CAS 2020/A/6981 Thai Amateur Weightlifting Association (TAWA) *et al*. v. International Weightlifting Federation (IWF)

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mrs. Carine Dupeyron, Attorney-at-Law, Paris, France

Arbitrators: Mr. Alexis Schoeb, Attorney-at-Law, Geneva, Switzerland

Mr. Romano F. Subiotto, Solicitor – Advocate, London, United Kingdom, Avocat in Brussels, Belgium

in the arbitration between

Thai Amateur Weightlifting Association (TAWA) *et al*.

Represented by Mr. Claude Ramoni, Attorney-at-Law with Libra Law SA, Lausanne, Switzerland

Appellants

and

International Weightlifting Federation (IWF)

Represented by Mr. Ross Wenzel and Mr. Nicolas Zbinden, Attorneys-at-Law with Kellerhals Carrard, Lausanne, Switzerland

Respondent

I. THE PARTIES

1. The Thai Amateur Weightlifting Federation (the "Appellant" or "TAWA") is the national governing body for the Olympic sport of weightlifting in Thailand. It is affiliated with the International Weightlifting Federation. Thirteen athletes are all young Thai athletes who have never committed any anti-doping rule violations ("ADRV(s)"). They are part of the Thai national team and are qualified to take part in international competitions according to TAWA's criteria. They will be referred as the "Eligible Athletes":

- Mr. Chindanai Taksin, born on 12 May 2002;
- Ms. Duangkamon Khongthong, born on 31 October 2002;
- Mr. Kriangkai Khuenkankong, born on 6 April 2002;
- Mr. Nonthaphat Thaneewan, born 12 October 1999;
- Ms. Premhathai Chaiphatchomphu, born on 24 August 2003;
- Ms. Rodsukon Sonkaew, born on 28 November 1999;
- Ms. Siriyakorn Khaipandung, born on 27 August 1999;
- Ms. Suphatcha Hatsadong, born on 25 October 1998;
- Mr. Surodchana Khambao, born on 23 December 1999;
- Mr. Suttipong Jeeram, born on 28 April 2000;
- Mr. Tanu Deewong, born on 22 March 2002;
- Mr. Thada Somboon-Uan, born on 3 November 2000; and
- Ms. Thipwara Chontavin, born on 14 December 2002.

Eight athletes have been sanctioned by the International Testing Agency ("ITA") for the commission of an ADRV in 2018. They will be referred as the "Sanctioned Athletes":

- Ms Chayuttra Pramongkhol, born on 29 November 1994, is currently serving a period of ineligibility of 24 months, due to expire on 4 February 2021;
- Ms Duanganskorn Chaidee, born on 11 August 1997, is currently serving a period of ineligibility of 24 months, due to expire on 19 December 2020;
- Ms Rattanawan Wamalun, born on 15 July 1995, is currently serving a period of ineligibility of 24 months, due to expire on 4 February 2021;
- Ms Sopita Tanasan, born on 23 December 1994, is currently serving a period of ineligibility of 24 months, due to expire on 17 January 2021;
- Ms Supatchanin Khamhaeng, born on 14 April 2001, is currently serving a period of ineligibility of 18 months, due to expire on 19 June 2020;
- Mr Teerapat Chomchuen, born on 31 July 2001, is currently serving a period of ineligibility of 18 months, due to expire on 19 June 2020;
- Ms Thunya Sukcharoen, born on 21 April 1997, is currently serving a period of ineligibility of 24 months, due to expire on 18 January 2021;

- Mr. Witsanu Chantri, born on 12 September 1996, is currently serving a period of ineligibility of 24 months, due to expire on 19 December 2020;

The Eligible Athletes and the Sanctioned Athletes will collectively be referred to as the "Athletes". TAWA and the Athletes will be hereinafter referred to as the "Appellants".

2. The International Weightlifting Federation (the "Respondent" or "IWF") is the international governing body for the Olympic sport of weightlifting. It has its headquarters in Budapest, Hungary and holds its seat in Lausanne, Switzerland.

II. FACTS

3. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence 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.

A. Protagonists of the weightlifting sport in Thailand

4. TAWA is the national federation for weightlifting sport in Thailand and has approximately 1,000 affiliated athletes and 50 athletes in its national team who are taking part in international competitions. It ranks among the 20 best nations in the sport of weightlifting.

5. The Sports Authority of Thailand ("SAT") is an entity established as a public organization which enters into agreements with coaches, who are then sent to the different sports organizations, such as TAWA. In view of preparing the Thai weightlifting athletes for the XXXII Olympic Games (in Tokyo in 2020), SAT hired the Chinese coach Liu Ning ("Coach Liu Ning") after selection by TAWA and seconded him to TAWA. As of 1 October 2017, Coach Liu Ning started training Thai weightlifters at national and international levels at the Chiang Mai national training center.

6. The Doping Control Agency of Thailand ("DCAT") is the entity in charge of fighting doping in Thailand. DCAT provides testing program and makes available to Thai athletes material elaborated in Thai language based on WADA templates on its website. However, according to TAWA, there were no specific control and guidance in such materials with respect to the risk of doping via gels and creams.

B. The AAFs of Thai Athletes in October-November 2018

7. In October 2018, during the Youth Olympic Games in Argentina, one Thai athlete tested positive for exogenous testosterone. A few weeks later, during the IWF World Championships held between 1-10 November 2018 in Turkmenistan, nine Thai athletes tested positive for exogenous testosterone, that is, half of the Thai delegation. Prior to these in-competition controls, on 11 October 2018, twenty Thai athletes had been targeted for an out-of-competition in their training camp in Chiang Mai, and fifteen of them returned AAFs for the same substance, exogenous testosterone.

8. These numerous adverse analytical findings ("AAFs") created a major crisis for TAWA and its national team.

C. The investigation conducted by TAWA

9. On 23 January 2019, TAWA appointed an investigation committee to analyze these AAFs.

10. The investigation involved the examination of the ten athletes for whom adverse analytical findings had been reported at the Youth Olympic Games in Argentina and at the 2018 IWF World Championships in Turkmenistan as well as fourteen other individuals including three additional athletes, Coach Liu Ning, four other Thai coaches, two physiotherapists, one doctor, one cook, one training center chief and the technical chairman of TAWA.

11. In April 2019, according to the report prepared and submitted by said investigation committee:

- Coach Liu Ning had been providing to TAWA athletes an unlabeled gel used to treat injury and heal muscle fatigue (the "Gel"), which he imported from China. Coach Liu Ning testified that his supplier, Mr. Gang Zheng, had ensured him that it *"did not contain doping drugs because since he has been using it, the athletes had urinalyses by NADO and IWF before the competition and there is no problem"*;

- the athletes who were not coached by Coach Liu Ning and therefore were not using the Gel did not report positive tests.

12. The TAWA investigation committee therefore suspected that the Gel could be the source of the contamination, obtained a sample of said Gel and sent it for analysis to the WADA-accredited laboratory in Bangkok (the "Bangkok Laboratory"). The analysis showed that the Gel contained testosterone, although at a low concentration level of 3333 ng/ml.

D. The "Undertaking"

13. In March 2019, during the IWF Executive Board's meeting in Las Vegas (USA), the Thai doping scandal was discussed, in order to, *inter alia*, reassess the attribution to TAWA of the

organization of the 2019 IWF World Championships scheduled to take place in Pattaya, Thailand.

14. The Board decided that Thailand would not lose its right to organize the 2019 IWF World Championships, provided TAWA agreed to sign and implement the following undertaking (the "Undertaking"):

> *"2. The Thai Amateur Weightlifting Association voluntarily and irrevocably undertakes that it:*
>
> *2.1. shall investigate all rule-violations committed and the unlawful circumstances in the Thai weightlifting. Upon completion of such investigation the Thai Amateur Weightlifting Association shall report to the Sports Authorities, the National Olympic Committee, IOC Member of Thailand and IWF by the latest August 01, 2019 about its findings, sanctions and anti-doping measures adopted;*
>
> *2.2. shall not participate with athletes and Athlete Support Personnel at any IWF events, in particular at the 2019 IWF World Championships, and all international weightlifting events according to the applicable IWF anti-doping policy;*
>
> *2.3. shall not participate in the weightlifting competitions of the Games of the XXXII Olympiad to be held in Tokyo 2020 including all Olympic qualifications events;*
>
> *2.4. shall not organize any future IWF events and any other international events except of Anti-Doping Educational Seminar;*
>
> *2.5. shall organize anti-doping courses for athletes and Athlete Support Personnel 3 (three) times a year at is own costs;*
>
> *2.6. shall be periodically monitored by IWF for the implementation of the present undertaking; and*
>
> *2.7. shall host the IWF 2019 Word Championships in Pattaya, Thailand in full compliance with all applicable rules, the host agreement and at the highest level possible, for the benefit of restoring the integrity of weightlifting and the damaged reputation of global community of weightlifter".*

15. On 7 March 2019, while the Undertaking proposed by the IWF was significantly different from the proposal previously shared by TAWA, the latter agreed to the Undertaking in the above terms.

E. The implementation and interpretation of the Undertaking

16. Between July 2019 and December 2019, various correspondence were exchanged between TAWA and the IWF regarding the finalization of TAWA's investigation in April 2019 and TAWA's intention to register its affiliated athletes in international competitions as of September 2019. On or around the same time, TAWA initiated a claim before Swiss court for provisional measures to allow certain athletes to compete in specific competitions, which was later dismissed on 15 November 2019 and eventually withdrawn by TAWA due to ongoing discussions with the IWF.

17. In December 2019, a meeting took place in Lausanne between TAWA and IWF, during which TAWA proposed that (i) young and junior athletes be authorized to take part in competitions as of 1 February 2020, with the senior athletes being authorized to resume competitions as of 1 April 2020 and that (ii) the ban on TAWA to organize IWF events end on 1 April 2020.

18. The IWF Executive Board eventually decided to postpone any decision as to the status of TAWA and its athletes to its next meeting, and on 17 March 2020, the IWF Executive Board stated that it would wait for the decision to be issued by the IWF Independent Member Federations Sanction Panel (the "IWF Panel"), which had just been seized and that such decision would replace the Undertaking.

F. The ITA disciplinary procedure

19. In parallel of the TAWA investigation and discussions with the IWF, the International Testing Agency ("ITA") initiated several disciplinary procedures against the ten concerned athletes. During its investigation, ITA's expert noted that the concentration level found by the Bangkok Laboratory in the Gel was too low to lead to the AAFs; another WADA-accredited laboratory therefore retested the Gel and found that the concentration level was at 4,4 mg/g, i.e. over 1,000 times higher. The scientific finding then confirmed that the level of exogenous testosterone found in the athletes' samples was consistent with the analysis of the Gel.

20. Pursuant to Articles 7.10.1 and 10.2.2 of the IWF anti-doping policy (the "IWF ADP"), the concerned athletes were sanctioned by ITA with a 2-year ban for non-intentional doping for the senior athletes (or four-year ban where the violation was a second violation), who accordingly accepted that they committed the anti-doping rule violations with significant fault or negligence but ITA confirmed that the doping was not intentional. The ban was reduced to 18 months for the junior athletes for no significant fault or negligence. These sanctions were recorded into agreements between the ITA and each of the concerned athletes on 24 December 2019.

21. As a conclusion to this factual background section, the Panel highlights that the present case must be read against the background of findings made in 2017, of numerous violations of anti-doping rules by weightlifting athletes further to the re-testing of samples from the Beijing

(2008) and the London Olympics (2012) in 2017. At the time, these ADRVs led the International Olympic Committee ("IOC") to consider excluding the sport of weightlifting from the Olympic program if no serious measures were taken by the IWF and its Member Federations. Among these measures, a so-called Clean Sport Commission instituted by the IWF recommended to impose strong incentives/tougher sanctions to Member Federations aiming at encouraging the implementation of efficient anti-doping controls and policies. The Panel understands that Article 12 IWF ADP in its version of 2018, which is discussed at length in this case, has been drafted to reflect this policy.

G. The Appealed Decision

22. On 24 February 2020, further to the agreements reached between ITA and the Athletes on 24 December 2019 and the confirmation that three ADRVs had taken place, the IWF Legal department informed TAWA of the opening of a sanction procedure in application of Article 12.5 IWF ADP before the IWF Panel, with a hearing taking place on 28 February 2020.

23. On 1 April 2020, the IWF Panel issued the following decision (the "Appealed Decision"):

"Pursuant to Article 12 of the ADP, the Independent Panel imposes the following sanctions on TAWA:

27. TAWA junior athletes (athletes under the age of 18 at the time of a competition) and their athlete support personnel shall continue to remain ineligible to participate in international competition until 5 months following the next IWF calendar event which takes place. (At the present time, no IWF calendar events are taking place because of the Coronavirus pandemic).

28. All other TAWA athletes and their athlete support personnel shall continue to remain ineligible to participate in international competition until 11 months following the next IWF calendar event which takes place. Pursuant to ADP Article 12.1 this suspension may be lifted as early as the date set forth in paragraph 27 above upon satisfaction of the conditions set forth in paragraph 31 below.

29. No TAWA athlete shall be eligible to participate in the XXXII Summer Olympic Games, whenever those Games may occur.

30. Except for the early participation opportunity for TAWA athletes and their athlete support personnel to participate in international competition after the dates set forth in paragraphs 27 and 28 above, the membership status of TAWA is otherwise suspended for a period of 3 years through 1 April 2023. (As previously noted above, except for TAWA athletes and their support personnel not being allowed to participate in international events, there was never any limitation in the Undertaking on the ability of TAWA technical officials

or other TAWA representatives to participate in IWF activities. For avoidance of doubt, current TAWA officials are suspended for 2 years and are not eligible to be appointed to any IWF position so long as TAWA remains suspended.)

31. Pursuant to Article 12.5.1 of the ADP the 3-year suspension of TAWA may be lifted on or after 7 March 2022 if TAWA can demonstrate to the IWF Independent Monitoring Group.

a) TAWA athletes, athlete support personnel and officials are receiving anti-doping education at a level which complies with the WADA International Standard for Education;

b) TAWA provides evidence that, notwithstanding the fact that the Sports Authority of Thailand is the party contracting with coaches working at the Chiang Mai training center, TAWA has the authority to vet and approve any coach hired by the Sports Authority of Thailand to coach TAWA athletes. Further, prior to approving the hiring of any weightlifting coach training TAWA athletes at the Chiang Mai training center, or other TAWA national team training center or camp, TAWA will thoroughly investigate that coach's anti-doping background, for example prior anti-doping rule violations committed by that coach or one of his/her athletes, whether that coach comes from a country or countries with a track record of doping in weightlifting and whether the coach is familiar with the basic principles of the IWF ADP together with the potential causes of unintentional anti-doping rule violations.

c) TAWA shall actively supervise any coach working with its athletes at the Chiang Mai training center or other TAWA national team training center or camp, TAWA shall provide evidence that it has the authority to have the coach removed when that coach's performance is not consistent with best practices of anti-doping.

d) The fine set forth in paragraph 32 below has been paid in full.

32. The fine imposed on TAWA pursuant to Article 12.5 shall be $200,000.00. (One hundred thousand dollars of this amount is imposed as a penalty, the remainder shall be used by IWF to offset the costs it has incurred arising out of the 10 violations committed by TAWA athletes and to pay for additional IWF testing of TAWA athletes.)"

33. The Independent Panel has also found that the actions of TAWA in this matter have "brought the sport of weightlifting into disrepute". However, the sanctions imposed above under Article 12.5 include those sanctions which the Independent Panel would have imposed under Article 12.7".

III. PROCEEDINGS BEFORE THE CAS

24. On 21 April 2020, the Appellants filed their statement of appeal with the Court of Arbitration for Sport ("CAS") against the IWF with respect to the Appealed Decision in accordance with Article R47 et seq. of the Code of Sports-related Arbitration (the "Code").

