CAS 2019/A/6190 Orkhon Purevdorj v. United World Wrestling (UWW)

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President:	Mr Romano Subiotto QC, Avocat, Brussels, Belgium, and Solicitor-Advocate in London, United Kingdom
Arbitrators:	Dr Sven Nagel, Rechtsanwalt in Leipzig, Germany
	Prof Jens Evald, Professor of Law in Aarhus, Denmark

in the arbitration between

Orkhon Purevdorj, Mongolia

represented by Dr Michael Lehner of Bornheim und Partner, Heidelberg, Germany

Appellant

and

United World Wresting, Corsier-sur-Vevey, Switzerland

Respondent

* * *

I. INTRODUCTION

1. This appeal is brought by Ms Orkhan Purevdorj against the decision of the United World Wrestling Anti-doping Panel issued on February 15, 2019. The Anti-doping Panel found that Ms Purevdorj committed an anti-doping rule violation pursuant to Article 2.1 of the Anti-Doping Rules of the United World Wrestling, and imposed a four year ban on Ms Purevdorj, *i.e.* until September 16, 2022.

II. THE PARTIES

2. Ms Orkhan Purevdorj ("Athlete" or "Appellant"), born in 1993, is a women's freestyle wrestler from Mongolia. In 2018, the Athlete was the holder of a United World Wrestling license.

3. United World Wrestling ("UWW" or "Respondent") is the governing body for the sport of wrestling. The UWW is a worldwide, non-governmental organisation that manages the sport of wrestling, in the spirit of its traditions and in accordance with the requirements of the Olympic Charter. The federation is based in Corsier-sur-Vevey, Switzerland.

III. FACTUAL BACKGROUND

4. The relevant facts and allegations based on the Parties' written submissions are set forth below. Additional facts and allegation in the Parties' written submissions may be set out, where relevant, in connection with the legal discussion below. While the Panel has considered all the facts, evidence, allegations and legal arguments submitted by the Parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

5. The Appellant is a Women's freestyle wrestler from Mongolia and held a UWW licence in 2018. In view of the Athlete's results, Ms Purevdorj was placed in the UWW's registered testing pool from January 2018.

6. On 20 August 2018, after winning the final in the Women's Freestyle in 62 kg at the 2018 Asian Games in Jakarta, Indonesia, the Doping Control Officer collected a urine sample from the Athlete. The sample was subsequently split into two separate bottles, marked as Sample A and Sample B. The World Anti-Doping Agency ("WADA") accredited laboratory in Doha, Qatar, analysed both samples

7. On 24 August 2018, the analysis of Sample A returned an adverse analytical finding for Stanozolol. Stanozolol is an exogenous anabolic androgenic steroid. It is classified under S1.1A of the WADA 2018 Prohibited List and is prohibited at all times (in and out of competition).

8. Before the Disciplinary Commission of the Olympic Council of Asia, Sample B was analysed, which confirmed the adverse analytical finding, and the Athlete did not

contest the laboratory results. She attributed the adverse analytical finding to sabotage, but failed to provide any evidence supporting her allegations.

9. On 14 September 2018, the UWW formally charged the Athlete with the commission of an anti-doping rule violation.

10. On 20 September 2018, the Athlete sent her statement of defence together with additional documents to the UWW. On 9 February 2019, a hearing was held before the UWW. The Athlete accepted that the hearing would take place by phone conference and that, for organization reasons, only one member of the panel attended the hearing. The Athlete participated together with her lawyer and the administrator of the Mongolian Wrestling Federation.

11. The Athlete argued in defence that an adverse analytical finding resulted from: (i) an intravenous injection of proteins once in July 2018; or (ii) from a sabotage at the 2018 Asian Games. The Anti-doping Panel analysed the two theories in connection with the Athlete's degree of fault or negligence. The Panel concluded that both theories were speculations, that the Athlete had failed to demonstrate the origin of the presence of Stanozolol in her body, and that she was not entitled to any fault-related mitigation.

12. On 15 February 2019, the UWW Anti-Doping Panel issued a decision ("Appealed Decision"), which held as follows:

    a. "[...] *the results of the analysis of the sample provided by the Athlete establish the presence in her sample of a prohibited substance and its metabolite, i.e. Stanozolol;*

    b. *The substance detected in the Athlete's sample is an anabolic steroid. It is listed in the WADA 2018 Prohibited List and is prohibited at all times. According to the prohibited list, the substance is a non-specified substance;*

    c. *In view of the analytical results, including the B sample's, the Anti-doping Panel finds that an anti-doping rule violation pursuant to Art. 2.1 of the Rules consisting of the presence of a Prohibited Substance in the Athlete's body is established;*

    d. *The panel finds that both [Appellant's] theories are speculations and do not satisfy the degree of proof placed on the athlete to demonstrate the origin of the presence of Stanozolol in her body. Hence it is meaningless at this stage to examine the degree of fault or negligence of the athlete.*

    e. *Based on this, the athlete is not entitled to any fault-related mitigation and should be sanctioned with a period of ineligibility of four years, with deduction of the period of provisional suspension already served.*"

IV. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

13. On 8 March 2019, the Appellant filed the Appeal ("Statement of Appeal") against the UWW challenging the Appealed Decision before the Court of Arbitration for Sport ("CAS") in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration ("CAS Code"). In the Statement of Appeal, the Appellant nominated Dr Sven Nagel, attorney-at-law in Leipzig, Germany, as arbitrator. The Appellant also requested an extension of the deadline to submit additional arguments until April 30, 2019.

14. On 21 March 2019, the Appellant filed the Appeal ("Appeal Brief").

15. On 22 March 2019, the Respondent nominated Prof. Jens Evald as arbitrator in this matter.

16. On 25 March 2019, the CAS Court Office invited the Respondent to submit its Answer within 20-days upon the receipt of the Appeal in accordance with Article R55 of the Code. The Respondent received the Statement of Appeal on March 27, 2019, which meant that the deadline to file an Answer expired on April 16, 2019.

17. On 18 April 2019, the Respondent filed the Answer, which was received by the CAS Court Office on April 23, 2019, *i.e.* after the deadline to file the Answer.

18. On 24 April 2019, the CAS Court Office informed the Parties by letter that the Respondent had filed the Answer after the applicable deadline. The Appellant was invited to state whether she consents to the admissibility of the Respondent's Answer.

19. The Parties were also invited by the same letter to inform the CAS Court Office whether they preferred a hearing to be held in this matter or for the Panel to issue an award based solely on the Parties' written submissions.

20. On 30 April 2019, the UWW asked the Panel to issue an award based on the Parties' written submissions.

21. On the same date, the Appellant responded that she did not consent to the admissibility of the Respondent's Answer and the award could be issued based on the Parties' written submissions only if the award was in her favour. A hearing should take place should the Panel decide otherwise.

22. On 1 May 2019, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, informed the Parties that the Panel was constituted as follows:

President:	Mr Romano Subiotto QC, Avocat in Brussels, Belgium and Solicitor-Advocate in London, United Kingdom
Arbitrators:	Dr. Sven Nagel, Rechtsanwalt in Leipzig, Germany; Prof. Jens Evald, Professor of Law in Aarhus, Denmark.

23. On 1 May 2019, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, informed the Respondent of the Appellant's observation with respect of the late filing of the Answer. In view of the Appellant's objection, the Respondent was given the opportunity to provide its comments strictly limited to the Appellant's observations submitted on 30 April 2019.

