



Tribunal Arbitral du Sport
Court of Arbitration for Sport
Tribunal Arbitral del Deporte

COURT OF ARBITRATION FOR SPORT (CAS)
Ad Hoc Division – Games of the XXXII Olympiad in Tokyo

sitting in the following composition:

President: Ms. Carine Dupeyron, Attorney-at-Law, France
Arbitrators: Mr. Manfred Nan, Attorney-at-Law, The Netherlands
Mr. Francisco Mussnich, Attorney-at-Law, Brazil

CAS OG 20/04 Maxim Agapitov v. International Olympic Committee

AWARD

in the arbitration between

Mr Maxim Agapitov

Represented by Ms. Anna Atseliovich and Mr. Artem Patsev

("Applicant")

and

International Olympic Committee

Represented by Dr. Xavier Favre-Bulle and Mr. Marc-Anthony de Boccard

("Respondent")

1 PARTIES

- 1.1 The Applicant is Mr Maxim Agapitov (the “Applicant” or Mr. Agapitov”), a retired athlete and currently the Acting President of the European Weightlifting Federation and the President of the Russian Weightlifting Federation.
- 1.2 The Respondent is the International Olympic Committee (“IOC”), with headquarters located in Lausanne, Switzerland
- 1.3 The Applicant and the Respondent are referred to individually as a “Party” or jointly as the “Parties”.

2 SUMMARY OF RELEVANT FACTS

- 2.1 The elements set out below are a summary of the main relevant facts as established by the Panel by way of a chronology, on the basis of the submissions of the Parties. Additional facts may be set out, where relevant, in the legal considerations of the present award.
- 2.2 The Applicant, an acting President of the European Weightlifting Federation and president of the Russian Weightlifting Federation, received a document called an “*Olympic Identity and Accreditation Card*” (“OIAC”) from the International Weightlifting Federation (“IWF”) on or around mid-June 2021.
- 2.3 On 7 July 2021, the IOC wrote to the IWF regarding, *inter alia*, the conditions for the accreditation for IWF officials for Tokyo 2020. This letter supplemented a previous communication from the IOC to the IWF dated 10 June 2021 regarding the IOC Executive Board’s decisions on accreditations for IWF officials for Olympic Games after revelations on widespread doping practices at the IWF.
- 2.4 On 10 and 14 July 2021, the Applicant was informed orally, then in writing, by the Interim President of the IWF that the IOC requested him to send back his “*Pre-Accreditation Card*” (“PVC”) to the Tokyo 2020 Organising Committee.
- 2.5 In an exchange of correspondence dated 15 and 16 July 2021:
 - the Applicant wrote to the IOC Sports Director, Mr. Kit McConnell, to challenge the Respondent’s denial of his accreditation, which the Applicant considered was “*unfair*” and immediately requested a reconsideration; the Applicant attached to his letter several exhibits, including written statements from Mr. McLaren as to his leadership and support towards the fight against doping in the weightlifting sports;
 - the IOC Sports Director replied regarding the “*withdrawal of your accreditation for the Olympics Games Tokyo 2020*” that the Applicant did not meet the

criteria for IWF officials (point B) providing that such official shall “*not have personal history linked to any anti-doping rule violation and/or sanction.*”

- 2.6 On 18 July 2021, the Applicant then filed an “*official request to be heard by the IOC competent body according to the Olympic Charter*”, noting that in the absence of any decision by the IOC competent body by Monday 19 July 2021, at 6:00 pm Tokyo, he would consider that “*an official IOC decision [has been taken] to withdraw his “pre-valid accreditation for the Tokyo 2020 Olympics*”.

3 CAS PROCEEDINGS

- 3.1 On 21 July 2021 at 8:18 am (time of Tokyo), Mr. Agapitov filed an Application with the CAS Ad Hoc Division against the Respondent with respect to the withdrawal of his accreditation for the XXXII Olympiad in Tokyo (“Tokyo 2020”).

- 3.2 On the same day, the CAS Ad Hoc Division notified the Parties of the composition of the Arbitral Tribunal, as follows:

- Ms. Carine Dupeyron, acting as president
- Mr. Francisco Müssnich and Mr. Manfred Nan, acting as co-arbitrators.

- 3.3 Later on the same day, procedural directions and summons to appear, together with a decision to extend the 24-hour time limit for rendering the award, were communicated to the Parties, setting in particular until 22 July at 10:00 am (time of Tokyo) for the Respondent to file its Answer and scheduling the hearing on 22 July at 2:00 pm (time of Tokyo).

