



Arbitration CAS 2016/A/4378 Adrian Ivan Zbirnea v. International Weightlifting Federation (IWF), award of 26 September 2016

Panel: Mr Ken Lalo (Israel), President; Prof. Jacopo Tognon (Italy); Mr Michele Bernasconi (Switzerland)

Weightlifting

Doping (19-norandrosterone)

Inadmissibility of an appeal filed untimely

Article 7.3.2 of the IWF Anti-Doping Policy, which provides that an athlete is deemed to be validly notified of an adverse analytical finding when notification is made to the athlete's member federation cannot be accepted by a CAS panel. Indeed, an athlete may lose his procedural rights and be precluded from appealing a decision which suspended his sporting career for a substantial period of time. However, notification to an athlete's attorney of record is deemed to be a notification to the athlete himself. Furthermore, it is a standard procedure at CAS that notifications are made to an attorney of record under articles R30 and R31 of the CAS Code. This is also in line with article 137 of the Swiss Civil Procedure Code. This procedural rules are fair and reasonable and not against "public policy" and these clearly provide "effective knowledge" to the athlete. In this respect, an appeal filed with CAS more than 21 days after the athlete is deemed to have been notified and received the appealed decision, i.e. more than 21 days after the notification of his counsel, is late and therefore inadmissible.

I. THE PARTIES

- 1.1 Mr Adrian Ivan Zbirnea (the "Athlete") is an international-level weightlifter from Moldova, 26 years old, and at all relevant times a member of the Moldovan weightlifting national team.
- 1.2 The International Weightlifting Federation ("IWF") is the international governing body for the sport of weightlifting. IWF is an association established under Swiss Law, with its seat in Lausanne, Switzerland and secretariats in both Lausanne and Budapest, Hungary. IWF is a signatory to the World Anti-Doping Agency ("WADA") and its World Anti-Doping Code (the "WADC").

II. FACTUAL BACKGROUND

- 2.1 Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced during the written procedure and at the hearing. Additional facts and allegations found in the parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in these proceedings, it refers in its Award only to those it considers necessary to explain its reasoning.
- 2.2 On 18 April 2015, the Athlete was selected for an in-competition doping control test during the 2015 European Championships, held in Tbilisi, Georgia. The urine sample provided by the Athlete was tested by the WADA accredited laboratory in Cologne, Germany and revealed the presence of 19-norandrosterone > 2ng/ml, an anabolic agent belonging to Class S1.1 anabolic agent of the 2015 WADA Prohibited-List (the "Prohibited Substance"). The laboratory report indicated that the concentration of the Prohibited Substance in the sample was 10.9 ng/ml, which is greater than the threshold limit of 4 ng/ml, the combined standard uncertainty being 0.2 ng/ml.
- 2.3 On 28 May 2015, the IWF informed the Athlete, through the Weightlifting Federation of the Republic of Moldova ("WFRM") about the adverse analytical finding, indicated that the Athlete was provisionally suspended based on Article 7.9.1 of the IWF Anti-Doping Policy (2015 edition, effective from 1.1.2015) ("IWF ADP") and provided the Athlete with the possibility of requesting the analysis of the B-sample and a hearing before the IWF Hearing Panel.
- 2.4 On 4 June 2015, the WFRM wrote to the IWF, expressing its apologies for the positive test results, assuring that the Athlete did not use banned substances, indicating that it did not have financial means to analyze the ingredients of the sport supplements used by the Athlete and requesting the imposition of the minimal possible penalty on the Athlete.
- 2.5 Furthermore, by an e-mail communication dated 4 June 2015, Mr. Antonio Conflitti, the Deputy President of the WFRM, advised the IWF that the Athlete did not seek a B-sample analysis because of the costs involved and requested the IWF to assist in an investigation of a possible supplement contamination.
- 2.6 On 6 July 2015, the General Director of the National Anti-Doping Agency of Moldova advised the IWF that the Athlete requests a hearing during the IWF World Championships in Houston.
- 2.7 On 28 September 2015, the IWF informed the Athlete of the hearing date, the deadline for submission of documents and gave the Athlete the opportunity to analyze, at an accredited laboratory, specific supplements consumed by the Athlete. The Athlete did not use the opportunity to have the supplements analyzed but rather requested to be tested again.