24. On 6 May 2019, the Respondent submitted its observations.

25. On 19 June 2019, the CAS Court Office, on behalf of the Panel, informed the Parties that the Panel has decided i) to declare the Respondent's Answer inadmissible, ii) not to hold a hearing and issued an Order of Procedure, which was duly signed by the Parties on the same date.

A. DECISION TO NOT HOLD A HEARING

26. Article R57 of the CAS Code provides as follows:

"*After consulting the parties, the Panel may, if it deems itself to be sufficiently well informed, decide not to hold a hearing.*"

27. In accordance with Article R57 of the CAS Code, The Panel finds that it deems itself sufficiently well informed to decide the dispute on the basis of the Parties' written submission.

28. The Panel recalls that, according to Article 3.1 of the UWW ADR, the Athlete carries the burden of proving how the substance came into her body. In this regard, the Athlete specified the names of the following witnesses: (i) the club physician Mrs Altanshagai Batbileg; (ii) the Athlete herself; (iii) the trainer Tserenbaata Khosbyar; and (iii) Mr Namsrai Batsaikhan.

29. The Panel notes that the proposed testimonies could not affect in any way the Panel's conclusion, which is explained in more detail below, that the Athlete has failed to establish that the anti-doping rule violation was not intentional, and how the prohibited substance entered her body in order to be entitled to any fault-related mitigation.

30. Specifically, while the two other witnesses were not present at the events during the Asian Games, as regards the proposed testimony of Mrs Altanshagai Batbileg, a club physician, who, according to the Appellant, administered the protein substance at the end of July, the Panel recalls that No (Significant) Fault or Negligence would not apply even if Stanozolol had been injected to her body with a substance that was described by Mrs Altanshagai Batbileg as a protein. The comment to Article 10.4 of the UWW ADR – *Elimination of the Period of Ineligibility where there is No Fault or Negligence* – explains that:

"*No Fault or Negligence would not apply in the following circumstances: (a) a positive test resulting from a mislabeled or contaminated vitamin or nutritional supplement (Athletes are responsible for what they ingest (Article 2.1.1) and have been warned*

against the possibility of supplement contamination; (b) ***the Administration of a Prohibited Substance by the Athlete's personal physician or trainer without disclosure to the Athlete (Athletes are responsible for their choice of medical personnel and for advising medical personnel that they cannot be given any Prohibited Substance)****; and (c) sabotage of the Athlete's food or drink by a spouse, coach or other Person within the Athlete's circle of associates (Athletes are responsible for what they ingest and for the conduct of those Persons to whom they entrust access to their food and drink).*" (emphasis added)

31. Further, the Panel recalls that it is the CAS's consistent jurisprudence that the Athlete cannot shift her duty onto her doctors, and that the Athlete bears a personal responsibility to ensure that no prohibited substance enters her body, regardless of whether a doctor prescribed it:

a. CAS 2002/A/385, ¶50: "*It has been a known and widely publicized fact for several years that food supplements can be – and sometimes intentionally are – contaminated with products which are prohibited in sports. An athlete who ignores this fact, does so at his/her own risk.* ***It would be all to simple and would frustrate all the efforts being made in the fight against doping to allow athletes the defense that they took whatever the team doctor gave them, plus attempting to shift the responsibility to someone else.*** *The athlete's negligence lies in the fact that he/she uses food supplements which include a generally known risk of contamination. The extent of the precaution taken to reduce the risk of contamination may have a bearing on the extent of the sanctions.*" (emphasis added)

b. CAS 2009/A/1870, ¶120: "*she could have conducted further investigation with a doctor or another reliable specialist; she could have had supplements tested. Those circumstances actually show that H was indeed negligent, also considering that the risks associated with food supplements are well known among athletes, years after the first cases of antidoping rule violations cause by contamination or mislabelled products were detected and considered in the CAS jurisprudence.*"

c. CAS 2014/A/3798, ¶3-4: "*The standard of care required for a no fault or negligence finding, i.e. utmost caution, requires that an athlete establishes that he has done all that is possible, within his medical treatment, to avoid a positive testing result. A professional and experienced athlete who, despite being familiar with repeated warnings from his International Federation, WADA and National Anti-Doping Organizations emphasizing the risk of contamination in nutritional supplements, choses to take the risk of using nutritional supplements anyway, fails to exercise the standard of care required for no fault or negligence, i.e. utmost caution. In the case of a positive test resulting from a contaminated vitamin or nutritional supplement, a reduction of the period of ineligibility under Article 10.5.2 of the FIRS ADP may be appropriate, for instance, if the athlete clearly establishes that the cause of the positive test was contamination in a common multiple vitamin purchased from a*

source with no connection to prohibited substances and that the athlete exercised care in not taking other nutritional supplements."

d. CAS 2012/A/2763, ¶5: *"Even in the case where athletes may not be deemed informed athletes due to a lack of anti-doping education, they must be aware of the basic risks of contamination of nutritional supplements. If athletes have been taking a cocktail of supplements despite the numerous warnings in place about taking supplements, have failed to contact the manufacturers directly or arrange for the supplements to be tested before using them, did not seek advice from a qualified doctor or nutritionist, have failed to conduct a basic review of the packaging of the supplements and any basic Internet research about the supplements, they cannot be deemed to have taken any of the reasonable steps expected of them and cannot establish on the facts that they bear no significant fault or negligence."*

32. The Panel notes that the Athlete requests the Panel to annul the Appealed Decision and to acquit her of a doping offence. As explained in detail below, her pleas of a lack of intent, theory of sabotage, and contamination of the product ingested can only be considered in the Panel's review of the appropriateness of the penalty, but not in connection with whether the anti-doping rule violation has actually been committed.

33. In light of the above, the Panel has decided that there is no need to conduct an oral hearing in the present case.

V. CAS JURISDICTION

34. Article R47 of the CAS Code provides that:

"An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statues or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statues or regulation of that body."

35. The Appellant does not submit any specific arguments regarding CAS's jurisdiction, noting only that she was a successful wrestler also at an international level.

36. The Respondent does not dispute the jurisdiction of CAS.

37. Article 8.2.2 of the UWW Anti-doping Rules ("UWW ADR") provides that the decision of the UWW Disciplinary Chamber may be appealed to the CAS as provided in Article 13 of the UWW ADR.

38. Pursuant to Article 13.2 of the UWW ADR, a decision that an anti-doping rule was committed may be appealed exclusively as provided in Articles 13.2-13.7 UWW ADR.

39. Article 13.2.1 of the UWW ADR provides as follows:

"*In cases arising from participation in an International Event or in cases involving International-Level Athletes, the decision may be appealed exclusively to CAS.*"

40. The Panel observes that the Athlete held a UWW license in 2018. After winning the final in the Women's Freestyle in 62 kg at the Asian Games in Jakarta, Indonesia, the Doping Control Officer collected a urine sample from the Athlete.

41. According to the scope of the Rules "*athletes who hold international licence granted by United World Wrestling for the year considered*" shall be considered to be International-Level Athletes.

42. In this case, the jurisdiction of CAS, which has not been disputed by any Party, arises out of Article 13.1 of the UWW ADR in conjunction with Article R47 of the CAS Code.

