

IWF INDEPENDENT MEMBER FEDERATIONS SANCTIONING PANEL

in the matter

Weightlifting Federation of Vietnam (“WFV”)

Final Decision

I. INTRODUCTION

1. The present Decision is issued by the International Weightlifting Federation (the “IWF”)’s Independent Member Federation Sanctioning Panel (the “IWF Panel” or the “Panel”) in order to decide upon whether the Weightlifting Federation of Vietnam (the “WFV”) has committed a breach of Article 4(a) of the IWF Qualification System for the Games of the XXXII Olympiad Tokyo 2020 (“IWF OQS”) and, if so, the consequences of such breach.

II. PARTIES

A. THE INTERNATIONAL WEIGHTLIFTING FEDERATION

2. The IWF is the international governing body for the Olympic sport of weightlifting. Its headquarters are located in Budapest, Hungary and its registered seat is in Lausanne, Switzerland.

B. THE WEIGHTLIFTING FEDERATION OF VIETNAM

3. The WFV is the national governing body for the Olympic sport of weightlifting in Vietnam. The WFV is a Member Federation of the IWF.

III. FACTS AND PROCEDURAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions, pleadings and evidence adduced during the proceedings. Additional facts and allegations found in the Parties’ written submissions 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 Decision only to the submissions and evidence it considers necessary to explain its reasoning.

A. THE ANTI-DOPING RULE VIOLATIONS OF THE WFV ATHLETES

5. Over the course of the qualification period of the Olympic Games Tokyo, i.e. between 1 November 2018 and 22 July 2021 (“Qualification Period), four athletes from the WFV committed, and were sanctioned by the IWF for, Anti-Doping Rule

Violations (“ADRVs”) under the then applicable 2018 IWF Anti-Doping Policy (“IWF ADP”).¹

6. In summary, the ADRV were as follows:

- **Ms. Thi Phuong Thahn NGUYEN** provided: (i) an Out-of-Competition sample on 23 October 2018, which revealed the presence of the Prohibited Substances furosemide and stanozolol; and (ii) an Out-of-Competition sample on 17 November 2018, which revealed the presence of the Prohibited Substances 5a-androstane-3a, 17b-diol (5aAdiol) and 5b-androstane-3a, 17b-diol (5bAdiol).

On 15 August 2019, the IWF issued a decision holding that Ms. Nguyen had committed an ADRV for the Presence of Prohibited Substances. The respective Adverse Analytical Findings (“AAFs”) were jointly considered as a first ADRV, and Ms. Nguyen was sanctioned with a period of ineligibility of 4 years and her competitive results disqualified. Despite being granted several opportunities by the IWF, Ms. Nguyen did not explain the circumstances of the ADRV nor submit any defence in relation to same.

- **Mr. Van Vinh TRINH** provided an Out-of-Competition sample on 17 November 2018, which revealed the presence of the Prohibited Substances 5a-androstane-3a, 17b-diol (5aAdiol) and 5b-androstane-3a, 17b-diol (5bAdiol).

On 15 August 2019, the IWF issued a decision holding that Mr. Trinh had committed an ADRV for the Presence of a Prohibited Substance. Mr. Trinh was sanctioned with a period of ineligibility of 4 years and his competitive results disqualified. Despite being granted several opportunities by the IWF, Mr. Trinh did not explain the circumstances of the ADRV nor submit any defence in relation to same.

- **Ms. Thi Thu Trang NGUYEN** provided an Out-of-Competition sample on 16 November 2019, which revealed the presence of the Prohibited Substances Oxandrolone and its metabolite epi-Oxandrolone.

On 18 November 2020, Ms. Nguyen agreed to resolve the case via an Agreement on Consequences, according to which she was sanctioned with a period of ineligibility of 4 years and her competitive results were disqualified.

¹ Identical ADRV are set out in the equivalent provisions of the 2021 IWF Anti-Doping Rules (“IWF ADR”).

During the results management process conducted by the ITA, Ms. Nguyen accepted that she had committed an ADRV but did not explain the circumstances of same.