- 3.4 On that time and day, the hearing was held by videoconference. The Panel was joined by Mr. Antonio de Quesada, CAS Head of Arbitration, and the following persons also attended the hearing:

- The Applicant; Mr. Maxim Agapitov;
- On behalf of the Applicant: Ms. Ms. Anna Atseliovich and Mr. Artem Patsev;
- On behalf of the Respondent: Mr. Xavier Favre-Bulle and Mr. Marc-Anthony de Boccard;
- The translator: Ms. Ekaterina Woodham Mostovaya.

- 3.5 At the outset of the hearing, and following a letter sent earlier on 22 July 2021 by the Applicant requesting the president of the Panel “*to re-consider her participation in CAS OG 20/04 Maxim Agapitov v. IOC and disqualify herself voluntarily*”, the president of the Panel (i) confirmed her independence and impartiality and (ii) asked the Applicant whether he was considering filing a challenge, in which case the hearing would be postponed, to leave time for the challenge to be decided.

- 3.6 The Applicant confirmed that he was comfortable with the statement of Ms. Carine Dupeyron and did not intend to file a challenge against her.
- 3.7 There were no further objections as to the constitution of the Panel, to the conduct of the proceedings or the Parties' rights to be heard and treated equally in these proceedings.

4 PARTIES' SUBMISSIONS

- 4.1 The Parties' submissions and arguments shall only be referred to in the sections below if and when necessary, even though all such submissions and arguments have been considered fully by the Panel in making its decision.

a. The Applicant's Submission

- 4.2 The Applicant argues that the IOC's silence on the request of 18 July 2021 is appealable as, in his view, the absence of an answer has the same effect of a formal decision of the IOC to deny his request and, consequently, to withdraw his accreditation.
- 4.3 Quoting the World Anti-Doping Code (the "WAD Code") in Article 13.3, he argues that a failure to render a decision allows the Applicant to appeal directly to CAS. Confirming his position, he cites CAS 2005/A/944 where the Panel established that the mere absence of any reaction must be considered as a decision which is final and thus subject to an appeal before CAS. Again citing CAS 2017/A/5200, CAS 2017/A/5333, and CAS 2013/A/3249, the Applicant argues that these Panels found that the term "*decision*" is to be understood broadly, and under certain circumstances, "*negative decisions*" or "*refusals to decide*" can be considered as appealable decisions, because the organization's inactivity leads to the same consequences as if a decision had been issued.
- 4.4 The Applicant then goes on and characterizes the behaviour of the IOC as a violation of several legal principles, namely a natural justice right, i.e. a right to be heard in due time by an independent panel/tribunal. In fact, denying the participation of a person in the Tokyo 2020 Olympics, is, in the view of the Applicant, a sanction for it circumvents the persons' due-process fundamental rights recognized by any legal system around the world as well. He quotes several cases, including CAS 2014/A/3516, CAS 2011/A/2670, and CAS 2004/A/725.
- 4.5 The Applicant then contends that the IOC committed a violation of the WAD Code. In fact, by taking a decision in July 2021 with regard to the composition of IWF official delegations for Tokyo 2020, and by adding some criteria for IWF officials to receive accreditations, the IOC has actually revitalized Rule 45 of the Olympic Charter (so-called the "*Osaka rule*") which IOC knows perfectly well was declared as invalid and unenforceable by the CAS, at least twice in 2011-2012 (CAS 2011/O/2422 and CAS 2011/A/2658), and again confirmed in 2016 by the CAS media release in regard of the Korean swimmer Tae Hwan. This was again confirmed during the Rio de Janeiro

Olympic Games by CAS Ad hoc Division OG 16/004, CAS Ad hoc Division OG 16/013, and CAS Ad hoc Division OG 16/019.