25. On 1 May 2020, the Respondent voluntarily produced (through a link) certain documents requested by the Appellants in their Statement of Appeal, including documents considered by the IWF Panel when rendered the Appealed Decision, the file provided by the ITA, as well as the recording of the hearing and a free transcript. The Respondent objected to the production of other documents, including the correspondence between the IWF administration and the IWF Panel.

26. On 5 May 2020, the Respondent nominated Mr. Romano Subiotto Q.C. as arbitrator.

27. On 19 May 2020, following a permitted extension of time, the Appellants submitted their Appeal Brief in accordance with Article R51 of the Code.

28. On 30 June 2020, the ICAS Challenge Commission issued its Decision on Petition for Challenge concerning the Appellants challenge to the Respondent's nomination of Mr. Subiotto. The Appellants' challenge was dismissed.

29. On 2 July 2020, following an agreed-upon extension of time, the Respondent submitted the Answer, a list of exhibits and exhibits and also emphasized that it was requesting the bifurcation of the proceedings, considering that there was no provision granting the Athletes, as Appellants, a right of appeal to the CAS against the Appealed Decision.

30. On the same day, the Appellants filed a report of Professor McLaren dated 4 June 2020 in support of their submission regarding a German TV documentary on doping and corruption at IWF from ARD.

31. On 20 July 2020, the Respondent agreed to the admission of the report of Professor McLaren dated 4 June 2020 to the case file.

32. On 23 July 2020, and pursuant to Article R54 of the CAS Code, the CAS Court Office informed the Parties that the Panel was appointed as follows:

President: Ms. Carine Dupeyron, Attorney-at-Law in Paris, France

Arbitrators: Mr. Alexis Schoeb, Attorney-at-Law in Geneva, Switzerland and Mr. Romano Subiotto Q.C., Solicitor-Advocate in London, United Kingdom, and Avocat in Brussels, Belgium

33. On 3 September 2020, and on behalf of the Panel, the CAS Court Office informed the Parties (i) that before deciding on the Respondent's request for bifurcation, the Appellants were invited to respond to it by 10 September 2020 (ii) the Appellants were invited by 10 September 2020 to justify why these documents likely exist and are relevant to the issues before the Panel, as required by Article R44.3 of the CAS Code (there were two successive letters on the same day, with the second one amending the first one on the request for the production of "*correspondence between IWF Secretariat and the Independent Panel*").

34. On 10 September 2020, the Appellants provided their responses both regarding the bifurcation and their request for production of correspondence between the IWF Secretariat and the IWF Panel.

35. On 24 September 2020, and on behalf of the Panel, the CAS Court Office informed (i) the Parties that the Respondent's request for bifurcation, as well as the Appellants' request for document production, were denied (ii) that the Panel considered a hearing necessary.

36. On 12 November 2020, the Parties signed and returned the Order of Procedure.

37. On 13 November 2020, a video hearing was held in this procedure. The Appellants were led by their counsel, Mr. Claude Ramoni and Ms. Monia Karmass; the Respondent was led by its counsel Mr. Ross Wenzel and Mr. Nicholas Zbinden. The Panel was assisted by Mr. Kendra Magraw, Counsel to the CAS.

38. At the outset of the hearing, no party objected to the constitution of the Panel or the jurisdiction of the CAS to decide this dispute (save for the Respondent's jurisdictional objection as to the Athletes). At the conclusion, the Parties agreed that their right to be heard had been respected.

IV. THE PARTIES' POSITIONS

39. The Panel has taken into consideration all the Parties' written submissions and has weighed the arguments made by the Parties in the light of all the evidence presented. The Panel sets out below a concise summary of the Parties' positions relevant to its decision, which does not attempt to be an exhaustive account of all the evidence and arguments put forward before this

Panel (all of which, it repeats, it has fully evaluated) but only of the most relevant factual and legal arguments. When necessary, other factual and legal arguments will be described in the decision section of this Award.

A. The Appellants' Position

40. On 21 April 2020, the Appellants filed a Statement of Appeal with the CAS seeking, *inter alia*, the following relief on the merits:

> *"I. TAWA and all its affiliated athletes agree not to participate in the Tokyo Summer Olympic Games.*
>
> *II. TAWA and all its affiliated athletes have served a Period of Suspension according to the terms and conditions of the Undertaking signed on 7 March 2019, which commenced on 7 March 2019 and expired on 1 April 2020.*
>
> *III. As from 1 April 2020, no sanction shall be imposed on TAWA and its affiliated athletes.*
>
> *IV. Chindanai Taksin, Duangkamon Khongthong, Kriangkai Khuenkankong, Nonthaphat Thaneewan, Premhathai Chaiphatchomphu, Rodsukon Sonkaew, Siriyakorn Khaipandung, Suphatcha Hatsadong, Surodchana Khambao, Suttipong Jeeram, Tanu Deewong, Thada Somboon-Uan, and Thipwara Chontavin and all other eligible Thai Athletes are immediately authorised to participate in any IWF events (except for the XXXII Summer Olympic Games).*
>
> *V. Duangaksorn Chaidee is eligible participate in any IWF events (except for the XXXII Summer Olympic Games) as from 19 December 2020.*
>
> *VI. Witsanu Chantri is eligible to participate in any IWF events (except for the XXXII Summer Olympic Games) as from 19 December 2020.*
>
> *VII. Chayuttra Pramongkhol is eligible to participate in any IWF events (except for the XXXII Summer Olympic Games) as from 4 February 2021.*
>
> *VIII. Thunya Sukcharoen is eligible to participate in any IWF events (except for the XXXII Summer Olympic Games) as from 18 January 2021.*
>
> *IX. Sopita Tanasan is eligible to participate in any IWF events (except for the XXXII Summer Olympic Games) as from 17 January 2021.*
>
> *X. Rattanawan Wamalun is eligible to participate in any IWF events (except for the XXX II Summer Olympie Garnes) as from 4 February 2021.*
>
> *XI. Teerapat Chomchuen is eligible to participate in any IWF events (except for the XXXII Summer Olympie Garnes) as from 19 June 2020.*
>
> *XII. Supatchanin Khamhaeng is eligible to participate in any IWF events (except for the XXXI I Summer Olympie Games) as from 19 June 2020.*

XIII. No fine is imposed on TAWA.

XIV. No TAWA officials are suspended. They shall remain eligible to be appointed to any IWF position."

41. On 19 May 2020, the Appellants filed their Appeal Brief wherein they maintained the relief previously sought in their Statement of Appeal.

42. In their submissions, the Appellants first asserts the CAS jurisdiction and standing to appeal of the Athletes (1) and raised procedural issues regarding the conduct of the proceedings by the IWF Panel (2). Finally, the Appellants address substantive claims regarding the Appealed Decision (3).

1. The Appellants' position with respect to CAS jurisdiction and standing to appeal of the Athletes

43. The Appellants sustain that (i) the CAS Panel has exclusive jurisdiction to adjudicate the appeal filed by the Athletes pursuant to the IWF ADP and that (ii) the Athletes have legal standing to challenge the sanctions imposed on them by IWF.

i. <u>CAS jurisdiction</u>

44. The Appellants rely on (i) both Article 12.8 and 12.9.4 IWF Constitution to assert that the CAS has exclusive jurisdiction to rule on an appeal filed by the members of the IWF against the decisions it renders and on (ii) various CAS awards to state that CAS panels have ruled that appeals filed by indirect members against the sanctions imposed on them by their national federation were admissible (CAS 2018/A/5722; CAS 2020/O/6689; CAS 2016/A/4703). The Appellants also assert that Article 75 Swiss Civil Code ("SCC") ensures the Athletes a right to appeal (by relying on CAS 2008/A/1583), as supported by the Swiss Federal Tribunal (TF 4A8314/2017; ATF 119 II 271, consid. 3b). The Appellants additionally refer to CAS jurisprudence (CAS 2007/A/1392) and note that, in the present case, the Athletes have been prevented from participating in international competitions, so that the Appealed Decision is directly affecting their personality rights. Therefore, the Appellants assert that, pursuant to the IWF Statutes and IWF ADP, the CAS has jurisdiction to adjudicate the appeal filed by the Athletes.

ii. <u>Standing to appeal of the Athletes</u>

45. Once it is admitted that the CAS has jurisdiction over the Athletes, the Appellants turn to CAS 2011/A/2354 to assert that "*anyone who is party to an arbitration agreement and is affected by a decision has 'locus standi' to challenge it*" and sustain that the CAS developed the concept of standing to appeal by requiring two conditions: (i) the appellant must be sufficiently affected by the appealed decision, and (ii) there must be a tangible interest of a financial or sporting nature at stake (referring here to CAS 2016/A/4903), even if the parties are not the explicit addressees of the decision that is challenged but are still "*directly affected by it*" (CAS 2016/A/4924). As a result, the Appellants allege that the Athletes are affected by said decision and have a tangible interest in the matter so that they have standing to appeal.

2. The Appellants' position with respect to the conduct of the proceedings by the IWF Panel

46. The Appellants submit that they are well-aware of the so-called *"curing effect"* of CAS proceedings and the CAS panel's full power to review the facts and the law. However, certain issues affecting the procedure before the IWF Panel must be brought to the attention of the Panel to understand why the IWF Panel erred in rendering the Appealed Decision, namely that:

- The IWF Panel was not properly constituted; and
- There were serious procedural flaws before the IWF Panel.

47. Consequently, the Appellants assert that, while those procedural flaws can be corrected by the CAS, the above demonstrates that any factual consideration by the IWF Panel – and the reasoning with respect to the resulting sanction – shall be disregarded by the CAS Panel.

3. The Appellants' position with respect to the Appealed Decision

i. At the outset, the criticism against the sanction system put in place by the IWF

48. The Appellants criticize the system put in place by the IWF to sanction Member Federations, for various reasons, notably:

- The proceedings before the IWF Panel are only opened after decisions on ADRVs, i.e. months, if not years after the AAFs, which is detrimental to the process;
- In the meantime, the IWF Panel has no jurisdiction and therefore cannot decide on provisional sanctions, which are therefore left to the IWF Executive Board; a proper procedure would have given jurisdiction to the IWF Panel from the beginning.

ii. The inapplicability of Article 12.7 IWF ADP regarding sanction for bringing disrepute to the sport of weightlifting

49. The Appellants allege that Article 12.7 IWF ADP, which provides for specific sanctions against Member Federations who would bring sport of weightlifting into disrepute does not apply. In that respect, the Appellants assert that the contamination of Thai athletes through the application of the Gel on their skin by itself is insufficient to conclude that TAWA brought the sport of weightlifting into disrepute within the meaning of Article 12.7 IWF ADP, in the absence of other circumstances, as per CAS jurisprudence.

iii. The Appealed Decision breaches the principle of legality

50. The Appellants assert that the Appealed Decision breached the applicable principle of legality (*nulla poena sine lege)*, i.e. a person may only be found guilty of a disciplinary offence provided there is a clear and strictly construed provision which proscribes the said misconduct and provides for a predictable sanction ("predictability test"). Accordingly, Article 12.5 IWF

ADP shall be strictly complied with by the Appealed Decision, which has not been the case, as illustrated below:

- *The IWF Panel lacked authority to declare athletes "ineligible":* the Appellants assert that the IWF Panel erred in declaring the Athletes ineligible as Article 12.5 IWF ADP does not provide for such sanction. The same is true for preventing the participation in international competition that is not organized by IWF.

- *The IWF Panel lacked authority to declare athlete support personnel "ineligible":* the Appellants raised that Article 12.5 IWF ADP does not refer to "Support Personnel," and therefore, there was no legal basis allowing the IWF Panel to declare "Support Personnel" ineligible.

- *The IWF Panel lacked authority to "suspend" TAWA officials for two years :* the Appellants argue that a suspension imposed on TAWA cannot affect officials of TAWA in accordance with the term "*Suspension*" as defined in the IWF ADP, and that the authority of the IWF Panel is to "*suspend*" a member federation as per Article 12.5.a IWF ADP and/or to "*ban*" a "*team official*" as per Article 12.5.c IWF ADP is limited to IWF events or activities and cannot be further expanded absent a clear legal basis.

- *The IWF Panel lacked authority to "suspend" the membership status of TAWA:* the Appellants challenge the ruling of the Appealed Decision to the extent that it decided to suspend the membership status of TAWA for a period of three years, as Article 12.5 IWF ADP does not allow such sanction: while certain defined rights could be suspended, but not the membership itself.

- *The IWF Panel lacked authority to impose a period of ineligibility of an undefined duration:* under §§27-28 of the Appealed Decision, it ruled that that Thai athletes shall be ineligible for a period of 5 or 11 months following the next IWF calendar event to take place. Due to the current pandemic, the sanction on TAWA and the athletes is for undefined duration, which is not acceptable in the absence of any legal basis allowing the IWF Panel to change the start date of a sanction, or to extend the duration of the sanction on Thai athletes as a result of the coronavirus pandemic (relying on CAS 2019/A/6498), or to have an undefined duration; this is moreover unfair since the procedure before the IWF Panel should have started earlier and would have avoided this uncertainty.

- *The concept of "junior athletes" under the Appealed Decision is both unclear and unfair:* the term junior used in the Appealed Decision is not consistent with the IWF Technical and Competition Rules (the "IWF TCRR"), which define "Junior" as between 15 and 20 years of age; while the IWF ADP uses "Minors" as individuals under the age of 18.

- *The conditions for an early reinstatement imposed by the IWF Panel do not comply with the IWF ADP:* the criteria under §31.a of the Appealed Decision, i.e., that TAWA receives education which complies with the WADA International Standard for

  Education ("ISE"), cannot be implemented for the year 2020, as such standard will not enter into force before 1 January 2021, and the criteria under §31.d of the Appealed

Decision, i.e. the full payment of the fine, is not consistent with Article 12.5.1 IWF ADP, which requires that the condition that the IWF Panel can fix to lift a sanction has to be "*aimed at assisting IWF in the fight against doping in sport*".

iv. The criteria used for imposing a fine are wrong

51. The Appellants allege that the fixation of the fine amount is *"far from being clear"*, and accordingly request that IWF justify the costs it seeks to cover with the fine, and to allocate any funds to be paid by TAWA to DCAT for testing purposes, instead of using fines for the IWF own budget.

v. The Appealed Decision goes against the prohibition against double jeopardy (i.e., *ne bis in idem*)

52. For the Appellants, the principle of double jeopardy, which applies in CAS disciplinary procedures, has not been respected:
- With respect to TAWA: the Appealed Decision appeara to ignore certain sanctions already imposed in the Undertaking, such as TAWA's renouncement to send athletes to the XXXII Olympic Games in Tokyo;
- For the Sanctioned Athletes: the Appealed Decision ends up extending the ineligibility of certain Athletes decided in the agreements with the ITA, therefore adding another sanction based on the same ADRV, in breach of the *ne bis in idem* principle.

vi. The Appealed Decision breaches the principle *nulla poena sine culpa*

53. The Appellants allege that liability can only give rise to a sanction when there is a "fault" and that international federations shall, in principle, adhere to this principle *nulla poena sine culpa*. The Appellants recognize, however, that principle is not absolute and that CAS panels have accepted several times that regulations of sports federation may provide for *"strict liability"*. In this case though, a specific rule providing for a strict liability in clear and unambiguous wording needs to have been adopted and accepted by the parties at stake. Here, while Article 12.2 IWF ADP provides for strict liability for TAWA as a Member Federation, there is no provision under the IWF ADP allowing to sanction officials or athletes without fault.

vii. The Appealed Decision is discriminatory and amounts to a collective punishment

54. The Appellants allege that the IWF Constitution, as well as the Olympic Charter, bans discrimination based on nationality, and also prohibits "*collective punishment*". CAS case law confirm the same, together with Article 11.2.6 of the WADA International Standard for Code Compliance by Signatories ("ISCCS"), which provides that blanket bans on athletes shall be avoided. For the Appellants, the suspension of TAWA and its affiliated athletes constitutes an unfair blanket ban on all athletes and officials from Thailand, and a

discrimination based only on their nationality and their obligation to be affiliated with TAWA.

viii. The Appealed Decision is grossly disproportionate

55. The Appellants state that the principle of proportionality is well-established and further assert that the proportionality test applicable to the sanction must be assessed in light of the following three steps: (i) is the sanction capable of achieving the envisaged goal? (ii) is the sanction necessary to reach the envisaged goal? (iii) are the constraints suffered by the affected persons justified by the envisaged goal? For the Appellants, the answer is "no" to each question and therefore the sanctions in the Appealed Decision are disproportionate.

