



Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2011/A/2675 Mita Overvliet v/ International Weightlifting Federation (IWF)

ARBITRAL AWARD

Delivered by the

COURT OF ARBITRATION FOR SPORT

Sitting in the following composition:

Sole Arbitrator: Dr Hans Nater, LL.M., Attorney-at-Law, Zurich, Switzerland

in the arbitration between

Mita Overvliet, Frankfurt (Oder), Germany

Represented by Mr Steven Teitler, Legal Counsel, Doping Autoriteit Nederland,
Capelle aan den IJssel, The Netherlands

- Appellant -

International Weightlifting Federation (IWF), Lausanne, Switzerland

Represented by Carrard & Associés, Mr François Carrard and Mr Yvan Henzer,
Attorneys-at-law, Lausanne, Switzerland

- Respondent -

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1. THE PARTIES

- 1.1 Ms. Mita Overvliet ("Appellant" or "Athlete") is a professional athlete practicing weightlifting and a former member of the national Team of the Netherlands Weightlifting Federation.
- 1.2 The International Weightlifting Federation ("Respondent" or "IWF") is a permanent non-profit organization composed of 189 affiliated National Federations worldwide, from all five continents. It has its seat in Lausanne, Switzerland. The IWF is governed by Swiss Private Law, in particular Articles 60-79 of the Swiss Civil Code.

2. FACTUAL BACKGROUND

- 2.1 This section summarizes the main relevant facts and allegations based on the Parties' written submissions. In this Award, additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. The Sole Arbitrator has considered all the factual allegations, legal arguments and evidence submitted by the Parties in the present proceedings, but he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.
- 2.2 On 13 April 2011, Appellant competed at the European Weightlifting Championships held in Kalin, Russia. On that day, Appellant was tested in-competition.
- 2.3 Appellant's sample was taken to the laboratory of the Institute for Biochemistry of the German Sports University, Cologne, Germany ("the laboratory"), a WADA accredited laboratory, where Appellant's A sample was analyzed.
- 2.4 By report dated 16 May 2011, the laboratory reported Adverse Analytical Findings on analysis of Appellant's A sample of norandrosterone, being an S1.1 Anabolic Agent prohibited by the 2011 WADA Prohibited List, in a concentration of more than 2 ng/ml and of furosemide, being a Specified Substance listed under S5 Diuretics and other Masking Agents in the 2011 WADA Prohibited List. The laboratory reported that the detection of norandrosterone was consistent with the administration of the prohibited substance nandrolone or a prohormone of nandrolone.
- 2.5 The B sample analysis confirmed the laboratory's findings.

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2.6 Appellant was prescribed furosemide as treatment for a medical condition. However, Appellant did not seek a TUE for this substance.

2.7 Appellant does not know how nandrolone entered her system. She acknowledged the use of food supplements without first properly verifying whether they were safe. However, the analysis of the used food supplements by the laboratory in Cologne did not establish the presence of a prohibited substance.

2.8 On 2 December 2011, the IWF Doping Hearing Panel sanctioned the Athlete by four (4) years' ineligibility dating from 23 May 2011, being the date from which she was provisionally suspended by the IWF. The suspension was imposed pursuant to Article 10.2 of the IWF Anti-Doping Policy adopted at the IWF Congress held on 31 March 2009 in Madrid ("IWF ADP").

2.9 In her Statement of Appeal, the Appellant made the following Requests for Relief:

"Appellant requests that the imposed sanction is reduced to a period of ineligibility of two (2) years, dating from 23 May 2011.

With respect to the costs, Appellant requests that Respondent is ordered to pay Appellant all the costs and fees Appellant incurred related to this Appeal before CAS".

2.10 The IWF, in its Answer, requested the CAS Panel to issue an award holding that:

"I. The Appeal filed by Ms. Mita Overvliet is dismissed.

