

DECISION
of the
INTERNATIONAL WEIGHTLIFTING FEDERATION
HEARING PANEL

14 January 2019

Chairman: Mr. Serge **Vittoz** (SUI)

Members: Mr. Ashley **Metcalfe** (UK)
Mr. Taisto **Kuoppala** (FIN)

In the case of

Ms. Romela Begaj (ALB)

INTRODUCTION

The present Decision is issued by the International Weightlifting Federation (**IWF**) Hearing Panel (the **Panel**) in order to decide upon an alleged violation of the IWF Anti-Doping Policy (**IWF ADP**) by Ms. Romela Begaj (the **Athlete**).

I. FACTUAL BACKGROUND AND PROCEDURE BEFORE THE IWF

1. The elements set out below are a summary of the main relevant facts, as established by the Panel in particular on the basis of the documents regarding the doping control, the sample analysis, the written submissions and evidence submitted by the Athlete. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Athlete and her representative in these proceedings, it refers in the present Decision only to the submissions and evidence it considers necessary to explain its reasoning. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows.
2. The Athlete is an international-level weightlifter of Albanian citizenship. She was born on 2 November 1986. She is affiliated with the Weightlifting Federation of Albania (**WFA**). She has competed internationally since 2006 and has participated in many major events, such as the Olympic Games or the IWF World Championships.
3. On 29 March 2015, the Athlete was sanctioned with a two-year period of ineligibility by the IWF Hearing Panel, for the presence of the prohibited substance Stanozolol in one of her bodily sample collected at the occasion of a doping test. This sanction was confirmed in an Award rendered by the Court of Arbitration for Sport on 5 October 2015 and ended on 1 December 2016.
4. The Athlete competed in the IWF World Championships which took place between 28 November and 5 December 2017 in Anaheim, USA (the **Competition**). On 2 December 2017, the Athlete was required to undergo a doping control conducted under the authority of the IWF. The Athlete provided a urine sample and confirmed on the Doping Control Form (**DCF**) that the sample had been taken in accordance with the applicable regulations. Furthermore, she declared on the DCF that she had taken several food supplements over the seven days prior to the test.
5. The urine sample provided by the Athlete was analysed by the WADA-accredited laboratory in Montreal, Canada (the **Laboratory**). The report issued by the Laboratory on 23 February 2018 shows that the Athlete's A Sample contained Stanozolol (the **Prohibited Substance**) and its metabolites (the adverse analytical finding - **AAF**). This substance is listed under class S1.1 (Anabolic Agents) on the 2017 WADA Prohibited List adopted by the IWF.
6. On 11 January 2018, the IWF notified the Athlete of the AAF, through WFA.
7. Following a request from the Athlete, the Laboratory proceeded to the opening and analysis of the Athlete's B Sample, which confirmed the presence of Stanozolol.
8. On 6 September 2018, WFA informed IWF that due to financial problems, the Athlete requested the Panel to render its decision based on the documentation only, without holding a hearing.
9. On 24 September 2018, the Athlete requested to be provided with a 45-day deadline to file her written submission, which was granted by the Panel.

10. On 5 November 2018, the Athlete filed her written submission, which was not accompanied by any evidence.

II. THE ATHLETE'S POSITION

11. The Athlete's position is, in substance and for its relevant part, the following.
- She comes from a poor family and get through very difficult times in her childhood and adolescence.
 - As Weightlifting is her only source of income, she would never do anything to jeopardise her career.
 - With regard to her first anti-doping rule violation in 2014, it was not determined that she intentionally used Stanozolol, but that she could not demonstrate how this substance entered her body.
 - In the present matter, she was informed by a scientist, who assisted her free of charge, that the documentation packages demonstrate that passive exposure to stanozolol and that there must have been a "*direct single high dose administration of Stanozolol, very close to the sampling date or continuous treatment with stanozolol that could have started few weeks before the sampling and would probably go on for a few weeks*".
 - She was tested shortly before and after 2 December 2017 and both tests returned as negative. The theory of the long treatment with Stanozolol is therefore not possible in the case at hand.
 - Someone from the previous management of WFA always provided wrong whereabouts information, which she always tried to correct. She also never missed a doping control.
 - She always used vitamins and never food supplements which could be contaminated.
 - WFA never answered positively to her request to have her food supplements tested and could not afford to have them tested by herself.
 - Only a sabotage could be the source of the positive test.
 - She is ready to co-operate with IWF to prove her innocence and pleas for "*a favorable judgement*" in the case at hand.

III. APPLICABLE RULES

12. Taking into account that the alleged ADRV took place on 2 December 2017, it is the 2017 of the IWF ADP in force at the time that is applicable to the case at hand (art. 20.7 IWF ADP).

13. Art. 2 IWF ADP defines an anti-doping rule violation as follows:

2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample

2.1.1 *It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, negligence or Knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.*

2.1.2 *Sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analyzed;*

or, where the Athlete's B Sample is analyzed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample; or, where the Athlete's B Sample is split into two bottles and the analysis of the second bottle confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first bottle.

