Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2011/A/2336 WADA v. FCL & Margarita Mercado Villarreal
CAS 2011/A/2339 WADA v. FCL & Katerine Mercado Villarreal

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

Sitting in the following composition:

President:	Mr Massimo **Coccia**, Professor and Attorney at Law, Rome, Italy
Arbitrator:	Mr Martin **Schimke**, Attorney at Law, Düsseldorf, Germany
Arbitrator:	Mr José María **Alonso Puig**, Attorney at Law, Madrid, Spain
Ad hoc Clerk:	Mr Jordi **López Batet**, Attorney at Law, Barcelona, Spain

In the arbitral proceedings between

The World Anti-Doping Agency (WADA), Montreal, Canada

Represented by Mr François **Kaiser**, Mr Edgar **Philippin** and Mr Ross **Wenzel**, Attorneys-at-law, Lausanne, Switzerland.

as Appellant

and

Federación Colombiana de Levantamiento de Pesas, Santiago de Cali, Colombia

Represented by Mr Luis F. **Begué Trujillo**, President, Santiago de Cali, Colombia.

Ms Margarita & Ms Katerine Mercado Villarreal, Cartagena, Colombia

Represented by Mr Gilberto **Mercado Villarreal**, Cartagena, Colombia.

as Respondents

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I. PARTIES

1. The World Anti-Doping Agency (hereinafter "WADA" or "the Appellant") is a Swiss private foundation – with its seat is in Lausanne, Switzerland and its headquarters in Montreal, Canada – founded and financed by governments and sports institutions, devoted to leading, promoting, coordinating and monitoring the fight against doping in sport in all its forms.

2. The Federación Colombiana de Levantamiento de Pesas (hereinafter "FCL" or the "First Respondent") is the national association governing the sport of weightlifting in Colombia, and a member of the International Weightlifting Federation (hereinafter "IWF").

3. Both Ms Margarita Mercado Villarreal and Ms Katerine Mercado Villarreal (hereinafter also jointly referred to as the "Second Respondents" or the "Weightlifters" or individually as the "Weightlifter") are two sisters of Columbian nationality who compete as weightlifters at a highly competitive level and are affiliated with the FCL.

II. BACKGROUND FACTS

4. The background facts stated herein are a summary of the main relevant facts, as established on the basis of the parties' written submissions and the evidence examined in the course of the proceedings. Additional facts will be set out, where material, within other sections of this award.

5. The Weightlifters tested positive for 19-norandrosterone, the metabolite of nandrolone, in an out-of-competition test performed in Cali on 19 October 2009 (Margarita at a level of 24 ng/ml and Katerine at a level of 9ng/ml).

6. On the basis of these adverse analytical findings, the FCL commenced disciplinary proceedings against the Weightlifters. As a result, further to a hearing that took place on 11 June 2010, the FCL Disciplinary Commission decided to impose on each Weightlifter a sanction comprised of one year of ineligibility, a cancellation of results and an order to return trophies, medals and awards. The relevant operative part of the

FCL's decision (the "Appealed Decision")(which refers to both Weightlifters) reads as follows:

(i) As to Ms Margarita Mercado Villarreal:

«... *se le sancionará con una suspensión de toda actividad relacionada con el levantamiento de pesas por el término de un (1) año contado a partir de la fecha de los hechos, la cual será efectiva mediante la Resolución respectiva. No obstante lo anterior y como quiera que la levantadora Margarita Rosa Mercado Villarreal estuvo activa en el periodo comprendido entre el 19 de octubre de 2.009 y la fecha, la sanción principal tendrá como subsidiaria el despojo de todos sus resultados deportivos y su anulación en la hoja de vida deportiva, conforme lo estipula el mismo articulo 47 del Código disciplinario de la Federación Colombiana de Levantamiento de Pesas en concordancia con el artículo 10.1 del Manual de Reglas de la Federación Internacional. Como consecuencia de lo anterior, la mencionada deportista deberá devolverle a la Federación las medallas, trofeos y premios que esta entidad le haya otorgado. Igual circunstancia deberá darse si ha participado internacionalmente*»,

which may be informally translated into English as follows:

«... a sanction of 1 year of ineligibility in weightlifting related affairs from the date of the facts shall be imposed, which will be effective by means of the respective Resolution. Nevertheless, considering that the weightlifter Margarita Rosa Mercado Villarreal was active during the period comprised between 19 October 2009 and today, a subsidiary sanction of removal of all her sporting results and exclusion of these results from her sporting records will also be imposed in accordance with article 47 of the Disciplinary Code of the FCL and article 10.1 of the International Federation Regulations. As a result, the referred athlete will return the medals, trophies and awards granted by the FCL. The same will apply if the athlete has competed internationally».

(ii) As to Ms Katerine Mercado Villarreal

«...*se le aplicará una sanción equivalente a un (1) año de suspensión contado a partir de la fecha de los hechos, ósea el 19 de octubre de 2.009, de todo lo relacionado con el levantamiento de pesas; así mismo, como quiera que durante este termino la atleta ha estado en competencia activa, se lo despojara de todos*

los resultados deportivos y se le ordena que devuelva trofeos, medallas y premios otorgados por la Federación Colombiana de levantamiento de Pesas, decisión esta que se materializara mediante la Resolución respectiva»,

which may be informally translated into English as follows:

«... a sanction of 1 year of ineligibility in weightlifting related affairs from the date of the facts (19 October 2009) shall be imposed; moreover, considering that the athlete has been up to date actively involved in competitions, her sporting results will be removed and the athlete is instructed to return the trophies, medals and awards granted by the FCL, this decision to be materialized by means of the respective Resolution».

7. The Appealed Decision also imposed monetary sanctions for the "Liga de Levantamiento de Pesas Bolívar", which do not form a part of the present appeal.

8. On 23 December 2010, WADA received a copy of the Appealed Decision.

III. CAS PROCEEDINGS

9. On 13 January 2011 the Appellant filed with the CAS two separate Statements of Appeal against the Appealed Decision (one referring to the case of Ms Margarita Mercado Villarreal and the other to the case of Ms Katerine Mercado Villarreal).

10. In both Statements of Appeal WADA requested (i) that the complete file giving rise to the Appealed Decision be provided by FCL, and (ii) that an appropriate deadline for submitting the Appeal Brief (as from receipt by WADA of the complete FCL file) be set. In addition, in a letter filed together with the Statements of Appeal, WADA requested that the CAS join the two appeals filed against the Appealed Decision.