43. The Panel accordingly holds that it has jurisdiction over the Appeal.

VI. ADMISSIBILITY

A. ADMISSIBILITY OF THE APPEAL

44. Article R49 of the CAS Code provides that:

"*In the absence of a time limit set in the statues or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by other parties.*"

45. According to Article 13.7.1 of the UWW ADR:

"*The time to file an appeal to CAS shall be twenty-one days from the date of receipt of the decision by the appealing party.*"

46. The Appealed Decision was issued on 15 February 2019.

47. The Appellant filed her Statement of Appeal on 8 March 2019, and therefore within the time limit required by the UWW ADR and Article 49 of the CAS Code.

48. Further, according to Article R51 of the CAS Code:

"*Within ten days following the expiry of the time limit for the appeal, the Appellant shall file with the CAS Court Office a brief stating the facts and legal arguments giving rise to the appeal, together with all exhibits and specification of other evidence upon which*

it intends to rely. Alternatively, the Appellant shall inform the CAS Court Office in writing within the same time limit that the statement of appeal shall be considered as the appeal brief. The appeal shall be deemed to have been withdrawn if the Appellant fails to meet such time limit."

49. The Panel notes that there is no dispute concerning the admissibility of the Appeal, although Article R51 of the CAS Code provides that the Statement of Appeal shall be deemed to have been withdrawn if the Appellant fails to meet the time limit to file the Appeal Brief.

50. As a result, the Panel finds that the Appeal is admissible.

B. ADMISSIBILITY OF THE ANSWER

51. Article R55 of the CAS Code provides as follows:

"*Within twenty days from the receipt of the grounds for the appeal, the Respondent shall submit to the CAS Court Office an answer [...] If the Respondent fails to submit its answer by the stated time limit, the Panel may nevertheless proceed with the arbitration and deliver an award.*"

52. On 24 April, 2019, the CAS Court Office informed the Respondent that the Answer was not submitted within twenty days after the receipt of the grounds for the Appeal, and invited the Appellant to state whether she consented to the Answer's admissibility. The Appellant was also informed that the Panel would decide the issue if the Appellant objected to the Answer's admissibility.

53. On 30 April 2019, the Appellant informed the CAS Court Office that she objected to the admissibility of the Answer.

54. On 1 May 2019, the CAS Court Office informed the Respondent of the Appellant's observations, and invited the Respondent to comment on the Appellant's observations submitted on April 30, 2019.

55. On 6 May 2019, the Respondent filed comments on the Appellant's observations. The Respondent acknowledged that the UWW missed the deadline to submit the Answer and did not dispute the Appellant's objections.

56. As a result, the Panel considers the Answer to be inadmissible, unlike the Respondent's comments filed on 6 May 2019, which were limited to the Appellant's observations submitted on 30 April 2019.

57. The Panel notes that, pursuant to Article R55 of the CAS Code "*If the Respondent fails to submit its answer by the stated time limit, the Panel may nevertheless proceed with the arbitration and deliver an award.*"

58. The Panel has therefore proceeded with the arbitration and delivery of the Award.

VII. APPLICABLE LAW

59. Article R58 of the CAS Code provides as follows:

"*The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.*"

60. The Appellant submits no arguments regarding the relevant rules and regulations applicable to the present dispute.

61. The Appealed Decision determined that the Appellant committed an anti-doping violation of Article 2.1 of the UWW ADR. The UWW Anti-doping Panel observed that the results of the analysis of the urine sample provided by the Athlete established the presence of a prohibited substance and its metabolite, *i.e.* Stanozolol. The UWW Anti-doping Panel explained that Stanozolol is an anabolic steroid, which is listed in the WADA 2018 Prohibited List and is prohibited at all times.

62. Based on the above and considering that the Respondent – the federation which issued the Appealed Decision – applied the UWW ADR in adjudicating the present case, the applicable law under which Panel will decide the present dispute is to be found in the UWW ADR, the UWW Constitution, the WADA Code, and the WADA 2018 Prohibited List. Since the UWW is a Swiss entity, Swiss law applies subsidiarily.

VIII. SCOPE OF REVIEW

63. Articles 13.1.2 of the UWW ADR provides as follows:

"*In making its decision, CAS need not give deference to the discretion exercised by the body whose decision is being appealed.*"

64. Comment to Article 13.1.2 of the UWW ADR explicitly elaborates that CAS proceedings are *de novo* and prior proceedings do no limit the evidence or carry weight in the hearing before CAS.

65. Additionally, pursuant to Article R57 of the CAS Code:

"*The Panel has 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.*"

66. As a result, the Panel has the power to examine the case at hand *de novo*.

IX. THE PARTIES' SUBMISSIONS

67. The Parties' submissions are summarized below. The Panel has thoroughly considered all of the evidence and arguments submitted by the Parties, even if no specific or detailed reference has been made to these arguments in the following outline of the Parties' positions and the ensuing discussion on the merits.

A. THE APPELLANT

68. The Appellant does not dispute that the analysis of her sample revealed the presence of Stanozolol. However, she submits that she has never knowingly introduced the substance in question, or let anyone else introduce it into her body.

69. As a preliminary matter, the Appellant disputes that the presence of a prohibited substance is sufficient to satisfy the Respondent's burden of proving an anti-doping violation. The Appellant argues the Respondent must also prove that the substance entered the Athlete's body with her knowledge. The Appellant questions the CAS jurisprudence regarding the principle of strict liability, claiming that it has been declared unlawful and unconstitutional in various countries. The Appellant also requests the Respondent to furnish the complete documentation of the analysis and in particular the quantity of Stanozolol found in her body, arguing that the "*respondent thus prevents the appellant's line of proof*" without knowing the exact amount of Stanozolol.

70. The Appellant maintains that she has never knowingly introduced Stanozolol in her body. In her defence, the Athlete offers two possibilities: (i) the protein liquid used at the end of July 2018 was a contaminated product that included Stanozolol; and (ii) the adverse analytical finding resulted from an intentional doping attempt on the Athlete.

71. Regarding the contamination of the product, the Appellant submits that she was given the protein liquid due to her health issues at the end of July 2018. Before the protein liquid was administered into her body, the club physician, Mrs Altanshagai Batbileg assured her that the protein liquid did not contain any prohibited substance. Accordingly, the presence of Stanolozol in the Appellant's body could result from an undetected contamination of the protein liquid at the end of July 2018.

72. Regarding the sabotage, the Appellant submits that the presence of Stanolozol in her body may be explained by an intentional doping attempt by an unknown person in her environment, especially by somebody from the Mongolian Wrestling Federation. Such an attempt might have been motivated by the objections against her because the Appellant decided to be coached by her personal trainer. Moreover, at the Asian Games, the Appellant was forced to share a room with another female athlete, who prepared the Athlete's meals, meaning that the Athlete, for the first time, could not prepare her meals. According to the Appellant, this offered a special opportunity to "*secretly add a prohibited substance like stanolozol.*"

73. The Appellant requests the Panel to issue an award holding that:

a. "*The decision of the UWW Anti-Doping Panel of the 15th of February 2019 be revoked*

b. *The Appellant should be acquitted of a doping offence.*"

B. THE RESPONDENT

74. In its letter on 6 May 2019, the Respondent submitted in reply to the Appellant's letter of 30 April 2019 that it did not prevent the Appellant from presenting its arguments nor perpetrated any kind of "*obstruction of proof.*" The laboratory analysis report was provided to the Athlete twice: (i) before the Disciplinary Commission of the Olympic Council in Asia; and (ii) in the proceedings before the UWW.