- **Mr. Dinh Sang BUI** provided an Out-of-Competition sample on 16 November 2019, which revealed the presence of the Prohibited Substances Oxandrolone and its metabolite epi-Oxandrolone.

On 18 November 2020, Mr. Bui agreed to resolve the case via an Agreement on Consequences, according to which he was sanctioned with a period of ineligibility of 4 years and his competitive results were disqualified. During the results management process conducted by the ITA, Mr. Bui accepted that he had committed an ADRV but did not explain the circumstances of same.

B. THE PROCEDURE BEFORE THE INTERNATIONAL TESTING AGENCY

7. On 27 May 2021, the International Testing Agency (“ITA”) on behalf of the IWF, notified the WFV of the alleged breaches of Article 4(a) of the IWF OQS and granted the WFV a deadline until 3 June 2021 to file written observations with respect to the alleged breach.

8. On 29 May 2021, the WFV acknowledged receipt of the ITA’s correspondence.

9. On 30 May 2021, the WFV submitted its position, which read in its totality as follows:

*Greetings from Weightlifting Federation of Vietnam.
To prepare for OLP Tokyo, the Vietnam’s Weightlifting team has made great efforts to participate in the qualifying phase for weightlifting at the Olympics Tokyo with athletes: Thach Kim Tuan, Hoang Thi Duyen; and Vuong Thi Huyen. However, there were 4 other athletes who tested positive for doping. Due to lack of funding from the Weightlifting Federation of Vietnam, these 4 athletes were under the direct management of local teams at the time they committed. We understood that this can adversely affect the athletes who are participating the qualifying phase. We are writing this letter in the hope that IWF and ITA would reconsider approving the Vietnam team for the OLP 2020. This can help weightlifting to attract more attention from the government to support the development of weightlifting in Vietnam.*

10. On 31 May 2021, the ITA acknowledged receipt of the WFV’s email and responded as follows:

*As mentioned in ITA’s letter of 27 May 2021, we remind the Weightlifting Federation of Vietnam that it has until 3 June 2021, to supplement its position and/or provide further explanations, if needed.
Thereafter, the case file will be referred to the Independent Panel for adjudication.*

11. No further comments were received from the WFV within the relevant time limit.

C. THE PROCEEDINGS BEFORE THE IWF PANEL

12. On 7 June 2021, the ITA referred the matter of the WFV to the Chairman of the IWF Panel for adjudication (the “Referral”).

13. On 8 June 2021, the WFV wrote to the IWF Panel as follows:

*We acknowledge receipt of your e-mail and all document.
We hope that IWF would reconsider approving the Vietnam team for the
OLP 2020.
once again, thanks for your attention*

14. Also on 8 June 2021, the Parties were informed of the composition of the IWF Panel as follows:

- Mr. Antonio Rigozzi (Chairman);
- Ms. Louise Reilly; and
- Mr. Heiner Kahlert.

15. On 10 June 2021, the IWF Panel provided the Parties with the Acceptance and Statement of Independence forms duly signed by the members of the Panel and requested the Parties to inform the Panel without delay in the event they had any issue with its composition.

16. In the same letter, the WFV was invited to file its response to the ITA’s referral of 7 June within 15 days of receipt of the Panel’s email.

17. Also on 10 June 2021, the WFV responded to the IWF Panel’s correspondence as follows:

*We have not issues with the composition of the Panel. We are agree the
Acceptance and Statement of Independence forms completed by Ms. Louise
Reilly, Dr. Heiner Kahlert and Mr Antoni Rigozzi.
Thank you for your consideration.*

18. The WFV did not submit any further position in relation to the ITA’s referral within the relevant deadline.

IV. THE RELEVANT PROVISIONS

A. THE IWF OQS

19. Article 4 of the IWF OQS is contained in Section C (“Athlete Eligibility”) of those regulations and states as follows:

