CAS 2006/A/1175 Edita Daniute v/ International DanceSport Federation

ARBITRAL AWARD

rendered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Prof. Luigi **Fumagalli**, Attorney-at-Law, Milan, Italy

Arbitrators: Mr David W. **Rivkin**, Attorney-at-Law, New York, United States of America
Mr Goetz **Eilers**, Attorney-at-Law, Frankfurt, Germany

between

Edita Daniute, Kaunas, Lithuania
represented by Mr Mike Morgan, Solicitor, Leeds, United Kingdom

as Appellant

and

International DanceSport Federation, Lausanne, Switzerland
represented by Mr Ko de Mooy, IDSF Anti-Doping Director, Steenbergen, The Netherlands

as Respondent

1. BACKGROUND

1.1 The Parties

1. Ms Edita Daniute (hereinafter referred to as the "Dancer" or the "Appellant") is a Lithuanian ballroom dancer, born in 1979.

2. The International DanceSport Federation (hereinafter referred to as the "IDSF" or the "Respondent") is the international federation, recognized by the International Olympic Committee, governing all aspects of DanceSport worldwide, either directly through its own organs, or through its national member bodies, or by administrative agreements with other persons and organisations. IDSF is a legal entity under Swiss law and has its headquarters in Lausanne, Switzerland.

3. The Dancer is registered with the Lithuanian Dance Sport Federation (hereinafter referred to as the "LDSF"), which in turn is a member of the IDSF. As a result, the Dancer is subject to and bound by the applicable rules and regulations of IDSF, including its anti-doping rules.

1.2 The Dispute between the Parties

4. On 19 August 2006, the Dancer participated, with her dance partner, Mr Arunas Bizokas, in an IDSF Grand Slam Standard competition in Stuttgart, Germany. On that occasion, the Dancer underwent a doping control according to the IDSF anti-doping rules.

5. In a letter of 14 September 2006, the Anti-Doping Director of the IDSF informed the Dancer of her positive test result. The WADA accredited German laboratory (the "*Institut für Dopinganalytik und Sportbiochemie Dresden*") had in fact detected in the A-sample of urine provided by the Dancer the presence of Sibutramine, which is a prohibited substance of the category "S6: Stimulants" under the 2006 IDSF Anti-Doping Code (hereinafter referred to as the "IADC").

6. In the same letter, the Anti-Doping Director of the IDSF informed the Dancer of her provisional suspension from any further competition as from 14 September 2006 according to Article 5(IV)(1) of the IADC.

7. On 14 September 2006 the Dancer requested the analysis of the B-sample of urine she had provided.

8. On 8 October 2006, the IDSF Disciplinary Council (hereinafter referred to as the "DC") decided to temporarily lift the provisional suspension until the B-sample was analyzed. The adoption of this decision was communicated to the Dancer on the same day by phone and on 10 October 2006 by e-mail. The formal written decision, dated 16 October 2006, was received by the Dancer on 18 October 2006.

9. In a letter dated 10 October 2006 the Anti-Doping Director of the IDSF informed the Dancer that "*the analysis of the B-sample confirmed the analysis of the A-sample*". The Dancer was therefore charged with a doping offence under Article 1(VII)(1) of the IADC.

10. By e-mail of 18 October 2006, the Dancer was informed that, as a consequence of the B-sample analysis, her provisional suspension from any further competition had re-entered into

force with immediate effect until the case was decided by the DC. In the same e-mail, the Dancer was informed of the composition of the Chamber of the DC in charge of dealing with her case (hereinafter referred to as the "Chamber").

11. On 26 October 2006, the Dancer submitted to the Chamber her statement of defence. In substance, the Dancer indicated that the positive test was caused by her ingestion of a herbal slimming remedy, called "Meizitang", which she had bought for beauty purposes in a spa in Lithuania in August 2006 and began to ingest on a daily basis since this date until 19 August 2006. In this connection the Dancer emphasized that scientific examination, performed by the "*Medicines Control Laboratory of the State Medicines Control Agency at the Ministry of Health of the Republic of Lithuania*", had established that the tablets contained in the particular package of "Meizitang" contained Sibutramine, despite the fact that it was not mentioned on the ingredients list of the packet. As a result, the Dancer submitted, primarily, that she had to be held at "*No Fault or Negligence*" pursuant to Article 5(I)(1) of the IADC, and thus suffer no period of ineligibility, and, subsidiarily, that the sanction should be limited to a minimum level pursuant to Article 5(V)(2) of the IADC, Sibutramine being a "*Specified Substance*".

12. On 17 November 2006, the Chamber issued the following decision (hereinafter referred to as "the Decision"):

> "*1. Pursuant to article 1.VII.1 of the IADC, an anti-doping rule violation has been committed by the Athlete.*
>
> *2. The athlete, Mrs. Edita Daniute is responsible for the commission of such anti-doping rule violation.*
>
> *3. By virtue of art. 1.VII.1, and in accordance with art. 5.V.2 of the IADC, Mrs. Edita Daniute shall be declared ineligible for competition for 3 (three) months, starting from September 14th, date of the first provisional suspension.*
> *For the calculation of the sanction, days where the suspension was temporarily lifted are not to be taken into account. Therefore, the Athlete will be allowed to compete again starting from December 22nd 2006.*
>
> *4. The athlete shall bear her own costs and expenses of the present procedure.*
>
> *5. According to article 16 of the IDSF Disciplinary Code, the Athlete shall bear the minimum costs for any proceedings. Therefore, the Athlete shall pay the amount of CHF 100,00 (one hundred Swiss Francs).*
>
> *6. The costs and expenses incurred with the IDSF Disciplinary Council shall be borne by the IDSF*".

13. The Decision, in substance, confirmed that the presence of a prohibited substance in the urine samples provided by the Dancer constituted a doping offence pursuant to the IADC, and indicated that the "*circumstance* [inadvertent doping] *that modifies responsibilities cannot be applied to this case …: the Athlete cannot claim ignorance as after carrying out the relevant investigations we have noted that the information on the substance, effects of the substance, on the combination specifically with Meizitang are easily accessible to any person and of course much more accessible to an Athlete who should be informed about the drugs and other*

substances she takes".