14. Art. 3.1 IWF ADP reads as follows:

3.1 Burdens and Standards of Proof

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

15. As for the standard period of ineligibility, the IWF ADP provides as follows:

10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method

The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6:

10.2.1 *The period of Ineligibility shall be four years where: 10.2.1.1 The anti-doping rule violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional. 10.2.1.2 The anti-doping rule violation involves a Specified Substance and IWF can establish that the anti-doping rule violation was intentional.*

10.2.2 *If Article 10.2.1 does not apply, the period of Ineligibility shall be two years.*

10.2.3 *As used in Articles 10.2 and 10.3, the term "intentional" is meant to identify those Athletes who cheat. The term therefore requires that the Athlete or other Person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. An antidoping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not intentional if the substance is a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered intentional if the substance is not a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance.*

16. As for the possibilities to reduce the aforementioned periods of ineligibility based on fault, the IWF ADP states as follows:

10.4 Elimination of the Period of Ineligibility where there is No Fault or Negligence

If an Athlete or other Person establishes in an individual case that he or she bears No Fault or Negligence, then the otherwise applicable period of Ineligibility shall be eliminated.

10.5 Reduction of the Period of Ineligibility based on No Significant Fault or Negligence

10.5.1 *Reduction of Sanctions for Specified Substances or Contaminated Products for Violations of Article 2.1, 2.2 or 2.6. 10.5.1.1 Specified Substances Where the anti-doping rule violation involves a Specified Substance, and the Athlete or other Person can establish No Significant Fault or Negligence, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years of Ineligibility, depending on the Athlete's or other Person's degree of Fault. [...]*

10.5.2 Application of No Significant Fault or Negligence beyond the Application of Article 10.5.1

If an Athlete or other Person establishes in an individual case where Article 10.5.1 is not applicable that he or she bears No Significant Fault or Negligence, then, subject to further reduction or elimination as provided in Article 10.6, the otherwise applicable period of Ineligibility may be reduced based on the Athlete or other Person's degree of Fault, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this Article may be no less than eight years.

17. In case of Multiple Violations, the sanction is in particular as follows:

10.7.1 *For an Athlete or other Person's second anti-doping rule violation, the period of Ineligibility shall be the greater of:*

- a) *six months;*
- b) *one-half of the period of Ineligibility imposed for the first anti-doping rule violation without taking into account any reduction under Article 10.6; or*
- c) *twice the period of Ineligibility otherwise applicable to the second anti-doping rule violation treated as if it were a first violation, without taking into account any reduction under Article 10.6.*

The period of Ineligibility established above may then be further reduced by the application of Article 10.6.

18. As to the disqualification of results, the IWF ADP reads as follows:

9 Automatic Disqualification of individual results

A violation of these Anti-Doping Rules in Individual Sports in connection with an In-Competition test automatically leads to Disqualification of the result obtained in that Competition with all resulting consequences, including forfeiture of any medals, points and prizes. "Points" includes any points credited to a National Federation for the purposes of qualification for the following Olympic Games.

10.8 Disqualification of Results in Competitions Subsequent to Sample Collection or Commission of an Anti-Doping Rule Violation

In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9, all other competitive results of the Athlete obtained from the date a positive Sample was collected (whether In Competition or Out-of-Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes.

19. Finally, in relation to the commencement of the period of ineligibility, Article 10.11 IWF ADP provides as follows:

10.10 Commencement of Ineligibility Period

Except as provided below, the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date Ineligibility is accepted or otherwise imposed.

IV. MERITS

A. IWF Competence

20. Pursuant to the scope of the IWF ADP 2018, which is applicable as for the procedural rules, and article 8 of these regulations, the IWF Hearing Panel is competent to decide on the present matter.

B. The Anti-Doping Rule Violation and the sanction

21. The Panel accepts the accuracy of the AAFs and finds that the IWF has established a violation of Article 2.1 IWF ADP to its comfortable satisfaction, having regard to the seriousness of the allegation which is made. The analysis of the A- and B-sample confirmed the presence of the – non-specified – Prohibited Substances, which is listed in class S1.1 of the 2017 WADA Prohibited List (Anabolic Agents).

22. The Panel therefore concludes that there is no doubt that an ADRV occurred.

23. According to Article 10.2.1 of the IWF ADP, the period of ineligibility shall be four years where the ADRV does not involve a Specified Substance unless the Athlete can establish that the ADRV was not intentional.

24. Article 10.2.3 of the IWF ADP ADR sets out that the term "intentional" is meant to "*identify those Athletes who cheat. The term therefore requires that the Athlete or other Person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk*".

25. As the Athlete bears the burden of establishing that the violation was not intentional (within the above meaning), a whole series of CAS cases have held that the athlete must necessarily establish how the prohibited substance entered his/her body (see for example, CAS 2016/A/4377 at para. 51, CAS 2016/A/46662 at para 36, CAS 2016/A/4563 at para. 50, CAS 2016/A/4626 and CAS 2016/A/4845).