4. Anti-Doping Rules and Regulations

- a. *Should three (3) or more Anti-Doping Rule Violations sanctioned by IWF or Anti-Doping Organisations other than a Member Federation or its National Anti-Doping Organisation be committed by Athletes or other Persons affiliated to such Member Federation (MF)/NOC from 1 November 2018 until 22 July 2021 which is a continuous period, the Independent Member Federations Sanctioning Panel appointed by IWF as per the IWF ADR (the Independent Panel) may*
- i. *withdraw the quota place(s) from that MF/NOC with regard to the Olympic Games Tokyo 2020 and/or*
 - ii. *suspend that MF/NOC from participation in the ensuing Olympic Games. If such Member Federation is permitted to participate with Athletes in eligible events during the qualification period to the Olympic Games Tokyo 2020, its Athletes shall not be permitted to secure any IWF Absolute Ranking Points (World and/or Continental) at such event and their participation shall not affect the Member Federation’s exclusion from the Olympic Games Tokyo 2020.*
- b. *When considering the application of Article 4. a) above, the Independent Panel may refer to the principles set forth in Article 12.3.2 IWF ADR applicable to the imposition of Member Consequences. Similarly, the procedural rules of Article 12.7 IWF ADR apply by analogy to the process pertaining to Article 4.a).*
- c. *Any quota places withdrawn pursuant to point a) above shall be reallocated in accordance with the reallocation process as detailed in section I.*

20. Section I of the IWF OQS governs the Reallocation of Unused Places and provides the following:

1. IWF Absolute Ranking; World Points

If a quota place allocated is not confirmed by the NOC by the deadline of confirmation of quota place, is declined by the NOC, is withdrawn or Member Federation/NOC is suspended from participation, the quota place will be reallocated to the highest ranked athlete according to the IWF Absolute Ranking (World Points) and eligible according to this Qualification System, whose NOC is not yet qualified in the medal event; subject to the maximum quota per NOC.

2. IWF Absolute Ranking; Continental Points

If a quota place allocated is not confirmed by the NOC by the deadline of confirmation of quota place, is declined by the NOC, is withdrawn or Member

Federation/NOC is suspended from participation, the quota place will be reallocated to the highest ranked athlete from the same Continent according to the IWF Absolute Ranking (Continental Points) and eligible according to this Qualification System, whose NOC is not yet qualified in the medal event; subject to the maximum quota per NOC.

B. THE 2021 IWF ADR

21. Articles 12.2 and 12.7 of the IWF ADR are also relevant to the case at hand and provide the following:

Article 12.2: General Principles Applicable to Member Federations Sanctioning

Member Federations shall take all measures within the scope of their powers to implement these Anti-Doping Rules and ensure that their affiliated Athletes and other Persons comply with them. As a matter of principle, the Member Federations are liable for the conduct of their affiliated Athletes or other Persons. However, the Independent Panel should take into account the degree of fault or negligence of the Member Federation when determining the Member Consequences to be imposed in each case of a violation of this Article 12.

[Comment to Article 12.2: whilst this Article 12 is based on the principle of "strict liability" whereby it is not necessary that intent, fault, negligence or other culpable oversight of the Member Federation be demonstrated by IWF in order to establish a violation, the Member Federation may, as part of the proceedings before the Independent Panel, submit evidences to establish that the Member Federation's degree of fault or negligence was not significant in relation to the circumstances surrounding the underlying anti-doping rule violations. In such case, the Independent Panel should consider and appreciate any such attenuated degree of fault or negligence as a mitigating factor when determining the applicable Member Consequences. For the avoidance of doubt, the Member Federation shall bear the burden of establishing any attenuating circumstance in relation to the Member Federation's degree of fault or negligence.]

12.7 Procedural Rules

12.7.1 If the IWF is satisfied that a breach of Article 12 has occurred, it shall promptly notify the Member Federation.

12.7.2 The notice shall include details of the alleged breach and shall give the Member Federation a reasonable deadline to respond. The IWF will then transfer the file to the Independent Panel for adjudication. The Independent Panel will render a decision on the basis of the written file, unless it considers in its entire discretion that exceptional circumstances require the holding of a hearing.