75. As regards the concentration of Stanozolol in the analysis, the Respondent recalls that pursuant to Article 2.1.3 of the UWW ADR "*excepting those substances for which quantitative threshold is specifically identified in the Prohibited List, the presence of any quantity of a Prohibited Substance or its Metabolities or Markers in an Athlete's sample shall constitute an anti-doping rule violation.*" There is no need to establish a specific quantity of the prohibited substance in the Athlete's body in order to find an anti-doping rule violation, as Stanozolol is not a threshold substance in WADA 2018 Prohibited List.

76. Finally, the Respondent noted that, according to Article 3.1 of the UWW ADR, the Athlete carries the burden of proving how the substance came to be in her body, and that it is for the Appellant to contact the laboratory should the concentration be of any interest to prove how the substance was ingested. The same applies to the analysis of the protein substance.

C. REQUEST FOR A HAIR TEST AND ANALYSIS OF THE PROTEIN SUBSTANCE

77. Article R51 of the CAS Code provides as follows:

"*Within ten days following the expiry of the time limit for the appeal, the Appellant shall file with the CAS Court Office a brief stating the facts and legal arguments giving rise to appeal,* ***together with all exhibits and specification of other evidence upon which it intends to rely.*** *[...]* (emphasis added)

In its written submission the Appellant shall specify the name(s) of any witnesses, including a brief summary of their expected testimony, and the name(s) of any experts, stating their area of expertise, it intends to call and state any other evidentiary measures which it requests. The witness statements, if any, shall be filed together with the appeal brief, unless the President of the Panel decides otherwise."

78. Further, according to Article R56 of the CAS Code:

"*Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement*

or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer."

79. The Appellant requests the establishment of an expert opinion by means of a hair test and analysis of the protein substance that was allegedly given to the Athlete at the end of July. However, the Appellant filed no exhibits or evidence in this regard. In its submission of 30 April 30, 2019, the Appellant submits that the doping control laboratory in Cologne, Germany, would require an official request by the Panel to analyse the protein substance.

80. The Panel recalls that, as correctly raised by the Respondent, there is no need to establish a specific quantity of the prohibited substance in the Athlete's body in order to find an anti-doping rule violation, as Stanozolol is not a threshold substance in WADA 2018 Prohibited List. This substance was present in the Athlete's A and B samples. Any hair test or analysis of the protein substance is therefore entirely irrelevant.

81. Furthermore, the Appellant bears the burden of rebutting a presumption of an anti-doping violation or to establish specific facts that would undermine the conclusion reached by the UWW in the Appealed Decision.

82. More specifically, pursuant to Article 3.1 of the UWW ADR, the Athlete carries the burden of proving that the anti-doping rule violation was not intentional and how the substance entered her body in order to obtain a reduction in her sanction. Hence, to satisfy her burden of proof and according to Article R51 of the CAS Code, the Appellant was required to submit all exhibits and supporting evidence with her Appeal Brief.

83. The Panel recalls that pursuant to Articles R51 and R56 of the CAS Code, the procedure before the CAS is adversarial and not inquisitorial. Therefore, it is each Party's responsibility to assert facts giving rise to their cause of action and to present means of evidence proving these facts to the Panel, which acts as a neutral umpire, deciding the question of fact and law raised by the Parties.

84. In her Appeal Brief, to support her defence that the Appellant unknowingly received a protein substance contaminated with Stanozolol, the Athlete referred to the analysis of this substance. However, the Appellant did not provide the analysis of the protein substance or a sample of the same substance, neither specified the name of the substance in question. The Athlete bears the burden of rebutting a presumption of an anti-doping violation and it is solely her responsibility to introduce evidence upon which she intends to rely in the present proceedings. By merely referring to theories without introducing any corroborating evidence, the Panel has no duty to *ex officio* investigate by itself. In the present proceedings, the Athlete failed to submit any exhibits and supporting evidence with her Appeal Brief proving her theory of a contaminated product. Hence, based on Articles R51 and R56 of the CAS Code, the Panel finds that the Athlete is precluded from relying on any such evidence in the present proceedings before the CAS.

85. For the sake of completeness, the Panel notes that the Appellant's allegations that the analysis is "*not possible by a direct assignment of the appellant outside of the proceedings*" is unfounded. Appellants regularly submit analyses conducted by third parties in support of their submissions in proceedings before the CAS. Additionally, the UWW ADR and the CAS Code do not oblige the Panel to issue "*an official assignment*" for the analysis of the protein substance simply because the Appellant refers to the "*analysis of the protein substance that is still on sale*" without introducing any corroborating evidence.

86. Further, Article R44.3 of the CAS Code provides as follows:

"***If it deems it appropriate to supplement the presentation of the parties, the Panel may at any time order the production of additional documents or the examination witnesses, appoint and hear experts, and proceed with any other procedural step***. *The panel may order the parties to contribute to any additional costs related to the hearing of witnesses and experts.*"

87. Accordingly, pursuant to Article R44.3 of the CAS Code, the Panel enjoys a margin of discretion and may appoint and hear experts only if it deems appropriate.

88. The Panel finds it unnecessary to appoint and hear the expert in view of the circumstances of the present case. In particular, the Panel notes that "*the positive stanozolol finding is not disputed here*" and the Athlete acknowledges that she knowingly took the protein substance. In this regard, the Panel recalls that pursuant to Article 2.1.1 of the UWW ADR, it is each Athlete's personal duty that no prohibited substance enters her body and that the Athletes are responsible for any prohibited substance found to be present in their sample. More specifically, as explained in detail above, the Athlete cannot shift her duty onto her doctors by claiming that they took whatever the doctor prescribed them. (*See* CAS 2002/A/385, ¶50:"*It would be all to simple and would frustrate all the efforts being made in the fight against doping to allow athletes the defense that they took whatever the team doctor gave them, plus attempting to shift the responsibility to someone else.*")

89. Finally, the Panel notes that the Athlete was unable to provide identical substance to the one allegedly used by the Appellant at the end of July 2018, but "*wishes to procure another sample of the same substance and to have this tested for any possible and not immediately apparent contamination.*" The fact that another protein substance may be contaminated with Stanzolol in the Panel's view fails to demonstrate on a balance of probability that the Athlete's anti-doping rule violation in the present case was not intentional. In any event, even if the analysis would confirm that the suggested protein substance was contaminated, the Appellant would still fail to establish on a balance of probability that the analysed protein substance was actually used by the Athlete at the end of July 2018.

90. Accordingly, the Panel finds that the Athlete failed to introduce any evidence that would support her theory of a contaminated product. Moreover, in view of the circumstances

of the present case and the fact that "*it is not possible to have identical substance tested*", the Panel finds it unnecessary to appoint and hear expert pursuant to Article R44.3 of the CAS Code. In the Panel's view, in the present case the analysis of "*another sample of the same substance*" would not – under ordinary circumstances - undermine the conclusion reached by the UWW in the Appealed Decision. In the instant case, the Appellant has not submitted any evidence or explanation that would mandate a different decision reached by the Panel.

X. MERITS OF THE APPEAL

A. INTRODUCTORY COMMENTS

91. Article 2.1 of the UWW ADR – *Presence of a Prohibited* Substance *or its Metabolites or Markers in an Athlete's Sample* – provides that:

"*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 rule violation under Article 2.1.*"

92. According to Article 2.1.2 of the UWW ADR:

"*Sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following: [...]; or,* ***where the Athlete's B Sample is analyzed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance*** *or its Metabolites or Markers found in the Athlete's A Sample; [...].*" (emphasis added)

93. Pursuant to Article 10.2.1.1 of the UWW ADR when the anti-doping rule violation does not involve a specified substance "*the period of ineligibility shall be four years, unless the Athlete or other person can establish that the anti-doping rule violation was not intentional.*"

94. The analysis of the Athlete's Sample A and Sample B revealed an adverse analytical finding for Stanozolol. Stanozolol is prohibited under class S1 of the WADA 2018 Prohibited List. According to the WADA 2018 Prohibited List, Stanozolol is a non-specified substance that is prohibited at all times.