II. The International Weightlifting Federation is granted an Award for Costs."

**3. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT
(CAS)**

3.1 On 23 December 2011, Appellant filed her Statement of Appeal.

3.2 On 5 January 2012, Appellant confirmed that the Statement of Appeal is to be considered as Appellant's Appeal Brief.

3.3 On 26 January 2012, Respondent submitted its Answer.

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- 3.4 On 27 January 2012, the Parties were advised that Dr. Hans Nater was appointed Sole Arbitrator.
- 3.5 By letter of 10 February 2012 to the Parties, the Sole Arbitrator noted that neither the Appellant nor the Respondent has called any witnesses and the Parties were in agreement that the decision should be rendered based solely on the Parties' written submissions.
- 3.6 By letter of 14 March 2012, the Parties were invited to submit simultaneous submissions of not more than ten pages on the Appeal Brief and the Answer respectively and to submit their comments, if any, on the following four issues:
- Has IWF become a compliant of the WADA Code? If yes, to what degree?
 - HAS IWF signed a declaration of acceptance pursuant to Article 23.1.1 of the WADA Code?
 - Do Exhibits R-101 and R-102 evidence compliance with the WADA Code? Please specify the applicable Code provisions.
 - What should be the test(s) for construction of the IWF ADP?
- 3.7 Within the time limit ending 26 March 2012 set by the CAS Court office in its letter of 14 March 2012, the Parties filed their Supplementary Submissions.
- 3.8 By letter of 28 March 2012, Respondent objected to the Appellant's request in its Supplementary Submission of 26 March 2012 to consider the Appeal Brief filed by the Appellant in the case CAS 2011/A/2674. By CAS letter of 30 March 2012, the Appellant's request was rejected on the grounds that there are no exceptional circumstances to supplement or amend the Appellant's arguments or to produce new exhibits.
- 3.9 By CAS letter of 10 April 2012, the Parties were advised that the Sole Arbitrator is satisfied to have received the relevant information to adjudicate this case, and the proceedings were declared closed.
- 3.10 By letter of 12 April 2012, Appellant reiterated her request to consider the parties' briefs in the CAS case CAS 2011/A/2674.
- 3.11 By letter of 18 April 2012, within the time limit set by CAS, Respondent objected to this request and moved to dismiss it.

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- 3.12 By CAS letter of 23 April 2012, Respondent's requests for leave to submit the Parties' briefs in the CAS case CAS 2011/A/2674 and to stay the proceedings pending the filing and considering of those briefs were dismissed.
- 3.13 On 3 May 2012, Appellant reiterated its request for leave to submit the Supplementary Submission requested by CAS letter of 14 March 2012.
- 3.14 By CAS letter of 7 May 2012, Appellant has been reminded of its letter of 10 April 2012, in which the Parties were advised of the following:

"The Sole Arbitrator (i) is satisfied to have received the relevant information to adjudicate this case and (ii) the proceedings are declared closed".

However, in view of the serious complaints of violation Appellant's right to be heard and her right to equal treatment raised by Appellant in her letter of 3 May 2012, Appellant has been granted its request for leave to submit the requested Supplementary Submission and invited to file it by 14 May 2012.

- 3.15 On 14 May 2012, Appellant submitted its Supplementary Submission.
- 3.16 On 24 May 2012 the CAS Court office forwarded an Order of procedure which the parties returned duly signed.

4. JURISDICTION OF THE CAS

- 4.1 Article R47 of the Code of Sports-related Arbitration (CAS Code) provides 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 or the appeal, in accordance with the statutes or regulations of the said sports-related body.

(...)"

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4.2 Article 13.2.1 of the IWF ADP provides as follows:

"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."

4.3 Respondent accepted the jurisdiction of CAS without any restriction.

5. APPLICABLE LAW

5.1 Article R58 of the CAS Code sets out the law applicable to resolve disputes using the Appeal Arbitration Procedure. That provision provides 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 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 rule of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

5.2 In the case at hand, the applicable regulations are the IWF ADP and the WADA Code. Subsidiarily, Swiss law is applicable, as the IWF is domiciled in Switzerland.