- 4.6 For the Applicant, the WAD Code is mandatory for the whole Olympic Movement, as stated by Rule 43 of the Olympic Charter. Their rules are intended to be applied in a manner which respects the principles of proportionality and human rights. When reviewing the facts and the law of a given case, all courts, arbitral hearing panels and other adjudicating bodies should be aware of and respect the distinct nature of the anti-doping rules in the WAD Code and the fact that those rules represent the consensus of a broad spectrum of stakeholders around the world with an interest in fair sport. Having regard to its objective and purpose and to its scope and application, a rule prohibiting doped athletes who have already served their suspension from participation in the Olympic Games (regardless of the capacity) is more properly characterized as a sanction of ineligibility for a major Competition, i.e. as a disciplinary measure taken because of a prior behavior, than as a pure condition of eligibility to participate in the Olympic Games. Even if one accepts that the rule has elements of both an eligibility rule and a sanction, it nevertheless operates as, and has the effect of, a disciplinary sanction.
- 4.7 The Applicant recalls that CAS case law has consistently held that the principle of *ne bis in idem* can apply to sanctions under sports law, and academic authorities on the subject have come to the same conclusion. If the *ne bis in idem* principle is indeed applicable to sanctions imposed under anti-doping regulations, the rule prohibiting doped athletes from participation in the Olympic Games (regardless of their capacity in the Games) would contravene this principle. The effective purpose of the sanction is the same (even if the underlying motivations are different); the sanction is attributable to the same behavior, and the sanction results in the same consequence, temporary or permanent ineligibility or exclusion from the Olympic Games.
- 4.8 The Applicant, in addition, claims that Article 17 (statute of limitations) of the WAD Code applies to the present case for it states that “*No anti-doping rule violation proceeding may be commenced against an Athlete or other Person unless he or she has been notified of the anti-doping rule violation as provided in Article 7, or notification has been reasonably attempted, within ten (10) years from the date the violation is asserted to have occurred*” (emphasis added). After this period it is considered that the person did not commit an anti-doping rule violation, thus “starting from a clean slate”.
- 4.9 It is the position of the Applicant that the withdrawal of his OIAC is a sanction for the same offence he committed in 1994 (twenty-seven years ago), regardless of (i) his suspension duly served, and (ii) his clean –and successful– sporting career afterwards, let alone (iii) his strong and even hardline commitment against doping and corruption in the sport of weightlifting, which is confirmed by a written deposition of Professor Richard McLaren exhibited in the present case. In that respect the Applicant makes an analogy with CAS 2015/A/4304, where the Sole Arbitrator, Prof. Ulrich Haas, reviewed the issue of application of the statute of limitation outside of the specified period and confirmed that “*all the interests protected by a statute of limitation, in particular the legitimate procedural interests of the “debtor”/“defendant” would be violated if an association could retroactively allow for the persecution of a disciplinary offense*”.

already time-barred. Such open-ended approach to disciplinary cases poses a serious threat to the principle of legal certainty that constitutes a violation of Art. 6(1) ECHR.” The Applicant argues that the IOC’s decision of July 2021 (based on point B of the established criteria) is effectively punishing the Applicant, as a weightlifting official, for the second time after he has already served a penalty for his anti-doping rule violation (“ADRV”) back in 1994. This amounts to a so-called and prohibited double-jeopardy rule for athletes who have been previously suspended for ADRVs.

- 4.10 The Applicant argues that the IOC also violated several fundamental principles of law when it stated that the IWF shall consider individuals only who meet some criteria, including those who do “*not have a personal history to any anti-doping rule violation and/or sanction*”.
- 4.11 In his view, it means that (a) the IOC has stated special rules only for some IWF officials regardless of the imperative statute of limitations established by the WAD Code, and (b) the IOC has offered the persons concerned no opportunities to rebut “*a presumption of guilt*” in an individual case. By establishing some special rules for weightlifting officials only, depending on their historical anti-doping record, the IOC clearly violated the wide-known principle of equal treatment and the Fundamental Principles of Olympism, inter alia: “*4. The practice of sport is a human right. Every individual must have the possibility of practicing sport, without discrimination of any kind and in the Olympic spirit, which requires mutual understanding with a spirit of friendship, solidarity and fair play. [...] 6. The enjoyment of the rights and freedoms set forth in this Olympic Charter shall be secured without discrimination of any kind, such as race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth or other status.*”
- 4.12 Finally, the Applicant contends that the position of the IOC was a complete surprise because he has been fighting corruption and lack of transparency in the IWF anti-doping program, harshly criticizing the policy of the previous leadership. He fully supported the idea of an independent investigation of IWF activities by Professor Richard McLaren and actively participated in it, providing relevant testimony and assistance to this investigation. The Applicant cites in that respect Professor McLaren, who, at the time, praised his cooperation during the investigation, saying that he had “*shown leadership to other presidents*” and that he was “*the most dedicated and committed person in the organization*”.
- 4.13 Prior to the hearing, the Applicant presented a written witness statement dated 21 July 2021 by Professor Richard McLaren, who was in charge of the investigation in the IWF, which provided first-hand information about the Applicant’s leading role in the investigation and his outstanding cooperation.