95. The Appellant does not dispute "*the positive stanozolol finding of the analysis*". However, she says she had no knowledge of the substance or of its source.

B. ANTI-DOPING RULE VIOLATION

1. Quantity of Stanozolol

96. The Panel considers that it is first necessary to address the Appellant's plea that the Respondent must provide the quantity of Stanozolol found in the Athlete's body in order to allow for the Appellant's "*line of proof.*"

97. It is undisputed that the analysis of the Athlete's Sample A and Sample B produced an adverse analytical finding for Stanozolol. The use of Stanozolol is prohibited in-competition and out-of-competition under the WADA 2018 Prohibited List.

98. In accordance with Article 4.2.2 of the WADA Code and Article 4.2.2 of the UWW ADR, all prohibited substances are qualified as "*specified substances*" except substances in classes S1, S2, S4.4, S4.5, S.6.A, and Prohibited Methods M1, M2, and M3. Pursuant to the WADA 2018 Prohibited List, Stanozolol is a non-specified substance included in class S1 (*Anabolic Agents*) that is prohibited at all times. Stanozolol is a synthetic steroid that is derived from testosterone and has anabolic and androgenic properties. In contrast with specified substances, non-specified substances cannot benefit from any non-doping explanation for being in an athlete's body.[1]

99. As regards the quantitative threshold, Article 2.1.3 of the UWW ADR provides that:

> "*Excepting those substances for which a quantitative threshold is specifically identified in the Prohibited List, the presence of any quantity of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample shall constitute an anti-doping rule violation.*"

100. The Panel notes that the WADA 2018 Prohibited List does not establish quantitative thresholds for Stanozolol. Its presence in the Athlete's Sample is therefore sufficient to establish an anti-doping rules violation, irrespective of the concentration found. (CAS 2016/A/4465, ¶89).

101. As a result, the Panel concludes that the Appellant's argument that the Respondent should have provided the quantity of Stanozolol present in the Athlete's body is irrelevant and must be dismissed.

2. Burden and Standard of Proof

102. In essence, the Appellant argues that the Respondent has not met its burden of proof in the Appealed Decision and disputes the principle of strict liability applied in doping cases. The two issues before the Panel are therefore whether: (i) the UWW established

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[1] *See* 2015 World Anti-Doping Code, Ado Reference Guide, July 2015, Section 10.1, p. 24 ("*specified substances are more susceptible to a credible, non-doping explanation; non-specified substances do not have any non-doping explanation for being in an athlete's system*").

an anti-doping rule violation to the comfortable satisfaction of the Panel; and (ii) the principle of strict liability is lawful.

103. Article 3.1 of the UWW ADR provides as follows:

"*UNITED WORLD WRESTLING shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the UNITED WORLD WRESTLING has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made. This standards of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules place the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specific facts or circumstances, the standard of proof shall be by a balance of probability.*"

104. Furthermore, as already explained above, Article 2.1.1 of the UWW ADR states that an anti-doping rule violation is committed without regard to the Athlete's fault, and athletes are presumed responsible for all substances that enter their bodies.[2] An Athlete's fault is only taken into consideration in determining the consequences of the violation.

105. Regarding the UWW's burden of proof to establish an anti-doping rule violation, Article 2.1.2 of the UWW Anti-doping Rules provides the following:

"*sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following: [...]; or,* ***where the Athlete's B Sample confirms the presence of the Prohibited Substance*** *or its Metabolites or Markers found in the Athlete's A Sample; [...].*"

106. Stanozolol was found in the Athlete's Sample A. The adverse analytical finding was subsequently confirmed by the analysis of the B Sample. The Panel is therefore satisfied that the UWW has established an anti-doping rule violation.

107. The Panel notes that an anti-doping rule violation is a strict liability offence. The principle of strict liability has been constantly applied in CAS jurisprudence (CAS 2017/A/5112, ¶67–68; CAS 2014/A/3487, ¶157; CAS 2006/A/1025.) According to this principle, the Athlete's lack of intent, fault, negligence or knowledge is not relevant for a finding of an anti-doping rule violation. As CAS panels have found previously:

"*Since there* ***is no mens rea requirement for anti-doping violation****, a finding that an athlete's sample contains a prohibited substance is ipso facto a finding that the athlete has committed an anti-doping violations.*" (CAS 2014/A/3487, ¶157).

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2 *See* Article 2.2.1 of the UWW Anti-doping Rules ("*It is each Athlete's personal duty to ensure that no Prohibited Substances enters his or her body and that no Prohibited Method is used.*")

108. The Panel further notes that the Appellant's argument that the principle of strict liability in doping proceedings has been declared unlawful and unconstitutional in various countries is misguided. The Appellant fails to put forward any specific precedents or legal arguments, stating only that "*quotes of decisions by the highest courts can be furnished later on.*" In this regard, the Panel notes that the standard of proof in cases involving anti-doping rules violations is greater than a mere balance of probability, but less than a proof beyond reasonable doubt. The application of such a standard of proof (rather than the criminal standard of beyond reasonable doubt) was subsequently confirmed in doping cases by the Swiss Federal Tribunal.[3] Thus, the Panel disagrees with the Appellant that the principle of strict liability violates any fundamental principles of law.

109. Additionally, the Panel emphasizes that this standard of proof is in the public interest in preserving the integrity of sports, as confirmed also by Judge Jean-Paul Costa, who in his opinion explained that "*I would favour that a higher freedom is given to a jurisdiction such as CAS in terms of standard of proof.*"[4]

110. In the Panel's view, an efficient anti-doping regime requires a legal principle that allows that regime to operate effectively and to sanction athletes, who engage in prohibited conduct. The standard suggested by the Appellant, namely that the UWW should also be required to prove that the substance entered the athlete's body with the athlete knowledge would dramatically increase the likelihood that cheating athletes could eschew the application of anti-doping regulations. The Panel notes that doping is fundamentally contrary to the spirit of sport and recalls the fundamental rationale for anti-doping rules as explained in the WADA Code:

"*Anti-doping programs seek to preserve what is intrinsically valuable about sport. This intrinsic value is often referred to as 'the spirit of sport.' In the essence of Olympism, the pursuit of human excellence through the dedicated perfection of each person's natural talents. It is how we play true. The spirit of sport is the celebration of the human spirit, body and mind, and is reflected in values we find in and through sport.*"

111. Consequently, the Panel finds that the contents of the blood or urine sample taken by the anti-doping authorities provide the most persuasive proof of an anti-doping violation. In CAS 94/129, the CAS Panel explained the rationale for the principle of strict liability:

"*It is true that a strict liability test is likely in some sense to be unfair in an individual case..., where the athlete may have taken a medication as the result of mislabelling or faulty advice for which he or she is not responsible...but it is also in some sense unfair for an athlete to get food poisoning on the eve of an important competition. Yet in*

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3 *See* Judgement of the First Civil Law Court, 4A_612/2009, February 10, 2010, para. 6.3.2.