56. To the contrary, the Appellants described several circumstances that should have led the IWF Panel to mitigate the sanction, but were not taken into consideration, in particular:

- TAWA took serious measures to fight doping;
- TAWA and its affiliated athletes were "*victims*" of the failure by the Bangkok Laboratory to detect prohibited substances in samples in due time;
- The Sanctioned Athletes ignored that they were ingesting testosterone while applying the Gel, and generally ignored the risk associated with gel and cream;
- TAWA itself proposed a draft undertaking and all of its officials resigned, showing moral responsibility;
- The combination of the financial consequences caused by the Undertaking and the Appealed Decision amounted to a "fully disproportionate" sanction;
- The pandemic crisis is a ground to reduce any sanction against the Appellants, as its effect combined with the Appealed Decision result in a grossly disproportionate sanction.

ix. <u>The Appealed Decision breaches the Appellants' personality rights</u>

57. The Appellants submit that, under Swiss law, sanctions must comply with the addressees' personality rights in accordance with Article 28 SCC, which protects personality rights. Therefore, since the Appealed Decision infringes the economic liberty or the right of the Appellants to personal fulfilment through sporting activities, the Appellants assert that it is unlawful as per Article 28 al. 2 SCC, unless IWF can demonstrate that there is a justifying ground (*i.e*. consent of the affected entities or individuals, overriding private or public interest or legal provision), which it does not.

x. <u>The Appealed Decision breaches antitrust law</u>

58. The Appellants have hired Ms. Pranvera Këllezi, PhD, specialist in competition law and member of the Swiss Competition Commission to issue an expert opinion as to whether the Appealed Decision constitutes an abuse of dominant position and/or a prohibited agreement under Swiss and EU Competition Law. After having analyzed (i) the relevant market, and whether EU and Swiss Competition Laws apply (ii) whether there is an abuse of a dominant position and (iii) whether there are agreements restricting competition, the Ms. Këllezi reached the following conclusion:

> *"IWF is in a dominant position in the relevant markets for the organization and commercialization of IWF Events. IWF members enjoy a collective dominance in the relevant markets for organization and commercialization of IWF Events.*

By ordering the exclusion of Eligible Athletes for an additional and undetermined period, IWF and respectively its members have clearly abused their individual, respectively collective, dominant position.

By ordering the exclusion of Sanctioned Athletes for an additional and undetermined period, IWF and respectively its members have clearly abused their individual, respectively collective, dominant position.

By ordering the suspension of TAWA for a period of three (3) years, the IWF and its members have abused their individual respectively collective, dominant position.

The Appealed Decision is to be considered as an agreement between undertakings or a decision of associations of undertakings within the meaning of Article 101(1) TFEU. In particular, the Appealed Decision is a decision of an association of undertakings and therefore an agreement within the meaning of Article 101(1) TFEU.

The Appealed Decision is to be considered as decision between IWF members as independent undertakings within the meaning of Article 4(1) of the Swiss Cartel Act.

The extension of the suspension of clean, Eligible Athletes, is a restriction of competition by object under Article 101(1) and a qualitative (and quantitative) severe restriction under Article 5(1) Swiss Cartel Act. There are no justification grounds whatsoever for such restriction of competition, consequently such extension infringes upon both Articles 101 TFEU and 5 Cartel Act.

The collective extension of the suspension for Sanctioned Athletes is a restriction of competition under Article 101(1) and Article 5(1) Swiss Cartel Act. The extension is excessive and disproportionate, and therefore infringes Articles 101 TFEU and 5 Cartel Act.

The suspension of TAWA membership for three (3) years restricts competition under Article 101(1) and Article 5(1) Swiss Cartel Act. The Appealed Decision does not show the necessity and proportionality of such suspension as the only effective and indispensable remedy, consequently such suspension infringes upon Article 101 TFEU and 5 Cartel Act.

The measures ordered by the Appealed Decision are unlawful and therefore null and void under Article 101(2) TFEU or Article 20 para. 2 CO."

B. The Respondent's Position

59. The Respondent filed its Answer on 2 July 2020. In its prayers for relief, the Respondent requests the Panel to rule as follows:

"I. The Panel has no jurisdiction to hear the appeal filed by the Appellant Athletes; in the alternative, the appeal filed by the Appellant Athletes is dismissed;

II. The appeal filed by TAWA is dismissed;

III. The arbitration costs (if any) are borne by TAWA, or in the alternative by the Appellants jointly and severally;

IV. TAWA, or in the alternative the Appellants jointly and severally, are ordered to contribute to the IWF's legal and other costs".

1. The Respondent's position on CAS jurisdiction and applicable law

i. CAS Jurisdiction

60. The Respondent does not dispute the jurisdiction of the CAS to hear the appeal by TAWA against the Appealed Decision.

61. However, the Respondent challenges the jurisdiction of the CAS to hear the appeal filed by the Athletes, as by virtue of Article R47 of the CAS Code, the arbitration agreement must explicitly grant said athletes the right to appeal. The Respondent further submits that Articles 12.9.4 and 13.6 of the 2019 IWF ADP do not provide with any right of appeal to CAS. In other words, only a Member Federation can appeal the decision of the IWF Panel. Finally, the Respondent claims that the CAS awards mentioned by TAWA do not support this argument. As a result, the Respondent states that the CAS has no jurisdiction over the Athletes.

ii. Applicable rules and applicable law

62. The Respondent asserts that this arbitration shall be governed by articles 176 et seq. of the Swiss Private International Law Act (PILA), as the IWF has its seat in Lausanne and the Appellants are located abroad. Accordingly, pursuant to Article 182, para. 2 PILA, the CAS Code governs the procedural aspects of this arbitration.

63. On the law applicable to the merits, the Respondent states that the 2018 IWF ADP is applicable to the present case and that Swiss law applies subsidiarily under Article R58 of CAS Code, since the IWF is a Swiss association. The 2019 IWF ADP applies by virtue of the principle *tempus regit actum*.

2. The Respondent's position regarding the Appellants' procedural complaints

64. The Respondent submits that the Appellants fail to understand the procedure before the IWF Panel, in particular the role of the IWF Secretariat.

65. Regarding the wrong factual statements alleged by the Appellants, the Respondent argues that the Appellants failed to establish a link between the purported biased information

provided by the IWF Panel and the incorrect facts, and actually challenges that there would be any wrong factual conclusions in the Appealed Decision. Specifically:

- It is correct that there were lengthy investigations before confirming the source of the AAFs;
- TAWA's own evidence confirms that Coach Liu Ning routinely provided the Gel for over one year;
- TAWA's action to get out of the Undertaking are uncontested, and include the recourse filed by TAWA before a court in Lausanne (seat of the IWF);
- TAWA's failure to check Coach Liu Ning's credentials is confirmed by oral evidence delivered by TAWA's former vice-president.

66. Regarding the appointment of the IWF Panel, the Respondent emphasizes that the name of all five members of the IWF Panel were submitted to the IWF Executive Board on 27 March 2018 in Colorado Springs and on 30 October 2018 in Ashgabat, contrary to the Appellants' allegations that these were appointed by the IWF former President. Moreover, the Respondent points out that the IWF Panel was composed by highly experienced experts in the field of anti-doping, namely: Mr. Richard Young, Professor Ulrich Haas, Mr. Ben Sandford, Dr. Andrea Gotzmann and Doctor Andrew Pipe.

67. As a result, the Respondent considers that deference should be paid to *"such a distinguished panel"* on the basis of a well-established dictum mentioned in CAS 2019/A/6498: *"(…) CAS panels should reassess sanctions only if they are evidently and grossly disproportionate to the offence".*

3. The Respondent's position on the merits

i. The Respondent's answer on the applicability of Article 12.7 IWF ADP

68. The Respondent first refers to "*the most recent case*" involving Article 12.7 IWF ADP (i.e., CAS 2019/A/6498) where the CAS the panel held that the Egyptian Weightlifting Federation ("EWF") had brought the sport into disrepute, after seven Egyptian athletes tested positive, by having appointed a coach who injected unknown substances to its athletes.

69. The Respondent contends that the conclusion should be the same in the present matter as the Thai doping crisis is one of the most severe ones of recent years and involved ten athletes, including two minors. The Respondent further emphasizes that this crisis attracted media coverage because the Olympic Games and IWF World Championships were involved. Similarly, it notes that such scandal was the direct consequence of TAWA's decision to select Coach Liu Ning and failure to supervise him.

ii. The Respondent's answer regarding the principle of legality and its consequences

70. The Respondent alleges that TAWA breached both Article 12.5 and Article 12.7 of the IWF ADP. Under Article 12.7 of the IWF ADP, in the event of a breach of the disrepute provision,

"*the Independent Panel shall impose any penalty upon the Member Federation that it considers just and proper*". Therefore, in view of this language, the Respondent submits that there is a clearly a legal basis for the consequences imposed.

71. The Respondent nonetheless addresses each of the Appellants' arguments for this alleged lack of legality:

- *"No authority to declare athletes ineligible":* the Respondent denies that the IWF Panel ever sought to impose a period of Ineligibility on each TAWA athlete under Article 10 of the IWF ADP. The fact that athletes are not eligible to participate in IWF Events is simply the result of the definition of a Suspension in the IWF ADP. As to the scope of the "*ineligibility*" of the athletes, the Respondent states that the definition of Suspension according to the IWF ADP refers to the "*participat(ion)*" of the member federation and its athletes in IWF Events, whether or not the athlete are "entered" by their national federations or another organization such as NOC.

- *"No authority to declare athlete support personnel ineligible":* The Respondent does not dispute that the IWF ADP does not refer to "*Athlete Support Personnel*" ("ASPs") under Article 12.5 IWF ADP and asserts that the use of this wording in the Appealed Decision was simply a matter of consistency with the Undertaking since TAWA had agreed that its Athletes and ASPs would not participate in IWF Events. In the end, Article 12.5.c IWF ADP refers to the term "*team officials*", which is defined in the IWF TCRR as "*coach, doctor, therapist, etc.*" which is sufficiently broad to cover the ASPs who participate in IWF Events. This semantic argument is therefore moot.

- *"No authority to suspend the TAWA officials for two years":* while a ban of the TAWA officials is not expressly provided for under Article 12.5 of the IWF ADP, the IWF Panel found that TAWA had also breached Article 12.7 IWF ADP which allows the Panel to *"ban all or some of the officials of that Member Federation from participating in any IWF activities for a period of up to two (2) years"*, which is what the IWF Panel did.

- *"No authority to suspend the membership status of TAWA"*: the Respondent asserts that Suspension as a sanction is expressly set out under both Articles 12.5 and 12.7 IWF ADP. The argument of the Appellants focusing on "*membership*" is purely semantic.

- *"No authority to impose a period of ineligibility for an "undefined duration"*: the Respondent notes that, despite TAWA's suspension for three years, or two years if certain conditions are satisfied (i.e., §32 of the Appealed Decision), the IWF Panel decided, within its discretion, to limit the scope of the ineligibility of the athletes to only a number of months (5 or 11) after the first IWF Event, which enables TAWA athletes to regain eligibility earlier than what the rules provide for. Since the pandemic crisis was expected to prevent sport only for a limited period, it seems likely that an IWF Event would have taken place by the time of the CAS Award, rendering this question moot. In the event no IWF Event were to take place in the next years, the Respondent asserts that the suspension of eligibility of TAWA athletes is not meant to last until after the suspension of TAWA is lifted. Therefore, the period of 5 or 11 months would start to run at the latest 5 or 11 months prior to the end of TAWA's suspension.

- *"Unclear and unfair concept of "junior athletes"":* the Respondent alleges that the term "*junior*" was only meant to refer to "*athletes under the age of 18*". The Respondent further notes that the IWF Panel had discretion to vary the otherwise applicable consequence of

full ineligibility of all athletes for as long as TAWA is suspended. For the Respondent, the relevant moment for determination of whether an athlete can benefit from this regime is

when the athlete competes in an IWF Event; thus, if the athlete is no longer under the age of 18 at the time of the IWF Event, said athlete shall not benefit from this regime.

- *"Conditions for early reinstatement do not comply with the IWF ADP":* the Respondent claims that the regime of early conditional lifting is based on Article 12.5.1 of the IWF ADP, which sets out certain criteria; in that respect, the Respondent further submits that nothing prevents the TAWA from complying with the ISE, whether these guidelines are in force or not since they have been published in November 2019; the Respondent also asserts that fine will assist the IWF to improving its fight against doping, *"whether directly or indirectly"* and prevent TAWA from repeating its failings in the future; therefore both sanctions are consistent with the aim to improve the fight against doping.

- *"Criteria for imposing the fine are wrong":* the Respondent recalls that, under Article 12.5 IWF ADP, the IWF Panel was entitled to impose a fine up to USD 500,000 in a case where the number of violations is of nine or more, such as in the present case. Thus, the current fine set at USD 200,000 complies with the principles of legality and proportionality.

iii. The Respondent's answer on the principle *ne bis in idem*

72. The Respondent first submits that such principle does not apply to the internal tribunal of a sport federation, i.e. to the IWF Panel.

73. Regarding TAWA: the Respondent further alleges that the purpose of the Undertaking was not to sanction TAWA but was offered to TAWA in exchange for retaining the right to organize the 2019 IWF World Championships; moreover, it is clear from the wording of the Appealed Decision that the IWF Panel took in consideration the Undertaking when making its decision by stating that it superseded "*TAWA's obligations set forth in the Undertaking*".

74. Regarding the athletes: the Respondent argues that the consequences of the Appealed Decision impacting the Athletes in the present case are not related to any particular wrongdoing on their part but rather claims that they are *"collateral damage"* (quoting CAS 2015/A/4319) of TAWA's suspension so that the principle of *ne bis in idem* does not apply.

iv. The Respondent's answer on the principle *nulla poena sine culpa*

75. The Respondent refers to its previous demonstration to claim there cannot not be any breach of the principle of *nulla poena sine culpa* since the measures imposed are not sanctions directed at TAWA athletes and officials. Therefore, the IWF did not have to establish any fault for implementing such measures.

v. The Respondent's answer of the allegation of discrimination and collective punishment

76. With respect to the first argument on discrimination, the Respondent asserts that the IWF ADP is applicable to all member federations without any distinction, and notes that, according to CAS case law, *"the principle of equal treatment is violated only when two similar situations are treated differently"*. As a result, the Respondent alleges the TAWA athletes are not in a similar situation than any other weightlifters, as their national federation is suspended. Thus, it concludes that there can be no breach of the principle of equal treatment.