b. The Applicant’s Request for Relief

- 4.14 The Applicant’s request for relief from the Panel is as follows:

“(procedural)

1. *this application is allowed.*

2. *this application, due to complexity of the case and the volume of evidence (including the witness testimonies) is assigned for a consideration of a three-arbitrators’ Panel.*

(on the merits):

3. *the decision of the IOC of 19 July 2021 that confirms the withdrawal of the accreditation of Mr Maxim Agapitov for Games of the XXXII Olympiad, in Tokyo (Tokyo 2020), is set aside.*

4. *Mr Maxim Agapitov is eligible to participate in the Games of the XXXII Olympiad, in Tokyo (Tokyo 2020) as a member of the IWF official delegation.*

5. *the IOC is ordered to reinstate the accreditation of Mr Maxim Agapitov for Games of the XXXII Olympiad, in Tokyo (Tokyo 2020).*

6. *the IOC is ordered to pay Mr Maxim Agapitov the entirety of the arbitration costs, if any, and a fair contribution towards the legal fees and other costs incurred by him in the framework of these proceedings, in an amount to be determined at the discretion of the Panel.”*

c. The Respondent’s Submission

4.15 The submissions of the Respondent, in essence, may be summarised as follows:

4.16 For the Respondent, the Application is inadmissible, absent a decision from the IOC which could be validly set aside by the Panel at this juncture, more specifically for the following reasons:

- the Applicant seeks that *“the decision of the IOC of 19 July 2021 that confirms the withdrawal of the accreditation of Mr Maxim Agapitov for Games of the XXXII Olympiad, in Tokyo (Tokyo 2020), is set aside”*. However, there is no such decision of 19 July 2021 or at any other time. If the Applicant attempts to create a fictitious decision, that is unavailing. In reality, the Applicant is aware that there is no appealable decision and he rather complains of an alleged refusal by the IOC to invite him to the Tokyo 2020 Olympic Games. The Applicant fails to explain why an absence of response should qualify as a decision in the present circumstances.
- Article 13.3 of the WAD Code does not apply.
- Assuming there would be a decision regarding the IOC's accreditations for IWF-related officials, the only relevant decision is the IOC Executive Board decision on accreditation, published and sent to the IWF on 10 June 2020. That decision has

not been challenged by the IWF or any third party; therefore it is in force. It was the responsibility of the IWF to inform all of its constituents, including the Applicant, of this decision, and the IOC cannot be held responsible if they failed to do so.

- What happened thereafter does not amount to any proper decision, which could be sought to be set aside. In its correspondence, the IOC acted merely in line with the IOC Executive Board decision of 10 June 2020. The criteria for an accreditation were later emphasised and the Applicant does not meet those criteria. There was no room for any decision. Moreover, under the applicable rules, the IOC has full discretion to grant an accreditation; there is no right to an accreditation. Consistently, the letters of the IOC such as the one of 7 July 2021 or 16 July 2021 do not qualify as decisions.
- Additionally, the Applicant has not demonstrated that he has a legal interest, worthy of protection, to challenge either a non-existing decision or a decision made in June 2020. There is no denial of justice in the present circumstances. Consistent with the analysis made in CAS awards, the IOC had no intention, nor any reason, to make a specific ruling regarding the Applicant. The IOC had merely announced, according to its discretionary power, the criteria regarding the accreditation of IWF officials and the Applicant does not meet these criteria. There is no individual decision to be made about someone who has no right to make an application failing the relevant criteria being met.

4.17 Absent any specific accreditation procedure applicable to the Applicant, and absent any proper decision, no due process requirements apply. Even if due process requirements were to apply, the Applicant addressed correspondence to the IOC in respect of his wish to obtain an accreditation. The Respondent, in particular in its letter dated 16 July 2021, took position, and as such, the right of the Applicant to be heard – should there be any – has thus been complied with. In any event, any breach of the right to be heard is cured by the present proceedings before the CAS panel.

4.18 Turning to the merits, the Respondent argues that no right exists to obtain an accreditation under applicable rules. According to the Accreditation at the Olympic Games - Detailed Specifications of October 2020, all matters relating to the OIAC, including the categories and related access rights, as well as the "*terms on which it is issued or withdrawn*", are at the "*sole discretion*" of the IOC Executive Board, which may delegate its powers to IOC Commissions, members of the IOC administration or to other entities or third parties in accordance with Article 19(4) of the Olympic Charter.