14. At the same time, however, the Chamber acknowledged that Sibutramine was a "*Specified Substance*" with the ensuing applicability of Article 5(V)(2) of the IADC, "*that enables … replacing the sanction of two years of ineligibility by that set out in this regulation*". Therefore, the Chamber considered that the sanction of 3 months of ineligibility was appropriate.

15. The Decision was notified to the Dancer on 18 November 2006.

2. THE ARBITRAL PROCEEDINGS

2.1 The Appeal

16. On 21 November 2006, the Appellant filed an appeal with the Court of Arbitration for Sport (hereinafter referred to the "CAS"), pursuant to the Code of Sports-related Arbitration (hereinafter referred to as the "Code"), to challenge the Decision, seeking the following relief:

"*(a) A cancellation of the sanction imposed on the athlete on the grounds that the athlete was at No Fault or Negligence; or alternatively*

(b) A reduction in the period of ineligibility imposed on Ms. Daniute to 2 months or less, as this would be consistent with the relevant caselaw".

17. The statement of appeal was accompanied by 3 binders of exhibits and contained also an application for the stay of the execution of the Decision. As described below, on 23 November 2006 the Deputy President of the CAS Appeals Arbitration Division granted this stay. As a result, the Appellant and her partner were able to participate in the IDSF World Championships on 25 November 2006, and the pair won the world championship.

18. On 29 January 2007, the Appellant filed her appeal brief, with the supporting documents, seeking the following orders:

"*(a) that the Decision of the Chamber in Charge be set aside in its entirety (…);*

(b) that Ms. Daniute be issued with a warning and a reprimand and no period of ineligibility (…); or alternatively

(c) that if any period of ineligibility is imposed that it is limited to 2 months or less, and that Ms. Daniute is credited with the period of time during which her provisional suspension was lifted ….;

(d) that the IDSF bear the reasonable costs of Ms. Daniute's legal fees in pursuing this appeal (…)".

19. In other words, the Appellant seeks an award, first, setting aside the Decision and, if that is not accepted, imposing a sanction at a minimum level.

20. In support of her request that the Decision be set aside in its entirety the Appellant invokes an alleged "*procedural unfairness*" on the part of the IDSF and the Chamber, claims a "*lack of*

independence" of the Chamber and the existence of "*real risk of a conflict of interest*", submits that the Chamber has erred in the reasoning on which it relied in making its final Decision, and claims that the Chamber has failed to consider the "*proportionality*" of its Decision.

21. With respect to the alleged "*procedural unfairness*" on the part of the IDSF and the Chamber, the Appellant submits that, according to Articles 4 and 7 of the Code of the IDSF Disciplinary Council (hereinafter referred to as the "DC Code"), the language of the proceedings before the DC is English, and that the members of the Chamber issuing a decision must have a clear understanding of the English language and be able to speak and write fluently in English. At the same time, the Appellant indicates her doubts about the Chairman of the Chamber that rendered the decision's ability to understand the English language , which means, according to the Appellant, that her case had been significantly prejudiced.

22. With respect to the alleged "*lack of independence*" of the Chamber and existence of "*real risk of a conflict of interest*", the Appellant submits that "*the Decision … cannot be considered safe*" because two members of the Chamber were also licensed IDSF adjudicators, and one of them was also president of a national DanceSport federation, and because the IDSF had an interest to exclude the Dancer and her partner from the World Championship, in order to prevent them from becoming professionals and joining another dance organization.

23. With respect to the submission that the Chamber has erred in the reasoning on which it relied in making its final Decision the Appellant states that she "*has now chosen not to plead 'No Fault or Negligence'*" but that the "*Chamber's … reasoning was so flawed in every aspect of the Decision that … it must render the entire decision unsafe*".

24. In this connection, the Appellant stresses that the Chamber based its Decision on irrational points, to the extent it made reference to internet searches that could be made only by someone who knew of Sibutramine or understood that substance to be present in Meizitang, while she was unaware of it. In addition, the Appellant contends that the Chamber based its Decision on an irrational point regarding the Dancer's claim of "*No Fault or Negligence*". On one side, the Chamber acknowledged that the prohibited substance Sibutramine "*is more likely than not be a detriment to the performance of a ballroom dancer*", since it alters the coordination, which is crucial to the performance of a ballroom dancer couple; on the other hand, however, the Chamber compared the substance to the stimulant "Amphetamine" having regard to its "positive effects", namely that it may reduce the sensation of fatigue in a similar way to amphetamines. However, Amphetamine is not a specified substance and is considerably more potent. It is therefore inexplicable for the Dancer that the Chamber should consider these two substances as equivalent.

25. Thus, the Dancer submits that "*the Chamber in Charge has made sufficiently significant errors on its reasons for the decision so as to make the entire Decision unsafe and extremely prejudicial to Ms. Daniute's defence*".

26. With respect to the alleged failure to consider the proportionality of the Decision on the Dancer, the Appellant remarks that she had submitted to the Chamber a number of cases, which involved the use of Specified Substances (such as Sibutramine). Ms Daniute admits that the Chamber was not bound by the decisions of other bodies; at the same time, however, she states that the failure to "*give any reasons for its rejection of this case law amounts to a further error, in that Ms Daniute does not know the basis for the decision against her. Further*

this error is aggravated by the disproportionate nature of the sanction for which particularly clear and detailed reasons would have been necessary and to which Ms Daniute was entitled".

27. In addition, the Appellant submits that the difference between a 2-month ban and a 3-month ban is enormous in the circumstances of her case. A 3-month ban would deprive the dance couple from the world championship they won at the IDSF World Championships. Therefore, the "*sanction imposed on Ms Daniute went further than was necessary for the IDSF to be able to achieve its aim*".

28. The Appellant, then, submits a *de novo* statement of defence: she "*admits the commission of a Doping Offence under Article 1 (VII) (1) of the IADC, insofar as a Prohibited Substance was present in her sample*"; but, at the same time, she invokes the fact that Sibutramine is classified as a Specified Substance, which the athletes are permitted to ingest outside of competition and "*is more likely than not to have a detrimental effect on the performance of a dancer competing in ballroom dancing*".

