4A_318/2020[1]

Judgment of December 22, 2020

First Civil Law Court

Federal Judge Kiss, President,
Federal Judge Hohl,
Federal Judge Niquille,
Federal Judge Rüedi, and
Federal Judge May Canellas.
Clerk: Mr. O. Carruzzo.

Sun Yang,
represented by Mr. Fabrice Robert-Tissot, Mr. Christopher Boog, and Mr. Philippe Bärtsch,
Appellant,

v.

1. World Anti-Doping Agency (WADA),
represented by Mr. Xavier Favre-Bulle and Mr. Marc-Anthony de Boccard,
2. International Swimming Federation (FINA),
represented by Mr. Serge Vittoz,
Respondents

Facts:

A.
A.a. Sun Yang (hereinafter: the Swimmer, the Athlete) is a Chinese international-level swimmer who has won several Olympic medals and world championship titles in various swimming events.

The World Anti-Doping Agency (hereinafter: WADA) is a foundation under Swiss law, with its headquarters in Lausanne. One of its aims is to promote the fight against doping in sport at the international level. The International Swimming Federation (hereinafter: FINA), an association under Swiss law with its headquarters in Lausanne, is the governing body of swimming at the world level.

A.b. During the night of 4 September 2018, the athlete was subject to an out-of-competition doping control ordered by FINA, as the testing authority, the implementation of which was delegated to International Doping Tests and Management (IDTM), acting as sample collection authority. The circumstances in

[1] Translator's Note: Quote as Sun Yang *v.* AMA (WADA) and FINA, 4A_318/2020.
The decision was issued in French. The full text is available on the website of the Federal Tribunal, www.bger.ch.

which the Athlete's unannounced testing took place are at the heart of this dispute. As the versions of the parties differ on a number of points, the Federal Tribunal will confine itself to the facts found in the contested award.

On September 4, 2018, between 22:00 and 23:00, the sample collection party, consisting of an officer in charge of the doping control ("Doping Control Officer," hereinafter: the DCO), an assistant in charge of blood collection ("Blood Collection Assistant," hereinafter: the BCA), and another, male, assistant ("the Doping Control Assistant," hereinafter: the DCA), went to the athlete's home in Hangzhou, China to collect blood and urine samples from the swimmer. All three of the above-mentioned persons were accompanied by a driver, who did not take part in the disputed doping control.

The DCO, who the athlete already knew from a previous doping control in which she had participated, presented him with a copy of her ID card issued by IDTM and a FINA document for IDTM entitled "Letter of Authority," which included the following phrase:

> [IDTM] is appointed and authorized by [FINA] to collect urine and blood samples from athletes in the frame of the doping controls organized as part of the FINA Unannounced Out-of-Competition Testing Programme.[2]

The DCA presented the athlete with his national ID card and the BCA submitted a copy of her Junior Nurses Certificate, entitled "Specialized Technical Qualification Certificate for Junior Nurses" [STQCJN].

The athlete signed the Doping Control Form and cooperated by providing two blood samples. The samples were sealed in glass containers and stored in a storage box.

Shortly thereafter, the athlete saw that the DCA was taking photographs of him. Finding this behavior inappropriate, he asked to re-examine more carefully the documents presented by the sample collection personnel, in particular the references from the DCA. The swimmer felt that the information provided by the DCA was insufficient. At the initiative of the DCO, or at least with her agreement, the DCA, whose task was exclusively to supervise the urine sample collection process, was excluded from the control mission. No urine samples could be collected, as the DCA was the only male member of the collection team.

Displaying some concern about the documents submitted by the DCO and the BCA, the athlete sought advice by telephone from his entourage. Shortly thereafter, his personal physician, Dr. B._____, joined him on site. The latter consulted his superior, Dr. C._____, by telephone, as well as D._____, head of the Chinese national swimming team. Dr. B._____ and Dr. C._____ then discussed with the DCO the accreditations of the sample collection personnel and the Letter of Authority.

They informed the athlete and the DCO that the documents presented did not meet the required requirements, which is why the blood samples collected could not be taken by the DCO. The athlete therefore wanted to retrieve the samples. The DCO warned the swimmer that this could be considered a possible failure to comply with doping control with potentially serious consequences. After intense

[2] Translator's Note: In English in the original text.

discussion and under pressure from the athlete, the DCO or BCA removed a glass container from the storage box and gave it to the swimmer.

Following instructions from his supervisor, G._____, given to him over the phone, the DCO requested the athlete return the material belonging to IDTM. The glass container could not be opened manually, so the athlete instructed a security officer to break it open. The security guard destroyed the glass container with a hammer, with the athlete assisting him by projecting light from his cell phone. The athlete then retrieved the blood samples, which remained intact, and returned the broken container to the DCO. He also tore up the doping control form he had previously signed.

At the athlete's request, Dr. B._____ transcribed the athlete's remarks regarding the disputed doping control on a separate sheet of paper. The said document, signed by the DCO, the BCA, the DCA, the athlete and the aforementioned doctor, states the following in its English translation:

> On the night of September 4, 2018, 4 persons of FINA conducted urine test and blood test to Mr. SUN Yang. One of the four persons was the driver who was unrelated. The rest of three persons entered into the room. Among the three persons, the [DCO] (...) possessed and provided and showed the certification of Doping Control Officer. The Athlete] actively cooperated with the testing. However, in the following process of blood and urine sample collection, [The Athlete] found that the [BCA], Blood Collection Officer, only provided her Nurse Qualification Certificate (...) but did not provide any other proof of certification for Blood Collection Officer. The DCA] (classmate of the [DCO]), the Doping Control Officer for urine test, only provided his resident ID card (...) and did not provide any other certification of Doping Control Officer for urine. They were unrelated personnel. Under our repeated inquiries, among them, only [the DCO] (...) provided the certification of Doping Control Officer, and the rest two could not provide Doping Control Officer certification and any other relevant authority. Therefore, the urine test and blood test cannot be completed. (The blood sample that has been collected could not be taken away.)[3]

A.c. The swimmer was found guilty of an anti-doping rule violation based on these facts and was cleared by the FINA Anti-Doping Commission on January 3, 2019.