4.19 The IOC determines the persons entitled to an OIAC and sets the conditions for its granting and issuance. The IOC reserves the right to refuse, suspend or cancel an accreditation. This refusal should be reasonable, based on clear criteria and for a limited amount of time. In the present case, the refusal is reasonable as the criteria were clear and the refusal was limited only to the Olympic Games Tokyo 2020.

4.20 Accordingly, there is no right of the Applicant to obtain an accreditation under the applicable rules. The IOC has full discretion in granting or not an accreditation. Consistent with the criteria (b) set out in the IOC's letter dated 7 July 2021, the

Applicant has a "personal *history linked to any anti-doping rule violation and/or sanction*" which prevents any accreditation. Moreover, the Applicant is also named in the IWF McLaren Report and he is the President of the Russian Weightlifting Federation which has been concerned by doping offenses of its athletes. In the light of this also, no accreditation is available to the Applicant.

- 4.21 Additionally, the Respondent distinguishes a PVC issued by an International Federation as IWF, which is not akin to an OIAC. According to the International Federation Accreditation and Guest Pass Manual of December 2019, Art. 4.6 of the mark-up version, an International Federation is responsible for the prompt and safe distribution of PVCs to individuals within their delegation, but there is a fundamental difference between PVC and OIAC. The Applicant's reliance on the fact that the IWF gave him a PVC on 15 June 2021 is therefore irrelevant; what only matters is having an OIAC, and the Applicant has never received any such accreditation by the IOC.
- 4.22 Moreover, the accreditation of an IWF-related official is in no way comparable with an athlete, who would be prevented from participating to the Olympic Games due to a past ADRV. All the references made by Mr. Agapitov in a large part of his Application are not relevant, insofar as they refer to athletes facing sanctions. The IOC is in no manner sanctioning, nor willing to sanction, the Applicant. The matter at stake is completely different: it is about whether an IWF-related official may obtain an accreditation, despite the restrictive policy decided by the IOC Executive Board in June 2020 for IWF officials. According to the relevant criteria of the applicable rules, the Applicant has simply no right to obtain an accreditation. There is no breach of the Olympic Charter, of the WADA Code, or of "*fundamental principles of law*" when dealing with an accreditation granted discretionarily by the IOC. There are no eligibility rules which would be comparable to those applicable to athletes seeking to compete. There are no issues of limitation: the IOC is not pursuing an action against the Applicant for a new ADRV, which could be time-barred in relation to old facts. All arguments relied upon by the Applicant in that regard are bound to fail as they contemplate situations which have nothing to do with the present case.

d. The Respondent's Request for Relief

- 4.23 On this basis, the Respondent submits the following prayers for relief:

"(i) declare Mr Maxim Agapitov's Application inadmissible and terminate the present proceedings CAS OG 20/04;

(ii) alternatively, dismiss all relief sought by Mr Maxim Agapitov in the Application;

(iii) in any event, order Mr Maxim Agapitov to pay all costs of these arbitration proceedings, including a contribution towards the legal costs incurred by the International Olympic Committee."

5 JURISDICTION

5.1 Article 61.2 of the Olympic Charter provides as follows:

“61 Dispute Resolution

[...]

2. Any dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport (CAS), in accordance with the Code of Sports-Related Arbitration”.

5.2 In view of the above, the Panel considers that the CAS Ad Hoc Division has jurisdiction to hear the present matter. The jurisdiction of the CAS Ad Hoc Division was not contested neither in the written submissions nor at the hearing.

5.3 Article 1 of the CAS Arbitration Rules for the Olympic Games (hereinafter: the “CAS Ad Hoc Rules”) provides as follows:

“Article 1. Application of the Present Rules and Jurisdiction of the Court of Arbitration for Sport (CAS)

The purpose of the present Rules is to provide, in the interests of the athletes and of sport, for the resolution by arbitration of any disputes covered by Rule 61 of the Olympic Charter, insofar as they arise during the Olympic Games or during a period of ten days preceding the Opening Ceremony of the Olympic Games.

In the case of a request for arbitration against a decision pronounced by the IOC, an NOC, an International Federation or an Organising Committee for the Olympic Games, the claimant must, before filing such request, have exhausted all the internal remedies available to him/her pursuant to the statutes or regulations of the sports body concerned, unless the time needed to exhaust the internal remedies would make the appeal to the CAS Ad Hoc Division ineffective.”

5.4 In the present case, the Panel considers that the Applicant properly applied to the CAS Ad Hoc Division to challenge the withdrawal of his accreditation. The Panel accordingly finds that it has jurisdiction over the present dispute.