- 2.8 At the hearing before the IWF Hearing Panel, held in Houston on 22 November 2015, the Athlete was present together with the WFRM Deputy President. The Athlete submitted a defence memo signed by his attorneys, Ms Federica Tosel and Mr Luigi Francesco Rossi. The IWF Hearing Panel accepted the defence memo with its exhibits, despite the fact that they were submitted only at the hearing and clearly not within the designated deadline, which had been communicated in advance of the hearing.
- 2.9 The Athlete's defence memo explained that he had taken several supplements before the competition, which he had purchased in person and through certain websites without any intention to use prohibited substances and indicated that he had taken these substances before but had never tested positive. The defence memo was supported by the written expert opinion of Professor Massimo Baraldo, Prof. Ass. of Pharmacology in Udine, Italy, concluding that the presence of norandrosterone at a concentration of 10.9 ng/ml cannot be directly associated with a voluntary consumption of norandrosterone, *"while it might be associated with a use and/or abuse of food supplements"*.
- 2.10 At the hearing before the IWF Hearing Panel the Athlete, supported by the testimony of his expert witness Professor Baraldo, argued, in the main part, that the presence of endogenous nandrolone in his body increased to beyond the level of the decision limit under the WADA Code as a result of the use of numerous supplements containing no prohibited substances, but which might be *"precursors of nandrolone"*, and, used together, must have increased the level of endogenous nandrolone in his systems.
- 2.11 In the decision of the IWF Hearing Panel dated 22 November 2015 (the "Appealed Decision"), the Hearing Panel concluded that it could not consider, even on the balance of probabilities, that the supplements taken by the Athlete, containing no prohibited substances according to the Athlete's own position, might have caused the adverse analytical finding. The IWF Hearing Panel concluded that the Athlete did not establish on the balance of probabilities that he bears no fault or negligence or even no significant fault or negligence.
- 2.12 The IWF Hearing Panel sanctioned the Athlete with a four (4) years' period of ineligibility. The period of provisional suspension was credited according to Article 10.10.3.1 IWF ADP. Thus, the end of the period of ineligibility was set to expire on 27 May 2019. Additionally, all the Athlete's individual results were disqualified and all medals and prize money forfeited in and from the 2015 European Championships in Tbilisi.
- 2.13 The Appealed Decision was sent by e-mail on 24 November 2015 by the IWF Legal Counsel to Mr Antonio Conflitti, WFRM Deputy President, Mr Tudor Casapu, WFRM President, the WFRM at its official e-mail address and the attorney, Ms Federica Tosel.
- 2.14 On 16 December 2015, Mr Antonio Conflitti, WFRM Deputy President, advised the IWF Legal Counsel that the WFRM communicated the Appealed Decision to the Athlete at a meeting held on 5 December 2015 and indicated that the Athlete wanted to appeal the Appealed Decision to CAS, requesting the related deadline for doing so.

- 2.15 On 17 December 2015, the IWF Legal Counsel answered that the time limit to file an appeal to CAS was twenty-one (21) days from the date of receipt of the Appealed Decision by the Athlete, that *“the Athlete shall be deemed validly notified if the notification was communicated to the official e-mail address of the Federation”* and that *“as you are well aware, all the official notifications and correspondence were made via your Federation from the beginning of the case therefore the date of the receipt of the decision is 24 November 2015”*.

III. PROCEEDINGS BEFORE THE CAS

- 3.1 On 26 December 2015, the Athlete filed his statement of appeal against the Respondent with respect to the Appealed Decision.
- 3.2 In accordance with Article R51 of the CAS Code, the Athlete filed his appeal brief on 9 January 2016.
- 3.3 On 12 January 2016, the IWF requested that the procedure be terminated due to the fact that the statement of appeal was filed outside the twenty-one (21) days period provided for the filing of an appeal.
- 3.4 On 20 January 2016, the Athlete responded that the appeal was timely as it was filed within twenty-one (21) days from the date on which the WFRM notified the Athlete regarding the decision of the IWF Hearing Panel and provided him with the Appealed Decision as well as a summary translation thereof.
- 3.5 On 21 January 2016, the CAS Court office advised the parties that the IWF’s request for a preliminary decision on admissibility will be transmitted to the Panel, once constituted.
- 3.6 On 25 January 2016, the IWF requested that the time to file its answer be extended to twenty (20) days following the Panel’s decision on the issue of admissibility. This request was objected to by the Athlete in his letter of 28 January 2016. The parties were advised, by letter dated 1 February 2016, that the Deputy President of the CAS Appeals Arbitration Division *“has decided to suspend the present proceedings until the Panel, once constituted, has rendered a decision on admissibility”*.
- 3.7 On 5 February 2016, the parties were advised that pursuant to Article R54 of the CAS Code and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the Panel appointed to resolve the dispute was comprised of Mr Ken Lalo, attorney-at-law in Tel Aviv, Israel, President, Mr Jacopo Tognon, Professor and attorney-at-law in Padova, Italy, and Mr Michele A.R. Bernasconi, attorney-at-law in Zurich, Switzerland.
- 3.8 On 2 March 2016, the CAS Court office advised the parties on behalf of the Panel that *“the Panel does not deem itself sufficiently informed to issue a preliminary decision on the admissibility of the appeal”* and that the parties’ positions regarding the timeliness of the appeal would be examined and considered together with the parties’ other arguments on the merits. As a consequence thereof, the twenty (20) days period for the filing of an answer commenced on that date.
- 3.9 On 21 March 2016, the IWF filed its answer in accordance with Article R55 of the CAS Code.