In substance, the Commission considered that the documents presented to the swimmer by the agents in charge of conducting the test did not in fact meet required standard. The athlete's notification process was considered irregular. Therefore, the disputed doping control was invalid and void. As a result, the blood collected in the course of the test was not considered a sample for the purposes of anti-doping regulations. The Commission emphasized that the completely inappropriate behaviour of the DCA (taking photographs of the athlete) was a reason to stop the collection of urine samples. As for the BCA, she had not provided the athlete with documentation establishing that she was qualified to perform a blood test. Finally, with respect to the DCO, she had not clearly indicated to the swimmer that she considered his behaviour to be a possible failure to comply with the doping control which could lead to serious consequences.

[3] Translator's Note: In English in the original text.

B.

B.a. On February 14, 2019, WADA submitted a statement of appeal to the Court of Arbitration for Sport (CAS), in which it requested the athlete's suspension for a period of eight years.

The appellant amended its statement of appeal dated February 18, 2019, joining FINA as a second respondent.

At WADA's request, CAS granted it a 20-day extension of time to file its statement of appeal.

On April 3, 2019, WADA filed its appeal brief with the CAS.

On April 16, 2019, the Challenge Commission of the International Council of Arbitration for Sport (ICAS) denied the athlete's challenge of the arbitrator appointed by WADA, Mr. Michael J. Beloff.

On May 1, 2019, the CAS informed the parties that the Panel would be composed of arbitrators Michael J. Beloff and Philippe Sands, as well as Franco Frattini, a judge in Rome, who would serve as Chairman.

The Swimmer appealed to the Federal Tribunal against the decision dismissing the challenge of the WADA-appointed arbitrator.

In a judgment dated September 25, 2019, the Federal Tribunal withdrew the case from its list because the arbitrator resigned on June 28, 2019 (case 4A_265/2019).

On May 9, 2019, the Athlete requested the CAS to divide the proceedings ("Request for bifurcation") and to examine preliminarily the question of the admissibility of the appeal and/or its jurisdiction.

On May 19, 2019, the CAS informed the parties that the Panel had rejected the plea of inadmissibility due to the late filing of the appeal brief. Upon receipt of a new appeal filed by the Athlete against the said decision, the Federal Tribunal declared it inadmissible insofar as it had not become moot (Judgment 4A_287/2019[4] of January 6, 2020).

During the course of the proceedings, the swimmer and FINA also argued that the appellant's counsel was in a conflict of interest situation. On May 29, 2019, the Athlete filed an affidavit in which he concluded that counsel for the Appellant was barred from representing her in the CAS proceedings, that the Statement of Appeal and the Appeal Brief were inadmissible due to the inability to retain counsel and, therefore, that the CAS had no jurisdiction ratione temporis to decide the dispute. In an incidental decision of July 26, 2019, the CAS dismissed the Athlete's motion. The Federal Tribunal declared the swimmer's appeal against this judgment inadmissible (judgment 4A_413/2019[5] of October 28, 2019).

On July 5, 2019, WADA selected a new arbitrator in the person of lawyer Romano Subiotto.

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[4] Translator's Note: The English translation of this decision can be found here: https://www.swissarbitrationdecisions.com/atf-4a-287-2019

[5] Translator's Note: The English translation of this decision can be found here: https://www.swissarbitrationdecisions.com/atf-4a-413-2019

The athlete requested the challenge of the above-mentioned arbitrator on July 12, 2019. By decision dated July 26, 2019, the ICAS Disqualification Panel denied the request for challenge.

On August 14, 2019, the Athlete and FINA filed their response.

On November 15, 2019, the Panel held a hearing in Montreux, broadcast live on the internet with the agreement of the parties, during which it heard the Athlete and eight other persons.

B.b. On February 28, 2020, the Panel rendered an arbitral award in which it found the Athlete guilty of a violation of Art. 2.5 of the FINA Doping Control Rules ("FINA Doping Control Rules", 2017 version) and suspended him for a period of eight years from the date of the award. The Court denied WADA's request to set aside the swimmer's competitive results for the period from September 4, 2018 to February 28, 2020.

In short, the Panel, after setting aside the procedural objections raised by the athlete, considered that the rules on notification of the doping test had been complied with, as the documentation presented to the swimmer was sufficient to proceed with the doping test. Furthermore, there was no justification for the swimmer's conduct in ordering the destruction of the container with the blood samples, tearing up the doping control form, and preventing the DCO from leaving the premises with the already collected blood samples. The arbitrators further found that the DCO had sufficiently made the athlete aware of the consequences of his actions. Noting that the athlete already had a first violation of the anti-doping rules from June 2014, they considered that the duration of the athlete's suspension should be doubled to eight years. For a series of reasons that do not need to be stated here, the Panel found that the annulment of the swimmer's results between September 4, 2018 and the time of the award was not justified.

C.
On April 28, 2020, the Athlete filed a civil action with the Federal Tribunal seeking the annulment of the award rendered on February 28, 2020. He further requested the Federal Tribunal to declare that the CAS had no jurisdiction and challenge the arbitrator Romano Subiotto (case 4A_192/2020). This case is still pending.

D.
On June 15, 2020, the Athlete (hereinafter: the Appellant) filed an application for revision of the Award of February 28, 2020. He made submissions for the annulment of the award and for the disqualification of the Chairman of the Panel, Franco Frattini.

In support of its application for revision, based on Art. 121(a) LTF, the Appellant submits that he learned of the existence of the award when an article was published on the [redacted] website dated May 15, 2020, that arbitrator Franco Frattini had published, on his Twitter account, repeated in 2018 and 2019, unacceptable comments with respect to Chinese nationals, which, in his opinion, is likely to raise legitimate doubts as to the impartiality of the said arbitrator in the context of the present dispute involving a Chinese athlete.

The Appellant granted WADA's (hereinafter: the Respondent Foundation) request for security for costs by spontaneously paying the sum of CHF 15'000 (after deduction of costs) to the Fund of the Federal Tribunal, which was acknowledged by order of July 22, 2020.

On September 4, 2020, FINA (hereinafter: the Respondent Association) declared that it would take legal action.

In its response of September 4, 2020, the CAS requested that the application for revision be rejected, to the extent it was admissible. It produced, as an annex to its writing, a written statement by arbitrator Franco Frattini, in which the latter vigorously contested the criticisms made against him by the Appellant.

On September 4, 2020, the Respondent Foundation requested the dismissal of the application for revision.

The Appellant responded spontaneously, prompting a rejoinder from the Respondent Foundation and the CAS.