6 ADMISSIBILITY

6.1 The Respondent challenges the admissibility of Mr. Agapitov’s application based on the absence of a “*decision*” from the IOC, alternatively that an IOC decision was issued on 10 June 2020 without a timely appeal from the IWF and/or the Applicant, whereas the Applicant argues that the failure of the IOC to respond to his letter by 19 July 2021 shall be qualified as a “*decision*” allowing him to resort to the CAS Ad Hoc Division.

- 6.2 Having considered the evidence presented by the Parties, the Panel finds that on 16 July 2021, the IOC informed the Applicant of the withdrawal of his accreditation, which was further confirmed by the IOC's absence of reaction further to the Applicant's letter of 18 July 2021 requesting that the "*IOC competent body reviews this legal position and informs [the Applicant] on its decision no later than close of business (18:00) of Monday, 19 July 2021, Tokyo time.*" The Panel considers that the above facts characterize the existence of a decision, and a dispute, with respect to a final decision to withdraw an OIAC, between the Applicant and the IOC, which falls under the jurisdiction of the CAS Ad Hoc Division in accordance with Article 1 of the CAS Ad Hoc Rules and Article 61 of the Olympic Charter.
- 6.3 For the sake of completeness, the Panel rejects the Respondent's argument that the IOC letter dated 10 June 2020 to the IWF would qualify as a decision that the Applicant failed to challenge timely. While this communication also related, amongst other questions, to the criteria that the IOC intended to adopt as to the accreditation of IWF officials for the Tokyo 2020 Olympic Games, the record is clear that it is not on the basis of that document that the IOC withdrew the Applicant's OIAC but by reference to the "point B" set forth in the letter of 7 July 2021.
- 6.4 Similarly, on the Respondent's argument with respect to the Applicant's lack of standing to sue based on the allegation that the "*IOC had no intention, nor any reason, to make a specific ruling regarding Mr. Agapitov*", the Panel decides that this assertion is disconnected from the facts presented before it, which all point out to a withdrawal of the OIAC of the Applicant based on the IOC's interpretation of the specific criteria it issued in its 7 July 2021 concerning IWF officials. On that basis, the existence of a legitimate interest of the Applicant to have a determination in that regard is evident.
- 6.5 Finally, on the various arguments raised by the Applicant as, *inter alia*, to his right to be heard, the violation of Article 6 of the European Convention on Human Rights, the qualification of the withdrawal of his accreditation as a "*sanction*" and the lack of jurisdiction of the IOC body that decided upon the withdrawal of his accreditation, the Panel notes that it has *de novo* review as per Article 16 of the CAS Ad Hoc Rules and accordingly, will reassess fully the facts and legal arguments raised by the Parties. The analysis of these elements is therefore unnecessary, as properly noted by the Respondent.
- 6.6 In view of the above, the Panel considers that the application filed by Mr. Agapitov is admissible.

7 APPLICABLE LAW

- 7.1 These proceedings are governed by the CAS Ad Hoc Division Rules enacted by the International Council of Arbitration for Sport ("ICAS") on 14 October 2003 ("CAS Ad Hoc Rules"), which states in its Article 17 that, the Panel must decide the dispute "*pursuant to the Olympic Charter, the applicable regulations, general principles of law and the rules of law, the application of which it deems appropriate*".

- 7.2 They are further governed by Chapter 12 of the Swiss Private International Law Act of 18 December 1987 ("PIL Act"). The PIL Act applies to this arbitration, as a result of the result of the choice of Lausanne, Switzerland as the seat of the Ad Hoc Rules and of its panels of arbitrators, pursuant to Article 7 of the CAS Ad Hoc Rules.

