



Tribunal Arbitral du Sport  
Court of Arbitration for Sport

**CAS 2011/A/2537 WADA v/ Toni Milanovic & Croatian Muay Thai Federation**

**ARBITRAL AWARD**

delivered by the

**COURT OF ARBITRATION FOR SPORT**

sitting in the following composition

Sole Arbitrator: Mr Patrick Lafranchi, Attorney-at-law, Bern, Switzerland

between

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

Represented by Messrs. Olivier Niggli & Yvan Henzer, attorneys-at-law, Lausanne,  
Switzerland

**Appellant**

and

**The Disciplinary Commission of the Croatian Muay Thai Federation, Zagreb, Croatia**

**Respondent 1**

and

**Mr. Toni Milanovic, Split, Croatia**

**Respondent 2**

## FACTUAL BACKGROUND

### A. THE PARTIES

1. The Appellant World Anti-Doping Agency («WADA») is an independent international anti-doping agency, whose aim is to promote, coordinate, and monitor, on an international level, the fight against doping in sports in all its forms.
2. Respondent 1 is an athlete practising Muay Thai. He is a member of the Muay Thai Club Ameno Split.
3. Respondent 2 is the Disciplinary Commission of the Croatian Muay Thai Federation.

### B. STATEMENT OF FACTS

4. On 17 April 2010, Respondent 1 was selected to provide a urine sample on the occasion of the Muay Thai National Championship in Split.
5. Respondent 1 tested positive for boldenone, salbutamol and methylhexanamine. These substances are prohibited under the 2010 WADA Prohibited List.
6. By a decision taken on 28 July 2010, Respondent 1 imposed a one year period of ineligibility upon the Appellant (“the Decision”).
7. This decision was sent to the Appellant on 7 July 2011.

### C. PROCEEDINGS BEFORE CAS

8. On 18 August 2011, the Appellant filed its Statement of Appeal with the Court of Arbitration for Sport (“CAS”) against the decision rendered on 28 July 2010 by Respondent 1. It made the following application:

*“1. The Appeal of WADA is admissible*

*2. The Appealed Decision rendered on 28. July 2010 by the Disciplinary Commission of the Croatian Muay Thai Federation in the matter of Mr. Toni Milanovic is set aside.*

*3. Mr. Toni Milanovic is sanctioned with a period of ineligibility to be set between two and four years starting on the date on which the CAS award comes into force. Any period of ineligibility, served by Mr Toni Milanovic*

*before the entry into force of the CAS award, shall be credited against the total period of ineligibility to be served.*

*4. All competitive results obtained by Mr. Toni Milanovic from 17 April 2010 through the commencement of the applicable period of ineligibility shall be disqualified with all of the resulting consequences including forfeiture of any medals, points and prizes.*

*5. WADA is granted an award for costs.*

9. The court Office fee in the amount of CHF 1'000.00 has been paid by the Appellant.
10. On 12 September 2011 Counsel of the CAS informed the Parties, that none of the Respondents has expressed its position/observations on the Appellants procedural request to suspend the deadline to file the appeal brief due to the fact that the national anti-doping regulations ("the Regulations") were not submitted by Respondent 2. The Respondents were asked on several occasions to submit these Regulations.
11. On 4 October 2011 Respondent 2 wrote to the CAS and expressed regret that it had violated the Anti-Doping Code of WADA. This mistake was made due to inexperience in such cases. It confirmed that it would set aside its first decision and make a new decision against Respondent 1. Furthermore Respondent 2 expressed its concern about the costs of this procedure.

Respondent 2 did not name an arbitrator and did not submit the Regulations.