5.3 Contrary to Appellant's submission, the Olympic Charter does not govern disciplinary disputes involving athletes of an international federation and, therefore, is not applicable.

5.4 In its "Introduction", the IWF ADP states the following:

"Preface

At the IWF Congress held on 31st March 2009 in Madrid, Spain the IWF accepted the revised (2009) World Anti-Doping Code (the "Code"). These Anti-Doping Rules are adopted and implemented in conformance with the IWF's responsibilities under the Code, and are in furtherance of the IWF's continuing efforts to eradicate doping in the sport of Weightlifting.

(...)

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When reviewing the facts and the law of a given case, all courts, arbitral tribunals and other adjudicating bodies should be aware of and respect the distinct nature of the anti-doping rules in the Code and the fact that these rules represent the consensus of a broad spectrum of stakeholders around the world with an interest in fair sport."

"Scope

(...)

The National Federation must guarantee that all athletes registered for an IWF License accept the Rules of the IWF, including these IWF Anti-Doping Rules.

It is the responsibility of each National Federation to ensure that all national-level Testing on the National Federation's Athletes complies with these Anti-Doping Rules.

(...)"

5.5 Article 10 of the IWF ADP is entitled "Sanctions on Individuals" and states:

(...)

10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of Prohibited Substances and Prohibited Methods

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 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.

(...)"

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The wording of Article 10.2 of the IWF ADP is identical to the wording of Article 10.2 of the WADA Code, with the sole exception that the WADA Code provides a two (2) years' ineligibility for a first offence.

- 5.6 Article 18 of the IWF ADP is entitled "Amendment and Interpretation of Anti-Doping Rules" and states inter alia:

(...)

18.4 The INTRODUCTION and the APPENDIX I DEFINITIONS shall be considered integral parts of these Anti-Doping Rules.

18.5 These Anti-Doping Rules have been adopted pursuant to the applicable provisions of the Code and shall be interpreted in a manner that is consistent with applicable provisions of the Code. The comments annotating various provisions of the Code may, where applicable, assist in the understanding and interpretation of these Anti-Doping Rules.

(...)

- 5.7 Part Four of the WADA Code is entitled "Acceptance, Compliance, Modification and Interpretation". The following provisions of Part Four of the WADA Code are relevant here:

"Article 23.1 Acceptance of the Code

23.1.1 The following entities shall be Signatories accepting the Code: WADA, International Olympic Committee, International Federations, (...). These entities shall accept the Code by signing a declaration of acceptance upon approval by each of their respective governing bodies.

(...)

23.1.3 A list of all acceptances will be made public by WADA.

Article 23.2 Implementation of the Code

23.2.1 The Signatories shall implement applicable Code provisions through policies, statutes, rules or regulations according to their authority and within their relevant spheres of responsibility.

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23.2.2 The following Articles (and corresponding Comments) as applicable to the scope of the anti-doping activity which the Anti-Doping Organization performs must be implemented by Signatories without substantive change (allowing for any non-substantive changes to the language in order to refer to the organization's name, sport, section numbers, etc.):

(...)

- *Article 10 (Sanctions on Individuals)*

(...)

No additional provisions may be added to a Signatory's rules which change the effect of the Articles enumerated in this Article.

Article 23.3 Compliance with the Code

23.3.1 Signatories shall not be considered in compliance with the Code until they have accepted and implemented the Code in accordance with Articles 23.1 and 23.2. They shall no longer be considered in compliance once acceptance has been withdrawn."

- 5.8 It is not disputed by the Parties that the IWF is a Signatory to the WADA Code and has signed a declaration of acceptance of the WADA Code.

6. THE SUBSTANTIVE ARGUMENTS

- 6.1 This section of the Award provides an overview summary of the arguments as provided by the Parties' submissions.