4 *See* Judge Jean-Paul Costa, "*Opinion for the World Anti-Doping Agency (WADA), September-October 2017*", December 14, 2017, p. 11.

neither case will the rules of competition be altered due to the unfairness. Just as the competition will not be postponed to await an athlete's recovery, so the prohibition of banned substances will not be lifted in recognition of its accidental absorption. The vicissitudes of competition, like those of life generally, may create many types of unfairness, whether by accident or the negligence of unaccountable persons, which the law cannot repair." (CAS 94/129, ¶14).

112. As a result, the Panel finds that the UWW satisfied its burden of proof in establishing the anti-doping violation. Sample A and Sample B both confirmed the presence of Stanozolol in the Athlete's body and the Appellant did not dispute procedure of the analysis conducted by the WADA accredited laboratory in Doha. Therefore, the Panel holds that the Athlete violated Article 2.1 of the UWW ADR.

C. THE SANCTION

113. The Appellant does not explicitly dispute the severity of the sanction imposed by the UWW. However, her pleas of lack of knowledge, theory of sabotage, and contamination of the protein, and related lack of intent, fault, or negligence are not relevant for the finding that an anti-doping rule violation has been committed. Rather, these issues are to be considered in relation to the severity of the sanction (CAS 2017/A/5112, ¶67).

114. More specifically, the Appellant's anti-doping rule violation and the non-specified nature of the substance present in her body mean that the Athlete can avoid the standard four-year period of ineligibility set forth in Article 10.2.1.1 of the UWW ADR if she establishes:

a. on a balance of probability that her anti-doping rule violation was not intentional (two years, Article 10.2.1.1 and 10.2.2 of the UWW ADR); or

b. if absence of intent can be shown, on a balance of probability how the prohibited substance entered her system and that:

    a) she bears no fault or negligence (elimination of the sanction, Article 10.4 of the UWW ADR); or

    b) she bears no significant fault or negligence and that the detected substance came from a Contaminated product (reduction of the sanction below two years, Article 10.5.1.2 of the UWW ADR).

1. Was the Athlete's Anti-doping Rule Violation Unintentional?

115. Article 10.2.1 of the UWW ADR provides that the period of ineligibility shall be four years where:

"*The anti-doping rule violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.*"

116. Article 10.2.3 of the UWW ADR defines the term "*intent*" as used in Articles 10.2 and 10.3 as follows:

"*the term "intentional" is meant to identify those Athletes who cheat. The term therefore requires that the Athlete or other Person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not intentional if the substance is a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered intentional if the substance is not a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance*"

117. The definition of "intent" in Article 10.2.3 of the UWW ADR means that an anti-doping rule violation is committed intentionally if the Athlete: (i) knew that there was a significant risk that her conduct might constitute or result in an anti-doping rule violation; and (ii) manifestly disregarded that risk.

118. Before turning to these prerequisites, the Panel observes that various CAS panels have addressed the question whether proving absence of intent within the meaning of Article 10.2.1.1. of the UWW ADR requires an athlete to prove how the prohibited substance entered his or her system.

119. In short, Article 10.2.1.1 of the UWW ADR contains no such requirement, contrary to the definition in the WADA Code (and the UWW ADR) of No (Significant) Fault or Negligence, which require proof of the source of the prohibited substance.

120. As in CAS 2017/A/5017, the Panel is of the view that the drafters of the WADA Code intended to leave the door open for an athlete to prove absence of intent even if he or she does not know, and therefore cannot show, how the prohibited substance entered the athlete's body. In this regard, this Panel respectfully acknowledges that the CAS jurisprudence expresses two distinct views on this issue (CAS 2016/A/4662, ¶51 and CAS 2016/A/4377, ¶41).

121. The Panel recalls that any ambiguous provisions of a disciplinary code must in principle be constructed *contra proferentem* and in accordance with the statement in CAS 94/129:

"*The fight against doping is arduous and it may require strict rules. But the rule makers and the rule appliers must begin by being strict with themselves. Regulations that may affect the careers of dedicated athletes must be predictable. They must emanate from duly authorized bodies. They must be adopted in constitutionally proper ways. They should not be the product of an obscure process of accretion. Athletes and officials should not be confronted with a thicket of mutually qualifying or even contradictory rules that can be understood only on the basis of the de facto practice over the course of many years of a small group of insiders.*"(CAS 94/129, ¶34)

122. The Panel's conclusion that the Athlete does not necessarily need to establish how Stanozolol entered her body is further supported by commentators, such as Antonio Rigozzi and Ulrich Haas in "*Breaking Down the Process for Determining a Basic Sanction Under the 2015 World Anti-Doping Code*" (International Sports Law Journal, (2015) 15:3-48):

"*The 2015 Code does not explicitly require an Athlete to show the origin of the substance to establish that the violation was not intentional. While the origin of the substance can be expected to represent an important or even critical, element of the factual basis of the consideration of an Athlete's level of Fault, in the context of Article 10.2.3, panels are offered flexibility to examine all the objective and subjective circumstances of the case and decide if a finding that the violation was not intentional.*"

123. As a result, the main issue here is whether the Appellant can successfully prove absence of intent in connection with her anti-doping rule violation simply by proffering the theories of a contamination of the protein liquid and sabotage, without introducing any corroborating evidence. In the Panel's view, the Appellant cannot do so.

124. As in cases CAS 2016/A/4534 and CAS 2017/A/5022, the Panel recalls that there is a theoretical possibility that an absence of intent might be established as a result of an athlete's simple assertion of his or her innocence and lack of intent when considering her demeanour, character, and history. However, such a situation could inevitably only be extremely rare. It is in practice highly unlikely that an Athlete could meet the burden of proving absence of intent without establishing how the substance entered her body. As indicated, proof of source can "*represent and important or even critical*" first step in any exculpation of intent.

125. The Panel notes that the Appellant did not offer any evidence on which she could rely to discharge her burden of proving lack of intent. The absence of evidence as to the source of Stanozolol, as explained in detail below, closed off one avenue. Absent proof of source, the Athlete attempted to rely on her protestations of innocence, her previous clean record, a hair sample analysis, and her belief in strictly opposing any form of doping. As to the Appellant's protestations, the Panel reminds itself of a dictum in earlier cases that "*the currency of such denial is devalued by the fact that it is the common coin of the guilty as well as of the innocent.*" (CAS 99/208, 40¶; CAS 99/A/234 and CAS 99/A/235, ¶10.17; CAS 2016/A/4534, ¶40)

126. Even if the Panel were to follow the Appellant's theory that the presence of Stanozolol resulted from the contaminated product, the Appellant would still not meet its burden that the anti-doping rule violation was not intentional. In this regard the Panel recalls that it is each Athlete's personal duty to ensure that no prohibited substance enters his or her body and that the WADA Code imposes on them a duty of utmost caution to avoid that a prohibited substance enters the Athlete's body. (see Advisory Opinion rendered by the CAS 2005/C/976 & 986, ¶73). As explained, Athletes cannot shift this responsibility on to their doctors. The CAS's consistent jurisprudence of such an unacceptable defence has been summarized in CAS/2012/A/2959:

"Dr. Tachuk's role does not relieve Mr. Nilforushan of responsibility. In CAS 2008/A/1488, the CAS panel commented at paragraph 12 that "in consideration of the fact that athletes are under a constant duty to personally manage and make certain that any medication being administered is permitted under the anti-doping rules, the prescription of a particular medicinal product by the athlete's doctor does not excuse the athlete from investigating to their fullest extent that the medication does not contain prohibited substances". In CAS 2005/A/872, a CAS panel ruled that for a reduction based on no significant fault or negligence there must be more than simply reliance on a doctor. Further, Koubek (...) makes clear that an athlete must cross check assurances given by a doctor, even where such a doctor is a sports specialist." (CAS 2012/A/2959, ¶8.19.)

