetyan ceased competing upon learning of the ASADA investigation, nor can he make a living as a professional weightlifter as he had done previously. This can most certainly be deemed a sanction. Furthermore, the sanction eliminates his participation in the sport as a coach, trainer or in any other capacity. Those are real and continuing sanctions even if the athlete has no intention of competing in the future.
57. Appellant's appeal is dismissed.

9 Costs

58. The present case being a Disciplinary Case of an International Nature Ruled in Appeal for the purposes of the Code of Sports-related Arbitration, the provisions set out in article R65 are applicable.
59. Code art. R65.3 provides:

"The costs of the parties, witnesses, experts and interpreters shall be advanced by the parties. In the award the Panel shall decide which party shall bear them or in what proportion the parties shall share them, taking into

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account the outcome of the proceedings, as well as the conduct and financial resources of the parties."

60. Both Appellant and the first-named Respondent requested that the other party make a contribution towards its costs. The Panel has considered that these two parties are both anti-doping agencies with similar financial resources, that Appellant was not successful in these proceedings, and that the first-named Respondent incurred substantial time and expense in defending the appeal. Therefore, it is reasonable to order that Appellant bear some of the first-named Respondent's legal costs.

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ON THESE GROUNDS

The Court of Arbitration for Sport decides:

1. The appeal filed by WADA on 4 May 2007, against a decision of ASADA dated 5 April 2007, is dismissed.
2. The award is pronounced without costs, except for the Court Office fee of CHF 500 (five hundred Swiss francs) already paid by the Appellant and to be retained by the CAS.
3. WADA shall contribute CHF 6,000 (six thousand Swiss francs) towards the legal costs incurred by ASADA in connection with this appeal. WADA, the AWF and Mr Karapetyn shall each bear their own costs.

Done in Lausanne, 15 November 2007

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Maïté E. Oliveau
President of the Panel