29. As a result, the Dancer accepts that the results of her performance at the event at which she tested positive be automatically disqualified, and admits that "*she cannot meet the extremely high threshold*" for "*No Fault or Negligence*". She therefore asks the Panel to exercise the discretion given by Article 5(V)(2) of the IADC to impose a minimum sanction, since the use of Sibutramine was not intended to enhance her sporting performance. On the basis of the several precedents invoked, and of the degree of vigilance that could be expected from her, taking into account the alleged failure of the IDSF to "*establish an anti-doping environment which influences behaviour among participants*", "*general mitigating factors*", and the principle of proportionality, "*any sanction should sit well within the 0-2 months range of ineligibility*".

30. Finally, the Appellant submits that she "*should … be given credit*" for the period in which her provisional suspension had been lifted, since in that period she relied, together with her dance partner, on the "*misinformation of the IDSF*", and therefore decided not to take part in competitions.

2.2 The Answer by ISF

31. On 16 March 2007, IDSF filed its answer to the appeal, with a counterclaim, requesting the CAS:

"- *to turn down the Appeal of Daniute;*

- *to set aside the Decision of the IDSF DC dated November 17th, 2006,*

and

newly Decide this case, provisionally enforceable:

a. principally: applying art. 5 V 1 of the IDSF ADC, to declare Daniute ineligible for the period of two (2) years, starting September 14th, 2006, adding the period that the provisional suspension was lifted (10 days), thus ending on September 25th 2008;

b. alternatively: if your Court is, in spite of above, of the opinion that art. 5 V 1 of the IDSF is not applicable, applying art. 5 V 2 of the IDSF ADC, to declare Daniute ineligible for the period of eight (8) months, starting September 14th, 2006, adding the period that the provisional suspension was lifted (10 days), thus ending on July 25th 2007;

c. in both occasions, principally and alternatively:
- *according to art. 5 III of the IDSF ADC: disqualification of Daniute's individual results (the couple Bizokas/Daniute), including all consequences such as forfeiture of medals, (ranking)points and prices, in the IDSF Grand Slam Standard competition held on August 19th, 2006 at Stuttgart, Germany;*
- *according to art. 5 III of the IDSF ADC: disqualification of Daniute's individual results (the couple Bizokas/Daniute), including all consequences such as forfeiture of medals, (ranking)points and prices, in the IDSF World Championship Standard held on November 25th, 2006 at Aarhus, Denmark;*
- *according to art. 5 III of the IDSF ADC: disqualification of Daniute's individual results (the couple Bizokas/Daniute), including all consequences such as forfeiture of medals, (ranking)points and prices, obtained in competitions from the date the sample resulting in the adverse analytical finding was collected (i.e. August 19th, 2006), including the European Championships Standard held in Madrid January 13th, 2007, except for the period the provisional suspension was lifted (i.e. October 8th – October 18th, 2006), till the date of the enforced commencement of the period of ineligibility;*
- *according to art. 5 III of the IDSF ADC: that Daniute shall bera the cost of IDSF for both procedures, for the IDSF DC and the Appeal procedure to CAS, totally amounting to € 1.500,--, to be paid to the IDSF Treasure within two weeks after the Decision of the CAS*".

32. In its defence, the IDSF requests that the appeal filed by the Dancer be declared inadmissible, because "*the Appeal Brief was not filed within the time limit required under Art. R51*" of the Code, and in any case dismissed, because the Appellant's "*statements … are not correct and not justified …*", and "*Daniute does not submit any relevant legal and/or factual reason for her Appeal*", which "*can be called an abuse of rights*".

33. With respect to the request that the appeal filed by the Dancer be declared inadmissible, the Respondent submits that the two-month time limit for the filing of the appeal expired on 17 January 2007, with the consequence that the appeal brief had to be filed, in accordance with Article R51 of the Code, "*on January 26th 2007 at the latest*". Since the Appellant's appeal brief was filed on 29 January 2007, the appeal "*should be deemed to have been withdrawn*" (Article R51 of the Code).

34. The reasons supporting the defence are summarized by the Respondent as follows:

"*Daniute is blaming the whole outside world, especially IDSF and its officials, but the facts are:*

--- the Daniute herself committed an anti-doping rule violation, that she admits, and

--- that she decided not to plead "No Fault or Negligence".

Her arguments as submitted in her Appeal Brief are mainly not correct, often based on

allegations which are no true and mostly irrelevant and speculative; never based on hard evidence. Judgement of Daniute's rule violation cannot be based on such speculations and soft arguments according to the IDSF ADC.

In brief:

*--- Daniute's arguments about the "*procedural unfairness*" are not correct and her conclusion is not justified;*

*--- Daniute's arguments about "*the lack of independence of the Chamber in Charge*" are not correct; her arguments about adjudicators and officials mostly absurd and her conclusions not justified;*

--- Daniute's attacks on the Chair's competence in the English language have no basis and are supported by no evidence, only speculation;

*--- Daniute's arguments about "*what IDSF has to gain*" are fantasy, change room rumours, far from being correct and the conclusions not justified;*

*--- Daniute's arguments about "*The Chamber in Charge has erred in the reasoning*" are partly understandable and partly not correct. The Chamber in Charge has taken Daniute's problems in consideration by deciding to a 3 months suspension only. Further conclusions are not justified.*

*--- Daniute's arguments about "*The Chamber in Charge has failed to consider the proportionality*" are not correct and the conclusion not justified.*

*--- Daniute's arguments about "*the Degree of vigilance expected from Daniute*" are mainly accusations to other parties only. Contrary to what Daniute submits IDSF is fulfilling it's obligations, including providing information, to the full satisfaction of WADA and the IOC. The question in this case is not what others should have done, but what Daniute should have done. The conclusions of Daniute are not justified.*

--- the statements of Bizokas in his biased testimony are partly not the truth, partly incomplete and the others irrelevant. Daniute's statement that IDSF managed to introduce anti-doping rules without any of its participants noticing*, is absolutely nonsense and not justified;*

--- compared to other sports the anti-doping environment at DanceSport competitions might be subject for improvement. However, this is a matter of the athletes themselves in the first place. IDSF cannot and will not enforce circumstances and behaviour that are not accepted by the majority of the athletes. Each athlete is of course free to adjust his/her own behaviour to what he/she thinks necessary;

*--- Daniute's arguments about "*mitigating factors*" are not correct, untruth, and her conclusion not justified;*

*--- Daniute's arguments about "*proportionality*" are factual not correct. Her conclusion is not justified;*

--- *Daniute's arguments about the "*provisional suspension*" are not correct and her conclusion is not justified;*

--- *Daniute's arguments about "*the conduct of IDSF*" are partly speculative and partly false, however irrelevant for this case. Her conclusions is not justified*".