(i) The Appellant's Submissions

- 6.2 Appellant submits that she committed an anti-doping rule violation which should have been sanctioned with the standard period under the WADA Code for a first Anti-Doping Rule Violation, i.e. a period of ineligibility of two (2) years. Appellant accepts that the standard period under the WADA Code for a first anti-doping rule violation is imposed.

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- 6.3 Appellant submits that Article 10.2 of the IWF ADP is not in compliance with Article 23.2.2 of the WADA Code providing that the Signatories of the WADA Code must implement, inter alia, Article 10 of the WADA Code without substantive change.
- 6.4 As the IWF made the WADA Code a part of its own rules, the standard four years' period of ineligibility for a first Anti-Doping Rule Violation pursuant to Article 10.2 IWF ADP is a violation of the IWF's own rules and, therefore, invalid and unenforceable.
- 6.5 The grounds for appeal have been confirmed by CAS in its award 2011/O/2422, which should be taken as a precedent in adjudicating the case at hand.

(ii) The Respondent's Submissions

- 6.6 Respondent submits that pursuant to Article 10.2 IWF ADP, the period of ineligibility imposed for violation of Article 2.1 IWF ADP (presence of prohibited substance or its metabolites or markers) shall be four years for a first violation. In its letter of 14 April 2011 to IWF, WADA confirmed that the IWF Anti-Doping Program was in line with the WADA Code
- 6.7 WADA has declared the IWF compliant in the sense of Article 23.3 of the WADA Code
- 6.8 Article 10.6 of the WADA Code provides that the two years' period of ineligibility for a first violation can be increased up to the maximum of four years. The use of steroids may be considered as an aggravating circumstance, so that the four years' ban is justified based on Article 10.6 of the WADA Code.
- 6.9 The IWF ADP is applicable irrespective of its compliance with the WADA Code.
- 6.10 A four years' period of ineligibility is not disproportionate and in line with Swiss law.

7. THE SOLE ARBITRATOR'S FINDINGS ON THE MERITS

- 7.1 The analysis starts with an outline of the scope and applicability of the WADA Code. Then, the Sole Arbitrator examines whether the WADA's compliance

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reports are decisive to adjudicate this case, followed by an analysis of the main issue of the case, i.e. whether the two years' period of ineligibility of the WADA Code has become part of the IWF's own regulations. The discussion on the merits ends with short comments on whether a four years' ban violates the proportionality rule, the Appellant's personality rights or Swiss public policy.

(I) Scope and applicability of the WADA Code

7.2 The Sole Arbitrator is prepared to follow the finding of CAS in its Award USOC v/ IOC¹: The WADA Code is neither a law nor an international treaty. It is rather a contractual instrument binding its signatories in accordance with private international law.

7.3 The WADA Code is the fundamental and universal document upon which the World Anti-Doping Program in sport is based. The purpose of the Code is to advance the anti-doping effort through universal harmonization of core anti-doping elements².

7.4 To become compliant with the WADA Code, International Federations (IFs) must undertake three steps (cf. WADA's Compliance process):

- **Code Acceptance:** The IF agrees to the tenets of the WADA Code;
- **Implementation:** The IF amends its rules and policies to include the Code's

mandatory Articles and Principles;

- **Enforcement:** The IF has amended its rules and policies and is enforcing them in

accordance with the Code.

7.5 To become applicable, the WADA Code must be accepted³ and implemented according to the Signatory's authority and within its relevant spheres of responsibility⁴. In other words, the WADA Code and its provisions need to be transformed into the regulations of a Signatory to become applicable.

¹ CAS 2011/O/2422, para. 8.21.

² Purpose, Scope and Organization of the World Anti-Doping Program and the Code.

³ Cf. Article 23.1 of the WADA Code: Acceptance of the Code.

⁴ Cf. Article 23.2 of the WADA Code: Implementation of the Code.