77. With respect to the second argument on collective punishment, the Respondent states that that TAWA did not provide any basis showing that collective punishments are inadmissible in sport and refers to the advisory opinion of a CAS panel to assert it does not apply in a disciplinary context. In any event, the Respondent claims that since there was no sanction on the Athletes per se (i.e., the Athletes were only affected as a consequence of the suspension imposed on their national federation), there cannot be any "*collective*" punishment.

vi. The Respondent's answer regarding the disproportionality of the sanction

78. The Respondent alleges that TAWA is plainly wrong when it asserts that the IWF Panel did not take into consideration the alleged mitigating factors. With respect to these mitigating factors put forward by TAWA, the Respondent notes the following:

- *"TAWA's measures to fight doping":* The Respondent submits that a lack of education is "*hardly*" relevant for assessing the athlete's level of fault under Article 10.5 of the IWF ADP; moreover, the Athletes are all members of TAWA's national team meaning that they cannot be considered as low-level athletes with limited access to anti-doping education. In addition, the crisis in 2018 was not the first involving testosterone use of TAWA athletes and submits that two athletes tested positive for the same substance a year earlier (i.e., August and October 2017); hence, the risk linked to the use of exogenous testosterone was "*well-known*" to TAWA athletes, as one of these two athletes, Mr. Mingmoon, admitted that he had understood that the positive test had come from a testosterone gel at the latest on the date of filing of his submission before the IWF Hearing Panel on 12 June 2018, i.e. approximately five months prior to the TAWA doping crisis. With respect to TAWA's allegation regarding the Bangkok Laboratory, the Respondent alleges that TAWA's characterization of the Bangkok Laboratory's reports as "False Negative Results" is misleading. The Respondent also challenges TAWA's interpretation of the delay of the Bangkok Laboratory and notes, as an example, that the Cologne Laboratory, which analyzed the samples collected at the 2018 IWF World Championships, submitted its first positive on 19 December 2018 (for a sample collected on 2 November 2018). Thus, the Respondent asserts that even though the samples collected at the mission on 11 October 2018 had been analyzed in Cologne, there was no guarantee that an adverse analytical finding would have been issued before the Championships.

- *"The circumstances of the ADRVs"* : the Respondent submits that TAWA's claim that the Athletes' use of the Gel since 2017 is not proven and is actually rebutted by Coach Ning's testimony and TAWA's report. Relying on the IWF Panel's words when it stated that *"the explanation for* [the lack of prior positive finding] *is likely either the passage of time between use of the gel and the time of the test or that those prior tests had not been analyzed using GC/IRMS"*, the Respondent further claims that even though the Athletes were not found to have committed their violation intentionally, there were all (except the minor Athletes) found to have been significantly at fault, which should be sufficient to demonstrate the severity of the violations.

- *"Conduct of TAWA":* the Respondent emphasizes that the resignation of the TAWA Executive Board only occurred in January 2020, i.e., one year after the Undertaking was signed, and resulted from the diffusion of a documentary investigating doping in Thai weightlifting; the resignation was therefore unrelated to the facts of the present case.

- *"The consequences of the Undertaking and of the Appealed Decision":* here, the Respondent refers to the question of the proportionality of the sanctions and to its arguments thereon.

- *"The Covid-19 crisis":* the Respondent denies that the athletes are "*disadvantaged by the current crisis*" since their ineligibility will only resume after the next IWF Event to take place. In that respect, the Respondent notes that the principle should have been that TAWA athletes are ineligible for as long as TAWA is suspended (i.e., three years). Instead, the IWF Panel considered the fact that TAWA athletes had already been ineligible for one year under the Undertaking and limited the additional period of ineligibility respectively to 11 and 5 months. As a result, the Respondent states that the IWF Panel took into account the principle of proportionality three times: (i) by counting the period of ineligibility served by TAWA Athletes under the Undertaking to determine the appropriate consequence (ii) by limiting the ineligibility on Athletes to a period of a maximum of slightly less than two years, and (iii) by limiting the ineligibility even further for minor athletes (as well as all other athletes if TAWA meets the conditional lifting criteria) to a period of slightly less than 18 months in total. The Respondent also rejects that the Covid-19 crisis should have resulted in shorter sanctions, as it considers "*difficult to see why a pandemic should have any impact on consequences imposed for a violation*"..

79. The Respondent therefore submits that the "*mitigating factors*" are very minor in view of the severity of the violation and that they were, in any event, considered by the IWF Panel.

80. Finally, the Respondent asserts that the consequences of the Appealed Decision do not breach the principle of proportionality and refers to CAS award 2019/A/6498 which stated that: *"according to well-established CAS jurisprudence, even though the CAS panel retain the full power to review the factual and legal aspects involved in a disciplinary dispute, they must exert self-restraint in reviewing the level of sanctions imposed by the disciplinary body; accordingly, CAS panels should reassess sanctions only if they are evidently and grossly disproportionate to the offence*".

81. As a result, the Respondent claims that, even assuming that this Panel were to review the matter with full power of review, the conclusion should the same since:
    - TAWA's violation is one of the most severe one in recent years;
    - Coach Liu Ning received a lifetime ban from DCAT;
    - TAWA clearly failed to supervise Coach Liu Ning in this case;
    - The Athletes did not receive the appropriate education from TAWA;
    - At least one athlete (i.e. Mr. Mingmoon) knew that the positive from an earlier doping control test came from a testosterone gel;
    - The positive findings took place as part of the 2018 IWF World Championships and the 2018 Youth Olympic Games, i.e., the most important yearly events in weightlifting;
    - The 2011 doping scandal involving seven minor TAWA athletes in 2011 (all found to have used methandienone) is an aggravating factor under Article 12.8.1 IWF ADP.

82. Furthermore, the Respondent emphasizes that the IWF Panel did not impose the most severe sanction applicable under the rules to TAWA since:

    - TAWA did not receive the maximum ban (i.e., four years);
    - the IWF Panel used its discretion to limit the impact on the athletes to an additional 5 months of ineligibility, instead of three years as mandated by the applicable rules (or

11 for adult athletes, if TAWA fails to meet the requirements to conditionally lift the suspension).

83. Finally, the Respondent refers to the opinion provided by Professor Filip Tuytschaever in which it agrees that the consequences imposed in the Appealed Decision comply with the principle of proportionality.

vii. The Respondent's answer of the claim regarding personality rights

84. The Respondent first states that an infringement of personality rights is only unlawful if it is not justified by the consent of the person whose rights are infringed or by an overriding private or public interest or by law. Here, the Appellants agreed that they have consented to the applicable IWF ADP and it is undeniable that the objective of anti-doping certainly outweighs the interests of TAWA and its athletes.

viii. The Respondent's answer on competition law

85. The Respondent has consulted Professor Tuytschaever to provide his opinion on the matters raised by Ms. Këllezi and provides his executive conclusions as follows:

"First, the starting-point of the competition law analysis is whether the Decision results from an economic activity – i.e., whether it has been adopted by an undertaking or an association of undertaking. Neither the IWF nor the Independent Panel are engaged in any economic activity when they monitor compliance with and apply the IWF Anti-Doping Policy.

For their anti-doping activities, they do not act as an undertaking or as an association of undertakings, but carry out non-economic regulatory, supervisory, and court-like tasks which are outside the scope of competition law. Even if the consequences of the exercise of those tasks may have consequences on economic activities, this does not mean that hey are within the scope of competition law, let alone that they would be prohibited.

Second, even assuming that the regulatory and supervisory activities of the IWF, and the court-like activities of the Independent Panel, are within the scope of competition law, which they are not, the measures set out in the Decision comply with EU competition law.

This follows from an analysis on the basis of the Meca-Medina test developed by the Court of Justice of the EU. This test is generally applied by competition authorities and courts to determine the compatibility of sporting rules with competition law. The measures set out in the Decision are inherent and proportionate to the public interest objectives which they pursue. Accordingly, any restriction of competition which they entail are outside the prohibition of EU competition law".

86. Therefore, the Respondent claims that the consequences imposed by the IWF Panel fall outside the scope of competition law.

V. JURISDICTION

87. At the outset, the Panel notes that the Appellants and the Respondent agree that CAS has jurisdiction over the Appeal filed by TAWA against the Appealed Decision under Article R47 of the CAS Code.

88. What is at stake here is whether the Athletes also have the right to file an appeal against the Appealed Decision. This question has been framed by the Appellants as a question of jurisdiction of the CAS over the Athletes, followed by a question of legal standing of the Athletes to challenge the sanctions imposed on them by the IWF Panel. The Respondent has only denied the existence of CAS jurisdiction *rationae personae* and did not argue the standing to sue of the Athletes.

89. The Panel concurs with this two-step analysis, i.e., that before assessing whether the Athlete Appellants have standing to sue, it shall ensure in accordance with Article R47 of the CAS Code, that "*the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement, that there is an agreement to arbitrate* (…)." This is in line with the constant CAS jurisprudence to assess jurisdiction stipulating three pre-requisites, namely: - there must be a "*decision*" of a federation, association or another sports-related body, - "*the (internal) legal remedies available*" must have been exhausted prior to appealing to the CAS, and - the parties must have agreed to the competence of the CAS (for instance, CAS 2004/A/748). Here, this is the third step that the Panel must examine with respect to the Athletes only.

90. On the jurisdiction *rationae personae* of the CAS, the Appellants rely on (i) Articles 12.8 of the IWF Constitution, 12.9.4 and 13.6 IWF ADP to assert that the CAS has exclusive jurisdiction to rule on an appeal filed by member federations of the IWF against the decisions rendered by IWF bodies but also that athletes are covered by these articles as "appealing parties" and on (ii) various CAS awards to state that CAS panels have ruled that appeals filed by indirect members against the sanctions imposed on them by their national federation were admissible (CAS 2018/A/5722; CAS 2020/O/6689; CAS 2016/A/4703). Finally, the Appellants refer to Article 75 SCC and additional CAS jurisprudence (CAS 2008/A/1583), which would have extended the scope of this Article 75 SCC and allowed "*third parties the right to appeal if they are directly affected by the measure taken by the association*".

91. Once it is admitted that the CAS has jurisdiction over the Athletes, the Appellants turn to CAS 2011/A/2354 to assert that "*anyone who is party to an arbitration agreement and is affected by a decision has 'locus standi' to challenge it*" and sustain that the CAS developed the concept of standing to appeal by requiring two conditions: (i) the appellant must be sufficiently affected by the appealed decision, and (ii) there must be a tangible interest of a financial or sporting nature at stake (referring here to CAS 2016/A/4903), even if the parties are not the explicit addressees of the decision that is challenged but are still "*directly affected by it*" (CAS 2016/A/4924). As a result, the Appellants allege that the Athletes are affected by said decision and have a tangible interest in the matter so that they have standing to appeal.

92. The Respondent challenges the arguments on jurisdiction *rationae personae* and underscores that only Member Federations and the IWF are referred to in said Articles of the IWF Constitution and IWF ADP as appealing parties. As to the CAS awards referred to, the Respondent notes that none of them support the submission by TAWA that athletes could appeal, alongside their national federations, a decision by an international federation.

93. The Panel has carefully considered the wording of the relevant Articles of the IWF ADP, which essentially refers to Member Federations. Similarly, the arguments raised by the Appellants appear to refer to situation where members of federations are concerned: this is in particular the case for the reference to Article 75 SCC; CAS 2008/A/1583 does not apply either in the Panel's view, as the UEFA statutes have a large definition of parties allowed to appeal and actually deals with standing to sue for the cited section and not with jurisdiction *rationae personae*. The Swiss landmark case cited by the Appellants (TF 4A_314/2017) allowing a recourse by a third party which has been refused membership, is equally grounded on the opportunity to becoming a member and standing to sue, as in the CAS case 2007/A/1392.

94. However, the Panel also notes the wording of Article 12.8 of the IWF Constitution, which provides for a general recourse to CAS Arbitration for "[a]*ny decision taken throughout the Disciplinary and Ethics Procedures of the IWF may be appealed solely and exclusively to the Court of Arbitration for Sport*" without any limitation as to the party entitled to appeal. Read in conjunction with the "*appealing party*" expression in Article 12.9.4 IWF ADP, and taking into consideration the prevailing right to be heard of the Athletes, the Panel is of the view that the ambiguous formulations of these cited provisions of the IWF Constitution and the IWF ADP should benefit to the Athletes. The Panel accordingly admits that the Athletes have a right to appeal the decision of the IWF Panel alongside TAWA before the CAS.

95. Regarding the standing to sue of the Athletes, the Panel highlights that the Respondent did not challenge any of the arguments raised by the Appellants regarding the Athletes' standing to sue. The Panel concurs with the development on standing to sue made by the Appellants and acknowledges that it is undisputable – and undisputed - that the Athletes are directly affected by the Appealed Decision and that they have a tangible interest, in relation to their ability to participate in competition, in being parties to the current procedure before the CAS.

96. The Panel accordingly determines that it has jurisdiction over the Athletes and confirms that they have standing to lodge their appeal.

VI. APPLICABLE LAW

97. 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.*"

98. The Appellants and the Respondent agree that the IWF regulations, in particular the IWF ADP and IWF Constitution apply, and that, the IWF being domiciled in Switzerland, the Panel shall, subsidiarily, apply Swiss law. The Panel concurs and confirms this analysis.

VII. MERITS

1. The procedural flaws of the proceedings by the IWF Panel alleged by the Appellants and the Appellants' criticism of the IWF sanction system

99. While admitting that the CAS has full power to review the facts and the law of the case renders these developments not essential, the Appellants have deemed necessary to detail before this Panel several criticisms regarding the procedure before the IWF Panel, from the constitution of the latter to the access to documents by said IWF Panel, so as to establish that they resulted in the bias of the Appealed Decision. The Appellants also challenged the functioning of the IWF system for sanctions, and the sequence between the Undertaking and the Appealed Decision. The Appellants finally underscored that IWF has the burden to establish the violations of Article 12.5 and 12.7 IWF ADP and that Swiss imposes a strict liability standard.

100. The Respondent replied to these allegations in detail and contested the existence of procedural flaws in the procedure before the IWF Panel inasmuch as their alleged consequences over the Appealed Decision. The Respondent also noted that CAS panels shall only review sanctions pronounced by a disciplinary body if they are evidently and grossly disproportionate, citing CAS 2019/A/6498. The Respondent has not contested the application of such standard of proof.

101. At the outset, the Panel raises that the Appellants and the Respondent agree about the *"curing effect"* of CAS proceedings and the CAS panel's full power to review the facts and the law, which by essence cures any procedural violations that occurred in the proceedings that led to the Appealed Decision, as provided for Articles 13.1.1. and 13.1.2 IWF ADP and in Article R57 of the CAS Code.

102. The Panel confirms that it will proceed in accordance with such *de novo* principle, as embodied in these cited provisions, and accordingly does not deem necessary to comment on the debates between the Parties regarding the documentary evidence communicated to the IWF Panel, the constitution of said IWF Panel, and generally regarding the alleged procedural flaws before the IWF Panel and the criticism of the IWF sanction system.

103. With regard to the Respondent's reference to the *dictum* in CAS 2019/A/6498, which notes that "*CAS panels should reassess sanctions only if they are evidently and grossly disproportionate to the offence,"* the Panel recalls that it will review the Appealed Decision on the merits, including the sanction aspect by applying the proportionality principle in any event, and that while precedents do not have binding effect, previous decisions from other CAS panels may be considered.

104. Finally, the Panel confirms that the IWF has the burden of establishing the breach of the IWF ADP provisions and that, in the absence of specific provisions in the IWF regulations as is the case here, Swiss law applies, including on questions relating to the standard of proof.

2. The Application of a sanction under Article 12.7 IWF ADP for bringing disrepute to the sport of weightlifting

105. The Appellants deny that TAWA breached Article 12.7 IWF ADP by bringing the sport of weightlifting into disrepute "*by reasons of conduct connected or associated with doping or anti-doping rule violations*". In that respect, the Appellants rely on various CAS awards to assert that there needs to be serious additional circumstances to the ADRVs to consider that the Appellants brought the sport of weightlifting into disrepute. Stated differently, the Appellants contend that even a large number of positive cases is not sufficient to trigger a sanction against the Member Federation under Article 12.7 IWF ADP.