- 3.10 On 1 April 2016, the CAS Court office advised the parties that the Panel decided to hold a hearing in this case. The Panel reached the decision after considering the IWF's position expressed in its e-mail of 23 March 2016 that the matter may be decided on the parties' written submissions and the Athlete's position expressed in his e-mail of 29 March 2016, namely, that the matter should be decided after hearing the parties and the expert witness.
- 3.11 On 2 May 2016 and on 7 May 2016, the IWF and the Athlete, respectively, signed an Order of Procedure. The IWF qualified its signature by stating that it does not constitute an admission that the statement of appeal was timely and that the appeal is admissible.
- 3.12 On 25 May 2016 the Athlete provided an e-mail stating that *"in the framework of a criminal proceeding, it has been found, that the assistant coach (now defendant in a criminal proceeding) has been, for years, contaminating the supplements that the athletes have been taking and using with them during national and international competitions"*. The Athlete advised that he was awaiting a report from the prosecutor in Moldova and that *"the defence"* has just learned *"a few minutes ago"* regarding this matter which is of vital importance for these proceedings.
- 3.13 On 30 May 2016, the Athlete provided correspondence between the WFRM and the Prosecutor's office of Buiucani city district, Chisinau municipality. This correspondence, including from the National Department of Police of Chisinau municipality and from the Prosecutor's Office of the Republic of Moldova (with notarized translations into English), allegedly confirmed and expanded on the facts contained in the Athlete's e-mail of 25 May 2016. These documents stated that Mr Celma Veaceslav, weightlifting coach in Moldova and member of the Federal Bureau of the WFRM, was evidenced on the WFRM's security cameras to have stolen items from the sports school and office of its principal during April 2016. Criminal investigation against Mr Celma was opened. During the *"interview"* of Mr Celma by the prosecutor's office, it was also revealed that Mr Celma tampered with the athletes' supplements during the period of March to November 2015 and *"put"* in them *"Nandrolone decanoate"* and *"Turinabol"*.
- 3.14 On 31 May 2016, the Panel held a hearing with the parties at the CAS headquarters in Lausanne.
- 3.15 In addition to the Panel and Mr Fabien Cagneux, CAS Counsel, the following people attended the hearing:
- The Athlete;
 - Mr Luigi Francesco Rossi, counsel for the Athlete;
 - Ms Federica Tosel, counsel for the Athlete;
 - Mr Antonio Conflitti, Deputy President of the WFRM, nominated as witness by the Athlete, testifying by telephone;
 - Professor Massimo Baraldo, an expert witness, testifying on behalf of the Athlete;
 - Ms Vincenzina Pincente, interpreter;