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7.6 The WADA Code is not self-executing and not applicable by substitution⁵. In order to be applicable, wholly or in part, the applicable Code provisions must be implemented into the Signatory's own regulations.

(ii) WADA's compliance reports are not decisive

7.7 Appellant does not dispute that the IWF is a Signatory to the WADA Code. She admits to be aware of the compliance report dated 20 November 2011. However, Appellant *"does not consider such report a formal legal permission from WADA to the IWF allowing a substantive change to the World Anti-Doping Code"*.

7.8 Respondent submits that the IWF has been declared compliant by the WADA, inter alia by its letter of 14 April 2011 confirming that the IWF Anti-Doping Program was in line with the WADA Code. Respondent further submits that the IWF ADP is applicable, irrespective of its compliance with the WADA Code.

7.9 As a Signatory of the WADA Code who signed the Declaration of Acceptance of the WADA Code, the IWF is, in principle, bound by the WADA Code and has committed itself to implement it. The IWF has publicly been declared compliant in the sense of Article 23.3 of the WADA Code. In its Compliance Report dated 20 November 2012, approved by the Foundation Board, the IWF has been listed under "Compliant Signatories".

7.10 In the letter to the President of the IWF dated 14 April 2011, signed by Rune Anderson, Director Standards and Harmonization, and Emiliano Simonelli, Senior Manager – Code Compliance Standards and Harmonization, WADA informed *"that we consider your anti-doping program to be in line with the World Anti-Doping Code"*. It has not been submitted by either party, and there are no indications whatsoever that the two officers of WADA who signed that letter were not authorized to issue it nor that they were unaware, at the time they signed the letter dated 14 April 2011 on behalf of WADA, of the IWF ADP and, in particular, its Article 10.2 providing a standard four years' period of ineligibility for a first doping violation.

⁵ Advisory Opinion CAS 2005/C/976, 986, FIFA and WADA, published on WADA website: http://www.wada-ama.org/Documents/World_Anti-Doping_Program/WADP-Legal_Library/Advisory_and_Legal_Opinions/CAS_Opinion_FIFA.pdf.

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7.11 This dispute is not a dispute between the IWF and the WADA on the validity and relevance of the compliance reports issued by WADA regarding the IWF's Anti-Doping Policy. This dispute is a dispute between an athlete and the IWF on whether the sanction of four years' ineligibility according to Article 10.2 of the IWF ADP should be reduced to a two years' ineligibility pursuant to the mandatory provision of Article 10.2 of the WADA Code.

7.12 Regardless of whether the IWF has to be considered a code-compliant or not, the success of the Appeal depends on the construction of the IWF ADP, i.e. on whether the correct construction of the IWF ADP provided for a two or four years' period of ineligibility. This discussion follows in para. 7.13 et seq. of this Award.

(iii) Has the two years' period of ineligibility become part of the IWF's own regulations?

7.13 For the Appellant, *"it is clear that the IWF has adopted its Anti-Doping Policy using the World Anti-Doping Code as its model, as it is bound to do so by Article 20.3.1 of the Code and Rule 44 of the Olympic Charter"*. The Appellant further submits that the IWF has used the Model Rules for International Federations, as developed by WADA, for drafting its Anti-Doping Policy. She highlights that WADA's Model Rules for International Federations specify the sections of the WADA Code which must be implemented without substantive change, inter alia the two years' ineligibility for a first doping offence as provided for in Article 10.2 of the WADA Code.

7.14 Respondent takes the view that the four years' period of ineligibility according to IWF ADP is applicable.

7.15 The IWF is an association according to Swiss law. Under Swiss law, an association qualifies as a group of natural persons and / or legal entities constituted and organized on the basis of a written agreement.

7.16 The principle of autonomy of associations is anchored in the Swiss Law of Private Associations⁶. It provides an association with a very wide degree of self-sufficiency and independence⁷. The right to regulate and to determine its own affairs is considered essential for an association and is at the heart of the principle

⁶ Cf. CAS 2011/O/2422, para. 8.31.