35. In support of its counterclaim, the Respondent refers to Articles 5(V)(1) and 5(V)(2) of the IADC and submits that the Chamber's conclusion that Sibutramine was not capable of enhancing the sport performance of the Dancer and therefore that the Dancer did not intend to enhance her performance by the use of Sibutramine is not justified. As a result, the IDSF requests this Panel to "*decide anew whether Daniute has established that she had not intention to enhance her sport performance*".

36. In the Respondent's opinion, "*Daniute has not established that she bears only a reduced fault or negligence or no significant fault or negligence*". IDSF, in this respect, submits that "*it is part of any athlete's obligations under anti-doping policies and codes to check the ingredients of any medicine or similar pharmaceutical product … . It is also part of any athlete's obligations to consult a pharmacist or a medical doctor before ingesting any pharmaceutical or nutritional product. … . Daniute being a top-level athlete in a doping controlled sport with experience in the discipline, her responsibility and awareness of the issue have to be very high. … To conclude: Daniute, by stating that she had read the product information of Meizitang only, has neither established that she bears no fault or negligence, nor that she bears no significant fault or negligence. The fact that she, being a top ranked athlete, never consulted a doctor or pharmacist, is accountable to herself only …*".

37. In conclusion, IDSF submits that "*in principle Daniute should not benefit from the milder sanction defined Article 5 V 2*" of the IADC: the sanction (of ineligibility for two years) provided by Article 5(V)(1) of the IADC should therefore apply. IDSF explains that it "*is of the opinion that Daniute did intend to enhance her sport performance, at least tried to increase the appreciation for her aesthetic and artistic performance by the adjudicators*" and that "*Daniute did not convincingly establish how the substance entered her body*". Only in a subordinate way, "*giving her some credits of the doubt about the substance entering her body*", could the sanction be reduced, pursuant to Article 5(V)(2) of the IADC, to a period of ineligibility of at least eight months.

2.3 The CAS Proceedings

38. On 23 November 2006, IDSF submitted its answer to the Appellant's application for provisional measures , asking the CAS to dismiss it.

39. On the same date, the Deputy President of the CAS Appeals Arbitration Division issued a decision on the Appellant's application for provisional measures, as follows:

"*1. Admits the application for a stay filed by Ms. Edita Daniute.*

2. States that the present order is rendered without costs".

40. By letter dated 28 December 2006, the CAS Court Office informed the parties, on behalf of the President of the CAS Appeals Arbitration Division, that the Panel to hear the appeal

brought by the Dancer against the Decision had been constituted as follows: Prof. Luigi Fumagalli, President of the Panel; Mr David W. Rivkin, arbitrator appointed by the Appellant; and Mr Goetz Eilers, arbitrator appointed by the Respondent.

41. On 2 April 2007 the CAS Court Office, on behalf of the President of the Panel, issued the order of procedure, detailing the procedure for the arbitration (hereinafter referred to as the "Order of Procedure"). The Order of Procedure was accepted and countersigned by the parties.

42. By letters dated 22 and 28 March 2007, the Appellant requested the authorization to file some additional documents. By letters dated 22 March 2007 and 4 April 2007, the Respondent expressed its opposition to such request. On 10 April 2007, the President of the Panel, acting pursuant to Article R56 of the Code, decided "*to provisionally accept the submissions of the Appellant by letters dated 22 and 28 March 2007, together with the answers of the Respondent dated 22 March 2007 and 4 April 2007*", making clear the "*this decision is without prejudice to any determination as to the admissibility and relevance of the argument and evidence therein tendered by the Appellant*".

43. A hearing was held in Lausanne on 25 April 2007. At the hearing Mr Bizokas, dance partner of the Appellant, and the Appellant herself, were heard as witnesses. At the conclusion of the hearing, the parties, after making submissions in support of their respective requests, confirmed that they had no objections in respect of their right to be heard and to be treated equally in the arbitration proceedings.

3. LEGAL ANALYSIS

3.1 Jurisdiction

44. CAS has jurisdiction to decide the present dispute between the parties. The jurisdiction of CAS, which is not disputed by either party, is based *in casu* on Article 6(VI) of the IADC, and Article 11 of the DC Code, which provide for an appeal to CAS against any decision made by the DC or one of its chambers.

45. In fact, pursuant Article 6(VI) ["*Appeals*"] of the IADC,

> "*1. Any decision made by the Disciplinary Council or one of its Chambers may be appealed to the Court of Arbitration for Sport ("CAS") in Lausanne; Switzerland, according to its rules and jurisdiction. This includes namely*
> - *decisions that an anti-doping rule violation was committed or not committed*
> - *a decision imposing CONSEQUENCES for an anti-doping rule violation*
> - *a decision that IDSF lacks jurisdiction to rule an alleged anti-doping rule violation or its CONSEQUENCES*
> - *A decision revising the ANTI-DOPING REPRESENTATIVE'S decision to impose a PROVISIONAL SUSPENSION.*
>
> *Any such appeal must be made within twenty-one (21) days after the reception of such decision, according to the requirements of CAS.*
>
> *2. Decisions appealed shall remain in effect while under appeal unless the appellate body orders otherwise.*
>
> *3. The following parties shall have the right to appeal to CAS:*

a) The ATHLETE or other PERSON who is the subject of the decision being appealed
b) IDSF
c) the International Olympic Committee or International Paralympic Committee, as applicable, where the decision may have effect in the relation to the Olympic Games or Paralympic Games, including decisions affecting eligibility for the Olympic Games or Paralympic Games
d) the International World Games Association (IWGA), where the decision may have effect in the relation to the World Games, including decisions affecting eligibility for the World Games
e) WADA.

4. The only person that may appeal from a suspension (Art. 6 II 1) is the ATHLETE or other PERSON upon whom the suspension is imposed".