- Mr Pierre Cornu, counsel for IWF.
- 3.16 At the beginning of the hearing, the parties confirmed that they had no objection as to the composition of the Panel.
- 3.17 At the outset of the hearing the Athlete requested the Panel to allow him to admit the new evidence consisting of the correspondence between the WFRM and the National Department of Police of Chisinau municipality and the Prosecutor's Office of the Republic of Moldova from May 2016 regarding the alleged tampering of Mr Celma with the Athlete's supplements. The IWF objected, stating that it is difficult to give any weight to such evidence, it is not clear whether it is genuine, it is difficult to assess its reliability or relevance and that it is questionable and not clear that it was indeed the Athlete who received the contaminated substances tampered with by the assistant coach. The Panel decided to allow such evidence since it could be relevant and it indeed became known only days before the hearing and could not have been available earlier. On the other hand, the Panel confirmed that the considerations of both parties would be taken into account in determining the weight of evidence to be afforded to such new evidence.
- 3.18 At the hearing, the witnesses presented by the Athlete and the Athlete himself testified in the main part as follows:
- Mr Conflitti testified that Mr Sergiu Cretu, the principal of the Weightlifting Sport School and member of the Federal Bureau of the Moldavian Federation, made coaching changes and as a result angered the assistant coach, Mr Celma. The President of the WFRM together with Mr Conflitti called a board meeting of the federation to which Mr Celma and other coaches were invited. Mr Celma did not reveal the contamination which was found out only later in front of the prosecutor who prosecuted Mr Celma for stealing money from the federation's safe as revealed by a security camera of the federation. During the world championships there were three positive cases and the federation assumes that these cases are also positive because of Mr Celma's activities, contaminating supplements used by the athletes. Mr Conflitti also confirmed that the Appealed Decision was communicated, explained and translated to the Athlete at a meeting held at the federation's office on 5 December 2015 upon Mr Conflitti's return from Houston. Mr Conflitti was certain that the Athlete has never knowingly used any drugs.
 - Professor Baraldo described his expertise and experience, confirmed and repeated the matters detailed in his written report as elsewhere detailed in this Award and testified that one sample cannot establish that the reason for the presence of the Prohibited Substance is necessarily from consumption of such substance and not from an increase of the level of endogenous nandrolone in the Athlete's systems. Professor Baraldo also confirmed the reputation of Dr Geyer.
 - The Athlete testified that he did not use steroids in Tbilisi or before the event. He used supplements either received from his coach, bought with his coach or bought at a friend's recommendation.

- 3.19 At the closing of the hearing, the parties confirmed that they had no objection to the manner in which the proceedings were conducted. They also agreed that they were treated equally and that their respective rights to be heard were respected.

IV. SUBMISSIONS OF THE PARTIES

- 4.1 While the admissibility of the appeal has been disputed, there is agreement among the parties with regard to the jurisdiction of CAS, based on Article R47 *et seq.* of the CAS Code and Article 13.2.1 of the IWF ADP which grants exclusive jurisdiction to CAS in appeals involving International-Level Athletes, IWF Events or IWF decisions. The parties also agree that the applicable rules are the IWF rules, particularly the IWF ADP and that, subsidiarily, Swiss law applies in accordance with Article R58 of the CAS Code.
- 4.2 The parties also agree that there was a positive finding of 19-norandrosterone > 2ng/ml, at a concentration of 10.9 ng/ml in the Athlete's sample taken at the event. The appeal does not contest the analytical procedure or the accredited laboratory and its findings. The only disputed issues in this case thus concern the imposition and length of the applicable ineligibility period and other consequences resulting from the anti-doping rule violation.

A. The Athlete's Submissions and Requests for Relief

- 4.3 The Athlete's submissions may be summarized as follows:
- 4.4 The Athlete's arguments regarding the timeliness of the appeal are that the Athlete had knowledge of the Appealed Decision only on 5 December 2015. The Athlete was not personally among the recipients of the e-mail notifying the Appealed Decision. The representatives of the WFRM, who were copied on the e-mail circulating the Appealed Decision, returned from the World Championships in Houston on 29 November 2015 and acted diligently in inviting the Athlete to the WFRM's offices and advising him regarding the Appealed Decision and its consequences on 5 December 2015. The date of notification of the Appealed Decision by the WFRM to the Athlete is confirmed by the Athlete as well as by the oral testimonies of Mr Antonio Conflitti, Deputy President of the WFRM. The Athlete does not read English and required the WFRM's assistance in explaining to him the Appealed Decision. The Athlete also required assistance to speak with his Italian lawyers. To hold otherwise is to deprive a person of his basic human rights. It takes away an effective ability to contest a wrongful decision and could thus ruin the Athlete's entire sporting career. Not to admit the appeal based on timeliness means that form and process govern rather than substance, which violates Article 6 of the European Convention on Human Rights (small errors should not preclude decisions on the merits; a person has the right to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusations against him and to have adequate time and facilities for the preparation of his defence). The Athlete gained "*effective knowledge*" of the Appealed Decision only on 5 December 2015. The Appealed Decision carries substantial consequences and these should be considered similarly to criminal charges. The Athlete had a right to and required a period of twenty-one (21) days from "*effective notification*" to consider and prepare the appeal. This period was most

relevant here since the matters had to be translated to him and his communication with the lawyers who speak different languages was not easy and was definitely time consuming. Every case should be decided based on its own special circumstances and grounds and not systematically. There are rules, but there are rights, and the Athlete should have the right to have his case decided on the merits and not based only on procedural grounds.