106. In turn, the Respondent refers to CAS 2019/A/6498 where the CAS panel held that the EWF had brought the sport into disrepute, after seven Egyptian athletes tested positive, by having appointed a coach who injected unknown substances to the athletes, including to minors, and by failing to have a proper anti-doping program and to monitor the support personnel. For the Respondent, TAWA's attitude is comparable to that of the EWF as it failed to monitor Coach Liu Ning, failed to educate its athletes to the dangers of inadvertent doping, including through gels and creams, while having under its monitoring its athletes training at a national center for key IWF competitions.

107. The Panel has assessed the attitude of TAWA and while it acknowledges that TAWA has taken serious measures after the AAFs were identified, prior to that, the Panel is of the view that TAWA has acted negligently and this negligence has created the conditions for this widespread doping practice to take place among Thailand's weightlifting national team members. In particular, the Panel notes that TAWA did not make any check on Coach Liu Ning, did not monitor the substance Coach Liu Ning was administering to the athletes, despite AAFs for testosterone as early as 2017 for two athletes which should have, already at that time, raised concern and prompted an investigation by TAWA. The Panel also underscores that the application of the Gel concerned high level / international athletes, trained by a national coach in a national center where TAWA should have exercised a heightened degree of surveillance. The lack of supervision by TAWA at the highest level of weightlifting in Thailand is an aggravating factor; the Panel takes seriously that numerous people involved in

the training center appeared to know that the Gel was used, without this information being shared with TAWA officials, thereby demonstrating at the very least the negligence and lack care of the national federation in the monitoring of its activities and its personnel at its national center, although the utmost care and supervision are expected from TAWA.

108. The Panel is not convinced by the argument that absorbing a Prohibited Substance through the skin should be considered as a mitigating factor that should alleviate the characterization of TAWA's liability. To the contrary, the Panel believes that any proper anti-doping program must cover all means of absorption and that failing to include this into the education of the athletes and of their support personnel, including coaches, is an unacceptable omission. In the Panel's opinion, the alleged limited degree of education of the athletes or the absence of WADA or DCAT documents drafted in Thai addressing the risk of contamination by creams and gels do not constitute excuses, as administering an anti-doping program cannot be limited to distributing documents but must also take place through providing trainings and transmitting information orally to athletes and coaches and controlling the substances to which athletes have access to, and during which the aforementioned risk of contamination by creams and gels has no reason to be omitted. In other words, the Panel does not believe it credible that, as recently as in 2018, athletes and coaches at international levels preparing for IWF Events and the Olympic Games in a sport that just went through a major doping scandal could ignore this risk.

109. Finally, TAWA's own evidence regarding the loss of sponsors for the 2019 IWF World Championship *inter alia*, in addition to media coverage, confirms that the direct consequence of this widespread doping practice amongst TAWA affiliated athletes dishonored the sport of weightlifting.

110. The Panel accordingly determines that TAWA has brought the sport of weightlifting into disrepute and accordingly risks a sanction under Article 12.7 IWF ADP, the level of which will be discussed below.

3. Whether the Appealed Decision breached the principle of legality

111. As a preliminary comment, the Panel notes that the Respondent does not challenge the application of the principle of legality and the maxim *nulla poena sine lege*, referred to by the Appellants as part of the Swiss law disciplinary system and the *lex sportiva*. However, for the Respondent, while Article 12.5 defines specific sanctions that might be imposed to a Member Federation, Article 12.7 adds a discretionary power to the IWF Panel, who is entitled to *"impose any penalty upon the Member Federation that it considers just and proper in all the circumstances*" for bringing the sport of weightlifting into disrepute. For the Respondent, there is therefore a clear legal basis for the sanctions imposed by the IWF Panel. For the Appellants, however, the IWF Panel has not properly interpreted and applied these Articles and the scope of allowed sanctions, therefore breaching the legality principle in eight instances, set forth below.

112. The Panel noted the Respondent's argument that, based on Article 12.7 IWF ADP, the IWF Panel had discretion to take any penalty considered just and proper and accordingly that the debate on the principle of legality should fail, based on the finding of a breach of Article 12.7 IWF ADP and the ensuing discretion granted to the Panel. The Panel, however, does not agree that this discretionary power is without boundaries. Accordingly, for the Panel, the sanctions that have been decided by the IWF Panel must be examined in light of the classic expectations of legality and predictability.

A. Could the Appealed Decision declare athletes "ineligible"?

113. The Appellants assert that Article 12.5 IWF ADP does not allow the IWF Panel to issue an ineligibility sanction directed at TAWA Athletes. In addition, the Appellants argue that such ineligibility could not concern competitions where TAWA does not "*participate*" as a Member Federation of the IWF, such as the Olympic Games where athletes are entered by National Olympic Committees, and not by their national federations, or such as the FISU competitions, with athletes are entered into by the University Board of Thailand.

114. The Respondent states that the Appealed Decision is not properly interpreted by the Appellants: the ineligibility directly results from the definition of the term "*Suspension*" in the IWF ADP which sets it out as a sanction the suspension of the member federation's "*right to participate at IWF Events with Athletes and Technical Officials*". Therefore, there is a clear legal basis for the "*ineligibility*" of the TAWA athletes in all IWF events, deriving from the suspension of TAWA. The Respondent also clarifies that the term "*participation*" refers to the presence of the athletes in a competition, and that the presence or participation of the member federation or the method of "entry" of the athlete are irrelevant elements to determine which events are covered.

115. The Panel agrees, as a matter of principle, that the IWF Panel was bound by the scope of the sanctions provided in Article 12.5 IWF ADP and the definition of the term "Suspension" in the same IWF ADP. The first question is, accordingly, whether the IWF Panel has exceeded these boundaries by declaring TAWA athletes ineligible to participate in international competitions and the XXXII Summer Olympic Games at §27-29 of the Appealed Decision, as alleged by the Appellants. Stated differently, the question is whether the suspension ordered against TAWA, which is framed in the IWF ADP as a "*suspension of (….) a Member Federation's 1) right to participate at IWF Events with Athletes and Technical Officials*" could be read as encompassing a sanction of ineligibility of the TAWA athletes to participate in international competitions for the same or a lesser duration, notwithstanding the non-participation of TAWA itself.

116. The Panel recalls that the Appealed Decision at §30 made clear that the ineligibility of the athletes is closely related to the 4-year suspension for TAWA which has been pronounced but is limited in time for the athletes as follows: "*except for the early participation*

opportunity for TAWA athletes and their athlete support personnel to participate in international competition after the dates set forth in paragraphs 27 and 28 above".

117. Hence, while the term "*ineligibility*" is in the IWF ADP essentially used for sanctions on individuals under Article 10 IWF ADP for violations of Articles 2.1, 2.2 or 2.6 IWF ADP and might have been employed here, the Panel is of the view that the IWF Panel intended to remain, and did remain, within the scope of the sanctions it was entitled to order under Article 12.5 IWF ADP, i.e. the suspension of TAWA affiliated athletes from any participation in IWF Events, while it did not replicate the precise wording of the relevant provision of the IWF ADP.

118. As to the scope of said sanction, the Panel reads these portions of the Appealed Decision (at §27-29) addressing the TAWA athletes as an "*exception*" to the sanction of suspension pronounced against TAWA under Article 12.5 IWF ADP. In other words, the IWF Panel has applied the quasi-maximum suspension to TAWA, as a Member Federation, but decided to minimize the duration of the suspension for the TAWA athletes, in a more favorable way for them. The Panel does not see anywhere in the IWF ADP any prohibition for the IWF Panel to do so, quite to the contrary.

119. As to the scope of the ineligibility, the Panel notes that the Respondent acknowledges twice in its Appeal Brief that the ineligibility "*to participate in international competition*" referred to in the Appealed Decision means the IWF Events, as defined in the IWF TCRR, i.e. "*international weightlifting competitions registered as IWF Events in the IWF Calendar*" (…"*here, the 'ineligibility is only for IWF events*", and at §45.6 "*the Suspension render the TWA athletes* '*ineligible to participate in all IWF Events (which are set out on the IWF Calendar), irrespective of who 'enters" the athletes*"). This seems to be also the reading of the Appellants.

120. The Panel concludes that the IWF Panel did not err and remained within the boundaries of the IWF ADP when it decided to that TAWA athletes shall continue to remain "*ineligible*" to participate in international competitions for a certain period of time. However, the Panel determines, to avoid any ambiguity, that the wording of the sanction in the Appealed Decision should have been more faithful to the IWF ADP and shall be modified to frame it as a suspension of the Athletes to participate in IWF Events, as opposed to the stated "*ineligibility*" of the Athletes "*to participate in international competitions*".

B. Did the IWF Panel lack authority to declare athlete support personnel "ineligible"?

121. Athlete Support Personnel is defined in the IWF ADP, Appendix 1, as *"Any coach, trainer, manager, agent, team staff, official, medical, paramedical personnel, parent or any other Person working with, treating or assisting an Athlete participating in or preparing for sports Competition"*.

122. The Appellants argue that the definition of "*Suspension*" under the IWF ADP does not mention that Athlete Support Personnel could be prevented from participating at IWF Events. Therefore, there was no legal basis allowing to declare "*Support Personnel*" ineligible.

123. The Respondent also agrees that the Appealed Decision refers to "*Support Personnel*", which not a term referred to in the definition of "*Suspension*" or in Article 12.5 IWF ADP. The Respondent explains the confusion by the fact that this term was used in the Undertaking. For the Respondent, the IWF Panel grounded its decision against the support personnel under Article 12.5.c IWF ADP, which provides for a ban of maximum two years for "*team officials*", which expression covers the same persons as the Support Personnel (i.e. coaches, doctors, therapists, etc.). This would therefore be a purely semantic error, with no real consequence.

124. The Panel acknowledges that the Appealed Decision refers to "*Support Personnel*", whereas Article 12.5 IWF ADP contains the term "*Technical Officials*", which is not a defined term of the IWF ADP.

125. The Panel notes that, in the 2018 IWF TCRR, contemporaneous to the 2018 IWF ADP, the term Technical Official is defined as "*any person who controls the play of a competition by applying the rules and regulations of the sport to make judgments on rule infringement, performance, time or ranking. A Technical Official acts as an impartial judge of sporting competition. This involves an obligation to perform with accuracy, consistency, objectivity and the highest sense of integrity*." There is therefore nothing in common between Support Personnel and Technical Officials. The Panel further notes that the Appealed Decision at §30 stated that "*there was never any limitation in the Undertaking on the ability of TAWA technical officials or other TAWA representatives to participate in IWF activities*".

126. Accordingly, the Panel confirms that the sanction against the Athlete Support Personnel imposing them a suspension in the Appealed Decision has no legal basis.

C. Did the IWF Panel lack authority to "suspend" TAWA officials for two years?

127. The Appellants emphasize that the concept of "*team official*" (as referred to under Article 12.5 IWF ADP) must be distinguished from the concept of "*TAWA officials*", which refer to any person elected to a position within TAWA. The Appellants then note that Article 12.5 IWF ADP grants the IWF Panel the authority to ban "*team officials*" but that a suspension imposed on TAWA cannot affect officials of TAWA in accordance with the term "*Suspension*" as defined in the IWF ADP. Moreover, the Appellants argue that the authority of the IWF Panel to "suspend" a member federation as per Article 12.5.a IWF ADP and/or ban a "*team official*" as per Article 12.5.c IWF ADP is limited to IWF Events and cannot be further expanded absent a clear legal basis. The Appellants finally conclude that the IWF ADP does not mention, as a possible sanction under the definition of "*Suspension*" or under Article 12.5 IWF ADP, that TAWA officials may be ineligible to serve in any IWF position, and therefore the Appealed Decision is not based on a proper legal basis. Finally, the Appellants highlight that, due to the resignation of all TAWA officials in January 2020, the ban would apply to officials that did not take part into the failure of the anti-doping system.

128. The Respondent accepts that a ban of the TAWA officials is not expressly provided for under Article 12.5 of the IWF ADP. However, it submits that the IWF Panel found that TAWA had not only breached Article 12.5 IWF ADP but also brought the sport into disrepute under

Article 12.7 IWF ADP which allows the Panel to *"ban all or some of the officials of that Member Federation from participating in any IWF activities for a period of up to two (2) years"*, which is what the Panel did. Therefore, the Respondent considers that there is a legal basis for the suspension imposed on the TAWA officials based on the violations committed by TAWA.

129. The Panel agrees that, having brought the sport of weightlifting into disrepute, the IWF Panel was entitled to resort to the sanctions provided for under Article 12.7 IWF ADP, including to ban TAWA officials from IWF activities for a period up to two years. This is what the IWF Panel clarified at §30 of the Appealed Decision, recalling that TAWA officials would be banned for two years; the slight inconsistency in the Appealed Decision is in §33, where it is asserted that "*the sanctions imposed above under Article 12.5 include those sanctions which the Independent Panel would have imposed under Article 12.7"* where, in practice, the sanction against TAWA officials is actually taken under Article 12.7 IWF ADP. The Panel will accordingly modify the wording but does not see any ground for reforming this sanction, which has a legal basis under the IWF ADP.

D. Did the IWF Panel lack authority to "suspend" the membership status of TAWA?

130. The Appellants challenge the ruling of the Appealed Decision to that extent that it led to the suspension of the membership status of TAWA for a period of three years while Article 12.5 IWF ADP does not allow such sanction.

131. The Respondent asserts that a Suspension as defined in the IWF ADP is imposed on TAWA and that the basis for this sanction is expressly set out under both Articles 12.5 and 12.7 IWF ADP.

132. The Panel analyses the argument of the Appellants as essentially semantic, since the Appealed Decision did "suspend" TAWA, a term which is defined in the IWF ADP, with the detailed of the rights which were suspended. Referring to the "*membership status*" of TAWA is certainly not provided for "word by word" in the IWF ADP, but the meaning of the sanction remains the same when one looks at the definition of the term "*Suspension*". The allegation of not observing the principle of legality fails in that respect, while the Panel acknowledges that the formulation of the sanction in the Appealed Decision could have been more faithful to the IWF ADP.

E. Did the IWF Panel lack authority to impose a period of ineligibility of an undefined duration?

133. Under §§27-28, the Appealed Decision ruled that Thai athletes shall be ineligible for a period of 5 or 11 months following the next IWF calendar event to take place. Due to the current pandemic, the Appellants assert that *"no one can guess when the next IWF weightlifting event will take place*".

134. It is therefore the Appellants' position that such ban is not acceptable for the following reasons:
- there is no legal basis allowing the IWF Panel to extend the duration of the sanction on Thai athletes as a result of the coronavirus pandemic;
- the IWF ADP does not allow for a sanction to be of an undefined duration;
- an extension of the sanction based on the pandemic is grossly unfair since the procedure before the IWF Panel was delayed and started on 24 February 2020 (i.e.,

two months after the closure of the disciplinary procedures against the Sanctioned Athletes); in other words, had IWF and its Panel proceeded without delay, the decision would have been issued before the pandemic outbreak so that the sanction duration would have been shorter.

135. As set out in the definition of Suspension in the IWF ADP, the Respondent alleges that, during the suspension of a member federation, none of its athletes is eligible to participate in IWF Event, a situation that qualifies as a *"collateral damage"* of the suspension of the member federation. The Respondent further notes that TAWA is suspended for three years, or two years if certain conditions are satisfied (§ 32 of the Appealed Decision) so that, in theory, all its athletes should be ineligible for the same length of time. However, the IWF Panel decided, within its discretion, to limit the scope of the "ineligibility" of the athletes to only a number of months (5 or 11) as TAWA athletes and athlete support personnel had already refrained from participating in IWF Event since the Undertaking has been signed by TAWA on 7 March 2019. Thus, the Respondent asserts that this order is in accordance with the principle of proportionality as it enables TAWA athletes to regain eligibility earlier than what the rules provide for. Furthermore, the Respondent alleges that this was meant to postpone the start date of the short period of Ineligibility by a few months since the pandemic crisis would prevent sport only for a limited period and notes that it seems likely that an IWF Event will have taken place by the time of the CAS Award, rendering this question moot. In the event no IWF Event were to take place in the next years, the Respondent asserts that the suspension of eligibility of TAWA athletes is not meant to last until after the suspension of TAWA is lifted. Therefore, the period of 5 or 11 months would start to run at the latest 5 or 11 months prior to the end of TAWA's suspension. As a result, and in view of the above, the Respondent affirms that there is a *"manifestly no issue with the principle of legality"*.