⁷ Cf. Heini/Portmann, *Das Schweizerische Vereinsrecht*, 3rd ed. (Zurich, 2005), para 58.

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of autonomy. One of the expressions of the private autonomy of associations is the competence to issue rules to their own governance, their membership and their own competitions. Swiss associations are deemed sovereign to issue their statutes and regulations⁸. However, they are bound by their contractual engagements towards third parties.

7.17 According to Swiss law, statutes and regulations of associations have to be construed and interpreted in the same way as public laws. The Swiss Federal Tribunal⁹ and leading commentators¹⁰ tend to interpret the statutes and regulations of associations in an objective way, comparable to the interpretation of statutory law¹¹. Accordingly, CAS jurisprudence requires the interpretation of the statutes and rules of sport associations to be objective and always to start with the wording of the rule¹². It follows that the adjudicating body has to consider the meaning of the rule, looking at the language used, the appropriate grammar and the syntax. The intentions (objectively construed) of the association including any relevant historical background may be taken into consideration.

7.18 At the heart of this dispute lies the construction and interpretation of the IWF ADP. By way of interpretation of the IWF ADP it has to be examined whether the IWF ADP provides a four or a two years' ineligibility for a first doping violation.

7.19 The wording of Article 10.2 IWF ADP is specific, clear and unambiguous. This Article states in a separate line:

"First violation: Four (4) years' Ineligibility".

7.20 However, it cannot be denied that there is an inconsistency between the Preface of the IWF ADP, which forms an integral part of the IWF ADP, and its Article 10.2: While in its Preface the IWF ADP states that the IWF, at its congress in Spain held on 31 March 2009, accepted the revised (2009) World Anti-Doping Code providing a two years' ineligibility, Article 10.2 IWF ADP stipulates for a first doping violation a *"Four (4) Years' Ineligibility"*.

7.21 Interpreted from the perspective of a systematic interpretation, Article 10.2 IWF ADP providing specifically a four years' period should prevail over the Preface of

⁸ Cf. Heini/Portmann, *Das Schweizerische Vereinsrecht*, 3rd ed. (Zurich, 2005), para 69.

⁹ Cf. Decision 7B.10/2005 of 3 May 2005, consid. 2.3.

¹⁰ BK/Heini/Scherrer, note 22 to Article 59 of the Swiss Civil Code.

¹¹ Decision of the Swiss Federal Tribunal 127 III 318, with respect to a collective employment contract.

¹² CAS 2002/O/422, para. 46.

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the IWF ADP and its general reference to the WADA Code. Article 10.2 of the IWF ADP is a "lex specialis" to the Preface of the IWF ADP.

- 7.22 Article 18 IWF ADP addresses the "*Amendment and Interpretation of the Anti-Doping Rules*" and provides in Article 18.5 "*these Anti-Doping Rules have been adopted pursuant to the applicable provisions of the [WADA] Code and shall be interpreted in a manner that is consistent with applicable provisions of the [WADA] Code*". The general reference to the adoption of the WADA Code by the IWF ADP in Article 18 IWF ADP cannot override the specific rule of Article 10.2 IWF ADP providing a four years' Ineligibility, even if one takes into consideration (i) the IWF's commitment to accept the WADA Code; (ii) the mandatory character of Article 10.2 of the WADA Code providing a two years' ineligibility and (iii) Article 43 of the Olympic Charter declaring the WADA Code mandatory for the whole Olympic Movement. The four years' ineligibility rule pursuant to Article 10.2 of the IWF ADP stands like a citadel in the rough sea.
- 7.23 The principle of confidence may serve as an additional element of interpretation. In this context, the IWF may have understood the compliance reports and WADA's letter of 14 April 2011 in the sense that the WADA has approved the IWF ADP including its four years' ineligibility sanction for a first doping offence.
- 7.24 The Sole Arbitrator concludes that the four years' period of ineligibility for a first doping violation according to Article 10.2 IWF ADP is applicable to the case at hand.
- 7.25 The Appellant submits that the grounds for her Appeal have been confirmed by CAS in its Award 2011/O/2422. The Panel in that case ruled that the IOC Executive Board's June 27, 2008 decision prohibiting athletes who have been suspended for more than six months for an anti-doping rule violation from participating in the next Olympic Games following the expiration of their suspension (so called "*Osaka-Rule*") is invalid and unenforceable. However, the case at hand is to be differentiated from CAS 2011/O/2422. While the Panel in that case concluded that the Osaka-Rule is not in compliance with the IOC's Statutes (the Olympic Charter) which incorporated the WADA Code, there is no violation of the Statutes of the IWF in the case at hand. The IWF ADP is not its Statute and only part of its rule book.
- 7.26 In support of his conclusion, the Sole Arbitrator wishes to underline that the Appellant, when she entered the IWF European Championships, accepted the IWF Regulations and the sanctions provided in the IWF ADP. As Respondent correctly