Reasons:

1.
According to Art. 54(1) of the Federal Tribunal Act of June 17 2005 (FSCA; SR 173.110), the Federal Tribunal shall issue its judgment in an official language, as a rule in the language of the contested decision. Where the decision was rendered in another language (here, English), the Federal Tribunal uses the official language chosen by the parties. Before the CAS, the parties used English, while in their briefs to the Federal Tribunal they used French. In accordance with its practice, the Federal Tribunal will therefore render its judgment in French.

2.
2.1 The Federal Tribunal is seized of a motion for annulment and an application for revision in respect of the same arbitral award. In such a case, the motion for annulment is in principle given priority (ATF 129 III 727[6] at 1 p. 729; Judgment 4A_231/2014[7] of September 23, 2014 at 2). In the present case, the application for revision relates to only one question, as the Appellant only calls into question the impartiality of the Chair of the Panel who rendered the contested award. For reasons of procedural economy, it is therefore appropriate to depart from the rule and to examine the application for revision first as, if it were admitted, this would result in the annulment of the award and would exempt the Federal Tribunal from having to rule on the numerous issues raised by the Appellant in his motion.

[6] Translator's Note: The English translation of this decision can be found here: https://www.swissarbitrationdecisions.com/extension-arbitration-clause-non-signatory

[7] Translator's Note: The English translation of this decision can be found here: https://www.swissarbitrationdecisions.com/suspicion-bribery-does-not-justify-stay-arbitration-indefinite-time

3.
The seat of the CAS is in Lausanne. At least one of the parties was not domiciled in Switzerland at the relevant time. The provisions of Chapter 12 of the Law on Private International Law (PILA; SR 291) are therefore applicable (Art. 176(1) PILA).

4.
4.1 The PILA does not contain any provision on the revision of arbitral awards within the meaning of Art. 176 PILA. The Federal Tribunal has filled this gap through case law. The Federal Tribunal is the competent judicial authority to hear applications for the revision of any international arbitral award, whether final, partial, or interlocutory. If it grants an application for revision, the Federal Tribunal does not decide on the merits itself but refers the case back to the arbitral tribunal that made the decision or to a new arbitral tribunal to be constituted (ATF 142 III 521[8] at 2.1 p. 525; 134 III 286[9] at 2 p. 287 and references).

4.2 In its request for revision, the Appellant submits that it discovered, in May 2020, the existence of circumstances that could seriously call into question the impartiality of the president of the Panel that rendered the contested award. Therefore, he alleges that he can invoke, in relation to these circumstances, the specific ground for disqualification provided by law (Art. 121(a) FSCA).

In several judgments, the Federal Tribunal has considered the question of whether a revision should be initiated when a ground comparable to the one at issue here is only discovered after the expiry of the time limit for appeal. However, it has left the question open (ATF 143 III 589 at 3.1 p. 597; 142 III 521[10] at 2.3.5 p. 535; judgments 4A_234/2008[11] of August 14, 2008 at 2.1; 4A_528/2007[12] of April 4, 2008 at 2.5).

In a landmark judgment, the First Civil Law Court examined the issue in depth, not only by studying the solutions advocated by the doctrine and those adopted in comparative law, but also by reviewing the preparatory work on various statutes. The Federal Tribunal noted, in particular, that the legislature did not seem to have addressed the issue of the revision of international arbitral awards and that, therefore, there was nothing to prevent the Federal Tribunal from filling a loophole in the FTA or the PILA. At the end of its review, the Federal Tribunal referred to the need to allow that the discovery, after the expiry of the time limit for appeal against an international arbitral award, of a ground for challenging the sole arbitrator or one of the members of the arbitral tribunal may give rise to an application to the Federal

[8] Translator's Note: The English translation of this decision can be found here: http://www.swissarbitrationdecisions.com/federal-tribunal-upholds-independence-members-cms-network

[9] Translator's Note: The English translation of this decision can be found here: https://www.swissarbitrationdecisions.com/request-for-revision-of-an-arbitral-award

[10] Translator's Note: The English translation of this decision can be found here: http://www.swissarbitrationdecisions.com/federal-tribunal-upholds-independence-members-cms-network

[11] Translator's Note: The English translation of this decision can be found here: https://www.swissarbitrationdecisions.com/renunciation-to-appeal-revision-of-award-within-time-limit-to-ap

[12] Translator's Note: The English translation of this decision can be found here: https://www.swissarbitrationdecisions.com/arbitrators-independence-not-affected-by-his-membership-of-a-spe

Tribunal for revision of the award, provided that the requesting party could not have discovered the ground for challenge during the arbitral proceedings with the attention required by the circumstances.

However, it left the issue undecided, not only because the application for revision would be dismissed in any event, but also by taking into account the fact that a 'tidying up' – a revision – of Chapter 12 PILA was then currently in progress (ATF 142 III 521 at 2.3.5).

Since then, the situation has evolved, from a legislative point of view. In its message of October 24, 2018 on the amendment of the PILA Chapter 12: International Arbitration, the Federal Council proposed to open the way for a revision when a ground for challenge is only discovered after the end of the arbitration proceedings (FF 2018 p. 7184). In its view, this is the only effective solution. The remedy in civil matters proves to be useless when a party only becomes aware of a ground for challenge after the expiry of the time limit for recourse. The Federal Council also notes that the aggrieved party does not always have the opportunity to raise such a defect at the stage of the enforcement proceedings. Moreover, the latter does not constitute an effective remedy, since the rejection of the application for enforcement does not lead to the annulment of the award (FF 2018 p. 7184).

The new Art. 190(a) PILA, which came into force on January 1, 2021 (AS 2020 p. 4184), provides, in (1)(c), that a party may apply for the revision of an award if, although it has exercised due diligence, a ground for challenge is only discovered after the arbitral proceedings have been terminated and no other legal remedy is available.

For all the reasons mentioned in ATF 142 III 521 and in view of the new solution adopted by the legislature, it is appropriate to fill the existing gap by admitting that the discovery of a ground requiring the challenge of an arbitrator after the expiry of the time limit for appeal against an international arbitral award may still give rise to the filing of an application for revision of the said award before the Federal Tribunal, provided that the requesting party was unable to discover the reason for the challenge during the arbitral proceedings by exercising the due diligence, *i.e.*, the attention required under the circumstances.

4.3 The Appellant declares that he has been informed of the existence of the ground for challenge on May 15, 2020, at the earliest.