12.7.3 The Independent Panel may at any time and at its own discretion decide to impose provisional Member Consequences on the Member Federation pending a decision on the alleged breach, provided, however, that provisional Member Consequences may not be imposed unless the Member Federation is given an opportunity to provide written explanations either before the imposition of the provisional Member Consequences or on a timely basis after the imposition of the provisional Member Consequences.

12.7.4 The decisions of the Independent Panel made in application of Article 12 may be appealed exclusively to CAS within twenty-one days from the date of receipt of the decision by the appealing party.

12.7.5 For violations of Article 12.3.3 and for the automatic fines under Article 12.5.1, the procedure set out under this Article 12.7 shall not apply and the sanction shall be notified as soon as practicable to the Member Federation by the IWF.

12.7.6 Any decision rendered by the Independent Panel against a Member Federation shall be publicly disclosed by the IWF unless exceptional circumstances warrant otherwise.

V. THE PARTIES' POSITIONS

22. The IWF Panel has taken into consideration all of 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 summary of the Parties' positions relevant to the present Decision, which is not intended to be an exhaustive account of all the arguments and evidence put forward by the Parties but only the most relevant ones. When necessary, other factual and legal arguments will be described in the section related to the legal discussion.

A. THE IWF'S POSITION

23. In its Referral, the IWF essentially submitted that it was satisfied that the WFV had breached Article 4(a) of the IWF OQS and thus requested the IWF Panel to confirm the breach and decide upon the applicable consequences for same.
24. More specifically, in its notice to the WFV of 27 May 2021, the IWF alleged that the requirements of Article 4(a) of the IWF OQS were met, insofar as:
- Over the course of the Qualification Period, four athletes affiliated with the WFV committed ADRVs as per Article 2.1 of the 2018/2019 IWF ADP (and equivalent provisions in the 2021 IWF ADR);
 - All four ADRVs were sanctioned by the IWF (either through sanctioning decisions or Agreements on Consequences). The decisions are final and binding;
 - The conditions of Article 4(a) have been met:
 - i. *"More than 3 violations"*: in fact, four ADRVs have been committed by athletes affiliated with the WFV;

- ii. *“Sanctioned by the IWF”*: all four ADRVs stem from Out-of-Competition tests conducted under the Testing Authority and Results Management Authority of the IWF and all four athletes were indeed sanctioned by the IWF;
 - iii. *“During the qualification period of the Olympic Games Tokyo 2020”*: all four ADRVs occurred between 17 November 2018 and 16 November 2019 (i.e. within the Qualification Period of 1 November 2018 to 22 July 2021).
25. With respect to the consequences applicable to the WFV’s breach, the IWF submitted the following:

As per Article 4 of the IWF OQS, the range of consequences that may be imposed against the WFV are the following:

- i. *withdraw the quota place(s) from that MF/NOC with regard to the Olympic Games Tokyo 2020 and/or*
- ii. *suspend that MF/NOC from participation in the ensuing Olympic Games. If such Member Federation is permitted to participate with Athletes in eligible events during the qualification period to the Olympic Games Tokyo 2020, its Athletes shall not be permitted to secure any IWF Absolute Ranking Points (World and/or Continental) at such event and their participation shall not affect the Member Federation’s exclusion from the Olympic Games Tokyo 2020*

As of today, the WFV has the full quotas: 4 men and 4 women.

In light the circumstances of the cases, the ITA is of the view that 6 quotas should be withdrawn; leaving the WFV with 1 male and 1 female to potentially qualify for the Tokyo Games.

Moreover, it is our opinion that Article 4.a) ii) should not apply to this case.

Lastly and for the sake of clarity, considering that the reallocation of quotas policy is already provided for in the IWF OQS, this matter is not for the Independent Panel to settle.

B. THE WFV’S POSITION

26. As noted above, the WFV did not provide any detailed submissions in these proceedings, however noted in its response to the ITA’s notice of 27 May 2021 that: (i) the four athletes who were sanctioned for doping were under the direct management of local teams at the time they committed the offences due to lack of funding from the Weightlifting Federation of Vietnam; and (ii) if the IWF would consider approving the Vietnam team for the Olympic Games, this would help weightlifting to attract more attention from the government to support the development of weightlifting in Vietnam.