8 DISCUSSION

- 8.1 As a preliminary objection, the Respondent argued at length that the Applicant was never granted an accreditation nor an OIAC for the Tokyo 2020 Olympic Games (but only a PVC). Accordingly, there has never been a "*withdrawal*" of this accreditation but the legitimate exercise by the IOC of its discretionary right to provide accreditation IF officials to the Olympic Games. However, the evidence put before the Panel, in particular (i) the labelling as an "*OIAC*" of the document issued and delivered to the Applicant in June 2020, (ii) the terminology used by the IOC itself regarding the "*withdrawal*" of the OIAC in its 16 July 2021 letter, (iii) the definition of a PVC, and (iv) the description of the validation process of the PVC in the Olympic Games and IF Accreditation and Guest Pass Manual as a purely administrative act without any additional scrutiny of the IOC, contradicts plainly IOC's argument.
- 8.2 Having clarified this point, this case is therefore about the withdrawal of the Applicant's OIAC, based on the application by the IOC of a revised set of criteria, which was issued on 7 July 2021 and concerned "*all IWF officials accredited in a capacity for Tokyo 2020*". Stated differently, this case is not a case about a "*right to obtain an accreditation*" as the Respondent attempted to portray it nor is it a case that questions the ability of the IOC to issue accreditation rules.
- 8.3 This withdrawal has been decided by the IOC in application of Article 59 of the Olympic Charter regarding "*measures or sanctions which may be taken by [...] the IOC Executive Board*", particularly in sub-section "*2. in the case of any violation of the Olympic Charter, of the World Anti-Doping Code, or of any other decision or applicable regulation issued by the IOC,*" where the IOC Executive Body is entitled to withdraw the accreditation of any officials (Article 59.2.2.3).
- 8.4 The question at stake is whether the criteria that the Respondent issued and applied to decide to withdraw the Applicant's OIAC are enforceable and appropriate.
- 8.5 Turning to said criteria, the Panel notes that both Parties agree that these criteria have been embodied in the 7 July 2021 letter from the IOC to the IWF. In said correspondence, the IOC required that IWF officials "*accredited in any capacity for Tokyo 2020*" meet the following conditions:

"a. Not named under negative context, including but not limited to incriminating circumstances, in any previous investigation such as the McLaren independent investigation, the ITA report and/or any past inquiries beyond weightlifting

b. Not have a personal history linked to any anti-doping rule violation and/or sanction

c. Not cover any leadership role in a National Federation currently sanctioned due to multiple doping offenses”.

- 8.6 As put forward by the Respondent, these additional criteria have been issued by the IOC in the wake of the publication of the International Testing Agency report on 24 June 2021 which found severe “*mishandling and impropriety on the part of certain IWF officials in relation to its anti-doping program [...]*”, and after widespread doping scandals in the weightlifting sports in 2019 and 2020.
- 8.7 The issuance of these additional criteria led the IOC in the following days to revisit the accreditation that had been granted to the Applicant and to withdraw his accreditation based on its analysis that Mr. Agapitov’s situation was falling within “*point B*”, which requires “*not have a personal history linked to any anti-doping rule violation and/or sanction*”, as set forth in the 16 July 2021 letter from the IOC Sports Director to the Applicant.
- 8.8 In this letter and as supplemented in its submission before the Panel, the IOC argued that three facts were relevant: the 1994 ADRV committed by the Applicant, the presence of the Applicant’s name in the IWF independent investigation report drafted by Professor Richard McLaren and the official functions of the Applicant within weightlifting federations at the Russian or European level.
- 8.9 However, prior to reviewing these facts in light of the “point B” criteria, the Panel believe it necessary to, first, review the language and thus enforceability of such condition.
- 8.10 In that respect, the Panel finds that the language of the criteria B is particularly broad, as it uses vague terms, such as “*personal history*”, and make an excessively loose connection with ADRV and/or sanction by using the expression “*linked to any*”, without any reasonable limitation whatsoever with respect to the time or th to the person concerned. Together, these expressions and the absence of temporal limit do not comply, in the Panel’s view, with the classic requirements consistently set by CAS case law, of precision, clarity and predictability in the drafting of rules and the description of misconducts likely to be sanctioned (see, for instance, CAS 94/129, also in CAS 2011/A/2670, CAS 2014/A/3516)¹.
- 8.11 On that basis, the Panel finds that the criteria B is unenforceable against the Applicant.
- 8.12 Moreover, regarding the appropriateness of criteria B to the present circumstances, while the Panel is mindful of the objective pursued by the IOC in issuing these criteria for the accreditation of IWF officials, to avoid non-compliant behaviours, encourage clean sports, and improve the image and governance of the IWF, the Panel believes

¹ The Panel finds it helpful to provide illustrations of how the application of this “point B” could be, as in the present circumstances, disproportionate and inadequate. Assuming an athlete had his beverage spiked with a doping substance, thereby constituting an ADRV but with no fault. In such case, the Athlete would fall within the broad language used in point B, although he would not serve any suspension period or other sanction under the WAD Code. By the same token, if a lawyer represents athletes having committed ADRVs, he would equally fall within the wide category covered in point B as having “*a personal history linked to anti-doping rule violation*”, although in the absence of any reprehensible behavior.

that, in the present case, the automatic application of the criteria B to Mr. Agapitov has been inappropriate.