46. Article 11 of the DC Code then provides, with respect to decisions made by the DC in its role as first instance adjudication body, such as those concerning violations of the IADC (Article 9 DC Code), that:

"*Any decision made by the IDSF Disciplinary Council in its role as First Instance may be submitted exclusively by way of appeal to the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland, which will resolve the dispute definitively in accordance with the Code of Sports-related Arbitration. The period allotted for an appeal – if any – shall be two months after the receipt of the decision of the IDSF Disciplinary Council. However, filing an appeal for such a decision does not suspend or affect the IDSF Disciplinary Council's decision, which shall remain in full force until the Court of Arbitration has taken its respective decision*".

47. In the same way, the Decision provided that:

"*8.1 The formal decision of the IDSF Disciplinary Council may be appealed to the Court of Arbitration for Sport ("CAS") in Lausanne; Switzerland, according to its rules and jurisdiction;*

8.2. Any such appeal must be made within two months after the reception of this decision (according Art. 11 of the DC Code);

8.3. Filing an appeal does not suspend or affect the IDSF Disciplinary Council's decision, which shall remain in full force until the CAS has taken its respective decision;

8.4. According Art. 6 VI of the AD Code, and applicable to this case, the following persons shall have the right to appeal to CAS:
- *The athlete or other Person who is the subject of the decision being appealed;*
- *The International DanceSport Federation (IDSF);*
- *The World Anti-Doping Agency (WADA)*".

3.2 Appellate Proceedings

48. As these proceedings involve an appeal against a decision imposing a disciplinary sanction, issued by a federation (IDSF) whose statutes provide for an appeal to the CAS, they are considered and treated as appeal arbitration proceedings, in a disciplinary case of international

nature, in the meaning and for the purpose of the Code.

3.3 Admissibility

49. The statement of appeal of the Dancer was filed on 21 November 2006, within the time limit set by the IADC, the DC Code and the Decision.

50. In its answer, however, the Respondent challenged the admissibility of Dancer's appeal. In the Respondent's opinion, in fact, the appeal brief was not filed within the time limit set by Article R51 of the Code: according to IDSF that time limit expired on 26 January 2007, while the appeal brief was filed on 29 January 2007, with the consequence that "*the appeal should be deemed to have been withdrawn*".

51. Article R51 ["*Appeal Brief*"] of the Code so provides:

"*Within ten days following the expiry of the time limit for the appeal, the Appellant shall file with the CAS a brief stating the facts and legal arguments giving rise to the appeal, together with all exhibits and specification of other evidence upon which he intends to rely, failing which the appeal shall be deemed withdrawn.*

In his written submissions, the Appellant shall specify any witnesses and experts whom he intends to call and state any other evidentiary measure which he requests. The witness statements, if any, shall be filed together with the appeal brief, unless the President of the Panel decides otherwise".

52. The Panel does not agree with the Respondent's submissions. In this respect the Panel in fact notes:

i. that the appeal had to be filed "*within two months after the reception*" of the Decision, as directed by para. 8.2 of the same in accordance with Article 11 of the DC Code with an indication prevailing over the somehow contradictory provision contained in Article 6(VI)(1) of the IADC (indicating a deadline of twenty-one days);

ii. that it is a principle of Swiss law that "*where a time-limit is expressed in months or in years the* dies ad quem *shall be the day of the last month or of the last year whose date corresponds to that of the* dies a quo *or, when there is no corresponding date, the last day of the last month*" (Article 4 para. 2 of the European Convention on the Calculation of Time-Limits of 16 May 1972, in force for Switzerland since 28 April 1983: RS 0.221.122.3; Article 77 para. 1 No. 3 of the Swiss Code of Obligations); and

iii. that pursuant to Article R32 of the Code:

"*the time limits fixed under the present Code shall begin from the day after that on which notification by the CAS is received. Official holidays and non-working days are included in the calculation of time limits. The time limits fixed under the present Code are respected if the communications by the parties are sent before midnight on the last day on which such time limits expire. If the last day of the time limit is an official holiday or a non-business day in the country where the notification has been made, the time limit shall expire at the end of the first subsequent business day*".

53. As a result, the Panel finds:

    i. that the Decision was notified to the Dancer on 18 December 2006;

    ii. that the time limit for the filing of the statement of appeal expired on 18 January 2007;

    iii. that the appeal brief fell due on 28 January 2007, which was a Sunday, with the consequence that the time limit for its filing expired on the next day 29 January 2007.

54. Therefore, the appeal brief, submitted by the Appellant on 29 January 2007, was filed within the time limit set by Article R51 of the Code. The appeal cannot be deemed withdrawn.

55. Accordingly, the appeal is admissible.

3.4 Applicable Law

56. According to Article R58 of the Code, the Panel is required to 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*".

57. In this case, the parties have not agreed on the application of any particular law. Therefore, IDSF rules and regulations have to be applied primarily, with Swiss law applying subsidiarily.

3.5 Scope of Panel's Review

58. Pursuant to Article R57 of the Code,

    "*The Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. [...]*".

3.6 The Evaluation of the Panel

59. The Appellant, in her first group of submissions, challenges the Decision, and requests that it be set aside, by invoking "*procedural unfairness*", "*lack of independence*", "*real risk of a conflict of interest*", errors in the reasoning, and the failure to consider the "*proportionality*".

60. In other words, the Appellant, in support of her request, is adducing reasons broadly pertaining to the procedure before the Chamber (*errores in procedendo*), which she submits was affected by some defects ("*unfairness*", "*lack of independence*", "*risk of a conflict of interest*", lack of motivation), as well as concerning the exercise of the power of evaluation vested in the Chamber (*errores in iudicando*), indicated as flawed by errors. According to the Appellant,

such reasons justify the setting aside of the Decision, so that a *de novo* judgment can be rendered by this Panel.