In accordance with the violation of the rules on challenge, the application for revision must be filed with the Federal Tribunal, in order to be valid, within 30 days following the discovery of the ground for revision (Art. 124(1)(a) FSCA). This is a question of admissibility, not of the merits. It is up to the Appellant to establish the determining circumstances for verifying compliance with the time limit (judgments 4A_247/2014[13] of September 23, 2014 at 2.3; 4A_570/2011[14] of July 23, 2012 at 4.1).

[13] Translator's Note: The English translation of this decision can be found here: https://www.swissarbitrationdecisions.com/alleged-new-facts-must-be-pertinent-justify-revision

[14] Translator's Note: The English translation of this decision can be found here: https://www.swissarbitrationdecisions.com/federal-tribunal-rejects-request-for-revision-facts-that-were-kn

In this case, the contested award was notified to the Appellant on 2 March 2020. The 30-day period for appeal, laid down in Art. 100 FSCA, suspended from March 21 to April 19, 2020 inclusively by virtue of the Federal Council Ordinance of March 20, 2020 on the suspension of time limits in civil and administrative proceedings to ensure the maintenance of justice in connection with the coronavirus, expired on May 1, 2020. The Appellant states that he learned of the existence of the ground for challenge on May 15, 2020, at the earliest. By submitting his application for revision to the Federal Tribunal on June 15, 2020, the Appellant acted in good time. The question whether the Appellant could and should have discovered the ground for challenge during the arbitration proceedings with the due care required by the circumstances will be examined below.

5.
5.1 In support of his application for revision, the Appellant alleges that an article entitled [redacted], written by a person named E._____, published on May 15, 2020, on the [redacted] website, reported various messages published by arbitrator Franco Frattini on his Twitter account between May 28, 2018 and June 9, 2019, i.e., before and during the arbitral proceedings before the CAS.

The tweets – which are short messages of up to 140 characters – posted by the arbitrator in question read as follows: have the following content:[15]

Tweet of May 28, 2018:

> Show the HORROR
>
> THIS IS CHINA TODAY!! I'm sure nobody will ha e the courage to respond to me!!! Ambassador of China to Italy,where are you????? Are you silent on the tortures on dogs in Yulin?????

Tweet of May 28, 2018:

> Let's multiply our messages! Invade in China with our protest against horror and torture on stray dogs and cats,as they try to invade our markets with fake products!! Raise our voice, otherwise we are in complicity,

Tweet of July 3, 2018:

> Hell forever for those bastard sadic chinese who brutally killed dogs and cats in Yulin,with the complicity of the chinese authorities !!!

Tweet of May 28, 2019:

> This yellow face chinese monster smiling while torturing a small dog,deserves the worst of the hell!!!! Shame on China,pretending to be a superpower and tolerating these horrors!!
>
> [link to video of a person repeatedly throwing a small dog in the air]

[15] Translator's Note: All tweets in English in the original text. Spelling and grammar have not been altered.

Tweet of May 28, 2019:

> Racist????Me??ehi guy, I repeat: those horrible sadics are CHINESE!not French or Italian or polish! And I think they deserve a worse hell than the one in which they torture innocent animals! Chinese is Yulin! do you want to defend! come on,shame!!!!!

Tweet of June 2, 2019:

> [response to a post by another Twitter social network user]
>
> Old yellow-face sadic trying to kill and torture a small dog:this is China's picture!!! Westerners doing rich business with China bear in mind these atrocities

Tweet of June 9, 2019:

> Torturing innocent animal is a flag of chinese!Sadics, inhumans with the protection of chinese authorities and the tolerance of western powers focusing on more business with China,regardless any massive violence!Shame on china and their protectors! Shame on china and their protectors!
>
> [photograph of people cutting up animal carcasses]

5.2 As a preliminary point, the Respondent Foundation submits that the application for revision is based on new evidence, namely the article published on May 15, 2020, aimed at establishing old facts, *i.e.* the tweets published between 2018 and 2019 by the incriminated arbitrator. Referring to an unpublished judgment (4P.76/1997 of July 9, 1997, reproduced in Bulletin ASA 1997 p. 511), it notes that the Federal Tribunal left undecided the question of the admissibility of an application for revision based on evidence that did not yet exist at the time the decision for which revision is sought was rendered but which is intended to establish facts prior to that decision. In the Respondent Foundation's view, such a process would be inadmissible. The application for revision should therefore be dismissed, as the Appellant is not in a position to demonstrate the content of the tweets without the post-award evidence.

Such arguments cannot be upheld. Indeed, the Appellant bases his request for revision on the various tweets published by the arbitrator in 2018 and 2019, which he has also annexed separately to his writing, and not on the article published on the Internet on May 15, 2020. The Respondent Foundation therefore wrongly claims that the Petitioner would not be able to establish the tweets and their content without the new evidence. Insofar as the Appellant produces said article, it is only to establish the date on which he claims to have discovered the tweets that form the basis for his request for revision. However, the submission of new facts and new documents subsequent to the contested decision, which make it possible to determine the admissibility of an act submitted to the Federal Tribunal, is admissible (ATF 136 III 123 at 4.4.3; judgments 4F_6/2019 of March 18, 2020, at 2.1; 4A_705/2014 of May 8, 2015, at 2.1). The grievance is therefore unfounded.

6.
The Respondent Foundation and the CAS argue that, with the utmost diligence, the Appellant could have discovered the facts upon which he bases his request for revision during the arbitral proceedings.

6.1 A party that intends to challenge an arbitrator must invoke the reason for the challenge as soon as the party becomes aware of it. This jurisprudential rule, expressly stated in Art. R34 of the Code of Sports-

related Arbitration (hereinafter: the Code), applies both to grounds for challenge that a party actually knew and to those that it could have known with due care (ATF 129 III 445 at 4.2.2.1 p. 465 and references); while choosing to remain in ignorance can be considered, depending on the case, as an abusive maneuver comparable to deferring the request for challenge (ATF 136 III 605[16] at 3.2.2 p. 609; judgments 4A_110/2012[17] of October 9, 2012 at 2.1.2; 4A_506/2007[18] of March 20, 2008 at 3.1.2). The rule in question is an application of the principle of good faith in the field of arbitral proceedings. According to this principle, the right to raise a plea based on the irregular composition of the arbitral tribunal lapses if the party does not immediately raise it, as the party cannot keep it in reserve and invoke it only in the event of an unfavourable outcome of the arbitral proceedings (judgment 4A_506/2007, cited above, at 3.1.2 and references). An application for revision based on an arbitrator's alleged bias can thus only be considered in respect of a ground for challenge that the party could not discover during the arbitration proceedings with the attention required by the circumstances (judgments 4A_234/2008, cited above, at 2.2.1; 4A_528/2007, cited above, at 2.5.1).