127. Additionally, even if the Panel were to follow the Appellant's theory of sabotage, such a defence would not undermine its conclusion that the Appellant did not establish that the anti-doping rule violation was not intentional. In this regards, the Panel recalls the commentary to Article 10.5.2 of the WADA Code and 10.4 of the UWW ADR

"...sabotage of the Athlete's food or drink by a spouse, coach or other Person within the Athlete's circle of associates (Athletes are responsible for what they ingest and of the conduct of those Persons to whom they entrust access to their food and drink)."

128. Accordingly, even assuming that Stanozolol was added to the Athlete's food by the other female athlete the Panel would still not be persuaded that there was no intent. The Appellant says she shared the room with another female athlete during the Asian Games and that this other *"female athlete"* prepared the meals during the competition. In the Panel's view this person was therefore within the Athlete's circle of associates and indeed the speculative allegation of sabotage of her food in these circumstances is precisely an example of where it cannot affect the findings on intent.

129. For the sake of completeness, the Panel notes that Stanozolol is a non-specified substance, which enhances sport performance. It is a synthetic steroid that is derived from testosterone and has anabolic and androgenic properties. Among all anabolic androgenic steroids, Stanozolol is one of the most frequently abused steroids by professional athletes in order to improve physical strength, endurance and performance. Contrary to other steroids, Stanozolol allows athletes to preserve a lean appearance

without adding sizeable muscles, which is especially important for weightlifters. Against this background, the Panel cannot find that the Athlete lacked intent without any specific evidence that would confirm this on a balance of probability.

130. As a result, accordingly, the Panel finds that the Athlete's reliance on a series of speculative theories fails to demonstrate on a balance of probability that this anti-doping rule violation was not intentional within the meaning of Article 10.2.1.1 of the UWW ADR.

2. No Fault and No Significant Fault or Negligence

131. As explained above, an athlete, who successfully establishes absence of intent, may have the period of ineligibility eliminated or further reduced if he or she can establish, on a balance of probability, how the prohibited substance entered his or her body and either: (i) that he or she bears No Fault or Negligence; or (ii) that he or she bears No Significant Fault or Negligence.

132. As indicated, proof as to how the prohibited substance entered the Athlete's body is a mandatory prerequisite in order to benefit from the fault-related deductions, but it is not strictly required in order to prove absence of intent. (*See* CAS 2017/A/5022, ¶113).

133. Whether the Athlete was Not (Significantly) at Fault or Negligent in committing an anti-doping rule violation is analysed below for the sake of completeness, even though the Athlete failed to establish that the violation was not committed intentionally.

a. Relevant provisions

134. The UWW ADR and the WADA Code define No Significant Fault or Negligence as:

> "*The Athlete or other Person's establishing that his or her fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or negligence, was not significant in relationship to the anti-doping rule violation. Except in the case of a Minor, for any violation of Article 2.1,* ***the Athlete must also establish how the Prohibited Substance entered his or her system.***" (emphasis added)

135. The UWW ADR and the WADA Code define No Fault or Negligence as follows:

> "*The Athlete or other Person's establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule. Except in the case of a Minor, for any violation of Article 2.1,* ***the Athlete must also establish how the Prohibited Substance entered his or her system.***" (emphasis added)

136. The UWW ADR and WADA Code define a contaminated product as:

"*A product that contains a Prohibited Substance that is not disclosed on the product label or in information available in a reasonable Internet search.*"

137. According to Article 10.5.1.2 of the UWW ADR and the WADA Code on contaminated products:

"*In cases where the Athlete or other Person can establish No Significant Fault or Negligence and that the detected Prohibited Substance came from a Contaminated Product, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years Ineligibility, depending on the Athlete's or other Person's degree of Fault.*"

138. According to Article 10.4 of the UWW ADR, if an Athlete or other Person established in an individual case that he or she bears No Fault or Negligence, then the otherwise applicable period of Ineligibility shall be eliminated.

139. Comment to Article 10.4 of the UWW ADR explains the following:

"*This Article and Article 10.5.2 apply only to the imposition of sanctions; they are not applicable to the determination of whether an anti-doping rule violation has occurred. They will only* ***apply in exceptional circumstances****, for example where an Athlete could prove that, despite all due care, he or she was sabotaged by a competitor. Conversely,* ***No Fault or Negligence would not apply in the following circumstances****: (a) a positive test resulting from a mislabelled or contaminated vitamin or nutritional supplement...; (c) sabotage of the Athlete's food or drink by a spouse, coach or other Person within the Athlete's circle of associates... However, depending on the unique facts of a particular case, any of the referenced illustrations could result in a reduced sanction...*" (emphasis added)

140. Finally, Article 2.1.1 of the UWW ADR provides as follows:

"*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 Sample.*"

b. How the prohibited substance entered the Athlete's body

i. CAS Jurisprudence

141. The Athlete must demonstrate how the prohibited substance entered her system to sustain a plea of No (Significant) Fault. The Panel reiterates the relevant CAS jurisprudence:

a. CAS 2010/A/230, ¶11.12: "*To permit an athlete to establish how a substance came to be present in his body by little more than a denial that he took it would undermine the objectives of the Code and Rules. Spiking and contamination – two prevalent explanations volunteered by athletes for such presence – do and*

can occur; but it is too easy to assert either; more must sensibly be required by way of proof, given the nature of the athlete's basic personal duty to ensure that no prohibited substances enter his body ."

b. CAS 2017/A/4962, ¶53: "*The raising of an unverified hypothesis is not the same as clearly establishing the facts.*"

c. CAS 2006/A/1067, ¶14: "*The Respondent has a stringent requirement to offer persuasive evidence of how such contamination occurred. Unfortunately, apart from his own words, the Respondent did not supply any actual evidence of the specific circumstances in which the unintentional ingestion of cocaine occurred.*"

d. CAS 2011/A/2645: "*the athlete may establish how the Specified Substance entered the body by "**balance of probability.**" In other words, **a panel should simply find the explanation of an athlete about the presence of a Specific Substance more probable than not.**"* (emphasis added)

ii. <u>Sabotage by an unknown person</u>

142. The Appellant argues that she was subject to an intentional doping attempt conspired by the Mongolian Wrestling Federation. In particular she submits that the Appellant was forced at the 2018 Asian Games to share a room with another female athlete, who prepared meals for her and therefore had a "*special opportunity to secretly add a prohibited substance like stanozolol.*" To support her defence, the Athlete offers as evidence, *inter alia,* the Decree of Detective dated on September 15, 2018.

143. In the Panel's view, the Athlete's assertion just cited, devoid of any supporting evidence, falls significantly short of a cogent explanation of how Stanozolol appeared in her urine, and fails to meet the requisite burden of proving how the prohibited substance entered her system.

144. The Panel also doubts the reliability and sincerity of the Decree of Detective. In particular, a complaint against an unknown person was filed only on September 15, 2018. The Athlete tested positive on August 24, 2018, meaning that she filed a complaint 22 days after the results of an adverse analytical finding. Moreover, the Panel notes that this complaint was filed one day after the Athlete was formally charged by the UWW with the commission of an anti-doping violation. In the Panel's view if the Athlete's theory of sabotage were to follow, the Athlete would have begun taking actions immediately after August 24, 2018, when the analysis of Sample A returned an adverse analytical finding. However, the Appellant did nothing until September 15, 2018, after the UWW formally charged her.