26. Furthermore, as set out by the Panel in the case with reference CAS 2014/A/3820: "*In order to establish the origin of a Prohibited Substance by the required balance of probability, an athlete must provide actual evidence as opposed to mere speculation*". With regard to the same matter, a CAS panel stated the following (CAS 2014/A/3615):

The Panel emphasises that to permit an athlete to establish how a substance came to be present in his body by little more than a denial that he took it would undermine the objectives of the Code and Rules. Spiking and contamination - two prevalent explanations often put forth by athletes to explain the presence of a banned substance - can and do occur. That said, it is an easy assertion to make, particularly if unsupported by any evidence. To be effective as a system, more must be required by way of proof, having regard to the athlete's general duty to ensure that no prohibited substance enters his body. If the athlete's statements of denial alone were to be considered sufficient evidence to establish how the prohibited substance entered his body, the condition precedent set forth by Articles 10.5.1 and 10.5.2 of the FIM AD Code and WADAC would be deprived of effectiveness or utility.

27. In the case at hand, the Athlete's assertion with regard to her alleged sabotage is not only unsubstantiated, but also not supported by any evidence. The Athlete's mere supposition in this regard cannot be considered as sufficient to demonstrate how the Prohibited Substance entered her body. Although the Athlete was given the opportunity to provide her explanations, including the production of relevant evidence, she did not

submit any further explanations, let alone evidence, regarding the presence of the Prohibited substance in her system.

28. Although the Panel has some sympathy for the Athlete, who had to overcome many difficulties in her personal and professional life, and for whom the sport is the main source of income, it considers that the IWF ADP, which is based on the World Anti-Doping Code, is meant to be applied in a uniform manner, for all those who are subject to these rules. The prerequisite for an athlete to demonstrate how the prohibited substance entered his or her body, and the strict rules regarding the burden and standard of proof thereto, before possibly benefiting of a reduction or an elimination of the sanction are of utmost importance in the fight against doping. These principles shall, in the Panel's opinion, be strictly and uniformly applied.
29. The Panel therefore finds that the Athlete has failed to establish the way the Prohibited Substance entered her system and therefore has failed to satisfy her burden of proof with respect to the origin of the prohibited substance. In addition, there are no other exceptional circumstances and/or evidence submitted which could justify the assumption of lack of intent. The ADRV must therefore be deemed intentional.
30. Based on the foregoing, the Panel concludes (i) that the standard period of ineligibility to be imposed upon the Athlete is of four years (Art. 10.2.1 IWF ADP), (ii) that there is no reduction possible based upon the IWF ADP and (iii) that this sanction must be increased to eight years according to Article 10.7.1 IWF ADP, as it is her second anti-doping rule violation.

C. Commencement of the period of ineligibility

31. The Panel does not see any reason to depart from the standard rule of Article 10.10 IWF ADP and therefore conclude that the period of ineligibility shall start on the date of this decision and that the period of provisional suspension served by the Athlete shall be credited against the total period of ineligibility imposed.

D. Cancellation of results

32. In accordance with Article 9 IWF ADP, the Panel considers that the Athlete's results obtained at the occasion of the IWF World Championships 2017 shall be disqualified.
33. Furthermore, in the absence of any elements demonstrating that fairness would require to depart from the rule of Article 10.8 IWF ADP – the Athlete does not request the application of this provision – the Panel also considers that all competitive results obtained by the Athlete after the Sample Collection through the commencement of his provisional suspension shall be cancelled.

E. Conclusion

The Panel's conclusions are the following:

- a) The Athlete committed an ADRV in accordance with Article 2.1 IWF ADP, i.e. the presence of a Prohibited Substance in her bodily sample collected on 2 December 2017;
- b) The Athlete has not demonstrated the origin of the Prohibited Substance and therefore cannot benefit from an elimination or a reduction of the applicable sanction;

- c) As it is her second anti-doping rule violation, the Athlete shall therefore be sanctioned with a eight-year period of ineligibility, in accordance with Articles 10.2.1 and 10.7.1 IWF ADP;
- d) The Athlete's results obtained at the occasion of the IWF World Championships 2017 shall be cancelled, in accordance with Article 9 IWF ADP;
- e) The Athlete's results obtained between the date of the sample collection through the commencement of his provisional suspension shall be cancelled, in accordance with Article 10.8 IWF ADP.

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ON THESE GROUNDS

The IWF Hearing Panel hereby rules:

1. Ms. Romela Begaj is sanctioned with a period of ineligibility of eight (8) years starting on the date of the present decision, with that period to be reduced by the time for which she was provisionally suspended.
2. The results obtained by Ms. Romela Begaj at the occasion of the IWF World Championships 2017, as well as between the date the sample collection and the commencement of her provisional suspension shall be cancelled.
3. The costs of the present proceedings and the related fine payments, as determined by the IWF according to the applicable rules and policies, shall be borne by Ms. Romela Begaj.

Budapest, 14 January 2016



Serge Vittoz
Chairman



Ashley Metcalfe



Taisto Kuoppala