11. On 19 January 2011 the CAS Court Office wrote to the Respondents inviting them to jointly nominate an arbitrator and to send their observations regarding WADA's above mentioned requests. In the meantime, the deadline to file the Appeal Brief was suspended.

12. The Respondents failed to nominate an arbitrator or to express their position on the Appellant's requests within the deadline granted to them. Therefore, the CAS, by means of a letter to the parties dated 14 February 2011 (i) determined that the deadline to file the Appeal Brief remained suspended and was to be resumed either on receipt

of the complete FCL file or upon decision of the Panel (once constituted) (ii) stated that it would be grateful if the FCL agreed to send the complete file at its earliest convenience, failing which it would be for the Panel to decide on the Appellant's request to invite the FCL to provide such file (iii) informed the parties that, as the Respondents did not appoint an arbitrator within the deadline, the Deputy President of the CAS Appeals Division had appointed Mr José María Alonso Puig as arbitrator and (iv) decided to submit the two appeals against the Appealed Decision to the same Panel.

13. On 16 March 2011 WADA sent a letter to the CAS stating, *inter alia*, that "*as it would appear that the Respondents in these cases have no intention of responding (despite having already been given ample opportunity to do so) and WADA has now been able to obtain independently a translation of the (joint) decision which is the subject of these appeals, we would kindly request the co-arbitrators to order that (i) the cases be joined and re-opened, (ii) WADA is set a deadline of ten days from receipt of such order to file a (joint) Appeal Brief to supplement its Statements of Appeal, and (iii) in the continued absence of a response from the relevant Respondents after being sent such Appeal Brief, the case be decided on the basis of the Statements of Appeal and the Appeal Brief alone*".

14. On 21 March 2011 the CAS informed the parties that the Appellant, should it wish to do so, could submit a single and joint appeal brief for both cases CAS 2011/A/2336 and CAS 2011/A/2339 without prejudice to the potential consolidation of the cases, as it would be for the Panel to decide how to proceed (for instance whether to issue one or two awards). Additionally, the CAS requested that the Appellant specify whether it maintained or withdrew its request for the production of the FCL file and drew its attention to the fact that, in case of a withdrawal, the deadline for the filing of the appeal brief would resume.

15. On 24 March 2011 the Appellant withdrew its request for the production of the FCL file. However, it reserved the right, in the event that an Answer to the Appeal was eventually filed by the Respondents, to request the production of additional documents.

16. On 28 March 2011 the CAS sent a letter to the parties informing them that the deadline to file the Appeal Brief resumed as from the receipt of such letter.

17. On 1 April 2011 the Appellant filed with the CAS a single Appeal Brief covering both CAS cases. This brief was notified to the Respondents on 6 April 2011 to the FCL's address that was the only one provided by the Appellant in its Statements of Appeal.

18. On 7 April 2011 the CAS gave notice of the formation of the Panel for the present dispute. The Panel was constituted as follows: Mr Massimo Coccia as President, Mr Martin Schimke as arbitrator appointed by the Appellant and Mr José María Alonso Puig as arbitrator appointed by the Deputy President of the CAS Appeals Arbitration Division in lieu of the Respondents. No party, either at this or at any later stage, ever objected to the constitution and composition of the Panel.

19. On 26 April 2011 the FCL sent a letter by email to the CAS asking several questions regarding the two cases at stake.

20. On 27 April 2011 the CAS informed the parties, among other things, that the deadline to file the Answer to the Appeal expired the following day.

21. On 27 April 2011 the FCL sent a new email to the CAS in which it (i) again requested an answer to the questions it had previously posed and (ii) announced that the FCL did not know the address of the Weightlifters and that, therefore, in its opinion the Weightlifters would not respond to the CAS's inquiries.

22. On 28 April 2011 the CAS sent a letter to the parties informing them that (i) with regard to the email sent by the FCL the day before, the CAS was not in a position to give advice to the parties and suggested the FCL consult a lawyer or pose the questions to WADA, its National Olympic Committee or its National Anti-Doping Organization, (ii) the deadline to file the Answer to the Appeal expired on the date on which the letter was sent but that an extension could be obtained if requested within that same day, (iii) if the Respondents did not answer and decided not to participate in the proceedings they would, nevertheless, continue and (iv) the CAS would not respond to any future procedural requests sent by email. Additionally, the Appellant was invited to provide the CAS Court Office with evidence that the Second Respondents had received WADA's appeal (or that the FCL's address had been accepted in some way by the Second Respondents) or, if this was not possible, with a reliable address at which the CAS could again serve the appeal on the Second Respondents.

23. On 5 May 2011 the Appellant informed the CAS that, in spite of efforts it had made in this regard, it did not have an address for the Weightlifters and, thus, had no other choice but to follow the customary practice of using the address of their National Association (the FCL) when filing its submissions. In addition, WADA noted that it was implausible that the FCL did not have a means of contacting the Weightlifters and it asked the CAS to urge the FCL to be proactive in its efforts to contact (or provide the contact details of) the Second Respondents.

24. On 6 May 2011 both WADA and the FCL provided the Second Respondents' correct address and the FCL stated that "*The Mercado's girls had received all the documents you have sent to them*".

25. Also on 6 May 2011 the Second Respondents sent by email a response brief together with exhibits ("Answer to the Appeal").

26. On 21 June 2011 and further to CAS' request, the Second Respondents filed translations into English of some of the exhibits attached to their Answer to the Appeal but also submitted new documents, among which a Decision of the Cartagena Judicial District Court, Civil-Family Section, dated 26 July 2010 (hereinafter the "Cartagena District Court's Judgment"), which stated that the urine samples collected on 19 October 2009 were not effective and could not be used to sanction the Weightlifters because they were taken in violation of the Weightlifters' fundamental rights).

27. On 7 July 2011 the Panel (i) decided to accept those translations despite their late filing (given that these were mere translation into English of documents already filed by the Second Respondents) (ii) noted that the CAS had not received English translations of other documents and granted a new deadline to the Second Respondents to provide them and (iii) invited the other parties to inform the CAS if they objected to the admissibility of the new documents filed by the Second Respondents.

28. On 12 July 2011 WADA stated that it did not accept the filing of any documents that had not been translated into English and requested that the CAS set a final deadline for the Second Respondents to file the relevant remaining translations. In addition, it requested that the deadline for filing a Reply to the Answer to the Appeal, fixed in a previous CAS letter, be extended to expire 15 days after the communication to WADA

of the additional translations (or the failure to provide them). Finally, WADA did not object to the admission into the file of the new document filed by the Second Respondents although it did note that the quality of its translation into English was quite poor.