61. In this respect the Panel notes that, according to Article R57 of the Code, it has full power to review the facts and the law. The Panel consequently hears the case *de novo* and is not limited to considerations of the submissions before the DC: the Panel can consider all new arguments produced before it. This implies that, even if a violation of the principle of due process (such as the alleged "*unfairness*", "*lack of independence*", "*risk of a conflict of interest*", or lack of motivation) occurred in prior proceedings, it may be cured by a full appeal to the CAS (CAS 94/129, *USA Shooting & Q. v/ UIT*, *CAS Digest* I, p. 187 at 203; CAS 98/211, *B. v/ Fédération Internationale de Natation*, *CAS Digest* II, p. 255 at 257; CAS 2000/A/274, *S. v/ Fédération Internationale de Natation*, *CAS Digest* II, p. 398 at 400; CAS 2000/A/281, *H. v/ Fédération Internationale de Motocyclisme*, *CAS Digest* II, p. 410 at 415; CAS 2000/A/317, *A. v/ Fédération Internationale des Luttes Associés*, in *CAS Digest* III, p. 159 at 162; CAS 2002/A/378, *S. v/ Union Cycliste Internationale & Federazione Ciclistica Italiana*, in *CAS Digest* III, p. 311 at 315). In fact, the virtue of an appeal system which allows for a full rehearing before an appellate body is that issues relating to the fairness of the hearing before the tribunal of first instance "*fade to the periphery*" (CAS 98/211, *B. v/ Fédération Internationale de Natation*, *CAS Digest* II, p. 255 at 264, citing Swiss doctrine and case law).

62. The Appellant has had and has used the opportunity to bring the case before the CAS, where all of the Appellant's fundamental rights have been duly respected. At the end of the hearing, the Appellant expressly confirmed that she had no objections in respect of her right to be heard and to be treated equally in the CAS arbitration proceedings. Accordingly, even if any of the Appellant's rights had been infringed upon by the DC, the *de novo* proceedings before the CAS would be deemed to have cured any such infringements.

63. In the same way, the CAS Panel, by using its full power to review the facts and the law, can consider all the elements of the dispute, and review the exercise of the power of evaluation vested in the Chamber, indicated as flawed by errors, so to determine whether an anti-doping rule violation has been committed by the Dancer and, in the event an infringement is found, whether the proper sanction has been applied.

64. In light of the foregoing, the Panel found it unnecessary to verify whether the Decision was affected by "*procedural unfairness*" on the part of the IDSF and the Chamber, whether the Chamber "*lack*[ed] … *independence*", and whether a "*risk of a conflict of interest*", existed in order to be able to issue a *de novo* decision on the existence of an anti-doping rule infringement and its consequences. The Panel, in fact, has this power irrespective of the existence of the defects alleged by the Appellant.

65. For the sake of clarity, however, the Panel underlines that it does not agree with the Appellant's submissions as to the alleged "*procedural unfairness*" on the part of the IDSF and the Chamber, the "*lack of independence*" of the Chamber, and the existence of a "*risk of a conflict of interest*".

66. More specifically, the Panel finds that no sufficient evidence has been brought by the Appellant with respect to the alleged lack of competence in the English language of the Chairman of the Chamber and chiefly as to how this assumed poor command of English affected the Decision: the Panel notes that the Dancer submitted her pleadings in English and that the Decision, written in English, deals with the points raised by the Dancer, thereby

showing that the Chamber understood them.

67. In the same way, the Panel finds that the position of the members of the Chamber, including its Chairman, and their relations with IDSF, do not appear to amount to irregularities *per se* disqualifying the reasoning contained in the Decision.

68. The members of disciplinary commissions of any sports federation are in fact ordinarily appointed by other bodies of the same federation: disciplinary proceedings, however intended to take place by paying due respect to the right to be heard of the parties involved, lead to decisions which can be imputed to the same federation. In other words, the existence of a functional and organizational link between a disciplinary commission and the sport federation is the result of the very nature and purpose of disciplinary adjudication. As recently confirmed by the Swiss Federal Tribunal (decision 5 January 2007, *Rayo Vallecano v/ FIFA*, 4P.240/2006), Swiss law allows an association to sanction the associates for their breach of the association on rules, so as to secure the observance of those rules. Disciplinary commissions are actually intended to serve this purpose. In this framework, the Panel therefore finds that any reproach for the way specific disciplinary proceedings are organized should not be limited to an overall criticism about an alleged lack of independence or of a conflict of interest between the association and the associates, or the functional or organizational position of the disciplinary committee, but concern identified violations of the internal rules of the association, or mandatory rules of the applicable law, governing the composition and the activity of the chamber in charge of hearing the given case.

69. In this context, the Panel finds that no violation of specific rules of the DC Code – or any other rule applicable within the IDSF, including mandatory rules of Swiss law – has been committed: the position of the members of the Chamber and their relation with IDSF in the constitution of the Chamber its member associations do not lead to the setting aside of the Decision, failing a legal ground. In fact, it is not disputed that the components of the Chamber had the skills and qualities to meet the requirements of "*good standing and reputation*" set by Article 7 of the DC Code to act as adjudicators, and that the specific circumstances of ineligibility indicated in Article 18 para 2 of the IDSF Statutes did not occur.

70. In the same way, the Panel finds that the alleged existence of an interest of the IDSF to disqualify the Dancer is not supported by any factual element.

71. The main question, therefore, to be dealt with in these arbitration proceedings concerns the commission by the Dancer of an anti-doping rule violation pursuant to the IADC and the determination, and if it is the case, of the proper sanction to be applied. The issues raised by the Appellant (with respect to the errors committed by the DC in rendering the Decision, including the alleged failure to apply the principle of proportionality, whatever their "cause") have to be considered in this framework.

72. In this respect, the Panel confirms that an antidoping rule violation has been committed by the Appellant. Indeed the Appellant herself now "*admits the commission of a Doping Offence under Article 1 (VII) (1) of the IADC, insofar as a Prohibited Substance was present in her sample*" (Appeal Brief, p. 13, § 4.2).

73. Pursuant to Article 1 ["*Fundamental Principles and Interdictions*"] of the IADC, in fact,

"*VI. Doping is defined as the occurrence of one or more of the anti-doping rule violations set*

forth in Art. 1 VII of this CODE.

VII. The following constitute anti-doping rule violations:

1) The presence of a PROHIBITED SUBSTANCE or its METABOLITES or MARKERS in an ATHLETE'S bodily SPECIMEN. […]".

74. Section 6 "*Stimulants*" of the List of Prohibited Substances and Methods attached to the IADC, then, mentions Sibutramine, which is therefore a Prohibited Substance for the purpose, and within the meaning, of Article 1(VII)(1) of the IADC. The presence of Sibutramine in the sample provided by the Dancer on 19 August 2006 (see § 5 above), as a result, constitutes an anti-doping rule infringement pursuant to the IADC.