136. The Panel first underlines that the length of the pandemic and its continuous impact on the organization of sports events was not and could not be accurately assessed by the IWF Panel. Due to its unexpected global consequences on sports, it indeed raised a high degree of uncertainty, which could have been detrimental to the athletes. The Panel however noted that, on 9 November 2020, the Parties informed the CAS of their agreement that "*the 1st Online PanAm Cup LIVE by ZKC constitutes the next IWF calendar event that took place' for the purpose of the Challenged Decision (see IWF calendar enclosed). The sanction imposed would thus cease on 18 December 2020 for the junior athletes and their athlete support personnel and on 18 June 2021 for the senior athlete and their support personnel.*"

137. Accordingly, the argument on the undefined duration of the sanction is moot and the sanction will be determined in light of this common understanding of the scope of the sanction by the Parties.

F. Is the concept of "junior athletes" under the Appealed Decision both unclear and unfair?

138. The Appealed Decision states that *"TAWA junior athletes (athletes under the age of 18 at the time of a competition)"* will have to serve a ban of a reduced duration, i.e., five months instead of 11 months. In that respect, the IWF TCRR define "Junior" as being between 15 and 20 years of age. However, the IWF ADP does not use the term "junior" but defines "Minors" as individuals under the age of 18. However, according to the IWF ADP, in case of a doping offence, the relevant time to decide whether an athlete is a Minor is the day of the doping offence. Referring to concrete examples with respect to its Athletes, the Appellants assert that

the definition of junior athletes shall be fixed as per the IWF TCRR, taking into consideration the year during which the ADRVs that resulted in the procedure before the IWF Panel took place (2018); meaning that all athletes born in 1999 or after shall be considered as "Junior" for the purpose of the Appealed Decision – provided of course that a further ban would be *quod non* imposed on Athletes.

139. In response to TAWA's complaint that the order would be unfair since an athlete may be a junior at the time of the Appealed Decision, but not at the time of the competition, the Respondent refers to said Decision and allege that this term was only meant to refer to "athletes under the age of 18". The Respondent further notes that the IWF Panel had discretion to vary the otherwise applicable consequence of full ineligibility of all athletes for as long as TAWA is suspended. Therefore, this regime of early eligibility of young TAWA athletes is *"sensible, proportionate and is unambiguously set out in the Appealed Decision"*. It also notes that the relevant moment for determination of whether an athlete can benefit from this regime is when the athlete competes in an IWF Event; thus, if the athlete is no longer under the age of 18 at the time of the IWF Event, said athlete shall not benefit from this regime. Finally, the Respondent submits that if the Panel considers that the IWF Panel had no discretion to vary the otherwise applicable consequence of the suspension of TAWA, then it would mean that athletes should remain ineligible for as long as TAWA is suspended.

140. The Panel agrees with the Appellants that the Appealed Decision uses the term "*Junior*" when the IWF ADP refers to "*Minor*", which is defined as a natural person who has not reached the age of 18. The next question is when to assess when an athlete having committed an ADRV is a "minor". In that regard, the Panel clarifies that the athletes who were minor at the date of the doping offenses (i.e. October/November 2018) shall be considered minor for the interpretation of the sanctions.

G. Did the conditions for an early reinstatement imposed by the IWF Panel comply with the IWF ADP?

141. In the Appealed Decision at §31, the IWF Panel decided that (i) TAWA should be able to benefit from an early conditional lifting under Article 12.5.1 of the IWF ADP – as early as two years instead of three years of suspension; and (ii) the athletes subject to the ineligibility of 11 months should benefit from an early eligibility, if TAWA meets four standards as follows:

a. TAWA athletes, athlete support personnel and officials are receiving anti-doping education at a level which complies with the WADA International Standard for Education;
b. TAWA provides evidence that, notwithstanding the fact that the Sports Authority of Thailand is the party contracting with coaches working at the Chiang Mai training center, TAWA has the authority to vet and approve any coach hired by the Sports Authority of Thailand to coach TAWA athletes. Further, prior to approving the hiring of any weightlifting coach training TAWA athletes at the Chiang Mai training center, or other TAWA national team training center or camp, TAWA will thoroughly investigate that coach's anti-doping background, for example prior anti-doping rule violations committed by that coach or one of his/her athletes, whether that coach comes from a country or countries with a track record of doping in weightlifting and whether the coach is familiar with the basic principles of the IWF ADP together with the potential causes of unintentional anti-doping rule violations.

c. TAWA shall actively supervise any coach working with its athletes at the Chiang Mai training center or other TAWA national team training center or camp, TAWA, shall provide evidence that it has the authority to have the coach removed that coach's performance is not consistent with best practices of anti-doping
d. The fine set forth in paragraph 32 below has been paid in full.

142. The Appellants submit that the criteria under §31.a of the Appealed Decision, i.e., that TAWA receives education which complies with the WADA International Standard for Education ("ISE"), cannot be implemented for the year 2020, as such standard will not enter into force before 1 January 2021. However, as DCAT is WADC-compliant, meeting said criteria will not be an issue once the ISE is in force. The criteria under §31.d – payment of the fine in full – is not consistent with Article 12.5.1 IWF ADP. The criteria that the IWF Panel can fix to lift a sanction have to be "*aimed at assisting IWF in the fight against doping in sport*". As such, the Appellants allege that imposing sanctions in case of non-payment of debts may breach personality rights and be deemed excessive and against public order, as ruled by the Swiss Supreme Court – added to the fact that paying fines would not assist IWF in the fight against doping.

143. The Respondent replies that this regime of early conditional lifting is properly based on Article 12.5.1 IWF ADP, which sets out that *"(a)t the discretion of the Independent Panel, an appropriate portion up to a maximum of fifty percent of the sanction (including any fine) imposed upon the Member Federation may be conditionally lifted provided that the Member Federation undertakes to satisfy certain criteria aimed at assisting IWF in the fight against doping in sport defined at its discretion by the Independent Panel and meets them throughout the period of Suspension".* The Respondent further submits, in response to TAWA's arguments with respect to §31.a of the Appealed Decision, that the ISE has been approved by WADA in November 2019 and has been online since then. In other words, although it is not currently in force, nothing prevents TAWA from complying with its provision. Furthermore, the ISE will be in force at the time the suspension may be lifted and that the criterion does not require compliance with the ISE *per se* but requires anti-doping education at a level which complies with the ISE. Thus, the Respondent alleges that this criterion is appropriate, as it manifestly aims at assisting IWF in the fight against doping. The Respondent also asserts, in response to TAWA's arguments with respect to §31.d of the Appealed Decision (i.e., that a fine does not aim at assisting IWF in the fight against doping), that the IWF Panel explicitly gave a two-fold objective to the fine of USD 200,000 imposed. The first half is defined as a penalty while the other half is to be *"used by IWF to offset the costs it has incurred arising out of the 10 violations committed by TAWA athletes and to pay for additional IWF testing of TAWA athlete"*; meaning that this second half falls within the scope of Article 12.5.1 of the IWF ADP. As to the penalty aspect of the fine, the Respondent alleges that it will assist its fight against doping, *"whether directly or indirectly"* and that the purpose of the fine is to prevent TAWA from repeating its failings in the future so that the fine is consistent with the aim to improve the fight against doping.

144. The Panel finds that the criteria set at §31.a and §31.d of the Appealed Decision can be complied with and do actually assist the fight against doping, for the following reasons:

i. For §31.a, the wording of the Appealed Decision is unambiguous and refers to WADA ISE as a reference point ("*anti-doping education <u>at a level which complies</u> with the WADA International Standard for Education")*, the enactment or entry into force of these norms is not a relevant factor *per se*, it suffices for TAWA to access to the ISE to comply with this

criteria, which is the case here; on the merits, complying with the WADA ISE is naturally assisting the fight against doping;

ii. For §31.d, the Panel disagrees with the assertion that imposing a fine and requiring its payment is not, by essence, assisting the fight against doping; like any other public policy, the fight against doping requires funding to exist and be effective, in order to finance and implement training, documentation, testing, and education; fines against Member Federations that have failed into efficiently conducting anti-doping policies obviously present two aspects favoring anti-doping: it is deterrent and it raises financing for continuing to develop awareness and controls.

4. Whether the criteria used for imposing a fine were wrong

145. The Appellants does not challenge the right of the IWF Panel to impose a fine; however, they allege that the way its amount has been fixed is *"far from being clear"*. For the Appellants:
   i. assuming that the IWF Panel was contemplating to apply Article 12.4 IWF ADP to recover the costs of the tests and the ones incurred by IWF in connection with the violation, it should have provided a breakdown of costs and evidence thereof; and
   ii. as per Article 6.4 IWF Constitution, members of the IWF Commissions (i.e. including the IWF Panel) shall "*serve as volunteers*", so the procedure before the IWF Panel cannot have triggered any costs for IWF, in particular as no physical hearing implying travelling took place; and
   iii. moreover, the budget for testing Thai athletes shall not be used by IWF, but shall be attributed to DCAT since only DCAT can perform efficient testing at national level.

146. The Appellants, therefore, apply for IWF to justify the costs it seeks to cover with the fine, and to allocate any funds to be paid by TAWA to DCAT, instead of using fines for its own budget.

147. Based on Article 12.5 IWF ADP, the Respondent states that IWF Panel is entitled to impose a fine up to USD 500,000 in a case where the number of violations is of nine or more, such as in the present case. Thus, the IWF Panel could have imposed a fine of even more than USD 200,000.

148. The Panel recalls that the fine is within the range defined in Article 12.5 IWF, and actually is closer to the lower range of these fines, which was not obvious given the number of ARDVs identified amongst TAWA Athletes. With regard to the composition of the fine, the IWF Panel decided to give indications as to its reasoning for fixing the fine, but did not have, to the best of the Panel's knowledge, any obligation to provide accounting evidence to support the level of the fine, the range of which is fixed in the IWF ADP and left, for adjustments, to the discretion of the IWF Panel, which properly took into consideration a variety of factors taken and provided the explanations in support of its decision.

5. Whether the Appealed Decisions goes against the prohibition against double jeopardy (i.e., *ne bis in idem*)

149. The Appellants submit that the CAS ruled that the principle of the prohibition against double jeopardy (*ne bis in idem*) also applies in disciplinary procedures, and especially in anti-doping matters, provided that the following requirements are fulfilled, i.e. identity of the object, identity of the parties and identity of the facts. Since the IWF Panel failed to take into account all sanctions imposed under the Undertaking in order to fix the final sanction that was imposed, the Appellants allege that the Appealed Decision breaches the *ne bis in idem* principle. In that respect, the Appellants first assert that a large part of the Undertaking was not considered by the IWF Panel although - on its face - the Appealed Decision mentions that (i) it took into account the period of ineligibility that was already served by TAWA athletes and (ii) it would supersede the Undertaking. Second, the Appellants assert that the failure to comply with the *ne bis in idem* principle also affected the Sanctioned Athletes as the period of ineligibility imposed on them (and which is due to expire on 19 June 2020 for Supatchanin Khamhaeng and Teerapat Chomchuen and between 19 December 2020 and 4 February 2021 for the others Sanctioned Athletes), will be extended for international competitions during several months, depending on the duration of the pandemic. The Appellants, as discussed above, recall that the interpretation of the IWF Panel regarding its authority under Article 12.5 IWF ADP (i.e., the sanction of ineligibility it imposed on athletes and support personnel) is contrary to the WADC since periods of ineligibility can only be imposed upon athletes when an ADRV is duly established. Finally, the Appellants state that according to CAS case law, signatories such as IWF cannot implement rules foreseeing a sanction going beyond the mandatory requirements of the WADC. As a result, the Appellants allege that the sanctions imposed on athletes and support personnel by the IWF Panel constitute additional sanctions which are non-compliant with the WADC and, therefore, unenforceable.

150. The Respondent first submits that the Swiss Federal Tribunal has held that only the decision of an arbitral tribunal or state court could amount to *res judicata* or *ne bis in idem* so that such principle does not apply to internal tribunal of a sport federation. The Respondent relies on CAS 2015/A/4343 to assert that such principle *"prevents sports disciplinary bodies from trying a person or an entity for an offence in relation to which that person or entity has already been convicted or acquitted to a final decision of another body within the same regulatory framework"* (and beside the fact that it requires a triple identity). Therefore, the Respondent alleges that this principle was not breached in the present case. As it stems from the minutes of the IWF Executive Board, the Respondent further alleges that the purpose of the Undertaking was not to sanction TAWA but was offered by TAWA in exchange for retaining the right to organize the 2019 IWF World Championships. Therefore, absent a prior sanction, the principle of *ne bis in idem* could not have been breached. In that respect, the Respondent also states that it is clear from the wording of the Appealed Decision that the IWF Panel took in consideration the Undertaking when making its decision by stating that it superseded "*TAWA's obligations set forth in the Undertaking*". The Respondent then refers to CAS jurisprudence in order to assert that a disciplinary sanction is a measure that imposes adverse consequences in respect of some form of rule breach, misconduct or other undesirable behavior by the sanctioned person (i.e., that the aim of the sanction is primarily to punish that person). Therefore, the Respondent concludes that the consequences impacting the athletes in the present case are not related to any particular wrongdoing on their part but rather claims

that they are *"collateral damage"* (quoting CAS 2015/A/4319) of TAWA's suspension so that the principle of *ne bis in idem* does not apply.

151. The Panel decides on the alleged violation of the *ne bis in idem* principle as follows:

i. For TAWA: the Undertaking was not a decision but a voluntary commitment made by TAWA towards the IWF, with a concession obtained from the IWF, which was to allow TAWA to organize the IWF Championship in 2019 in Pattaya, Thailand, despite the doping scandal; as such, it does not qualify as setting a sanction; moreover, there was a clear sequence between the Undertaking and the Appealed Decision, where the Undertaking was meant to be replaced by the Appealed Decision, which prevents any "superposition" of sanctions: moreover, the IWF Panel expressly took into consideration the Undertaking when it issued the sanctions in the Appealed Decision, precisely to avoid any double sanctions; accordingly, the Panel does not believe that the Appealed Decision was in breach of the *ne bis in idem* principle;

ii. For the Athletes: the Panel notes that the source for the sanctions for the AAFs, which have been embodied in the agreements entered into between ITA and each of the athletes, individually, on 24 December 2019 and the sources of the suspension of TAWA's right to participate in IWF Events with its affiliated Athletes (i.e. the commission of ADRVs by more than 9 TAWA affiliated athletes) are different, as a sanction on a selection clause is by essence different from the ineligibility sanction for an ADRV; this, in itself, is sufficient to discard the argument of *ne bis in idem*; however, the Panel cannot turn a blind eye on the fact that the sanctions against TAWA for failing to ensure an effective anti-doping policy have a direct impact on the athletes, and that it might lead to a duration of their prohibition to participate in IWF Events longer than the one that was decided by the ITA for their individual ADRVs. However, this is not, for the Panel, a question that is properly posed under the principle of *ne bis in idem* because of the different source of the sanction, but rather an issue of effectiveness and proportionality of the sanction. In that regard, the Panel is convinced that (i) it is logical that sanctions decided against member federations also affect their members, i.e. the athletes, for purposes of efficiency of the fight against anti-doping, and (ii) the IWF Panel rightly addressed this question by fixing a sanction of a shorter duration to the Athletes that the suspension imposed on TAWA.