- 4.5 The Athlete is not a cheater and he categorically denies taking any prohibited substance. The Athlete has never tested positive before. It would be against the European Convention on Human Rights to dismiss the Athlete's case based on minor procedural and technical grounds and without providing him with an opportunity to have his appeal heard on the merits, and to thus crush the Athlete's sporting career, which is the immediate consequence of the imposition of a four (4) year ineligibility period.
- 4.6 Since the positive findings were notified, the Athlete and his legal team searched for a possible reason for the positive test results and could come up only with an hypothesis that the Athlete had consumed contaminated food or substances or, an alternate hypothesis, that there was an endogenous production of the substance in the Athlete's body, which caused the positive test result, an argument well supported by Professor Baraldo.
- 4.7 Based on new evidence revealed only days before the hearing, a more probable explanation was revealed. It appears that, during the period of March to November 2015, the assistant coach of the national Moldovan weightlifting team contaminated pills of certain supplements taken by the Athlete. This is well supported by the criminal investigation as notified on 25 May 2016 by the National Department of Police of the Republic of Moldova and further explained on 27 May 2016 in a letter from the Prosecutor's Office of the Republic of Moldova. The Athlete provided an e-mail stating that *"in the framework of a criminal proceeding, it has been found, that the assistant coach (now defendant in a criminal proceeding) has been, for years, contaminating the supplements that the athletes have been taking and using with them during national and international competitions"* including those used by the Athlete during relevant times. This was revealed in the process of criminal proceedings initiated against the same assistant coach relating to other matters (stealing from the WFRM offices). This now provides a logical explanation to a matter which could not be fully explained before.
- 4.8 In any event, even if this were not the case, it is clear according to Professor Baraldo's report and testimony that numerous supplements containing no prohibited substances, but which might be *"precursors of nandrolone"*, when used together, must have increased the level of endogenous nandrolone in the Athlete's systems.
- 4.9 The fact that Dr Geyer, IWF expert witness, was not present to testify made the task of the Athlete more difficult. Since there is a presumption of innocence, there should have been a chance to cross examine Dr Geyer. Dr Geyer only claimed that endogenous production of the Prohibited Substance to the detected level is unknown and not that it is scientifically impossible.

4.10 Therefore, and for any of those reasons, the sanctions imposed on the Athlete should be cancelled, or, at the very least, the period of ineligibility should be reduced to match the period already served by the Athlete.

4.11 The Athlete submits the following Prayers for Relief:

“1. declare the present appeal admissible and timely;

2. determines that the positive test of the Athlete of the anabolic agent, norandrosterione, (concentration of 10.9 ng / ml) observed during the test anti-doping in competition carried out on July 18, 2015 during the European Weightlifting Championship 2015 is due to no significant fault...pursuant to art. 4.4 WADA Code and

3. consequently cancel the sanction imposed by the appealed decision.

If CAS cannot agree with the above then:

4. determines that the positive test of the Athlete of the anabolic agent, norandrosterione, (concentration of 10.9 ng / ml) observed during the test anti-doping in competition carried out on July 18, 2015 during the European Weightlifting Championship 2015 resulting from the intake, carried out in the absence of fault or gross negligence of legal products and possible contamination;

5. consequently, reduce the penalty imposed to the minimum applicable, or determine the penalty of the sanction to the time that has already been suffered from the time of the suspension to date – in accordance with art. 4.5.1.2”.