6.2 The Appellant claims to have discovered the incriminated tweets when the article from E._____ was put online on May 15, 2020. He states that one of his counsel carried out research to ensure the impartiality of arbitrator Franco Frattini when he was appointed Chairman of the Panel of Arbitrators on May 1, 2019. According to his explanations, no disputed tweet appeared when the said counsel entered the words "Franco + Frattini", "Franco + Frattini + sport", or "Franco + Frattini + Court of Arbitration for Sport" into the Google search engine. In this respect, he also refers to a report dated June 12, 2020, drawn up at his request by an independent forensic expert, F._____, confirming that no suspicious tweet appears when searching in the above-mentioned search engine with the keywords "Franco + Frattini". The Petitioner further points out that he had no reason to suspect that the arbitrator may have made inadmissible comments in tweets concerning animal protection. Therefore, he cannot be blamed for not having been able to identify the said tweets, which are objectively difficult to find.

6.3 In its response, the CAS notes that the offending tweets were posted between May 28 and July 3, 2018 (*recte*: June 9, 2019). They were visible as soon as they were published and are still visible today. It argues that the Appellant could have easily found them when the arbitrator in question was appointed if he had just undertaken some research, even not very extensive research. In its view, it is not sufficient to simply enter the arbitrator's name in the Google search engine. It is necessary to add another term, in order to establish a possible link between the arbitrator and another person or entity. Therefore, in the CAS opinion, it would not have been absurd to use, for example, the words "Frattini" and "China", which would have been sufficient to make certain disputed tweets appear on the first page of the list of search results of the search engine mentioned above.

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[16] Translator's Note: The English translation of this decision can be found here: http://www.swissarbitrationdecisions.com/independence-and-impartiality-of-a-party-appointed-arbitrator-in

[17] Translator's Note: The English translation of this decision can be found here: https://www.swissarbitrationdecisions.com/grounds-challenge-arbitrator-must-be-raised-immediately-after-one-becomes-aware-them

[18] Translator's Note: The English translation of this decision can be found here: https://www.swissarbitrationdecisions.com/application-of-iba-rules-to-assess-an-international-arbitrators-

According to the CAS, the light touch of the Appellant in the search for elements likely to call into question the impartiality of arbitrator Franco Frattini contrasts with the great care, if not relentlessness, shown by the Appellant in order to obtain the challenge of the arbitrators appointed by the Respondent Foundation. Had the Appellant instead been meticulous in his initial search, he would have easily spotted the disputed tweets.

The CAS also points out that the website on which the article was posted on May 15, 2020, is managed by a law firm specializing in the defense of athletes suspected of doping. The author of the article, E._____, presents himself as a retired freelance journalist and engineer. He has also taken up the Appellant's cause, openly defending the Chinese athlete in another article published on March 19, 2020, on the same website. According to the CAS, if a retired journalist was able to discover the disputed tweets in 2020, one can legitimately think that any other person could have discovered them before the end of the CAS proceedings.

6.4 The Respondent Foundation submits that the Appellant has not demonstrated that it was impossible for him to have accessed the disputed tweets at the time the arbitrator in question was appointed, and until the award was rendered, when the burden of proof rests with the Athlete. It notes that by entering the first and last name of the arbitrator concerned, with or without quotation marks, in the Google search engine, the Twitter account of the said arbitrator appears on the first page of the list of search results. It also points out that the Twitter account of the arbitrator in question is "public", *i.e*. accessible to any person with internet access, without that person necessarily having to have an account on the same social network. According to the Respondent Foundation, one could legitimately expect an athlete risking eight years of suspension and the annulment of his sports results to browse, upon the appointment of an arbitrator, the arbitrator's Twitter account, accessible to all, by performing, at the very least, a simple search using a search engine. Indeed, the Appellant could be expected to examine "*leading social networks such as Facebook, Twitter, Instagram*". The Appellant's lack of curiosity is inexcusable, as the search for an athlete facing such a heavy suspension must be commensurate with the stakes of the case. Moreover, the Appellant is not credible when he claims that it was difficult to find the disputed tweets on the arbitrator's account.

6.5 In the present case, the Appellant declares having discovered the existence of the ground for disqualification on May 15, 2020, at the earliest – the date of the publication of the article in E._____. It should be noted from the outset that the publication of said article by a person who apparently took up the defence of the sanctioned athlete, two and a half months after the notification of the Award and significantly almost a year after the last of the incriminating tweets was posted online, appears unique to say the least, if not unwelcome. This being the case, it is not established, on the basis of the elements provided by the parties to the Court, that the Appellant was aware of the elements upon which he bases his challenge request before the publication of the said article before the award was rendered or before the deadline for appeal to the Federal Tribunal had expired, respectively. The Respondent Foundation and the CAS do not claim otherwise, but argue that the Appellant could and should have discovered the ground for challenge during the arbitration proceedings with the attention required by the circumstances.

Contrary to the Respondent Foundation's contention, the issue at this stage is not whether or not the Appellant could have had access to the disputed tweets during the arbitration proceedings, but only

whether or not the Appellant can be accused of not having exercised due care in seeking out the elements that may call into question the arbitrator's impartiality. In this respect, whatever the CAS may think, the circumstance in which the journalist E._____ was able to access the offending tweets in 2020 is not, in itself, decisive.