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submitted, by participating in an IWF competition, the Appellant entered into a contractual relationship with the Respondent, and, consequently, subjected herself to the IWF ADP with respect to doping matters.

(iv) No discretion to reduce the period of ineligibility

7.27 The Appellant does not raise the argument of proportionality, i.e. the principle whereby the sanction imposed must be commensurate with the circumstances of the individual case. Quite to the contrary, Appellant admits the responsibility of the consequences of having used contaminated food supplements. Proportionality is not an issue in this case.

(v) Article 10.2 IWF ADP does not violate Swiss Law

7.28 The four years' sanction of ineligibility for a first doping offence does not violate the personality rights of the Appellant nor Swiss public policy. By sanctioning the Appellant with a four years' ineligibility, the fundamental values of the Swiss legal system were not breached.

7.29 As Respondent pointed out, weightlifting is a sport in which doping can significantly enhance the performances. It is notorious that anabolic steroids are used in weightlifting. It is in the interest of the fight against doping to apply a high threshold as a deterrent to commit a doping violation in weightlifting.

8. CONCLUSION

8.1 For these reasons the Sole Arbitrator holds that the Appeal is dismissed.

9. COSTS

9.1 Pursuant to Article R65.2 of the CAS Code, disciplinary cases of an international nature shall be free of charge, except for the Court Office fee to be paid by the Appellant and retained by the CAS.

9.2 Article R65.3 of the CAS Code states: "*(t)he 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*

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*share them, taking into account the outcome of the proceedings, as well as the
conduct and financial resources of the parties.”*

- 9.3. The Appellant brought this Appeal and has failed. Considering the Appellant's financial situation, the Appellant should not be committed to contribute towards Respondent's legal fees.

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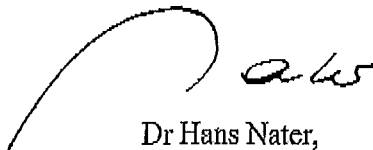
ON THESE GROUNDS

The Court of Arbitration for Sport rules that

1. The Appeal filed by Ms. Mita Overvliet on 23 December 2011 against the decision dated 2 December 2011 rendered by the IWF Doping Hearing Panel is dismissed.
2. The decision rendered by the IWF Doping Hearing Panel on 2 December 2012 is confirmed. Ms. Mita Overvliet being ineligible to compete in weightlifting competitions for a period of four years starting from 23 May 2011.
3. The present Award is pronounced without costs, except for the Court Office fee of CHF 1'000 (one thousand Swiss Francs) already paid by the Appellant which is retained by the CAS.
4. Each party shall bear its own legal costs and expenses incurred by this procedure.
5. All other motions or prayers for relief are dismissed.

Lausanne, 25 May 2012

THE COURT OF ARBITRATION FOR SPORT



Dr Hans Nater,
Sole Arbitrator