- 8.13 Having reviewed the three elements characterized by the Respondent as falling within “a personal history linked to anti-doping rule violation”, the Panel rejects them. With respect to the Applicant “being named” in the IWF Independent Report drafted by Professor McLaren and the Applicant currently exercising functions as Acting President of the European Weightlifting Federation and as President of the Russian Weightlifting Federation, the Panel notes that, at odds with the suggestion made by the Respondent that this would “taint” the Applicant vis à vis the “point B” criteria, the written witness statement by Prof. McLaren, which deserves to be quoted here, lifts any doubt as to the Applicant’s integrity and current role as an official towards the enforcement and implementation of anti-doping policies at the IWF:

“8. I found Mr. Agapitov to be an honest and forthright individual who was not intimidated by concerns of retaliation that caused many others not to co-operate in the investigation. He was a co-operative witness who had a strong vision of how the IWF needed to reform and the role that he and others could play in making the sport cleaner in respect of doping issues while reforming the governance structure of the organization.

9. I concluded that while he had made his own mistakes in his youth in making choices about doping, he had learned from those mistakes. He had a genuine desire to clean up the sport and understood how it could be accomplished. He was honest and straight forward in his comments and views of what had gone on. I found him to be truthful and exhibiting a genuine held belief in how to reform the IWF. He had personal courage and integrity and demonstrated that in speaking with me and my Chief Investigator.

10. I know that my Chief Investigator, who has many years of experience in law enforcement, was of a similar view of the character of Mr. Agapitov. The two of us always discussed our opinion and views of the persons we interviewed; and I recall that Mr. Dubbey was like-minded to myself and the view of the character of Mr. Agapitov as I have expressed it in this statement.

11. Finally, it is my personal view and with the background of the IWF investigation that Mr. Agapitov in his role of President of the Russian Federation has a genuine interest in the sport and cleaning up the doping issues that have plagued it during the recent past. He is a person of integrity and knows from personal experience that doping is not the way to compete in the sport of international weightlifting”.

- 8.14 What is left is therefore the Applicant’s 1994 ADRV, that is 27 years ago, for which he served a two-year suspension. However, the Panel believes that if “point B” withdrawing criteria means that any ADRV committed at any time in an athlete’s life prevents a person involved in the sports of weightlifting to be accredited at the Olympic Games, this condition is disproportionate.

- 8.15 The Panel is therefore of the view that, in the absence of any limitation in time with respect to the expression of “*a personal history linked to any anti-doping rule violation and/or sanction*”, 27 years is far beyond the time that could be reasonably considered as being part of a “*personal history*” likely to adversely affect the reputation of the sport of weightlifting at the Tokyo 2020 Olympic Games. Furthermore, said violation was committed by the Applicant during his athlete’s life while he is now exercising new functions as a sports official.
- 8.16 In light of the Panel’s conclusion that “point B” is unenforceable, whether this could be qualified as a double jeopardy, as argued by the Applicant, does not have to be decided in the present case..
- 8.17 Finally, the Panel highlights that the Applicant’s 1994 ADRV is not even relevant or related to the IWF’s governance problems and its officials’ reprehensible conducts towards doping, which have generated the issuance of the IOC’s criteria. Quite to the contrary, Prof. McLaren, certainly the best positioned person to make any finding in this respect, has convincingly testified that the Applicant had an affirmative approach in fighting against doping and in restructuring the governance of the IWF. As such, the withdrawal of the Applicant’s accreditation does not actually serve the purpose pursued by the IOC and could even be perceived as counterproductive in that respect.
- 8.18 In view of the above considerations, Mr. Agapitov’s application filed on 21 July 2021 is upheld.

DECISION

The Ad Hoc Division of the Court of Arbitration for Sport renders the following decision:

1. The application filed by Mr Maxim Agapitov 21 July 2021 is admissible and upheld.
2. The decision of the IOC to withdraw the accreditation of Mr. Maxim Agapitov is set aside.
3. The accreditation delivered to Mr. Maxim Agapitov in June 2021 for the Games of the XXXII Olympiad in Tokyo shall be reinstated in full.

Tokyo, 24 July 2021

THE AD HOC DIVISION OF THE COURT OF ARBITRATION FOR SPORT

Carine Dupeyron
President of the Panel

Francisco Müssnich
Arbitrator

Manfred Nan
Arbitrator