Case law imposes upon the parties a duty of curiosity[19] as to the existence of possible grounds for challenge that could affect the composition of the arbitral tribunal (ATF 136 III 605[20] at 3.4.2 p. 618; judgments 4A_110/2012, cited above, at 2.2.2; 4A_763/2011[21] of April 30, 2012, at 3.3.2; 4A_234/2008, cited above, at 2.2.2; 4A_528/2007, cited above, at 2.5.3; 4A_506/2007, cited above, at 3.2). A party may therefore not be satisfied with the general declaration of independence made by each arbitrator but must instead make certain investigations to ensure that the arbitrator offers sufficient guarantees of independence and impartiality. The Federal Tribunal thus found an inexcusable lack of curiosity on the part of a party who had ignored certain data, accessible at all times on the CAS website (judgments 4A_234/2008, cited above, paragraph 2.2.2; 4A_506/2007, cited above, at 3.2). On the other hand, it has never delimited the exact scope of the duty of curiosity. It is, in fact, difficult to define the contours of this duty, which depend on the concrete circumstances of each case. In any case, the duty of curiosity is not unlimited. The parties are certainly obliged to carry out certain investigations, in particular on the Internet (Mavromati/Reeb, *The Code of the Court of Arbitration for Sport*, 2015, no. 68 ad Art. R34 of the Code; Kaufmann-Kohler/Rigozzi, *International Arbitration - Law and Practice in Switzerland*, 2015, n. 8.138 ff). While they can certainly be required to use the main computer search engines and to consult sources likely to provide, *a priori*, elements revealing a possible risk of bias on the part of an arbitrator, such as the websites of the main arbitral institutions, of the parties, of their counsel and of the law firms in which they practice, the law firms in which certain arbitrators work, and – in the field of sports arbitration – those of the Respondent Foundation and of the sports institutions concerned, one cannot, however, expect them to systematically and thoroughly scrutinize all the sources relating to a given arbitrator (*cf*. in this sense, Karim El Chazli, *L'impartialité de l'arbitre, Étude de la mise en oeuvre de l'exigence d'impartialité de l'arbitre*, 2020, p. 325 and 330 ff, which refers to French case law). Moreover, while it is true that it is possible to easily access the data appearing on open access websites with a single click, this does not mean that the information in question is always easily identifiable.

Indeed, as one author points out, if all information can be presumed to be freely accessible from a material point of view, it is not necessarily easily accessible from an intellectual point of view (El Chazli, *op. cit*., p. 329). Depending on the circumstances, a party may need clues alerting it to the existence of a possible conflict of interest, requiring such party to carry out further research, particularly when the reason for the risk of bias is *a priori* unsuspected (El Chazli, *op. cit*., p. 329). Thus, the mere fact that information is freely accessible on the Internet does not *ipso facto* mean that the party, who would not have been aware of it notwithstanding his or her research, would necessarily have failed in his or her duty of curiosity. In this respect, the specific circumstances of the case will always remain decisive.

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[19] Translator's Note: This could also be translated as a "duty of enquiry".

[20] Translator's Note: The English translation of this decision can be found here: http://www.swissarbitrationdecisions.com/independence-and-impartiality-of-a-party-appointed-arbitrator-in

[21] Translator's Note: The English translation of this decision can be found here: https://www.swissarbitrationdecisions.com/request-for-revision-of-an-icc-award-rejected-the-petitioner-mus

In this case, none of the parties questions that the Twitter account of the arbitrator is accessible to everyone. Moreover, no party disputes that a link to the said account appears in the first results when the first and last name of the said arbitrator is entered into the Google search engine. It must therefore be admitted that the Appellant could, theoretically, have had access to the disputed tweets during the arbitration proceedings. However, it has not been established that the use of the keywords "Franco Frattini" in the aforementioned search engine during the arbitration proceedings would have made it possible to display the disputed tweets. Contrary to what the CAS maintains, the Appellant cannot be criticized for not having carried out a search by also introducing the word "China", because this would be tantamount to admitting that the Appellant should have guessed a possible lack of impartiality of the arbitrator solely on the basis of his nationality from the outset, even though there was no indication that the arbitrator would, hypothetically, have preconceived ideas about athletes having the same nationality as him.

It remains to be seen whether, as the Respondent Foundation asserts, the Appellant could and should have browsed the "leading social networks" and, in particular, the Respondent Arbitrator's Twitter account. Admittedly, it does not appear to be excluded, *prima facie*, that a party may be required, depending on the circumstances, to verify, by virtue of its duty of curiosity, the existence of possible grounds for challenge by examining, at least within certain limits, various social networks. However this also poses specific problems, as the universe of social networks is fluctuating and evolving rapidly. In addition, social networks have tended to multiply in recent years. Even if some of them could be described, once and for all, as "flagship social networks", the scope of the duty of curiosity would still need to be redefined over time. At a time when some people frequently use or even abuse certain social networks, in particular by publishing countless messages on their Twitter account, it would be advisable, if need be, not to be too demanding with regard to the parties, otherwise the duty of curiosity would be transformed into an obligation to carry out very extensive, if not almost unlimited, investigations requiring considerable time. There is, however, no need to examine this question further since the circumstances of the present case must lead to the denial of an inexcusable lack of curiosity on the part of the Appellant.

In this case, the respondent arbitrator was appointed on May 1, 2019. In accordance with Art. R34 of the Code, the parties had a period of seven days to request his challenge. The Appellant claims to have carried out certain investigations on the internet and consulted the CAS award database to verify the cases in which the challenged arbitrator had sat. While perhaps the Appellant should have consulted, even if only briefly, the Twitter account of the arbitrator in question, one cannot – in the absence of any other circumstances – consider that the Appellant failed in his duty of curiosity by not having found the tweets published nearly ten months (May 28, 2018 and July 3, 2018) before the appointment of the arbitrator (May 1, 2019), that were drowned in the mass of messages from an arbitrator's Twitter account, who is apparently very active on the social network in question. In any event, and assuming that the Appellant could and should have discovered the first three disputed tweets published by the arbitrator, all prior to the arbitrator's appointment, such a conclusion would not be necessary with respect to the other messages posted by the arbitrator. Indeed, a party cannot be required to continue its internet searches throughout the arbitration proceedings, nor, *a fortiori*, to scan the messages published on social networks by the arbitrators during the arbitration proceedings.

The objection raised by the Respondent Foundation and the CAS must therefore be rejected.

7.
The Respondent Foundation and the CAS contest that the facts alleged by the Appellant are likely to call into question the impartiality of the challenged arbitrator and may justify his challenge.

7.1 An arbitrator must, like a state judge, present sufficient guarantees of independence and impartiality. Failure to comply with this rule leads to an irregular appointment falling under Art. 190(2)(a) PILA in matters of international arbitration. To determine whether an arbitrator presents such guarantees, reference must be made to the constitutional principles developed in relation to state courts whilst also having regard to the specificities of arbitration – especially in the field of international arbitration – when examining the circumstances of the specific case (ATF 142 III 521[22] at 3.1.1; 136 III 605[23] at 3.2.1 p. 608 and the precedents cited; judgments 4A_292/2019[24] of October 16, 2019 at 3.1; 4A_236/2017[25] of November 24, 2017, at 3.1.1).