75. In light of this (undisputed) finding, the question then becomes whether the Decision applied the proper sanction. In this respect the parties expressed opposite views:

i. The Appellant submits that the Chamber erred in the appreciation of the facts, to the extent it made reference to internet searches that the Dancer could not be expected to have conducted, and in the evaluation of the IADC rules concerning the sanctions to be applied, also taking into account some precedents invoked by the Appellant. More specifically, she invokes the fact that Sibutramine is classified by the List of Prohibited Substances and Methods attached to the IADC as a "Specified Substance", and submits that "*the circumstances of Ms. Daniute violation must warrant the lowest possible sanction*".

ii. The Respondent contends, by way of counterclaim and contrary to the findings of the Decision, that the Dancer "*should not benefit from the milder sanction defined Article 5 V 2*" of the IADC: the sanction of ineligibility for two years provided by Article 5(V)(1) of the IADC should therefore apply.

76. Article 5(V) ["*Sanctions*"] of the IADC so provides:

"*1. Except for the specified substances identified in Art. 5 V 2, the period of INELIGIBILITY imposed for a violation of Articles 1 VII 1 (presence of PROHIBITED SUBSTANCE or its METABOLITES or MARKERS), 1 VII 2 (USE or ATTEMPTED USE OF PROHIBITED SUBSTANCE or PROHIBITED METHOD) and 1 VII 6 (POSSESSION of PROHIBITED SUBSTANCES or means for PROHIBITED METHODS) shall be:*

- *For a first violation: two (2) years' INELEGIBILTY*

- *For a second violation: lifetime INELIGIBILITY.*

If an ATHLETE establishes in such a case that he or she bears NO SIGNIFICANT FAULT OR NEGLIGENCE, then the period of INELIGIBILITY may be reduced, but not to less than one year for first violations and eight years for second or subsequent violations. When a PROHIBITED SUBSTANCE or its MARKERS or METABOLITES is detected in an ATHLETE'S SPECIMEN in violation of Art. 1 VII 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 reduced.

2. The PROHIBITED LIST may identify specified substances which are particularly susceptible to unintentional doping because of their general availability in medicinal products or which are less likely to be successfully abused as doping agents. Where an ATHLETE can establish that the USE of such a specified substance was not intended to enhance sport performance, the period of INELIGIBILITY found in Art. 5 V 1 shall be replaced with the following:

- *For a first violation: at a minimum, a warning and a reprimand and no period of INELIGIBILITY from future EVENTS, and at a maximum one (1) year's INELIGIBILITY.*

- *For a second violation: two (2) years' INELIGIBILITY.*

- *For a third violation: lifetime INELIGIBILITY*".

77. Preliminarily, the Panel notes that the Appellant has accepted "*that she cannot meet the extremely high threshold for* 'No Fault or Negligence'" and stated that she "*does not wish the Panel to consider it any further*".

78. At the same time the Panel remarks that the Appellant is not claiming that she bears "*No Significant Fault or Negligence*" within the meaning of the IADC and for the purposes of its Article 5(V). The Appellant's contentions focus only on the application of Article 5(V)(2) and the determination of the sanction applicable thereto.

79. As a result of the above, any and all considerations with respect to the degree of diligence required of the Dancer in the ingestion of a product (Meizitang), which does not mention in the label, but, which does contain, a prohibited substance, are not relevant for the determination of "*Fault or Negligence*" within the framework and for the purposes of the application of Article 5(V)(1) of the IADC, (the relevance of the degree of diligence required of the Dancer for the purposes of determining the sanction to be applied pursuant to Article 5(V)(2) of the IADC will be mentioned below, at § 92).

80. The first question to be examined, therefore, is whether Article 5(V)(2) of the IADC applies. Should the Panel deny this point, the general provision of Article 5(V)(1) would apply, as the Respondent submits.

81. The Panel agrees with the Appellant and the Decision that Article 5(V)(2) of the IADC applies.

82. The Panel remarks that Article 5(V)(2), in order to allow a replacement of the sanctions applicable pursuant to Article 5(V)(1) with those therein contained, requires the concurrent satisfaction of two conditions:

i. the anti-doping rule infringement should involve the use of a Prohibited Substance identified by the List of Prohibited Substances and Methods attached to the IADC as a "*Specified Substance*"; and

ii. the athlete can establish that the use of such a Specified Substance was not intended to enhance the performance of the sport.

83. The first condition is certainly met. The List of Prohibited Substances and Methods attached

to the IADC, in fact, mentions Sibutramine among the Specified Substances for the purposes of Article 5(V)(2) of the IADC. As a result, no further evaluation is requested in order to establish whether Sibutramine is particularly susceptible to unintentional doping. The inclusion of Sibutramine in the list the Specified Substances is a conclusive element on the point.

84. The Panel is satisfied, in the same way as the Chamber was when it rendered the Decision, that the second condition is also met. More specifically, the Panel holds that the Dancer has adduced sufficient elements, which are based on the characteristics of DanceSport, as well as on scientific indications that have not been specifically contradicted, to confirm that Sibutramine could not enhance her sport performance, and therefore justify the conclusion of the lack of her intention to achieve that effect.

85. Such elements are not reversed by the contrary submissions of the Respondent, which claims now that the Dancer did intend to enhance her sport performance. According to IDSF, the Dancer, by taking Meizitang, i.e. the product that contained Sibutramine, in order to achieve "slimming" benefits, intended to increase her performance by influencing the aesthetic and artistic evaluation by the adjudicators. The Panel, in fact, taking into account the overall criteria according to which couples participating in IDSF events are judged, does not find that the "slimming" effects of Sibutramine amount to an improvement of the sport performance of a dancer. The general purpose to achieve a "slimming" benefit, by use of a product not mentioning on the label the presence of a Specified Substance, cannot be equated to the specific intention to enhance the sport performance within the meaning of Article 5(V)(2) of the IADC.

86. The findings of the Decision on this point are therefore confirmed.

87. The next question, then, is whether the sanction imposed by the Chamber in the Decision is appropriate. In this respect, the Panel notes that according to Article 5(V)(2) of the IADC, the Chamber had the discretion to set the sanction in a scale ranging from a warning and a reprimand and no period of ineligibility to one year's ineligibility. The Chamber used that discretion to impose a sanction of three months of ineligibility, by taking into account all the elements of the case it heard.