B. The IWF's Submissions and Requests for Relief

4.12 The IWF's submissions may be summarized as follows:

4.13 The appeal is late and therefore the proceedings must be terminated. The Appealed Decision was notified to the WFRM on 24 November 2015. It was received by the WFRM on that day. The entire communication in this case, from the notification of the positive findings onwards, was conducted through the WFRM. The WFRM representative was present at the hearing. Under Article 7.3.2 of the IWF ADP, the athlete is deemed to be validly notified of the adverse analytical findings when the notification is made to his member federation. It is a standard practice at the IWF as well as other international sport federations to make notifications through the athlete's federation unless otherwise required by the athlete. This is the only manageable system since international federations cannot always trace the addresses of all athletes. The Athlete did not dispute that a decision may be notified by e-mail, which is a standard practice. The Appealed Decision was also notified to Ms Federica Tosel who represented the Athlete in his case in front of the IWF Hearing Panel based on the filings before it, even if she did not appear in person at the hearing itself. Notification to a party is to be made to such party's attorney under Articles R30 and R31 of the CAS Code and Article 137 of the Swiss Civil Procedure Code (which mandates notification to the attorney alone and not to the party itself). Under Article 13.7.1 of the IWF ADP the time to file an appeal is twenty-one (21) days from the notification of the Appealed Decision, thus ending in the

present case on 15 December 2015. Hence, the statement of appeal filed on 26 December 2015 is late and these proceedings must be terminated in accordance with Article R49 of the CAS Code. To hold otherwise would mean that parties could choose the timing to file an appeal and the entire legal system would collapse.

- 4.14 The positive analytical findings are not disputed by the Athlete.
- 4.15 The Athlete did not establish that the violation was not intentional or that he bears no fault or negligence or no significant fault or negligence and thus a four (4) year period of ineligibility under Article 10.2.1 IWF ADP shall be applied. The burden of proof in this regard lies with the Athlete under the balance of probabilities in accordance with Article 3.1 IWF ADP and this has not been met by the Athlete.
- 4.16 The Athlete changed his explanations during the proceedings on a number of occasions. He first explained that he must have consumed contaminated supplements, whose packages did not disclose the presence of prohibited substances, or contaminated food taken prior to the event. He later explained that he consumed a large number of various supplements all legal, but which are "*precursors of nandrolone*" and, taken together, may increase the nandrolone level above the permitted threshold level based on the expert opinion of Professor Baraldo. Immediately prior to the hearing the story is being changed again, this time explaining that the assistant coach "inserted" prohibited substances into supplements consumed by the Athlete. It is not explained how this latest version coincides with Professor Baraldo's opinion. The story about the assistant coach is also questionable and not supported. It is not clear what interest such coach may have had, nor how he could have modified some substances which came in pill form (therefore, requiring a chemist in order to modify them), nor how he got access to do so, the timing in relation to the positive test and many other facts and factors.
- 4.17 The Athlete did not corroborate his testimony that the positive finding resulted from consumption of contaminated food or supplements or even that he consumed any supplements, in general, or the ones mentioned in Professor Baraldo's report, in particular. The Athlete provided neither the packs of the supplements used, nor the receipts of their purchase, nor any other evidence relating to such supplements. The IWF proposed that the Athlete submit the supplements for analysis before the Houston hearing. The Athlete did not respond or provide the substances for an analysis. He did attend the hearing in Houston, bringing the substances with him, but this was beyond any deadline and not relevant for an analysis which could not be done on the day of the hearing. The new evidence regarding the alleged actions of the assistant coach raises numerous questions and the value of such evidence is impossible to assess.
- 4.18 Professor Baraldo's report is not complete, does not meet the criteria for an expert report and, in any event, more weight should be given to the expert opinion dated 17 March 2016 of Dr Hans Geyer, Deputy Head of the Institute of Biochemistry of the German Sport University of Cologne (a WADA accredited laboratory), one of the most renowned experts in the field of doping, in particular with regard to research concerning anabolic steroids, with many relevant publications in that field.

- 4.19 Dr Geyer stated that *“WADA TD2014NA considers that the formation of endogenous norandrosterone above a concentration of 10 ng/ml is not possible”, that “according to the recent literature, the formation of endogenous norandrosterone above 10 ng/ml in men is not known” and that “the formation of endogenous norandrosterone via the administration of different ‘clean’ nutritional supplements is not known”.*
- 4.20 In the present case, that concentration of norandrosterone in the sample was 10.9 ng/ml, which is not disputed.
- 4.21 The Panel should not prefer the opinion of a non-specialist, Professor Baraldo, to the findings of WADA formulated in its regulations, enacted after extensive research, and to the clear expert opinion of Dr Geyer, a real expert in the specific field. Had there been a timely demand to have Dr Geyer available for cross examination at the hearing, Dr Geyer would have been present.
- 4.22 The Athlete failed to establish, even on the balance of probabilities, that the norandrosterone found in his body had an endogenous origin. This means that the prohibited substance has an exogenous origin. The Athlete was not able to prove how the substance entered his body. He cannot therefore claim that the positive finding resulted from no fault or negligence or no significant fault or negligence. Therefore, the four (4) year period of ineligibility under Article 10.2.1 IWF ADP shall apply to the Athlete.
- 4.23 In its answer, the IWF requested to terminate the proceedings, reject the appeal and grant to the IWF contribution for expenses.