12. On 14 October 2011 the Appellant accepted to appoint a Sole Arbitrator in this case, further to the CAS Court office confirmation that this would significantly reduce the arbitration costs.
13. On 7 November 2011 Respondent 1, represented by his Trainer Mr. Veljko Vetma, wrote to the CAS and described his financial situation as very difficult. He argues that he and his family live in poverty and that they would not be able to pay court fees or penalties. They made no objection against the Sole Arbitrator.
14. On 21 November 2011, the Parties were notified of the constitution of the Panel as follows:

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15. Respondent 2 did not submit the Regulations until 6 February 2012, so that the time limit for the Appellant to send the appeal brief remained suspended.
16. On 6 February 2012 Respondent 2 sent a copy of the Regulations in Croatian to the CAS. On 10 February 2012 Counsel of the CAS sent a copy of these Regulations to the Appellant which was invited to file its appeal brief within 10 days upon receipt of this correspondence.
17. On 23 February 2012, Appellant requested a 10-day extension of its deadline to file its Appeal Brief, since it was trying to obtain a satisfactory translation in English of the Regulations submitted by Respondent 2.
18. On 29 February 2012, Respondent 2 informed the Parties that the Disciplinary Commission would meet on Sunday 4 March and would render a new decision in the case of Respondent 1.
19. On 12 March 2012 Counsel of the CAS stated that the extension of the time limit to file the appeal brief was granted.
20. On 23 March 2012 the Appellant informed the CAS that Respondent 2 rendered a new decision regarding Respondent 1. In its decision, Respondent 2 imposed a four – year period of ineligibility upon Respondent 1. The Decision was set aside.
21. In light of the above mentioned matters, the Appellant withdrew its appeal. It did not make any requests regarding costs.
22. On 26 March 2012 Counsel of the CAS informed the parties that the appeal was withdrawn and that an award on costs would be issued by the CAS.

## II. IN LAW

### **D. JURISDICTION OF CAS**

23. Article R47 of the Code of Sports-related Arbitration (“Code”) provides:

*“An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sport-related body.”*

24. In the present proceedings, the CAS jurisdiction was not disputed by the parties. Accordingly, the CAS has jurisdiction to decide this matter.

**E. APPLICABLE LAW**

25. The appeal brief was filed after 1 January 2010, so that the Code Edition 2010 is applicable in this procedure.
26. Article R58 of the Code provides the following:

*"The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision."*

**F. COSTS**

27. Article R64 of the Code deals with the Panel's power to award costs.
28. In particular, article R64.4 states that the CAS Court Office shall determine the final amount of the costs of arbitration, which shall include the CAS Court Office fee, the administrative costs of the CAS calculated in accordance with the CAS scale, the costs and fees of the arbitrator(s) calculated in accordance with the CAS fee scale, a contribution towards the expenses of the CAS, and the costs of witnesses, experts and interpreters. The final account of the arbitration costs may either be included in the award or communicated separately to the parties.
29. Article R64.5 of the CAS Code states as follows:

*In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the outcome of the proceedings, as well as the conduct and financial resources of the parties."*

30. The Sole Arbitration notes that the Court Office fee of CHF 1'000.00 was paid by the Appellant. According to Article R64.1 of the Code the CAS shall in any event retain this fee.
31. The appeal was withdrawn by the Appellant before it even submitted its Appeal Brief. Due to this fact it is not necessary to take a decision on the merits. Nevertheless the CAS and the Sole Arbitrator have incurred expenses in this case. The case was pending since 18 August 2011, the Sole Arbitrator was named and there was much correspondence to be made. In view of the fact that the file was transmitted to the Sole Arbitrator, an award on costs shall be issued further to the Appellant's withdrawal of its appeal.
32. According to Article R64.4 of the Code, the CAS Court Office shall determine the final amount of the costs of arbitration, which shall include the CAS Court Office fee, the administrative costs and the costs and fees of arbitrators calculated in accordance with the CAS fee scale. In this present case the costs of the proceedings were fixed at CHF 4'788.00 (four thousand seven hundred and eighty-eight Swiss francs).
33. In the award on costs the Sole Arbitrator shall determine which party shall bear the arbitration costs. As a general rule, the Sole Arbitration has discretion to grant the prevailing party a contribution towards its legal fees and other expenses. When granting such contribution, the Sole Arbitrator shall take into account the outcome of the proceedings, as well as the conduct and the financial resources of the parties (Art. R64.5 Code).
34. The Appellant withdrew its appeal due to the fact that Respondent 2 issued a new decision and imposed a four-year period of ineligibility on Respondent 1.  
  