27. The WFV did not submit formal prayers for relief in the present proceedings, but rather reiterated its request that “IWF would reconsider approving the Vietnam team for the OLP 2020”.

VI. JURISDICTION AND APPLICABLE LAW

28. At the outset, the Panel notes that the WFV does not dispute that the IWF Panel has jurisdiction over the present matter.
29. To the contrary, the WFV acknowledged receipt of the Panel’s correspondence of 10 June 2021 and confirmed that it had no issue with the composition of the Panel in these proceedings.
30. Articles 12.7.1 and 12.7.2 of the IWF ADR expressly provide that, once the IWF has notified a Member Federation of an alleged breach and given the Member Federation a reasonable deadline to respond, “[t]he IWF will then transfer the file to the Independent Panel for adjudication”.
31. In view of the above, the IWF Panel has jurisdiction to decide on the present dispute.
32. With respect to the applicable law, the IWF has alleged that the IWF OQS and the IWF ADR apply to the case at hand. The WFV has not put forward any position on the applicable law, nor disputed this submission from the IWF. The Panel therefore holds that the presented proceedings will be adjudicated in application of the IWF OQS and the IWF ADR.

VII. MERITS

33. In light of the Parties’ respective arguments, the questions that the IWF Panel needs to rule on in the present proceedings are the following:
- Has the WFV breached Article 4(a) of the IWF OQS?
 - If so, what sanctions should be imposed on the WFV?

A. HAS THE WFV BREACHED ARTICLE 4(A) OF THE IWF OQS?

34. As mentioned, the IWF considers that the WFV has breached Article 4(a) of the IWF OQS.

35. As a reminder,² this provision – the applicability of which is not contested by the WFV – provides that a Member Federation may be sanctioned in the event that three or more ADRVs (sanctioned by the IWF) are committed by athletes affiliated to the Member Federation between 1 November 2018 and 22 July 2021.
36. On the basis of the evidence on file, the IWF Panel is satisfied that the WFV has committed a breach of Article 4(a) of the IWF OQS.
37. Indeed, it is uncontested that:
- Four athletes affiliated to the WFV committed, and were sanctioned by the IWF for, ADRVs; and
 - The ADRVs were committed within the relevant time period set out in the IWF OQS.³
38. The IWF Panel thus needs to determine the relevant sanction for this breach.

B. WHAT SANCTION SHOULD BE IMPOSED ON THE FRH?

1. The WFV's Brief Submission

39. Prior to determining the appropriate sanction for the WFV's breaches, the IWF Panel will address the WFV's position regarding the circumstances that, in its opinion, should be considered in reaching a conclusion regarding the sanction.
40. Indeed, according to Article 12.2 of the IWF ADR (referred to by the IWF in its Referral), the Panel "should take into account the degree of fault or negligence of the Member Federation" when determining consequences.
41. Moreover, the comment to this Article states that:

[...] the Member Federation may, as part of the proceedings before the Independent Panel, submit evidences to establish that the Member Federation's degree of fault or negligence was not significant in relation to the circumstances surrounding the underlying anti-doping rule violations. In such case, the Independent Panel should consider and appreciate any such attenuated degree of fault or negligence as a mitigating factor when determining the applicable Member Consequences. For the avoidance of doubt, the Member Federation shall bear the burden of establishing any

² For the full wording of the relevant provisions, see above Section IV.

³ The Panel notes that one of the ADRVs committed by Ms. Thi Phuong Thahn NGUYEN did not occur within the Qualification Period, however the second did.

attenuating circumstance in relation to the Member Federation's degree of fault or negligence.