29. On 19 July 2011 the CAS, among other things, invited the Second Respondents to file English translations of any documents already submitted to the CAS without accompanying translations (warning them that if they failed to do so the documents filed only in Spanish could be ignored by the Panel) and granted WADA's request (in its letter of 12 July 2011) regarding the extension of the deadline.

30. On 8 August 2011 the CAS sent a letter to the parties in which it (i) noted that no additional translations had been filed by the Second Respondents and that, thus, the documents filed only in Spanish would be ignored by the Panel (ii) confirmed that the two new documents filed by the Second Respondents had been accepted into the file as none of the other parties had objected to their admissibility within the deadline (iii) gave WADA the opportunity to file a Reply to the Answer to the Appeal and (iv) informed the Respondents that they would have an opportunity to file a final brief should WADA file the above mentioned Reply.

31. On 23 August 2011 WADA filed its Reply submission, and on 25 August 2011 the CAS, pursuant to its letter dated 8 August 2011, invited the Respondents to file their final briefs. In addition, both parties were invited to state whether or not they wanted a hearing held in this case and were advised that their silence in this regard would be deemed to constitute the waiver of a hearing.

32. The Respondents failed to send their final briefs.

33. None of the parties stated that they wanted a hearing held in these proceedings within the deadline; in light of this, the Panel decided to issue the present award on the basis of the parties' written submissions.

34. On 1 December 2011 the Second Respondents sent to the Appellant some additional documentation that WADA forwarded to the CAS Court Office noting that it objected to its admissibility and supported, also with some new exhibits, that, contrary to what may appear from these documents newly filed by them that the Second Respondents were not already suspended for 2 years.

35. By letter of 13 December 2011, the Panel decided, in accordance with Article R56 of the Code of Sports-related Arbitration (hereinafter the "CAS Code"), not to admit these new documents in the CAS file.

36. Taking into account that (i) the FCL Disciplinary Commission ruled on the cases of Ms Margarita Mercado Villarreal and Ms Katerine Mercado Villarreal in one single decision (the Appealed Decision) and the fact that the Weightlifters raised no objection in this respect, (ii) both WADA and the Weightlifters filed submissions in the present proceedings making concurrent reference to both cases and (iii) the two cases are closely connected, the Panel has decided to issue one single award simultaneously ruling on both appeals. In any event, the Panel underlines that, in issuing the present award, it has duly taken into consideration the particularities and circumstances of each individual case.

37. The language of the present proceedings is English.

IV. OUTLINE OF THE PARTIES' POSITIONS

38. The following summaries of the parties' positions are only roughly illustrative and do not purport to include every contention put forward by the parties. However, the Panel has carefully considered and taken into account in its discussions and subsequent deliberations all of the evidence and arguments submitted by the parties, even if there is no specific reference to those arguments in the following outline of their positions or in the ensuing analysis.

A) THE APPELLANT: WADA

39. The Appellant submits that the prohibited substance 19-norandrosterone – an anabolic androgenic steroid – was detected in the Weightlifters' urines on the occasion of an out-of-competition test done on both of them on 19 October 2010. This occurrence implies a violation of article 2.1 of both the IWF Anti-Doping Policy (hereinafter the "IWF ADP") and the Columbian National Anti-Doping Group Rules (hereinafter the "NADO Rules"). Such a violation should be subject to a sanction of two years of ineligibility (and not one year as per the Appealed Decision).

40. The Appellant further argues that none of the purported departures from the WADA International Standard for Testing (hereinafter the "IST") alleged by the Weightlifters

at the hearing held on 11 June 2010 before the FCL Disciplinary Commission were proven and that, in any case, the Weightlifters made no effort to substantiate how those alleged and unproven departures (even if they had occurred) could have reasonably caused the positive test results.

41. With respect to Ms Margarita Mercado Villarreal and the alleged lack of due representation of this Weightlifter during the sample collection process, the Appellant holds that (i) it is not mandatory under the IST that minors be accompanied by a representative in all cases, and (ii) in any event the representation of this Weightlifter by her sister Katerine, also an international level athlete, is to be considered appropriate.

42. The Appellant additionally points out that the Weightlifters signed their respective doping control forms without making any commentary on or criticism of the sample collection procedures; this, in accordance with CAS jurisprudence, satisfies the burden of the Anti-Doping Organization with regard to conformity with the IST (or at least those parts of the IST which relate to the sample collection) and prevents the athletes from raising objections at a later time.

43. The Appellant also emphasizes that, in order to invalidate the adverse analytical findings of nandrolone metabolites in the Weightlifters' samples, the Weightlifters would have to (i) provide corroborating evidence to support the facts underlying the implied procedural departures, (ii) identify exceptional circumstances (most probably fraud or manipulation) which would – despite the body of contrary CAS case law – entitle them to challenge the sample collection procedure after signing the relevant doping control forms without adverse comments, (iii) demonstrate that it is more likely than not that one or more departures from such standard occurred and (iv) establish that such departure could reasonably have caused the positive test results. As not even one of these four conditions has been satisfied, WADA concludes that the presence of the prohibited substance in the bodily samples of the Weightlifters is established.

44. The Appellant also argues that neither Weightlifter filed an application for a Therapeutic Use Exemption authorising them to use a product containing the prohibited substance.

45. The Appellant underscores that the Weightlifters failed to explain the presence of the prohibited substance in their bodies; as a consequence, no possibility of eliminating or reducing the sanction as per article 10.5 of both the IWF ADP and the NADO Rules exists. On the contrary, it is expressly stated in the Appealed Decision that the Weightlifters had no idea how the prohibited substance entered their bodies. In addition, the Appealed Decision contains a statement from the FCL's doctor in which it is acknowledged that nandrolone is only available "*on the [Colombian] domestic market as an injectable solution*", and so accidental intake was utterly implausible.

46. Finally, the Appellant submits that the Cartagena District Court's Judgment concerning the ineffectiveness of the Weightlifters' samples does not bind the Panel, which is free (with the only limit of procedural public policy) to make its own determination with respect to those samples and their evidentiary value.

47. Therefore, the Appellant requests that the Panel grant the following relief:

«*1. The Appeal of WADA is admissible.*

2. The Appealed Decision, in the matter of Ms Margarita Rosa Mercado Villarreal and Ms Katerine Mercado Villarreal, is set aside.