In the present procedure, neither of the parties requested compensation or a contribution towards its legal fees. The Appellant withdrew the appeal without any requests towards the Respondents regarding the costs incurred in the present matter.  
  
Due to this fact it is obvious that the Respondents are not condemned to pay a contribution towards the legal fees and other expenses to the Appellant and that each party has to bear its own costs.
35. The Sole Arbitrator is of the following view concerning the arbitration costs of this proceedings:

- a.) First of all it is to state that the costs generally have to be borne by the party which withdraws its appeal. In this case, as mentioned above, the Appellant withdrew its appeal due to the fact, that Respondent 2 rendered a new decision in the matter of Respondent 1. As a consequence, the appeal was only withdrawn because Respondent 1 accepted some of the requests made by the Appellant in its appeal. Accordingly, it would not be appropriate if the Appellant would have to bear all the costs of the present procedure. It would be indeed unfair to oblige the Appellant WADA to bear all arbitration costs every time that an appeal is filed against a decision of a sports federation and that, in the middle of the arbitration, such sports federation issue a new decision corresponding to what was requested in the appeal. If the objective of the appeal has been fully reached, the Appellant should not be penalized with an order to pay costs simply because it had to formally withdraw such appeal.

In the present matter, the Appellant did not make any request regarding costs. Furthermore it must be emphasized that, in its statement of appeal, the Appellant asked also the CAS to disqualify the athlete from all competitive results he obtained from 17 April 2010 to the commencement of the applicable period of ineligibility. The Appellant did not mention whether Respondent 2 disqualified the athlete in the new decision rendered 4 March 2012. Consequently it is not proven that Respondent 2 has accepted all the requests made by the Appellant.

In addition it is of value that in contrast to the Respondents, the Appellant is an Organization with financial power.

In view of the above, the Sole Arbitrator finds it appropriate that the Appellant shall bear one half of the costs of this procedure.

- b.) Furthermore, the Sole Arbitrator considers that Respondent 2 had already accepted in its letter of 4 October 2011 that it had made a mistake and that it would render a new decision in the proceeding against Respondent 1. In its decision of 4 March 2012 Respondent 2 imposed a four-year period of ineligibility on Respondent 1. This behaviour shows that Respondent 1 accepted at least an important part of the appeal from the beginning.

Furthermore the Sole Arbitrator considers that Respondent 2 is an amateur, non-profit sports organization with limited financial power.

Anyhow, it is to state that the Decision was not rendered according to the Regulations. The Decision was the beginning of the procedure. Furthermore Respondent 2 did not submit the requested Regulations and did not answer in time. Through its behaviour Respondent 2 generated further costs. For this reason, the Sole Arbitrator is of the view that Respondent 2 shall bears one half of the costs of this procedure.

c.) The Sole Arbitrator further notes from the file that Respondent 1 is a Croatian athlete who lives in poor conditions. His position in this procedure was straightforward from the beginning and he was manifestly not the source of particular costs in this arbitration because he has made no opposition in this case. With the new decision the athlete gets a punishment regarding his doping breach. It is not the fault of Respondent 1 if Respondent 2 did not impose an appropriate ban in its Decision. For these reasons the Sole Arbitrator finds it adequate that Respondent 1 does not have to bear any costs of this procedure.

d.) In conclusion, the Sole Arbitrator finds that the Appellant and the Respondent 2 shall each pay CHF 2394.- (two thousand three hundred ninety-four Swiss francs) as arbitration costs related to this procedure.




### ON THESE GROUNDS

The Court of Arbitration for Sport pronounces:

1. The procedure *CAS 2011/A/2537 WADA v/Toni Milanovic & Croatian Muay Thai Federation* is terminated and deleted from the CAS roll.
2. The Appellant shall bear the costs of the present procedure in an amount of CHF 2394.- (two thousand three hundred ninety-four Swiss francs).
3. Respondent 2 shall bear the costs of the present procedure in an amount of CHF 2394.- /788.- (two thousand three hundred ninety-four Swiss francs).
4. Each party shall bear its own legal costs.

Lausanne, 30 August 2012

### THE COURT OF ARBITRATION FOR SPORT

  
Patrick Lalive  
Sole Arbitrator