V. CAS JURISDICTION

- 5.1 CAS jurisdiction is provided for under Article R47 of the CAS Code which states that *“[a]n appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body”.*
- 5.2 The jurisdiction of the CAS stems from Article 13.2.1 of the IWF ADP which grants exclusive jurisdiction to CAS in appeals and, which reads as follows:
- “In cases arising from participation in an IWF Event, in cases involving International-Level Athletes or in cases when a decision is issued by IWF concerning International-Level Athletes or National-Level Athletes, the decision may be appealed exclusively to CAS”.*
- 5.3 The jurisdiction of CAS was not contested by the IWF and was confirmed by both parties by the signing of the Order of Procedure.
- 5.4 It follows that the CAS has jurisdiction to decide the present case.

VI. ADMISSIBILITY

- 6.1 According to Article R49 of the CAS Code, “[i]n the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against”.
- 6.2 The present case is governed by the provisions of the IWF ADP. Article 13.7.1 IWF ADP provides that “[t]he time to file an appeal to CAS shall be twenty-one days from the receipt of the decision by the appealing party”.
- 6.3 The parties agree regarding the following facts which may relate to this matter:
- The Appealed Decision was sent by e-mail on 24 November 2015 by the IWF Legal Counsel to Mr Antonio Conflitti, WFRM Deputy President, Mr Tudor Casapu, WFRM President, the WFRM at its official e-mail address and Ms Federica Tosel, attorney-at-law; these recipients received the Appealed Decision at the latest on 24 November 2015 (reference was made to receipt on 23 November due to different time zones but this is not relevant to the decision in this matter);
 - The WFRM held a meeting with the Athlete on 5 December 2015, provided him with a copy of the Appealed Decision and assisted in translating it for his benefit;
 - The Athlete filed his statement of appeal on 26 December 2015.
- 6.4 Therefore, if the “date of receipt of the decision” by the Athlete was or was deemed to be on 24 November 2015, as argued by the IWF, the appeal is late and is inadmissible. If, however, the “date of receipt of the decision” by the Athlete was on 5 December 2015, as argued by the Athlete, the appeal is timely and is admissible.
- 6.5 There is no question that the Athlete’s national federation received the Appealed Decision by 24 November 2015. The Panel, however, does not accept the IWF’s position that the twenty-one (21) day clock starts running on such a date based on Article 7.3.2 IWF ADP, which provides that the Athlete is deemed to be validly notified of an adverse analytical finding when notification is made to the athlete’s member federation.
- 6.6 The Panel holds that, based on the plain language of Article 7.3.2 IWF ADP, this Article relates specifically to notification of an adverse analytical finding. Similar language is not used elsewhere in the text in regard to notification of decisions issued by the IWF’s Hearing Panel. It is clear that the drafters of the IWF ADP had the possibility to incorporate similar language in regard to other notifications and the fact that they have not done so should be viewed as an indication that this was not their intention. Any practice regarding such notifications or arguments regarding ease of operation and the difficulty to trace the whereabouts of athletes are not sufficient reasons based on which notification of decisions may be assumed. This is especially true where, such as in this case, an athlete may lose his procedural rights and be precluded from appealing a decision which suspended his sporting career for a substantial period of time. Had this been the intention of the IWF, specific language could have easily been incorporated in the IWF ADP.