3. Both of Margarita Rosa Mercado Villarreal and Katerine Mercado Villarreal are sanctioned with a two-year period of ineligibility starting on the date on which the CAS award enters into force. Any period of ineligibility, whether imposed on, or voluntarily accepted by, the Athletes before the entry into force of the CAS award, shall be credited against the total period of ineligibility to be served.

4. WADA is granted an award on costs».

B) THE FIRST RESPONDENT: FCL

48. The FCL has not filed written submissions to put forward its position in the present proceedings. Accordingly, apart from considerations arising out of the Appealed Decision issued by its Disciplinary Commission, no further arguments have been put forward by the FCL.

C) THE SECOND RESPONDENTS: MARGARITA AND KATERINE MERCADO VILLARREAL

49. The Second Respondents argue that the sample collection on which the Appealed Decision is based has been declared ineffective by a decision of a Columbian ordinary court and that, in ignoring this order, the FCL Disciplinary Commission abused its dominant position.

50. The Second Respondents also allege that, in any case, several provisions of Columbian Act no. 845 of 2003 on Prevention and Fight against Doping and of Columbian Decree no. 875 of 2005 (which implements the above mentioned Act) were infringed during the sample collection process, i.e.:

(i) The Weightlifters were together in the doping control room while the relevant provisions stipulate that the athletes must be alone;

(ii) No FCL delegate was present during the sample collection process;

(iii) Ms Katerine Mercado Villarreal was allowed to depart from the doping control room (leaving her sample unattended and thus breaching the chain of custody);

(iv) Ms Margarita Mercado Villarreal, who was a minor at the time of the doping control, was not duly represented during the sample collection process as required by article 10 of Columbian Decree no. 875 of 2005;

51. In addition, the Second Respondents contend that the deadline by which they should have been notified of the doping test results was not complied with.

52. On the basis of the above, the Second Respondents request that the Appealed Decision be set aside and, therefore, request that the Panel grant the following relief:

«1. Que se declare nulo la sentencia proferida por el honorable tribunal de la FCL contra las hermanas Mercado y se le dé cumplimiento a los derechos adquiridos a través del tribunal superior del distrito judicial de Cartagena sala civil familia.

2. Que sea archivado inmediatamente el presente proceso de acuerdo a lo establecido por la norma civil colombiana.

3. En consecuencia que a las hermanas Mercado le sean reconocidos todos sus derechos y adquisiciones la cual fueron retiradas por el tribunal disciplinario de la FCL»,

which may be informally translated into English as follows:

«1. The decision of the FCL court against the Mercado sisters be annulled and the rights acquired through the decision of the superior court of the Cartagena's district court civil and family section be fulfilled.

2. The present proceedings be immediately closed in accordance with the Columbian civil regulations.

3. Consequently all the rights and achievements removed by the FCL disciplinary court be recognized to the Mercado sisters».

V. JURISDICTION

53. Article R47 of the CAS Code reads as follows:

«An appeal against the decision of a federation, association or sports-related body may be filed with the CAS 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-related body».

54. Article 38 of the FCL Disciplinary Code (hereinafter the "FDC") states that the FCL "*prohíbe la presencia de cualquier sustancia o uso de cualquier método de dopaje prohibido por la IWF, COI, y acoge la lista de sustancias y métodos prohibidos por la IWF y COI*" (in English, it would translate to the following: "the FCL prohibits the presence of any substance or use of any method of doping prohibited by the IWF, IOC, and takes in the list of substances and methods prohibited by the IWF and IOC").

55. In the Panel's view, this double reference to the IWF and IOC anti-doping rules means that the FCL wishes to incorporate both sets of rules within its own rules. However, the Panel notes that the IOC does not have its own set of permanent anti-doping rules but that, rather, it adopts specific anti-doping rules in reference to the various Olympic Games, which rules are to be applied only to violations committed during those Games (e.g. the "*IOC Anti-Doping Rules applicable to the Games of the XXIX Olympiad, Beijing 2008*", dated 7 May 2008, or the "*IOC Anti-Doping Rules applicable to the Games of the XXVIII Olympiad in Athens 2004*", dated 4 June 2004). As a consequence, the Panel is of the opinion that the FCL's reference to the IOC

rules only incorporates those rules from time to time, i.e. on the occasion of, and during the limited period of, the various Olympic Games (and, obviously, only with regard to the Columbian weightlifters competing in those Games), whereas the FCL's reference to the IWF rules incorporates them into the FCL's rules on a permanent basis.

56. This interpretation of article 38 FDC is consistent with the mandate set out in article 14.1 of the IWF ADP ("*All National Federations shall comply with these Anti-Doping Rules. These Anti-Doping Rules shall also be incorporated either directly or by reference into each National Federations Rules*") as well as its scope ("*These Anti-Doping Rules shall apply to the IWF, each National Federation of the IWF, and each Participant in the activities of the IWF or any of its National Federations by virtue of the Participant's membership, accreditation, or participation in the IWF, its National Federations, or their activities or Events*"). In fact, the FCL Disciplinary Commission confirmed this interpretation in the Appealed Decision in which reference is made to several provisions of the IWF ADP in relation to the imposition of sanctions on the Weightlifters. Therefore, in the Panel's view, there is no doubt that the FCL considers itself and its registered athletes to be subject to the IWF ADP, which even prevail over the FCL's own set of regulations.

57. By the same token, references to the IWF and IOC regulations can also be found in article 49 of the FDC which provides for a right to appeal against a doping-related decision on the basis of "*the sample and the evidentiary procedure not being in accordance with the anti-doping regulations of the Federation, the IWF or the medical content of the IOC...*" ("*la muestra y el procedimiento de prueba no estaban de acuerdo con el reglamento de dopaje de la Federación, o de la I.W.F. o del contenido médico del Comité Olímpico Internacional...*").

58. The above considerations imply that the Panel, in determining its own jurisdiction on the basis of article R47 of the CAS Code, must take into account the IWF ADP (which the FCL has assumed as forming part of its own regulations and which is applicable to any and all weightlifters registered with the FCL).