88. The parties dispute the measure of such sanction. According to the Appellant, the sanction imposed is excessive, as it disregards, without any motivation, the case-law adduced by the Dancer, does not respect the principle of proportionality, and does not take into account general mitigating factors, as well as the lack of a proper anti-doping environment within the IDSF. On the other side, the Respondent submits, by way of a subordinate counterclaim, for the event the Panel finds that Article 5(V)(2) of the IADC is applicable, that the sanction should be increased to at least eight months' ineligibility.

89. The Panel finds the measure of the sanction appropriate and does not require adjustments. This conclusion is justified by several elements.

90. In general terms, the Panel underlines that it is willing to enforce a strict approach in the definition of its power reviewing the exercise of the discretion enjoyed by the disciplinary body of an association to set a sanction. To the extent the exercise of such discretion does not run against the internal rules of the association, the mandatory provisions of the law applicable or even fundamental general principles of law, the Panel finds itself limited by the respect to

be paid to the freedom of the association to set the way to secure observance by its associates of the association rules.

91. As a result this Panel adheres, in relation to proportionality, to CAS's jurisprudence, which makes it clear that the sanction imposed must not be evidently and grossly disproportionate to the offence (see CAS 2004/A/690, *Hipperdinger v/ ATP Tour, Inc*., para. 86; CAS 2005/A/830, *Squizzato v/ FINA*, para. 10.26; CAS 2005/C/976 & 986, *FIFA & WADA*, para. 143). To extent the sanction is not evidently and grossly disproportionate to the offence, therefore, it is appropriate to let the sanction remain as determined by the Chamber.

92. The Panel, in this respect, does not find the sanction imposed on the Dancer to be evidently and grossly disproportionate to the offence, taking into account all the elements of the case, and chiefly those indicated by the Appellant as general mitigating factors, including the duty of care which could be expected of a top-level athlete such as the Appellant. The fact that a major sporting event is to take place within the period of ineligibility of an athlete found responsible of an anti-doping rule violation does not affect the measure of the sanction. A different solution would create a high degree of uncertainty in the anti-doping system, particularly because it can be expected that doping practices are often undertaken in preparation for major events. The, unfortunate, fact that the ineligibility period imposed on the Dancer deprived her of the possibility to win (as she then did) the title of world champion does not render the sanction imposed evidently and grossly disproportionate to the offence. A different reasoning, taking into account the actual result achieved in the world championship, and therefore based on an ex post evaluation, is clearly not admissible.

93. The above conclusion is not refuted by the case law invoked by the Appellant, which refers to different cases heard various sports federations. Contrary to the Appellant's submission, in fact, those decisions imposed sanctions similar to – or not conflicting with – that imposed on the Dancer, thereby confirming that the latter is not evidently and grossly disproportionate to the offence.

94. In the same way, the Panel finds that any deficiency in the anti-doping environment and culture within the IDSF system, even if existing, does not excuse practices contrary to rules in force and specifically accepted. Well to the contrary, the lower the degree of observance of the rules, the stronger the need of enforcement of those rules. At the same time, however, the Panel wishes to encourage the IDSF to take further steps, in addition to the necessary repression of doping violations, to develop, directly or through its member associations, the awareness by all the athletes of anti-doping values, and to create a proper anti-doping environment preventing the commission of anti-doping rule violations.

95. The final point to be determined concerns the actual period covered by the ineligibility. On one hand, the Appellant requests that she be given credit for the ten-day period at the temporary lifting of the provisional suspension, and therefore that the period of ineligibility should start as from 14 September 2006, without interruption. On the other hand, the Respondent submits that the Decision followed the correct approach.

96. The Panel agrees with the Appellant's submissions and holds that the ineligibility covered the three months' period starting from 14 September 2006 and ending on 14 December 2006, without adding thereto the ten days, from 8 October 2006 to 18 October 2006, during which her provisional suspension was temporarily lifted. Indeed, the Panel remarks that the decision to lift the ineligibility, adopted on 8 October 2006, was only formally communicated to the

Dancer on 18 October 2006, i.e. on the same date the ineligibility was reinstated. Failing a formal communication by the IDSF, the Dancer could not take advantage of the temporary lifting of her provisional suspension to participate in sporting events. The period covered by such lifting, therefore, does not have to be added to the three months' period of ineligibility starting from 14 September 2006. To the extent the Decision held otherwise, it has to be modified on the point.

3.7 Conclusion

97. In light of the foregoing, the Panel holds that the appeal has to be only partially granted and that the Decision is to be modified only in the portion regarding the calculation of the period covered by the ineligibility, whose duration is confirmed. As a consequence, the interim measure adopted by the Deputy President of the CAS Arbitration Division in its decision delivered on 23 November 2006 is revoked. The counterclaim is dismissed.

4. COSTS

98. Pursuant to Article R65 para. 1 of the 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.

99. Article R65 para. 3 of the Code provides that the Panel shall decide which party shall bear the costs of the parties, witnesses, experts and interpreters, taking into account the outcome of the proceedings, as well as the conduct and financial resources of the parties.

100. As this is a disciplinary case of an international nature, which was brought to CAS pursuant to a decision issued by IDSF, the proceedings will be free, except for the minimum Court Office fee, already paid by the Appellant, which is retained by the CAS.

101. With regard to the parties' costs, the Panel notes that the Respondent has prevailed, but that its preliminary objection and counterclaim have been dismissed. As a result, the Panel, taking into account the outcome of the proceedings as well as the conduct and financial resources of the parties, finds it appropriate that each party bears its own costs.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Edita Daniute against the decision issued on 17 November 2006 by the Disciplinary Council of the International DanceSport Federation is partially upheld.

2. Edita Daniute is declared ineligible for competition for 3 (three) months, from 14 September 2006 to 14 December 2006.

3. The counterclaim filed by the International DanceSport Federation is dismissed.

4. This award is pronounced without costs, except for the court office fee of CHF 500 (five hundred Swiss Francs) paid by Edita Daniute, which is retained by the CAS.

5. Each party shall bear its own costs.

Thus done in Lausanne, on 26 June 2007

THE COURT OF ARBITRATION FOR SPORT

President of the Panel

Luigi Fumagalli

Arbitrators

David W. Rivkin

Goetz Eilers