42. The IWF Panel considers that the (brief) submission made by the WFV in its correspondence of 30 May 2021 must be considered in this context.
43. In essence, the WFV submitted in its email of 30 May 2021 that: (i) due to limited funding it did not have control over the four athletes who committed the ADRVs at the time that they committed the ADRVs; and (ii) allowing the WFV to compete at the Olympic Games would result in more funding for the development of weightlifting in Vietnam.
44. The WFV did not elaborate further on these circumstances during the present proceedings. Nor did it, at any stage, provide evidence substantiating its allegations.
45. In view of the clear requirement in the IWF ADR that the Member Federation "bear the burden of any attenuating circumstance" and "submit evidences" to establish its position, it is simply not possible for the IWF Panel to accept the WFV's request to approve the Vietnam team.

2. Relevant sanction

46. As mentioned, the IWF Panel finds that the WFV has committed a breach of Article 4(a) of the IWF OQS.
47. The consequences of such a breach are expressly set out in the relevant regulations, which provides that the IWF Panel may:
 - i. withdraw the quota place(s) from that MF/NOC with regard to the Olympic Games Tokyo 2020 and/or*
 - ii. suspend that MF/NOC from participation in the ensuing Olympic Games. If such Member Federation is permitted to participate with Athletes in eligible events during the qualification period to the Olympic Games Tokyo 2020, its Athletes shall not be permitted to secure any IWF Absolute Ranking Points (World and/or Continental) at such event and their participation shall not affect the Member Federation's exclusion from the Olympic Games Tokyo 2020.*
48. For its part, the IWF has submitted that, as of today, the WFV has the full quota available (under Article 3b of the IWF OQS) of four men and four women. In the circumstances of the case, the IWF submits that:
 - Six quotas should be withdrawn, leaving the WFV with 1 male and 1 female to potentially qualify for the Tokyo Games; and

- Article 4(a)(ii) should not apply to this case, i.e. the WFV should not be suspended from participation in the ensuing Olympic Games.

49. The WFV has not addressed in any detail these specific requests from the ITA.

50. Having considered all of the circumstances, the IWF Panel accepts the ITA's request is: (i) in line with the applicable rules; and (ii) not disproportionate.

51. Indeed, according to Article 3 of the IWF OQS:

Subject to the specific Anti-Doping Rules and Regulations, all NOCs/MFs shall be eligible to qualify a minimum of one (1) male and one (1) female athlete for the Olympic Games Tokyo 2020.

a) Member Federations which have recorded ten (10) or more but less than twenty (20) violations of the IWF Anti-Doping Rules (IWF ADR) from 8 August 2008 until 22 July 2021 which is a continuous period, sanctioned by IWF or Anti-Doping Organisations other than Member Federations, National Olympic Committees or National Anti-Doping Organisations shall be eligible to qualify one (1) additional male and one (1) additional female athlete, altogether a maximum of two (2) male and two (2) female athletes;

b) Member Federations which have recorded less than ten (10) violations of the IWF ADR from 8 August 2008 until 22 July 2021 which is a continuous period, sanctioned by IWF or Anti-Doping Organisations other than Member Federations, National Olympic Committees or National Anti-Doping Organisations shall be eligible to qualify three (3) additional male and three (3) additional female athletes, altogether a maximum of four (4) male and four (4) female athletes.

52. In light of the policy principles underlying the above (which presuppose a relationship between (i) the number of ADRVs over a defined period of time and (ii) the consequences in term of quotas), the number of ADRVs over the relevant period in the present case, and in the absence of any specific submission in this respect by the WFV, the Panel sees no reason to depart from the IWF's request. Even assuming that the WFV's justification based on lack of control or funding had been established, the sanction requested by the IWF would still not be disproportionate on its face.

* * * * *

VIII. DECISION

53. In light of the above the Panel rules as follows:

1. **The Weightlifting Federation of Vietnam has committed a breach of Article 4(a) of the IWF OQS.**
2. **The Weightlifting Federation of Vietnam's quotas for the Tokyo Olympic games shall be reduced from six to two (one 1 male and 1 female).**

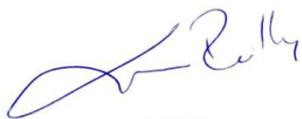
Date: 4 July 2021

The IWF Panel:



Antonio Rigozzi

Chair



Louise Reilly



Heiner Kahlert