59. In this respect, the Panel relies on the Dodô award (CAS 2007/A/1370 & 1376 *FIFA, WADA v. CBF, STJD, Ricardo Lucas Dodô*) in which the CAS held that it had jurisdiction over a national federation, and the athletes registered with that national

federation, because the national federation's rules included an express reference to, and incorporation of, the international federation's rules (which contained an arbitration clause giving jurisdiction to the CAS). This CAS jurisprudence has been approvingly scrutinised by the Swiss Federal Tribunal and is thus at this stage *jus receptum*:

> «*According to Art. 61 (5) and (6) of the FIFA Statutes, FIFA and WADA have the right to appeal to the CAS against any internally final decision in doping matters. These FIFA rules are binding for the Appellant. As a professional football player playing at the international level, he is a member of the Brazilian Football Association CBF, which for its part is a member of FIFA. Accordingly, the FIFA Rules, particularly the jurisdiction of the CAS according to Art. 61 of the FIFA Statutes, also apply to the Appellant. The CAS accurately adjudged this. [...] Art. 1 (2) of the CBF Statutes provides, among other things, that a player belonging to the CBF must follow the FIFA Rules. Such a general reference to the FIFA Rules and thus to the appeal rights of FIFA and WADA contained in the FIFA Statutes is sufficient to establish the jurisdiction of the CAS pursuant to R47 of the CAS-Code, by analogy with case law which holds valid the global reference to an arbitration clause contained in the statutes of an association*» (Federal Tribunal, judgment of 9 January 2009, 4A_400/2008, translation from the German original version).

60. Having concluded that the IWF ADP is part of the FCL's anti-doping rules which are binding on the Weightlifters, the Panel notes that articles 13.1.1 and 13.2.1 of the IWF ADP (whose terms essentially reproduce those of articles 13.1.1 and 13.2.1 of the World Anti-Doping Code, or "WADC") read as follows:

> «*13.1.1 WADA Not Required to Exhaust Internal Remedies*
>
> *Where WADA has a right to appeal under Article 13 and no other party has appealed a final decision within the IWF or its National Federation's process, WADA may appeal such decision directly to CAS without having to exhaust other remedies in the IWF or its National Federation's process.*
>
> *13.2 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, or a decision that no anti-doping rule violation was committed; a decision that an anti-doping rule violation proceeding cannot go forward for procedural reasons (including, for example, prescription); a decision under Article 10.10.2 (prohibition of participation during Ineligibility); a decision that the IWF or its National Federation lacks jurisdiction to rule on an alleged anti-doping rule violation or its Consequences; a decision by any National Federation not to bring forward an Adverse Analytical Finding or an Atypical Finding as an anti-doping rule violation, or a decision not to go forward with an anti-doping rule violation after an investigation under Article 7.4; may be appealed exclusively as provided in this Article 13.2.

13.2.1 Appeals Involving International-Level Athletes

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».

61. The examination of these provisions leads the Panel to conclude that in the present case the requirements of article R47 of the CAS Code are met as (i) the regulations of the sporting organization that issued the Appealed Decision – the FCL – do provide for an appeal to the CAS via the reference to the IWF ADP rules and (ii) article 13.1.1 of the IWF ADP expressly provides that WADA is entitled to appeal to the CAS without having to exhaust other remedies in the IWF or the FCL.

62. In any case, and *ad abundantiam*, the Panel underscores that, pursuant to article 186.2 of the Swiss Private International Law Act, "*l'exception d'incompétence doit être soulevée préalablement à toute défense sur le fond*" (in English, "the objection of lack of jurisdiction shall be raised prior to any defence on the merits"). In the present case, the Second Respondents, far from challenging the jurisdiction of the CAS, have implicitly recognised it by filing their allegations and submissions and making the corresponding requests for relief on the merits without ever raising any jurisdictional objection.

63. The Panel thus holds that the CAS has jurisdiction over the present case; in particular, the CAS has jurisdiction *ratione personarum* over the Weightlifters.

VI. ADMISSIBILITY

64. Article 13.2.3(e) of the IWF ADP stipulates that whenever a case falls under article 13.2.1 of the IWF ADP (i.e. in case of an anti-doping rule violation involving an international-level athlete) WADA shall have the right to lodge an appeal against the decision of the national-level reviewing body with the CAS.

65. On 23 December 2010 the Appealed Decision was communicated to WADA.

66. On 13 January 2011 WADA filed with the CAS the relevant Statements of Appeal.

67. The present appeal thus complies with the time-limit of twenty-one days pursuant to Article 13.6 of the IWF ADP.

68. In any event, none of the Respondents raised any objection as to the admissibility of the appeal.

69. The Panel thus holds that the appeal submitted by WADA is admissible.

VII. APPLICABLE LAW

70. Article R58 of the CAS Code reads as follows:

> «*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*».

71. In accordance with (i) article R58 of the CAS Code and (ii) article 38 of the FDC (as well as the considerations made at paras. 54 *et seq.* of this award concerning such provision) the Panel finds that the present dispute shall be resolved in accordance with the IWF ADP, which have been incorporated in the FCL's own rules on doping. By registering as athletes with the FCL, the Second Respondents expressly accepted as "applicable regulations" the FCL rules and thus the IWF ADP. The Panel is of the view that the IWF ADP even prevail over the FCL's own domestic rules and must be

primarily applied because (i) the need for uniformity of treatment of international-level athletes is a fundamental aspect of the fight against doping on the international level and (ii) the IFW ADP rules themselves so require (see supra at 56) lest the obligation of "*[a]ll National Federations [to] comply with these Anti-Doping Rules*" (article 14.1 IWF ADP) becomes mere lip-service. In this connection, the domestic laws of Colombia – such as Decree no. 875 of 2004 – cannot exclude (and must give in to) the application of the IWF ADP as the primary applicable regulations chosen by the parties.

VIII. MERITS

A) THE ANTI-DOPING RULE VIOLATION AND ITS CONSEQUENCES. GENERAL OVERVIEW

72. In order to properly set and define the *quaestio litis* of these proceedings, the Panel must address the following main issues: (i) the conduct of the Weightlifters, (ii) the violation of Anti-doping rules and, if such violation was indeed committed, (iii) its consequences in accordance with the applicable anti-doping rules.

73. With regard to the Weightlifters' conduct, the Panel, after considering the submissions and evidence in these proceedings, deems it undisputed that:

(i) The Weightlifters tested positive for 19-norandrosterone, the metabolite of nandrolone, in an out-of-competition doping test performed whilst the Weightlifters were preparing for the 2009 Bolivarian Games with their national team.

(ii) The Weightlifters, at the time of the doping test, were considered to be international-level athletes for the purposes of the IWF ADP (as confirmed by the IWF). In any case, none of the parties have contested the international-level status of the Weightlifters.

(iii) No "Therapeutic Use Exemption" was applied for by the Weightlifters.

(iv) The prohibited substance found in the Weightlifters' urine is an anabolic androgenic steroid and, thus, is not a "Specified Substance" as defined in the IWF ADP.