6. Whether the Appealed Decision breaches the principle *nulla poena sine culpa*

152. The Appellants allege that *"it is common ground under Swiss law"* that liability can only give rise to a "sanction" when there is "fault" and that international federations shall, in principle, adhere to the principle *nulla poena sine culpa*. The Appellants recognize, however, that such principle is not absolute and that the CAS accepted several times that regulations of a sports federation may provide for a *"strict liability"*. However, in order for an individual or an entity to be liable without fault, a specific rule providing for a strict liability in clear and unambiguous wording needs to have been adopted and accepted by the parties at stake. In this respect, article 12.2 IWF ADP states: *"The Member Federations shall be liable for the conduct of their affiliated Athletes or other Persons, regardless of any question of the Member Federations' fault, negligence or other culpable oversight"*. Accordingly, while TAWA may be held liable and be sanctioned even without any fault of its own, such rule does not apply

for officials or athletes sanctioned under the Appealed Decision, as there is no provision under the IWF ADP allowing the IWF Panel to impose sanctions to them without fault. In that

respect, the Appellants sustain that the Eligible Athletes did not commit any fault justifying a sanction of ineligibility under §27 or §28 of the Appealed Decision. For the Sanctioned Athletes, the Appellants highlight that they did not dope intentionally, but they committed a fault when using the Gel; in any event, they are liable only for themselves, but not for others. With respect to team officials, the Appellants admit that Coach Liu Ning was negligent, and that he deserved a sanction. However, the Appellants assert that the Respondent fails to show that any other officials did commit a fault or negligence.

153. The Respondent refers to its previous demonstration to claim there cannot not be any breach of the principle of *nulla poena sine culpa* since the measures imposed are not sanctions expressly directed at TAWA athletes and officials but are consequences of a sanction for strict liability of TAWA. Therefore, the IWF did not have to establish any fault for implementing such measures on them.

154. The Panel confirms that under Article 12.5 IWF ADP, the sanction is triggered on the basis of an objective factor, which is the existence for three or more ADRVs in one calendar year. There is accordingly no reason to look for the demonstration of a "fault" for TAWA (differently from Article 12.7 IWF ADP). For the athletes and the officials, which are covered by the scope of the sanction, the same reasoning applies: they are also subject to the sanction without any necessity to establish a fault from their part.

7. Whether the Appealed Decision is discriminatory and amounts to a collective punishment

155. The Appellants allege that it stems from both the IWF Constitution and the Olympic Charter that discrimination based on nationality is banned from sport. The same is true for "*collective punishment*", i.e. a punishment affecting many innocent persons for the act of some individuals. According to the Appellants, both principles are enshrined in numerous international conventions and form part of the international public order. The Athletes, as well as all other 1,000 weightlifters affiliated with TAWA, have no choice but to compete as representing Thailand, as they have to compete for the country of their nationality. Furthermore, the Appellants contend that the CAS regularly repeated that "*collective punishments*" are inadmissible in sport (CAS2017/A/5438). Article 11.2.6 of the WADA ISCCS also provides that blanket bans on athletes shall be avoided, provided that their participation is not unfair to other competitors and does not affect the integrity of competitions. The Appellants therefore submit that the blanket ban on TAWA and its affiliated athletes constitutes an unfair blanket ban on all athletes and officials from Thailand, based only on their nationality and their obligation to be affiliated with TAWA.

156. With respect to the first argument on discrimination, the Respondent asserts that the IWF ADP is applicable to all member federations without any distinction. In other words, when a suspension is imposed, it triggers the ineligibility of the athletes in IWF Events by effect of the definition of Suspension provided by the IWF ADP. Furthermore, it states that according to CAS case law, *"the principle of equal treatment is violated only when two similar situations are treated differently"*. As a result, the Respondent alleges the TAWA athletes are

not in a similar situation than any other weightlifters, as their national federation is suspended. Thus, it concludes that there can be no breach of the principle of equal treatment. With respect to the second argument on collective punishment, the Respondent states that TAWA did not provide any basis showing that collective punishments are inadmissible in sport and only refers to the advisory opinion of a CAS panel to assert it does not apply in a disciplinary context. In any event, the Respondent claims that since there was no sanction on the athletes *per se* (i.e., the athletes were only be affected by effect of the suspension imposed on their member federation), there cannot be any "collective" punishment. In particular, the Respondent submits the following cases as relevant examples to assert that similar consequences have been reviewed by different CAS panels and none of them considered them unlawful, namely, CAS 2016/A/4703, CAS 2016/A/4745, CAS 2016/A/4701, and CAS 2019/A/6498.

157. The Panel discards the allegation of discrimination, as the IWF ADP does not, *per se*, discriminate, and there is nothing in the record that would suggest that TAWA was targeted and sanctioned because of its nationality. The ADRVs of the ten athletes affiliated with TAWA are objective facts, which, if averred, immediately entail the imposition of a sanction to the concerned member federation and all of its affiliated athletes after an internal IWF procedure managed by an independent panel. There is no discrimination aspect in that process. As to the question of the collective punishment, the Panel notes that there is no breach of equality as all athletes affiliated to TAWA are affected in the same manner by the finding of liability of their national federation.

8. Whether the sanctions determined in the Appealed Decision are grossly disproportionate

158. The Appellants state that the principle of proportionality is well-established within most systems of law and plays an important role when it comes to sanctions. The principle pervades Swiss law, EU law and general principles of (sports) law. Relying on the CAS Advisory Opinion in CAS 2005/C/976 and CAS 2005/C/986, the Appellants note that the Panel observed: *"139. A long series of CAS decisions have developed the principle of proportionality in sport cases. This principle provides that the severity of a sanction must be proportionate to the offense committed. To be proportionate, the sanction must not exceed that which is reasonably required in the search of the justifiable aim."* In the case at hand, as Article 13.1.2 IWF ADP applies and as the CAS must not give deference to the Appealed Decision, the Appellants assert that the present Panel must apply proportionate sanctions. With respect specifically to the IWF ADP, the CAS confirmed that any decision issued against a national federation *"must comply with the applicable rules and with the right of each national federation member of IWF, including the right to heard and the proportionality of any sanction imposed"*. The Appellants further assert that in order to assess the proportionality of the sanction, the Panel needs to take into consideration both the effect of the Undertaking and the Appealed Decision. More precisely, it is the Appellants' position that the proportionality test applicable to the sanction must be assessed in light of the following three steps:

159. *"Is the sanction imposed by the Independent Panel capable of achieving the envisaged goal?"* The Appellants contend that the purpose of Article 12 IWF ADP is to ensure that (i) the IWF member federations take all measures within the scope of their power to implement the IWF ADP and (ii) their affiliated athletes and other persons comply with it. Thus, a sanction which is not aimed at achieving this purpose would be disproportionate.

160. *"Is the sanction necessary to reach the envisaged goal?"* According to the Appellants, this principle requires that, if several measures are possible, the less restrictive measure shall be adopted. Therefore, the Appellants asserts that the sanction imposed by the IWF Sanctions is "*extremely harsh*" as it imposed a 3-year ban on TAWA, plus the sanction imposed and accepted as per the Undertaking; meaning that both sanctions result in a 4-year ban on TAWA, i.e. the toughest sanction as per the IWF ADP.

161. *"Are the constraints which the affected persons will suffer as a consequence of the sanction justified by the overall interest in achieving the envisaged goal (proportionality stricto sensu)?"* The Appellants contend that the test here is whether the consequences of the sanction will be proportionate. According to the Appellants, the Appealed Decision failed to take into consideration the mitigating factors mentioned in the decision and is based on wrong factual assumptions as it did not take into account other circumstances relevant to assess the proportionality of the sanction. The Appellant thus submit that the following circumstances show that any sanction (apart from a reasonable fine) imposed in excess of the sanctions served as per the Undertaking shall be disproportionate.

A. TAWA's measures to fight doping

162. The Appellants consider that for the past years, TAWA ensured that its affiliated coaches and athletes were provided with anti-doping education, in full compliance with the WADC and that the lack of specific information on the risks of use of cream or gel put on the skin is not TAWA's responsibility. Furthermore, the Appellants claim that it is disproportionate to expect from Thai athletes the same level of anti-doping education as for English speaking athletes, when (i) any information published by IWF or WADA first need to be translated into and (ii) less resources are available in Thai than in other more widely spoken languages. Similarly, TAWA implemented an enhanced anti-doping education programme, once the numerous ADRVs had been disclosed and successfully investigated the circumstances of these violations. TAWA had also implemented a policy to control the distribution of medicine and supplements to athletes, including products applied on the skin. TAWA and its affiliated athletes were "*victims*" of the failure by the Bangkok Laboratory to detect prohibited substances in samples in due time. Absent such failure, the Sanctioned Athletes would not have been entered by TAWA in international competitions, and there would have been no sanction being imposed on TAWA and its affiliated athletes.

163. The Respondent submits that a lack of education is "*hardly*" relevant for assessing the athlete's level of fault under the No Significant Fault or Negligence provision set forth in Article 10.5 of the IWF ADP. Similarly, the Respondent alleges that pursuant to a CAS award, *"anti-doping rules cannot be interpreted differently based on different levels of education or cultural background. This would defeat the whole purpose of having a consistent and fair*

antidoping system". It further states that the Athletes are all members of TAWA's national team meaning that they cannot be considered as low-level athletes with limited access to anti-doping education. Furthermore, the Respondent notes that the crisis in 2018 was not the first involving testosterone use of TAWA athletes and submits that two athletes tested positive for the same substance a year earlier (i.e., August and October 2017). In that respect, it asserts that one of them, Mr. Mingmoon, was among the Athletes who tested positive a year later as part of the training camp in preparation of the 2018 IWF World Championships. As a result, it asserts that the risk linked to the use of exogenous testosterone was "well-known" to TAWA athletes at the time of the numerous positive tests. Moreover, the Respondent states that Mr. Mingmoon admitted himself that he had understood that the positive test had come from a testosterone gel at the latest on the date of filing of his submission before the IWF Hearing Panel on 12 June 2018, i.e., approximately five months prior to the doping scandal. Consequently, the Respondent does not consider that this factor should be considered as "*mitigating*" factor. Now with respect to TAWA's allegation regarding the Bangkok Laboratory, the Respondent alleges that TAWA's characterization of the Bangkok Laboratory's reports as "False Negative Results" is misleading since it is only in the event that the steroid values in a sample exceed certain thresholds that a confirmation procedure needs to be conducted. Absence such thresholds, the sample is (correctly) reported as negative. The Respondent challenges TAWA's interpretation that without the delay of the Bangkok Laboratory to report positives, it would have known that there was an issue with the gel so that the Athletes would not have sent to the World Championships. In that respect, the Respondent notes, as an example, that the Cologne Laboratory, which analyzed the samples collected at the 2018 IWF World Championships, submitted its first positive on 19 December 2018 (for a sample collected on 2 November 2018).Thus, the Respondent asserts that even though the samples collected at the mission on 11 October 2018 had been analyzed in Cologne, there was no guarantee that an adverse analytical finding would have been issued before the Championships.

B. The circumstances of the ADRVs

164. The Appellants consider that the Appealed Decision wrongly submits that Coach Liu Ning had provided Gel as a routine for more than one year, without detecting the presence of testosterone, although many tests were performed on Thai athletes in 2017 and in the beginning of 2018. Furthermore, the Appellants allege that the container of said Gel did not mention that it was containing "testosterone" and that the Sanctioned Athletes ignored that they were ingesting testosterone while applying the Gel. As a result, the reasoning by the IWF Panel under §21 of the Appealed Decision with respect to the lack of perception of the risk associated with gel and cream put on the skin should be dismissed. Finally, it is the Appellants' view that the CAS case law generally accepts that the use of a cream or gel applied on the skin is not considered as a "serious" doping offence with an intent to enhance sporting performances (CAS 2017/A/5015; CAS 2017/A/5110; CAS 2005/A/830).

165. The Respondent submits that TAWA's claim that the Athletes' use of the Gel since 2017 is not proven and cannot be relied on since it is rebutted by Coach Ning's testimony and TAWA's report. It also notes that the fact that previous tests did not return an adverse analytical finding is not evidence that the Athletes were not using the Gel nor that the

Bangkok Laboratory was incompetent. It further relies on the IWF Panel's words when it stated that *"the explanation for* [the lack of prior positive finding] *is likely either the passage of time between use of the gel and the time of the test or that those prior tests had not been analyzed using GC/IRMS"*. The Respondent further claims that even though the Athletes were not found to have committed their violation intentionally, there were all (except the minor Athletes) found to have been significantly at fault, which should be sufficient to demonstrate the severity of the violations.

C. The conduct of TAWA

166. The Appellants submit that TAWA officials all resigned so that the ban on all TAWA officials for two years imposed under the Appealed Decision will affect a new team (i.e., not in place at the time of the ADRVs, thereby making the ban grossly disproportionate. The Appellants also emphasize that TAWA accepted under the Undertaking an immediate sanction and took steps allowing to restore the reputation of weightlifting.

167. The Respondent underlines that the purpose of the Undertaking was not to acknowledge responsibility but to ensure that the organization of the 2019 World Championships was not attributed to another organization. It also notes that the resignation of the TAWA Executive Board only occurred in January 2020, i.e., a year after said Undertaking was signed, and resulted from the diffusion of a documentary investigating doping in Thai weightlifting. As a result, the Respondent asserts that the resignation was not related to the facts of the present case. In any event, the Respondent contends that these elements were even considered by the IWF Panel in its decision.

D. The consequences of the Undertaking and of the Challenged Decision

168. The Appellants contend that (i) the absence of any Thai athlete on the occasion of the IWF World Championships Pattaya 2019 was an extremely harsh sanction, with financial consequences of possibly 1,000,000 USD on TAWA, (ii) the acceptance by TAWA that no Thai athlete should take part in the XXXII Olympic Games in Tokyo resulted in an important loss of budget from the SAT as well as of its main sponsor, in an amount close to USD 1,000,000 (iii) the costs of further sanctions, notably an extended ban on international competitions for Thai athletes and the prohibition by TAWA to organise international events, will cause further financial losses for TAWA. Therefore, according to the Appellants, the financial losses caused by the Undertaking added to the fine of USD 200,000 set forth in the Appealed Decision and the costs required to implement an enhanced doping programme in Thai weightlifting led to a "fully disproportionate" sanction in the sanction.

169. The Respondent refers to the question of the proportionality regarding the consequences of the Appealed Decision and to its arguments thereon.

E. The COVID-19 crisis

170. The Appellants allege that the pandemic crisis is a ground to reduce any sanction against the Appellants, as the effect of the Appealed Decision, combined with the sanctions accepted

under the Undertaking and the effect of the COVID-19 crisis on sport, result in a grossly disproportionate sanction (since both the severity and duration of the sanction on athletes are aggravated as a result on the current crisis).

171. The Respondent asserts that TAWA mischaracterizes the "ineligibility" of the athletes to claim that they are "*disadvantaged by the current crisis*" since their ineligibility will only resume after the next IWF Event to take place. In that respect, the Respondent notes that the ineligibility of the athletes arise from, and is an automatic consequence of, the Suspension of TAWA so that the principle should have been that TAWA athletes are ineligible for as long as TAWA is suspended (i.e., three years). Instead, the Respondent emphasizes that the IWF Panel considered the fact that TAWA athletes had already been ineligible for one year under the Undertaking and limited the additional period of ineligibility respectively to 11 and 5 months.

F. Consideration by the Panel

172. The Panel confirms that the principle of proportionality is to be taken into consideration when assessing the scope of a sanction within the IWF ADP. The Panel also confirms that, as stated above, that the *de novo* principle, allows a full and complete review of the Appealed Decision.