145. In addition to the Decree of Detective, the Appellant submitted her, her trainer's, and Mr. Namsrai's testimony before the CAS. As explained, the Panel finds that the proposed testimonies would not undermine its conclusion. In any event, specifically

regarding the alleged theory of sabotage, the Panel finds the proposed testimonies to be immaterial to demonstrate how the prohibited substance entered the Athlete's body for the following reasons:

a. The Athlete's trainer was refused permission to travel to the Asian Games, and could not therefore provide any specific evidence to support the Appellant's defence;

b. Regarding Mr Namsrai's testimony, the Panel notes that Mr Namsrai was only present when the Athlete had won the 2017 World Championship. Consequently, Mr Namsrai could not testify concerning events at the Asian Games.

c. The Panel notes that the Athlete's testimony was devoid of any specific evidence to support the theory of sabotage. In particular, other than submitting the Decree of Detective dated on September 15, 2018, the Athlete stated only that "*I never used that substance. I think that it has been influenced by external factors.*" Moreover, as explained in the Athlete's written submission, her action "*has not furnished any results, at least not up to the present day.*"

146. For the sake of completeness, the Panel notes that, were the Athlete's theory of sabotage at all credible, she would surely at least have named the other "*female athlete*", with whom the Appellant allegedly shared her room at the Asian Games. Her name was definitely known to the Appellant since she described her in the written submissions as "*another female athlete who was allowed to participate in the World Championships for Mongolia without being qualified.*"

147. In line with CAS 2011/A/2645 cited above, the Athlete would have had to adduce specific evidence on how the substance entered her body to the extent that the Panel could have found the explanation more probable than not.

148. Accordingly, the Panel must reject the Athlete's unsubstantiated theory of sabotage.

iii. Contamination of the protein liquid

149. Concerning the contamination of the protein liquid, the Panel is also not persuaded that the Appellant established on a balance of probability that Stanozolol was administrated into her body by the club physician.

150. In the Panel's view the Appellant line of defence that the club physician ordered and administrated the protein substance at the end of July 2018 has several flaws and inconsistencies.

a. First, before the OCA Disciplinary Commission, the Appellant attributed the positive result only to a sabotage without raising any other defence.

b. Second, before the UWW Anti-doping Panel the Appellant defended that she had an intravenous injection that was prescribed by her club's doctor.

c. Third, in her submission to the CAS dated March 8, 2019, the Appellant claimed her trainer assured her the total harmlessness of the protein substance.

d. Lastly, in her submission to the CAS dated March 21, 2019, the Athlete explained that club physician, Mrs. Altanshagai Batbileg, administered the protein substance at the end of July 2018.

151. In light of the above, the Panel notes that the Appellant inconsistently explained who actually prescribed her the protein liquid, including a club physician, club doctor, and trainer. Additionally, the Athlete's statement that she was provided with the protein liquid at the "*end of July*" is insufficiently specific. Surely, the Athlete should have been able to ascribe a date to this event, had it been an isolated one.

152. In this respect, the Panel recalls the view of previous CAS Panels that supports its conclusion that the Appellant has failed to satisfy her burden of proving that the presence of Stanozolol resulted from the contaminated protein liquid:

CAS 2006/A/1032, ¶98: "*to prove that the concentrations of 19-NA in her sample supplied during the Paris test were caused in part by the ingestion of nutritional supplements, and in what proportion,* ***the player would need to adduce very specific evidence regarding what type of supplement was taken, in what doses and intervals and during what periods*** (emphasis added)."

153. Accordingly, the Panel considers that the Athlete has failed to provide any cogent explanation on how the prohibited substance entered her body. Her theory of contamination is unsubstantiated by any evidence, lacking even a date when the protein liquid was allegedly administered to her, or any reliable indication of who recommended and administered the liquid – was it the club physician, doctor, or trainer? Accordingly, the Panel finds that such a hypothetical theory does not meet the requisite burden of proving how Stanozolol entered the Athlete' body.

154. For the sake of completeness, the Panel observes that in the proceedings before the UWW Anti-Doping Panel, the Athlete introduced a picture of a product made in China. This product was made of soybean oil and lecithin and there was no indication that the substance contained any anabolic steroid. Additionally, the Athlete did not bring any other evidence supporting her theory that this product had been contaminated.

155. Even though the Athlete did not introduce a picture of this product before the CAS, the Panel notes – as the UWW Anti-Doping Panel – that this injection could also be regarded as the use of a prohibited method. According to the UWW Anti-Doping Panel, the picture showed a bottle of 250 ml of this product which was apparently injected intravenously outside the course of hospital treatment, surgical procedure or clinical

diagnostic investigation. Pursuant to M2.2 WADA 2018 Prohibited List, such a dose is beyond the limit of more than a total of 100 mL per 12 hour period and thus prohibited.

D. THE PANEL'S CONCLUSION

156. The Panel finds that the Athlete has failed to demonstrate that the anti-doping rule violation was not intentional within the meaning of Article 10.2.1.1 of the UWW ADR.

157. Additionally, the Panel finds that the Athlete has failed to establish on a balance of probability how the prohibited substance entered her system, meaning that any plea of No (Significant) Fault or Negligence must be rejected.

158. As a result, the Panel dismisses the Appeal.

XI. COSTS

159. Since this Appeal is brought against a disciplinary decision issued by an international sports federation, pursuant to Articles R65.1 and R.65.2 of the CAS Code, the proceedings are free of charge, except for the CAS Office Fee, which the Appellant has already paid and is retained by the CAS.

160. Article R65.3 of the CAS Code provides as follows:

"*Each party shall pay for the costs of its own witnesses, experts and interpreters. In the arbitral award and without any specific request from the parties, 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 complexity and the outcome of the proceedings, as well as the conduct and financial resources of the parties.*"

161. Pursuant to Article R65.3 of the CAS Code, in making its determination with respect to granting a contribution towards the legal fees and other expenses of the prevailing party, the Panel has to consider the complexity and the outcome of the arbitration as well as the conduct and the financial resources of the parties.

162. In this respect, the Panel notes that the Athlete's Appeal has been dismissed in its entirety. As a result, the UWW is the prevailing party. However, the Appellant is a 25-year-old professional athlete, whereas the UWW is a well-resourced international federation. Considering also that there was no hearing and that the UWW's Answer was filed after the deadline, the Panel exercises its discretion and decides that the UWW and the Athlete shall bear their own legal fees and expenses.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed on 8 March 2019, by Ms Orkhon Purevdorj against the decision issued by the United World Wrestling on February 15, 2019, is dismissed.

2. The decision rendered by the United World Wrestling on 15 February 2019, is confirmed.

3. The present arbitration procedure shall be free of charge, except for the CAS Court Office Fee of CHF 1,000 (one thousand Swiss francs), which has already been paid by Ms Orkhon Purevdorj and is retained by the CAS.

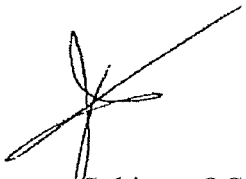
4. Each Party shall bear their own costs incurred in connection with the present proceedings.

5. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 10 December 2019

THE COURT OF ARBITRATION FOR SPORT



Romano Subiotto QC
President