(v) The Weightlifters had never been sanctioned for violation of Anti-doping rules before.

74. The Panel observes that article 2.1 of the IWF ADP establishes a strict liability regime: the mere presence of a prohibited substance in an athlete's sample, regardless of the athlete's intention or fault, triggers an anti-doping rule violation. Indeed, article 2.1 of the IWF ADP reads as follows:

> «*The following constitute anti-doping rule violations:*
>
> *2.1. The presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample*
>
> *2.1.1 It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping violation under Article 2.1*».

75. Therefore, the Panel remarks that the Weightlifters undoubtedly committed a violation of article 2.1 of the IWF ADP, as a prohibited substance was found in their samples. Pursuant to article 10.2 of the IWF ADP, a period of ineligibility of four years is to be, in principle, imposed on those who violate article 2.1 for the first time:

> «*The period of Ineligibility imposed for a violation of Article 2.1 (Presence of Prohibited Substance or its Metabolites or Markers), Article 2.2 (Use or Attempted Use of Prohibited Substance or Prohibited Method) or Article 2.6 (Possession of Prohibited Substances and Prohibited Methods) shall be as follows, unless the conditions for eliminating or reducing the period of Ineligibility, as provided in Articles 10.4 and 10.5, or the conditions for increasing the period of Ineligibility, as provided in Article 10.6, are met:*
>
> *First violation: Four (4) years' Ineligibility*».

76. Pursuant to article 10.9 IWF ADP 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*", it being possible, under certain circumstances, to start the period of ineligibility at an earlier date.

77. However, as mentioned in the final part of article 10.2, article 10.5 of the IWF ADP allows for the reduction or elimination of the sanction of ineligibility for violations involving non-specified substances on the basis of exceptional circumstances:

«*10.5 Elimination or Reduction of Period of Ineligibility Based on Exceptional Circumstances*

10.5.1 No Fault or Negligence

If an Athlete establishes in an individual case that he or she bears No Fault or Negligence, the otherwise applicable period of Ineligibility shall be eliminated. When a Prohibited Substance or its Markers or Metabolites is detected in an Athlete's Sample in violation of Article 2.1 (presence of Prohibited Substance), the Athlete must also establish how the Prohibited Substance entered his or her system in order to have the period of Ineligibility eliminated. In the event this Article is applied and the period of Ineligibility otherwise applicable is eliminated, the anti-doping rule violation shall not be considered a violation for the limited purpose of determining the period of Ineligibility for multiple violations under Article 10.7.

10.5.2 No Significant Fault or Negligence

If an Athlete or other Person establishes in an individual case that he or she bears No Significant Fault or Negligence, then the period of Ineligibility may be reduced, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this section may be no less than 8 years. When a Prohibited Substance or its Markers or Metabolites is detected in an Athlete's Sample in violation of Article 2.1 (Presence of Prohibited Substance or its Metabolites or Markers), the Athlete must also establish how the Prohibited Substance entered his or her system in order to have the period of Ineligibility reduced».

B) CONSIDERATIONS REGARDING THE PARTIES' REQUESTS FOR RELIEF

78. Taking into account the general framework described in Subsection A), the Panel must first examine the specific requests for relief set forth by the parties to this dispute.

79. WADA requests that the period of ineligibility imposed on the Weightlifters in the Appealed Decision be increased from one to two years and that this period start on the date on which this award enters into force.

80. On the other hand, the Second Respondents demand the annulment of the Appealed Decision, the closing of the disciplinary proceedings started against them and the restitution of their rights and achievements which were removed by the FCL Disciplinary Commission.

81. Prior to entering into the merits of the dispute the Panel points out the following:

(i) WADA did not challenge in its appeal the other ancillary sanctions imposed on the Weightlifters in the Appealed Decision (basically the removal of results and the return of trophies, medals and awards). Therefore, those ancillary sanctions will stand as decided by the FCL Disciplinary Commission, and the Panel will neither deal with nor decide on them.

(ii) The petitions made by the Second Respondents in the present proceedings are to be dismissed *in limine* pursuant to article R55 of the CAS Code. Contrary to the situation under the 2004 version of the CAS Code, the current article R55 does not allow the respondents in appeal arbitration procedures to raise counterclaims. Bearing this in mind, the Panel remarks that the Second Respondents have gone further than merely requesting that the Appealed Decision be confirmed: instead they are challenging the Appealed Decision and asking for (i) its annulment, (ii) the closing of the disciplinary proceedings and (iii) the recovery of certain rights and achievements. The Second Respondents have not merely answered the appeal filed by WADA, contesting the arguments contained therein and asking that the Appeal Decision be confirmed. They have filed a true counterclaim intended to annul the Appealed Decision; under the current CAS procedural rules, this is not admissible. If the Second Respondents did not agree with the Appealed Decision, they had the right to lodge an appeal with the CAS within the deadline to have their sanctions annulled, but they did not. Accordingly, now they must bear the consequences of their inaction, i.e. the legal impossibility of

requesting (via a counterclaim) that the CAS modify the Appealed Decision in their favour. Therefore, the petitions of the Second Respondents in these proceedings are inadmissible and the Panel will not deal with them. However, as the request to annul the sanctions imposed by the Appealed Decision includes, *a fortiori*, the request not to increase them, the Panel will consider the Second Respondents' motions for relief as tantamount to mere requests that the appeal be rejected. In addition, in order to protect the Weightlifters' rights to the maximum extent practicable, the Panel will fully take into account their arguments directed at obtaining the annulment of the Appealed Decision, as if they were raised as part of their defense on the merits.

C) THE SANCTION IMPOSED ON THE WEIGHTLIFTERS

82. The Panel notes that the Appealed Decision imposed on the Weightlifters a period of ineligibility of one year as sanction for the presence of 19-norandrosterone in the samples taken on 19 October 2009.

83. The Panel notes that the IWF ADP clearly establish that, with reference to a non-specified prohibited substance such as 19-norandrosterone, the sanction of four years of ineligibility pursuant to article 10.2 IWF ADP can be reduced or even eliminated (article 10.5 of the IWF ADP) if the accused athlete establishes both (i) how the prohibited substance entered into his/her body (the so-called "route of ingestion") and (ii) that he/she bore no fault or negligence or no significant fault or negligence.