7.2 The guarantee of an independent and impartial tribunal deriving from Art. 30(1) Cst. allows the challenge of a judge whose situation or behaviour is such as to raise doubts as to his impartiality. It is intended to prevent circumstances external to the case from influencing the judgment in favor or to the detriment of a party. It does not require disqualification only when bias of the judge is established, as a provision of the domestic forum can hardly be proven; it is sufficient that the circumstances give the appearance of bias and give rise to an apprehension of biased activity on the part of the judge. However, only objectively established circumstances must be taken into account; the purely subjective impressions of one of the parties to the proceedings are not decisive (ATF 144 I 159, at 4.3; 142 III 521, at 3.1.1; 140 III 221, at 4.1 and the judgments cited).

7.3 In *Mutu and Pechstein v. Switzerland* (judgment of October 2, 2018), the European Court of Human Rights (hereinafter: ECtHR) had to rule on the alleged lack of independence and impartiality of two CAS arbitrators. On this occasion, it emphasized that impartiality is usually defined by the absence of prejudice or bias (§ 141). It also recalled that, according to its settled case law, impartiality must be assessed not only from a subjective point of view, taking into account the personal conviction and conduct of the person called upon to rule on such an occasion, but also by following an objective approach, consisting in asking whether the court offered, independently of a judge's personal conduct, sufficient guarantees to exclude any legitimate doubt as to his or her impartiality (§ 141). Thus, in cases where it may be difficult to provide evidence to rebut the presumption of a judge's subjective impartiality, the requirement of objective impartiality provides an important additional safeguard (§ 142).

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[22] Translator's Note: The English translation of this decision can be found here: http://www.swissarbitrationdecisions.com/federal-tribunal-upholds-independence-members-cms-network

[23] Translator's Note: The English translation of this decision can be found here: http://www.swissarbitrationdecisions.com/independence-and-impartiality-of-a-party-appointed-arbitrator-in

[24] Translator's Note: The English translation of this decision can be found here: https://www.swissarbitrationdecisions.com/atf-4a-292-2019

[25] Translator's Note: The English translation of this decision can be found here: https://www.swissarbitrationdecisions.com/atf-4a-236-2017

In this respect, the decisive factor is whether a party's apprehensions about the lack of impartiality of an arbitrator can be considered objectively justifiable. In this respect, the ECtHR likes to quote the English adage "*justice must not only be done: it must also be seen to be done*" (§ 143), which emphasizes the importance that appearances themselves can have.

7.4 To verify the independence of the sole arbitrator or the members of an arbitral panel, the parties may also refer to the IBA Guidelines on Conflicts of Interest in International Arbitration, approved on May 22, 2004 and revised on October 23, 2014 [hereinafter: the Guidelines]. These guidelines, which could be compared to the ethical rules used to interpret and clarify professional rules (ATF 140 III 6, at 3.1 p. 9; 136 III 296 at 2.1 p. 300), do not, of course, have the force of law and it is always the circumstances of the specific case that are decisive; nevertheless, they constitute a useful working instrument that can contribute to the harmonization and unification of the standards applied in the field of international arbitration for the settlement of conflicts of interest, an instrument that cannot fail to have an influence on the practice of arbitration institutions and courts (ATF 142 III 521 at 3.1.2). According to one of the principles of the Guidelines, an arbitrator must decline to sit or resign where there exist, or arise after his or her appointment, facts or circumstances which, in the view of a reasonable third party having knowledge of the relevant facts and circumstances, would give rise to justifiable doubts as to the arbitrator's impartiality or independence (section 2(b) of the Guidelines). The doubts are legitimate if a reasonable third party, having knowledge of the relevant facts and circumstances, would consider it likely that the arbitrator's decision would be influenced by factors other than the merits of the case as presented in the parties' submissions (section 2(c) of the Guidelines).

7.5 In support of its request for revision, the Appellant submits that the tweets published by the arbitrator in question between May 28, 2018 and June 9, 2019, even if they were disseminated in a context other than that of the arbitration proceedings concerning him, reveal manifest prejudice against Chinese nationals and objectively raise doubts as to the impartiality of arbitrator Franco Frattini.

According to the Appellant, the offending tweets reveal an unconscious bias or, at the very least, create an appearance of bias on the part of the respondent arbitrator towards any Chinese national. According to him, the terms used by the arbitrator are degrading, abusive, and discriminatory towards Chinese citizens. The punctuation used as well as the use of capital letters accentuate the insulting nature of the statements. Moreover, the reference to ethnic origin or skin color would betray the existence of stereotypes, synonymous with partiality.

The Appellant further contends that the disputed award contains inappropriate value judgments about his personality and hurtful comments about his person. These passages, read in light of the offending tweets, would suggest that the Panel, chaired by Arbitrator Frattini, was animated by a form of resentment and bias unrelated to the case before it.

7.6 In his written statement of September 3, 2020, annexed to the CAS Answer, the arbitrator in question insists on the fact that he has taken up the defense of animals for many years and that he is opposed to all forms of cruelty towards them. He points out that he published the incriminating tweets in a very specific context, in reaction to the "massacre of animals committed each year in the city of Yulin in China

on the occasion of the disastrous traditional Dog Meat Festival," the purpose of which was "the massacre of dogs and cats, which are then roasted and sold at a fair". He admits that he reacted in a very emotional way, having found certain videos where dogs are "sadistically tortured by a few people" and concedes that his words sometimes exceeded his thoughts. The arbitrator notes, however, that his criticisms were in no way directed against the Chinese nation or the Chinese people in general. Indeed, he notes that in his capacity as former foreign minister of the Italian government, he has always maintained excellent relations with China. Objecting to the Appellant connecting his personal convictions and his role as arbitrator, he affirms that the award under appeal, rendered unanimously, was not influenced by elements external to the case to be decided.

7.7 In its response, the CAS argues that the arbitrator is a fervent defender of the cause of animal rights and that the statements made by him in the various tweets were exclusively aimed at the "animal killers" within the framework of the Dog Meat Festival in Yulin, and not the Appellant, his entourage, or the Chinese population in general. Therefore, the tweets in question do not in any way justify the challenge of the arbitrator concerned.