173. Having carefully reviewed the facts and arguments exchanged between the Parties, the Panel is convinced that the principle of proportionality was respected in the Appealed Decision, be it because of the high number the ADRVs (ten), the context of the ADRVs (within key international events) and the overall context of repeated doping scandals in the weightlifting world. All of these elements direct to a severe decision applying the upper range of the applicable sanctions. Moreover, as already discussed above, the Panel does not accept that certain facts be characterized as mitigating factors by the Appellants: for instance, the fact that the Prohibited Substance was administered through the Gel – as opposed to an injection or ingestion - is not an excuse, quite to the contrary as it demonstrates the lack of completeness of the anti-doping training of athletes; the same is true for the argument that Thai athletes did not have access to the same level of documentation as English-speaking athletes, and the overall suggestion that they would be less educated; being participants in the same competitions, there is no reason to consider that while they would have access to comparable training, they would not have an identical access to the ensuing level of anti-doping education; as to the measures taken by TAWA after the scandal. The Panel is also not certain that this argument of lack of awareness is credible, in light on the previous positive testing to testosterone of one of the athletes.

174. Regarding the Undertaking and its consequences, the Panel recalls once more that this was a compromise with an upside for TAWA, which was the retention of the organization of the IWF World Championships in Thailand and that this settlement agreement had no legal bearing over the Appealed Decision. For the resignation of TAWA officials, the prohibition to participate in the Olympics, and education efforts, the Panel agrees that these measures are positive steps but they cannot be deemed sufficient to absolve TAWA from its past failures and sanctions must be taken to ensure a full respect and a clear message within the IWF as to the role of member federations, or otherwise it could be assumed that little needs to be done

until a similar scandal takes place, and only limited sanctions are taken if belated reactions are implemented: this would, obviously, be counterproductive to increasing the overall awareness of member federations of their responsibilities in the fight against doping within their organization and for their member athletes.

175. As a final remark with respect to the Undertaking, the Panel questions whether, as a matter of proper procedure, it would not be desirable to resort to the IWF Panel already for such temporary measures under Article 12.9.3 IWF ADP (in its version of 2018) or under 12.7.3 IWF ADP (in its version of 2021) as opposed to negotiations between the IWF and the member federation.

9. Whether the Appealed Decision breaches the Appellants' personality rights

176. The Appellants submit that, under Swiss law, sanctions must comply with the addressees' personality rights in accordance with Article 28 SCC:

"[1]Any person whose personality rights are unlawfully infringed may petition the court for protection against all those causing the infringement.
[2]An infringement is unlawful unless it is justified by the consent of the person whose rights are infringed or by an overriding private or public interest or by law."

177. The Appellants then refer to an award of the CAS (CAS 2006/A/1025) where the panel held that: "*In the event of an infringement of the right of an individual's economic liberty or his right to personal fulfilment through sporting activities, the conditions set at Article 28 al. 2 of the Swiss Civil Code are applicable. Such infringement must be based either on the person's consent, by a private or public interest or the law*." As a result, the Appellants conclude that Article 28 SCC protects the personality rights not only of the Athletes, but also of TAWA. Therefore, and since the Appealed Decision infringes the economic liberty or the right of the Appellants to personal fulfilment through sporting activities, the Appellants assert that it is presumed to be unlawful as per Article 28 al. 2 SCC, unless IWF can demonstrate that there is a justifying ground (*i.e*. consent of the affected entities or individuals, overriding private or public interest or legal provision). The Appellants hereby submit that the Appealed Decision – breaching their personality right and presumed to be unlawful – is not justified by any of the justifying ground mentioned by Article 28 par. 2 SCC. Accordingly, the Appellants conclude that the Appealed Decision breaches the personality rights of the Appellants and is – therefore - illicit.

178. The Respondent first states that an infringement of personality rights is only unlawful if it is not justified by the consent of the person whose rights are infringed or by an overriding private or public interest or by law. However, the Respondent asserts that in the present case the Appellants are bound by the applicable IWF ADP; and further notes that the Appellants do not dispute it as they merely indicates that they *"could not have consented to a decision, which does not comply with the applicable regulation"* and *"could not accept a system where disproportionate and illegal decisions are issued by the Independent Panel*". As demonstrated above, the Respondent claims that the Appealed Decision does comply with the applicable rules and said legal principles.

179. The Panel determines that there is no breach of personality rights, first because of the acceptance of the IWF ADP by TAWA and indirectly by the Athletes, and second because the overall purpose of fighting doping is sufficient to justify the purported infringement.

10. Whether the Appealed Decision breaches antitrust law

180. The Appellants submitted the expert opinion of Dr. Këllezi, PhD, specialist in competition law and member of the Swiss Competition Commission as to whether the Appealed Decision constitutes an abuse of dominant position and/or a prohibited agreement under Swiss and EU Competition Law. After having analyzed (i) the relevant market, and whether EU and Swiss Competition Laws apply (ii) whether there is an abuse of a dominant position and (iii) whether there are agreements restricting competition, the Expert reached the following conclusion:

"IWF is in a dominant position in the relevant markets for the organization and commercialization of IWF Events. IWF members enjoy a collective dominance in the relevant markets for organization and commercialization of IWF Events.
By ordering the exclusion of Sanctioned Athletes for an additional and undetermined period, IWF and respectively its members have clearly abused their individual, respectively collective, dominant position.
By ordering the suspension of TAWA for a period of three (3) years, the IWF and its members have abused their individual respectively collective, dominant position.
The Appealed Decision is to be considered as an agreement between undertakings or a decision of associations of undertakings within the meaning of Article 101(1) TFEU. In particular, the Appealed Decision is a decision of an association of undertakings and therefore an agreement within the meaning of Article 101(1) TFEU.
The Appealed Decision is to be considered as decision between IWF members as independent undertakings within the meaning of Article 4(1) of the Swiss Cartel Act.
The extension of the suspension of clean, Eligible Athletes, is a restriction of competition by object under Article 101(1) and a qualitative (and quantitative) severe restriction under Article 5(1) Swiss Cartel Act. There are no justification grounds whatsoever for such restriction of competition, consequently such extension infringes upon both Articles 101 TFEU and 5 Cartel Act.
The collective extension of the suspension for Sanctioned Athletes is a restriction of competition under Article 101(1) and Article 5(1) Swiss Cartel Act. The extension is excessive and disproportionate, and therefore infringes Articles 101 TFEU and 5 Cartel Act.
The suspension of TAWA membership for three (3) years restricts competition under Article 101(1) and Article 5(1) Swiss Cartel Act. The Appealed Decision does not show the necessity and proportionality of such suspension as the only effective and indispensable remedy, consequently such suspension infringes upon Article 101 TFEU and 5 Cartel Act.
The measures ordered by the Appealed Decision are unlawful and therefore null and void under Article 101(2) TFEU or Article 20 para. 2 CO."

181. The Respondent submitted the expert opinion of Professor Tuytschaever, who reached the following conclusions:

> *"First, the starting-point of the competition law analysis is whether the Decision results from an economic activity – i.e., whether it has been adopted by an undertaking or an association of undertaking. Neither the IWF nor the Independent Panel are engaged in any economic activity when they monitor compliance with and apply the IWF Anti-Doping Policy.*
> *For their anti-doping activities, they do not act as an undertaking or as an association of undertakings, but carry out non-economic regulatory, supervisory, and court-like tasks which are outside the scope of competition law. Even if the consequences of the exercise of those tasks may have consequences on economic activities, this does not mean that hey are within the scope of competition law, let alone that they would be prohibited.*
> *Second, even assuming that the regulatory and supervisory activities of the IWF, and the court-like activities of the Independent Panel, are within the scope of competition law, which they are not, the measures set out in the Decision comply with EU competition law.*
> *This follows from an analysis on the basis of the Meca-Medina test developed by the Court of Justice of the EU. This test is generally applied by competition authorities and courts to determine the compatibility of sporting rules with competition law. The measures set out in the Decision are inherent and proportionate to the public interest objectives which they pursue. Accordingly, any restriction of competition which they entail are outside the prohibition of EU competition law".*

182. In the Panel's view, both experts agree that the question of whether the IWF is an undertaking or, with its members, an association of undertakings, and whether the Appealed Decision is to be considered as an agreement between undertakings or a decision of an association of undertakings within the meaning of Article 101(1) TFEU and/or Article 4(1) of the Swiss Cartel Act, are key to determine or exclude the application of antitrust legislation. Both experts also heavily rely on the *Meca-Medina* case, CJEU C-519/04 P dated 18 July 2006, while drawing diverging conclusions from its interpretation and consequences.

183. Turning to the definition of such undertaking, the Panel highlights that in the *Meca-Medina* case, the CJEU did not explicitly exclude the qualification of the IOC in its anti-doping activities as an undertaking or an association of undertaking but focused on the question of the proportionality of the sanctions. This was at odds with the decisions of the Commission and the Court of First Instance that both considered that the rules to combat doping are excluded from the scope of the Treaty's provisions on economic freedoms, including Articles 101 and 102 of the TFEU (formerly Articles 81 and 82 EC). Since then, to the Panel's knowledge, the question of whether an international sports federation would qualify as an undertaking when enforcing purely regulatory measures such as anti-doping has been intensely debated and not finally determined.

184. In the absence of clear-cut compelling case law, the Panel is of the opinion that the requirement of an economic activity to define an undertaking, i.e. an activity that could be carried by any private profit-making entity, does not correspond squarely to the implementation and enforcement of anti-doping policies by the IWF. The Panel also believes that nothing prevents, in the present case, the separation of the activities of the IWF between,

on the one hand, the implementation and enforcement of the antidoping rules and, on the other hand, its commercial activities, that is the organization of sporting events, the sales of tickets, the rights to broadcast the same events, etc. which would fall in the ambit of the EU competition law.

185. In any event, even assuming that the IWF were an "undertaking" under EU law, the Panel adopts the following citation from the *Meca-Medina* case:

"*The general objective of anti-doping rules relating to sport is to combat doping in order for competitive sport to be conducted fairly and includes the need to safeguard equal chances for athletes, athletes' health, the integrity and objectivity of competitive sport and ethical values in sport. In addition, given that penalties are necessary to ensure enforcement of the doping ban, their effect on athletes' freedom of action must be considered to be, in principle, inherent itself in the anti-doping rules.*

Therefore, even if anti-doping rules are to be regarded as a decision of an association of undertakings limiting the freedom of action of the persons whom they cover, they do not, for all that, necessarily constitute a restriction of competition incompatible with the common market, within the meaning of Article 81 EC, inasmuch as they are justified by a legitimate objective. Such a limitation is inherent in the organisation and proper conduct of competitive sport and its very purpose is to ensure healthy rivalry between athletes.

However, the penal nature of such anti-doping rules and the magnitude of the penalties applicable if they are breached are capable of producing adverse effects on competition because they could, if penalties were ultimately to prove unjustified, result in an athlete's unwarranted exclusion from sporting events, and thus in impairment of the conditions under which the activity at issue is engaged in. It follows that, in order not to be covered by the prohibition laid down in Article 81(1) EC, the restrictions thus imposed by those rules must be limited to what is necessary to ensure the proper conduct of competitive sport. Rules of that kind could indeed prove excessive by virtue of, first, the conditions laid down for establishing the dividing line between circumstances which amount to doping in respect of which penalties may be imposed and those which do not, and second, the severity of those penalties."

186. Stated differently, the Panel agrees that the sanctions should be assessed in light of the objective that is pursued, i.e. here the fight against doping, thereby applying the classic test of proportionality of the sanction which is widely accepted and applied in the *lex sportiva*. In the present circumstances, as amply developed in earlier sections of this Award, the Panel determined that the sanction imposed in the Appealed Decision to TAWA were proportionate and only required to be marginally modified.

VIII. COSTS

187. As this matter is exclusively of a disciplinary nature, and in accordance with Articles R65.1 and 65.2 of the CAS Code, this procedure is free.

188. Separately, as it concerns legal and other costs, Article R65.3 CAS Code states 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*."

189. The Appellants requests the IWF be ordered to reimburse the Appellants of the CHF 1,000 filing fee and make a contribution towards their legal and other costs incurred in the framework of the proceedings. The Respondent did not make any specific argument regarding costs.

190. Taking into consideration the outcome of this arbitration and Article R65.3 of the CAS Code, the Panel finds that the Appealed Decision has been very partly reformed but also that the Appellants have principally failed in their criticisms of the Appealed Decision. Applying the classic principle in international arbitration that "costs follow the event", the Panel decide to reject the request for reimbursement and that the Appellants shall pay CHF 5,000 to the IWF as a reasonable contribution to its legal costs.

ON THESE GROUNDS

The Court of Arbitration for Sports rules that:

1. The Court of Arbitration for Sport has jurisdiction to hear the appeal filed by the Thai Amateur Weightlifting Association, et al. against the International Weightlifting Federation against the decision rendered by the IWF Panel on 1 April 2020.

2. The appeal filed by the Thai Amateur Weightlifting Association, et al. against the International Weightlifting Federation against the decision rendered by the IWF Panel on 1 April 2020 is partially upheld.

3. The decision rendered by the IWF Panel on 1 April 2020 is set aside and replaced as follows:

   a. TAWA junior athletes (athletes under the age of 18 at the time of the AAFs in October/November 2018) shall not be allowed to participate in IWF Events until 5 months following the 1st Online PanAm Cup LIVE by ZKC, i.e. until 18 December 2020.

   b. All other TAWA athletes shall not be allowed to participate in IWF Events until 11 months following the 1st Online PanAm Cup LIVE by ZKC, i.e. until 18 June 2021. This sanction may be lifted as early as 18 December 2020 upon satisfaction of the conditions set forth at section (g) below.

   c. No TAWA athlete shall be eligible to participate in the XXXII Summer Olympic Games, whenever those Games may occur.

   d. Except for the early participation opportunity for TAWA athletes to participate in IWF Events after the dates set forth above, TAWA is suspended for a period of 3 years through 1 April 2023.

   e. Except for TAWA athletes not being allowed to participate in IWF Events, TAWA technical officials or other TAWA representatives are allowed to participate in IWF activities.

   f. TAWA officials are suspended for 2 years through 1 April 2022 and are not eligible to be appointed to any IWF position so long as TAWA remains suspended.

   g. The 3-year suspension of TAWA may be lifted on or after 7 March 2022 if TAWA can demonstrate to the IWF Independent Monitoring Group:

i) TAWA athletes, athlete support personnel and officials are receiving anti-doping education at a level which complies with the WADA International Standard for Education;

ii) TAWA provides evidence that, notwithstanding the fact that the Sports Authority of Thailand is the party contracting with coaches working at the Chiang Mai training center, TAWA has the authority to vet and approve any coach hired by the Sports Authority of Thailand to coach TAWA athletes. Further, prior to approving the hiring of any weightlifting coach training TAWA athletes at the Chiang Mai training center, or other TAWA national team training center or camp, TAWA will thoroughly investigate that coach's anti-doping background, for example prior anti-doping rule violations committed by that coach or one of his/her athletes, whether that coach comes from a country or countries with a track record of doping in weightlifting and whether the coach is familiar with the basic principles of the IWF ADP together with the potential causes of unintentional anti-doping rule violations.

iii) TAWA shall actively supervise any coach working with its athletes at the Chiang Mai training center or other TAWA national team training center or camp, TAWA shall provide evidence that it has the authority to have the coach removed when that coach's performance is not consistent with best practices of anti-doping.

iv) The fine set forth below has been paid in full.

h. The fine imposed on TAWA shall be $200,000.00.

4. The award is pronounced without costs, except for the Court Office fee of CHF 1000 (one thousand Swiss Francs) paid by the Thai Amateur Weightlifting Association (TAWA) et al, which is retained by the CAS

5. The Thai Amateur Weightlifting Association (TAWA) is ordered to pay the International Weightlifting Federation a total amount of five thousand Swiss francs (CHF 5,000) as a contribution towards the expenses incurred in connection with these arbitration proceedings.

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

Lausanne, Switzerland
Date: 8 April 2021

THE COURT OF ARBITRATION FOR SPORT

Mrs. Carine Dupeyron
President

Mr. Alexis Schoeb
Arbitrator

Mr. Romano F. Subiotto
Arbitrator