84. The Panel remarks that the Second Respondents failed to prove, or even allege, the existence of circumstances permitting the reduction or elimination of the sanction. In their submissions, in order to justify the annulment of the Appealed Decision, the Weightlifters make reference to certain alleged breaches and non-observance of provisions and decisions. However, even disregarding the fact that these petitions would be inadmissible in these proceedings (see *supra* at para. 81.ii), the Panel remarks that the Second Respondents did not invoke any fact, whether on a principal or on a subsidiary basis, which could potentially justify a reduction or the elimination of the sanction pursuant to article 10.5 of the IWF ADP. Indeed, as will be seen in the following paragraphs, none of the arguments set forth by the Second Respondents can help their case and obtain the rejection of the appeal.

85. Firstly, the Panel emphasizes that the fact that a Columbian ordinary court has decided that the Weightlifters' sample collection was ineffective and/or invalid is not binding on the CAS when resolving this case nor does it have any effect on it. This Panel is revising the Appealed Decision in accordance with the CAS Code and with the provisions of the Swiss Private International Law Act. Under the umbrella of such provisions, the Panel is free to assess the facts and evidence brought by the parties to the proceedings, regardless of any decision taken by a non-Swiss State court. This has been recognised and duly explained in various CAS awards. For example, in CAS 2011/A/354-355 *IHA v. LHF & IHF* the panel stated that the CAS "*is not bound by decisions taken by any other jurisdictional body*" (para. 6). In the award CAS 2008/A/1528-1546 *UCI & CONI v. Giampaolo Caruso & FCI*, the panel asserted that the CAS "*is not bound by the orders of a Spanish judge*" (para. 9.3). Similarly, in the order of 22 December 2009, in CAS 2007/A/1396-1402 *WADA & UCI v. Alejandro Valverde Belmonte & RFEC*, the panel stated that "*this Panel does not regard the [Spanish Judge's] Orders prohibitive for the production and use of the Operation Puerto documents in this arbitration*" (para. 47).

86. Moreover, in general, in CAS 2009/A/1879 *Alejandro Valverde Belmonte v. CONI*, the CAS panel stated that "*la question de l'admissibilité d'une preuve est de nature procédural et est donc soumise aux règles de procédure applicable devant cette Formation [...] Selon l'Article 184 alinéa 1 LDIP le tribunal arbitral procède lui-même à l'administration des preuves. Cette disposition donne aux arbitres le pouvoir de statuer sur l'admissibilité d'une preuve soumise par une des parties. Le pouvoir de la Formation de statuer sur l'admissibilité de la preuve est repris dans le Code TAS (cf. l'Article R44.2). Il découle de l'Article 184. alinéa 1 LDIP (ainsi que des articles du Code TS) que la Formation dispose ainsi d'un certain pouvoir d'appréciation pour déterminer la recevabilité ou irrecevabilité de la preuve*" ; translated in English: "the matter of the admissibility of a piece of evidence is of a procedural nature and shall thus be submitted to the procedural rules to be applied before the Panel [...] In accordance with article 184.1 PILA the arbitral tribunal itself administers the evidence. This provision grants to the arbitrators the power to rule on the admissibility of a piece of evidence submitted by one of the parties. The power of the Panel to rule on the admissibility of evidence is provided by the CAS Code (article R44.2). It appears from article 184.1 PILA (as well as from the articles of the CAS Code) that

the Panel has a margin of appreciation to determine the admissibility or inadmissibility of evidence".

87. In addition, it must be mentioned that the parties to the present proceedings are not the same as those in the proceedings before the Columbian ordinary courts (WADA was not a party therein). Therefore, the Panel holds that the referred Columbian ordinary court decision on the effectiveness and/or validity of the sample collection cannot have effects of *res judicata* (or of any other nature) on the present proceedings.

88. Secondly, the fact that the Weightlifters were together in the doping control room was not a condition imposed upon them but occurred at their own request, perhaps due to Katerine's desire to be present during her sister Margarita's (who was a minor at the time) sample collection. Something voluntarily done by the Weightlifters cannot be used by them to try to contest the correctness of the sample collection process.

89. Thirdly, the alleged non-attendance of a FCL delegate during the sample collection process has simply not been proven and, in any case, under the applicable rules – which before this Panel are the IWF ADP and not the provisions of the Colombian Decree no. 875 of 2004 (see *supra* at 71) – the absence of such a delegate cannot invalidate the sample collection.

90. Fourthly, the departure of Ms Katerine Mercado Villarreal from the doping control room before the completion of the sample collection process was due to her decision to answer a phone call and, thus, cannot in any way be used to dispute the accuracy of the sample collection process. In any case, no evidence or even allegation of the manipulation of her sample in her absence has been raised during the proceedings.

91. Fifthly, with regard to Ms Margarita Mercado Villarreal and the argument related to the fact that she, as a minor at the time of the doping control, was not duly represented during the sample collection process, the Panel stresses the following:

(a) in accordance with paras. C4.4, C4.6 and C4.8 of Annex C "Modifications for Athletes who are Minors" of the IST (which are applicable as per article 5.3 of the IWF ADP), the representation of minors during anti-doping tests is not compulsory;

(b) even if the representation of a minor were compulsory, Margarita was accompanied by her sister Katerine, who was of legal age and had enough skills – given her status as an international-level athlete – to know, understand and explain to

her minor sister what was happening during the sample collection process (and the relevant implications).

92. Sixthly, the Panel notes that none of the purported breaches described in the previous paragraphs were recorded on the anti-doping control forms signed by the Weightlifters at the end of the sample collection, despite the fact that there is a blank space on those forms in which procedural breaches may be recorded. In this respect, the Panel points out that, pursuant to section 7.4.4 IST, any athlete has the "*opportunity to document any concern he/she may have about how the Sample Collection Session was conducted*", and that section 7.4.6 IST provides that at the "*conclusion of the Sample Collection Session the Athlete and the DCO shall sign appropriate documentation to indicate their satisfaction that the documentation accurately reflects the details of the Athlete's Sample Collection Session, including any concerns recorded by the Athlete*". The Panel finds quite revelatory that the Second Respondents quietly signed those forms and did not record any complaint, protest or objection.

93. Finally, the Panel notes that the alleged infringement of the deadline within which the Second Respondents should have been notified of the adverse analytical findings has not been proven.

94. In view of the above, the Panel finds that the Second Respondents' allegations concerning the sample collection and storage procedures (i) are not relevant and/or (ii) have not been proven on the balance of probability and/or (iii) could in no manner cause their adverse analytical findings. Therefore, the Panel must conclude that the anti-doping tests performed by on the Weightlifters were properly carried out.