7.8 The Respondent Foundation, for its part, argues that the arbitrator in question did not hesitate, on the one hand, to denounce, on his Twitter account, the cruelty to animals committed in other countries, particularly his own, but also, on the other hand, to congratulate persons of Chinese nationality who have taken up the cause of animal protection. It stressed that the statements made must be interpreted in the context in which they were made, *i.e*., on a social network in reaction to images showing violence towards animals. According to it, the challenged arbitrator, who does not express himself in his capacity as an arbitrator on his Twitter account, has every right to have a political opinion and to defend his beliefs on social networks. While the Respondent Foundation concedes that some of the Respondent's words may seem "clumsy", it argues that these are not sufficient to call into question his impartiality.

7.9 With respect to the ground for challenge based on the allegedly derogatory and inappropriate remarks made in the contested award, it should be noted at the outset that the Appellant should have invoked it within thirty days of the notification of the award, which he did not do. Therefore, the Appellant is precluded from basing his request for revision on certain passages of the challenged award, highlighted by him, which cannot, in any case, justify the challenge of the challenged arbitrator.

As for the other reason put forward by the Appellant to obtain the challenge of the arbitrator concerned, it should be noted, along with the Respondent Foundation, that an arbitrator can perfectly well defend his convictions on the various social networks. This does not mean, however, that the arbitrator can express on the Internet everything he thinks, in extremely strong terms, without risking arousing certain fears as to his impartiality, even if he does not act under his arbitrator's "hat".

In this case, it is clear that the arbitrator, who has obviously taken up the cause of animal protection, sought, through his various tweets, to criticize a Chinese practice of dog slaughter, which he likened to torture, as well as the large-scale eating, on the occasion of a local annual gastronomic festival, of the meat of the sacrificed animals and denounced people whom the arbitrator considered to be executioners. The arbitrator also did not hesitate to denounce acts of cruelty to animals committed in other countries and to support Chinese nationals who have taken steps to put an end to the practice he denounced. His

violent criticism was clearly not directed against all Chinese nationals. Considered in the abstract, the fact that the arbitrator severely criticized the consumption of dog meat during the annual Yulin festival and denounced certain Chinese nationals who, according to him, were guilty of torturing animals, cannot, in itself, constitute a circumstance that would make it possible to infer the existence of a bias on the part of the arbitrator in question against any Chinese national. In this respect, if one wanted to attempt a comparison, one could take the example of an arbitrator of Indian nationality who would protest, on social networks, in harsh terms, against the practice of bullfighting that is prevalent in certain regions of Spain. Supposing that this person sits on a CAS panel called upon to rule on an appeal against a disciplinary sanction imposed on a Spanish athlete, would he or she be challengeable on the basis of the statements made by him or her to denounce the cruelty he or she believes has been committed against animals? The answer would probably have to be resolved in the negative, in the absence of other corroborative circumstances.

This being the case, it must be clearly seen that it is not so much the cause defended by the arbitrator that appears problematic in this case but rather certain terms used by him. Indeed, the arbitrator did not hesitate to use extremely violent terms, repeatedly, and several messages were published while the present case was being heard before the CAS. In particular, he used the following terms:

> "those bastard sadic chinese who brutally killed dogs and cats in Yulin",
>
> "This yellow face chinese monster smiling while torturing a small dog,deserves the worst of the hell", "those horrible sadics are CHINESE!",
>
> "Old yellow-face sadic trying to kill and torture a small dog",
>
> "Torturing innocent animal is a flag of chinese!Sadics, inhumans".

Among these, the words "*yellow face*", used twice by the arbitrator after his appointment as President of the Panel, are undoubtedly the most questionable. Certainly, the arbitrator himself concedes that certain words have sometimes gone beyond his thoughts. However, to say that the words "*yellow face*" are "clumsy", as the Respondent Foundation maintains, is an understatement. If we put them into context, these words, used in the singular, which may have been written under the influence of the emotion conjured by images considered revolting by the arbitrator, certainly refer each time to a specific person whom the arbitrator has picked out in a video and/or a photograph and whom he also calls a sadist because, according to him, he is torturing a small dog. However, these terms obviously refer to the skin color of certain Chinese individuals and are not directed toward their behavior, unlike other cutting or even hurtful terms used by the arbitrator, such as "sadist". Such qualifiers, even if they were used in a particular context, have absolutely nothing to do with the acts of cruelty alleged against certain Chinese nationals and are, whatever the context, unacceptable. If one adds to this the fact that the arbitrator made such remarks, not only on two occasions, but also after his appointment as Chairman of a Panel called upon to rule on the appeal lodged by a Chinese national, even though the proceedings were pending, it must be conceded that the apprehensions of the Appellant as to the possible bias of the arbitrator in question may be considered as objectively justified. In this respect, it is irrelevant whether or not the accused arbitrator is subjectively aware of the fact that his statements appear to be objectively flawed. Only the objective assessment of the circumstances alleged in support of a challenge is decisive. In the present case, however, the above-mentioned circumstances, considered from the point of view of a

reasonable third party who is aware of them, are such as to give rise to doubts as to the impartiality of the arbitrator challenged and to create an appearance of bias.

On the basis of the foregoing, the ground for challenge put forward by the Appellant is well-founded. It is therefore appropriate to admit the application for revision and, consequently, to annul the contested Award. Furthermore, the arbitrator Franco Frattini should be challenged.

8.
The Appellant is successful and the contested judgment is annulled. The Respondent Foundation, which is unsuccessful in its request to reject the application for revision, shall bear the costs of the federal proceedings (Art. 66(1) FSCA). It will also pay the Appellant compensation for his legal costs (Art. 68(2) FSCA). As for the Respondent Association, having declared that it is going to court, it cannot be considered as the unsuccessful party. Moreover, the decision taken has not been annulled to its detriment. Under these conditions, the legal costs could not be levelled against to the Respondent Association, nor could it claim compensation for costs. Finally, the security for costs paid by the Appellant must be returned to him.

For these reasons, the Federal Tribunal pronounces:

1.
The application for revision is admitted and the contested award is annulled.

2.
The application for challenge against the arbitrator Franco Frattini is admitted.

3.
The legal costs, set at CHF 7'000 shall be borne by the Respondent Foundation.

4.
The Respondent Foundation shall pay the Appellant CHF 8'000.

5.
The security for costs paid by the Appellant is released.

6.
This judgment shall be communicated to the parties' representatives and to the Court of Arbitration for Sport (CAS).

Lausanne, December 22, 2020

On behalf of the First Civil Law Court of the Swiss Federal Tribunal

The President:	The Clerk:
Kiss	O. Carruzzo