- 6.7 Furthermore, the IWF's arguments regarding ease of operation and administration are not valid following the initiation of the legal case by the IWF and especially following the Athlete's personal attendance at the hearing in front of the IWF Hearing Panel, establishing direct contact between the IWF and the Athlete (and/or his attorney).
- 6.8 The Panel does accept, however, the IWF's position that notification to the Athlete's attorney of record is deemed to be a notification to the Athlete himself.
- 6.9 The IWF argues that a party appearing before CAS "*may be represented or assisted by persons of their choice*" under Article R30 of the CAS Code and it is a standard procedure at CAS that notifications are made to an attorney of record under Articles R30 and R31 of the CAS Code.
- 6.10 IWF highlights, and Appellant did not dispute, that notification to an attorney of record is also the IWF practice which is known by all national federations' officials.
- 6.11 The Panel notes that under Article 137 of the Swiss Civil Procedure Code, which the Panel uses as additional reference independently of its direct applicability to this matter, "*[i]f a party is represented, service is made to the representative [or "counsel"]*".
- 6.12 Moreover, the same provisions require exclusive notification to the representative or attorney in lieu of and not in addition to notification to the athlete.
- 6.13 The hearing clarified, through the testimony of the Athlete and statements of the Athlete's attorney, Ms Federica Tosel, that the attorneys, Mr Luigi Francesco Rossi and she, represented the Athlete already in the proceedings before the IWF Hearing Panel. The Athlete was advised by these attorneys prior to and in connection with the IWF hearing, pleadings were filed with the IWF Hearing Panel by the attorneys on behalf of the Athlete and the Athlete has specifically confirmed such representation in writing. The fact that these attorneys did not attend the hearing in Houston related to cost issues and not to termination of any representation.
- 6.14 The Athlete submitted to the IWF Hearing Panel a defence memo signed by the attorneys, Ms Federica Tosel and Mr Luigi Francesco Rossi, which document included on its last page a signed confirmation by the Athlete regarding the legal representation stating (in its English translation provided by the Athlete) as follows: "*I signed Zbirnea Andrian Ivan, born in Chisinau (republic of Moldova) 12 May, 1990, where I live in street Hristo Botev, 25, athlete's Weightlifting Federation of the Republic of Moldova with reference to positive doping tests detected 18 April 2015 I name my defenders Italian Lawyers Federica Tosel and Luigi Francesco Rossi, giving the same broad authority to appoint their own consultants*".
- 6.15 Having heard the Athlete and his attorneys at the hearing before CAS and having reviewed again the parties' submissions, the Panel holds that the Athlete was represented at all pertinent times by Mr Luigi Francesco Rossi and by Ms Federica Tosel, Attorneys-at-law in Udine, Italy. Ms Federica Tosel received the Appealed Decision on 24 November 2015, which is deemed to be proper notification to the Athlete on the same date.

- 6.16 The procedural rules which assume notification to an athlete upon notification to his counsel are fair and reasonable and not against “public policy” and these clearly provide “effective knowledge” to the Athlete.
- 6.17 The Panel notes that procedural rules are enacted in order to streamline the administration of any legal system and to create an equitable legal field in which parties and non-parties can determine their rights and obligations within a defined set of rules. This is required in order to ensure a fair and just legal process having a defined order and certainty. To hold otherwise and to allow dates to be calculated from the time that an attorney or a federation representative decides to advise his client and an athlete, respectively, would allow parties to determine their own procedural deadlines and will create a chaotic system lacking any clarity. The rules in regard to this matter are clear and not ambiguous. They allow sufficient time for athletes in which to consider their rights and in which to act. The fact that an athlete may be personally notified only at a later stage by his federation or his attorneys is not a reason to deviate from the clear wording of a procedural rule.
- 6.18 Therefore, the Athlete is deemed to have been notified and received the Appealed Decision on 24 November 2015 and the deadline to file an appeal was 15 December 2015. The appeal filed with CAS on 26 December 2015 is late and, therefore, inadmissible.
- 6.19 Accordingly, the Panel is not in position to entertain the present appeal.

Based on this conclusion, all other or further motions or prayers for relief advanced or submitted by the parties are dismissed.

The Panel highlights, however, that IWF Counsel was forthcoming at the hearing before CAS to indicate that if, at some point, the new evidence provided by the Athlete is supported and there is substantiated evidence regarding tampering of the supplements used by the Athlete himself by the assistant coach of the WFRM, the Athlete may approach the IWF requesting a revision of the Appealed Decision by the IWF itself based on such new evidence, and that *“the IWF will be ready to examine the case”* in accordance with Article 7.13 IWF ADP which states that: *“IWF or a party affected by a decision rendered by the IWF Doping Hearing Panel which is in force, may request the IWF Hearing Panel to review it if facts or evidence that were unknown at the time of the original decision have been discovered and may have a significant impact on the sanction pronounced”*.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed on 26 December 2015 by Mr Adrian Ivan Zbirnea against the decision of the IWF Hearing Panel of 22 November 2015 is inadmissible.
2. (...).
3. (...).
4. All other or further motions or prayers for relief are dismissed.