95. Indeed, having carefully examined all the arguments raised by the Second Respondents, the Panel is persuaded that there are no circumstances in this case which might justify a reduction (let alone elimination) of the sanction under article 10.5 of the IWF ADP. Indeed, the Weightlifters did not even try to explain – in their respective declarations before the FCL Disciplinary Committee or in their written submissions before this Panel – how the Prohibited Substance had entered into their bodies (Margarita simply stated that she did not have the slightest idea how the prohibited substance entered into her body). As noted above (at para. 83), demonstrating the route of ingestion is one of the requirements pursuant to article 10.5

IWF ADP. Without such demonstration no reduction or elimination of the sanction is possible irrespective of any other factual circumstances.

96. The Panel must thus conclude that no legal ground justifies reducing the ineligibility period to be applied to the Weightlifters for their violation of article 2.1 IWF ADP.

97. In this regard, the Panel remarks that the Appealed Decision is flawed insofar as the FCL Disciplinary Commission, in order to reduce the period of ineligibility, set forth grounds – the Weightlifters' sporting background, age, sporting behaviour, anxiety in proving their innocence, clean anti-doping record – that are utterly irrelevant under the applicable anti-doping rules and do not justify any reduction of the sanction where the requirements of article 10.5 are not satisfied (see above at para. 83).

98. For the sake of clarity, the Panel wishes to point out that even if the requests for annulment of the Appealed Decision and closing of the disciplinary proceedings had been admissible in the present proceedings – *quod non* as per the reasons explained above at para. 81(ii) – such requests would have been rejected because they were not supported by appropriate or persuasive evidence and arguments.

D) DECISION

99. In light of the above, the Panel resolves that the appeal filed by WADA against the Appealed Decision is to be upheld. As a consequence, in accordance with the Appellant's request, the Weightlifters shall be declared ineligible to participate for a period of two years, starting from the date of notification of this award as the Panel believes that there is no reason to backdate the commencement of the period of ineligibility in accordance with article 10.9 IWF ADP. Any period of ineligibility already served by the two Weightlifters – if duly proven and attested by the IWF – shall be credited against the above mentioned period of two years of ineligibility.

100. The Panel is aware that article 10.2 IWF ADP stipulates (for a first violation of article 2.1) the sanction of four years of ineligibility. However, the Panel stresses that the Appellant has requested that the Panel imposes on the Weightlifters the sanction of two years of ineligibility. Therefore, to avoid ruling *ultra petita*, the Panel has to set the period of ineligibility in accordance with the terms and extent of the Appellant's request. Indeed, it is the Panel's duty to ensure that the award may not be set aside, and it must, thus, respect the prohibition on ruling beyond the claims submitted to it

(article 190.2.c. of the Swiss PILA). In any case, the Panel points out that the sanction of two years of ineligibility is the one provided for the "*presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample*" in the Colombian NADO Rules (article 10.2), the WADC (article 10.2) and even in the FDC (article 47).

IX. COSTS

101. Considering that the present appeals were directed against a decision issued by a national body that was not acting upon delegation of an international federation, article R64 of the CAS Code, in the version in force at the time of the filing of the two Statements of Appeal (see supra at 9) is applicable.

102. Pursuant to Article R64.4 of the CAS Code, the CAS Court Office shall, upon conclusion of the proceedings, determine the final amount of the costs of the arbitration, which shall include the CAS Court Office fee, the costs and fees of the arbitrators computed in accordance with the CAS fee scale, the contribution towards the costs and expenses of the CAS, and the costs of witnesses, experts and interpreters. In accordance with Article R64.4 of the Code and with the consistent practice of the CAS, such costs are later determined and notified to the parties by separate communication from the Secretary General of CAS.

103. In the award and as provided for by Article R64.5 of the CAS Code, the Panel shall therefore determine which party shall bear the arbitration costs or in which proportion the parties shall share them. Furthermore, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the outcome of the proceedings, as well as the conduct and the financial resources of the parties.

104. In the present case, the Panel considers the fact that the appeals were entirely upheld and, therefore, holds that the three Respondents shall jointly and severally bear the entire costs of the present arbitration proceedings, as will be determined and served on the parties by the CAS Court Office.

105. With respect to the contribution towards the Appellant's legal fees, the Panel must, as noted, take into consideration three factors: (i) the outcome of the proceedings (ii) the

conduct of the parties and (iii) the financial resources of the parties. The Panel is of the view that each of these factors is relevant, but that any of them may be decisive on the facts of a particular case. The Panel observes that it is clear from the case file that the three Respondents (the two Weightlifters and their national federation) did not have the financial means to properly defend themselves before the CAS. Therefore, even if the outcome of the proceedings is entirely in favour of the Appellant, the enormous financial imbalance between the parties leads the Panel to determine that the three Respondents must reimburse to WADA no more than a token amount of 1,000 Swiss Francs altogether, for which they will be jointly and severally liable vis-à-vis the Appellant.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The Appeal filed by the World Anti-Doping Agency is upheld.
2. The decision rendered by the Disciplinary Commission of the Federación Colombiana de Levantamiento de Pesas further to a hearing on 11 October 2010 concerning Ms Margarita Mercado Villarreal and Ms Katerine Mercado Villareal is set aside, except for the rulings related to (i) the "Liga de Levantamiento de Pesas de Bolívar" and (ii) the removal of results and return of trophies, medals and prices, which have not been appealed against.
3. Ms Margarita Mercado Villarreal is declared ineligible for a period of two years, starting from the date of notification of this award. Any period of ineligibility that she has already served, as attested by the International Weightlifting Federation, shall be credited against the above mentioned period of two years of ineligibility.
4. Ms Katerine Mercado Villarreal is declared ineligible for a period of two years, starting from the date of notification of this award. Any period of ineligibility that she has already served, as attested by the International Weightlifting Federation, shall be credited against the above mentioned period of two years of ineligibility.
5. Ms Margarita Mercado Villarreal, Ms Katerine Mercado Villarreal and the Federación Colombiana de Levantamiento de Pesas shall bear the entire costs of the proceedings, to be determined and served on the parties by the CAS Court Office, for which they are jointly and severally liable.
6. Ms Margarita Mercado Villarreal, Ms Katerine Mercado Villarreal and the Federación Colombiana de Levantamiento de Pesas are ordered to pay the total amount of CHF 1,000 (one thousand Swiss Francs), for which they are jointly and severally liable, to the World Anti-Doping Agency.
7. All other requests, motions or prayers for relief are dismissed.

Lausanne, 2 March 2012

THE COURT OF ARBITRATION FOR SPORT

Massimo **Coccia**
President of the Panel