



Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2012/A/3037 WADA v. Luiza Galiulina & FIG

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Prof. Jan Paulsson, Manama, Bahrain
Arbitrators: Mr Jacopo Tognon, Attorney-at-law, Padova, Italy
Prof. Denis Oswald, Attorney-at-law in Colombier, Switzerland

in the arbitration between

World Anti-doping Agency (WADA), Lausanne, Switzerland

Represented by Mr. Olivier Niggli and Mr. Ross Wenzel, Attorneys-at-law, Lausanne, Switzerland

- Appellant -

and

Ms Luiza Galiulina, Tashkent, Uzbekistan

And

Fédération Internationale de Gym ("FIG"), Lausanne, Switzerland

Represented by Dr. Stephan Netzle and Dr. Karsten Hofmann, Attorney-at-laws in Zurich, Switzerland

- Respondents -

I. THE PARTIES AND THE FACTUAL BACKGROUND

A. The Parties

a) *The Appellant*

1. World Anti-doping Agency (the **Appellant**, hereinafter also referred to as "WADA") is a Swiss private law Foundation. Its seat is in Lausanne, Switzerland, and its headquarters are in Montreal, Canada. WADA is an independent organization created in 1999 to promote, coordinate, and monitor the fight against doping in sport in all its forms.

b) *The Respondents*

2. Ms Luiza Galiulina (the **First Respondent**, hereinafter also referred to as the "Athlete"), is an athlete affiliated to the Uzbekistan Gymnastics Federation.
3. The Fédération Internationale de Gymnastique (the **Second Respondent**, hereinafter also referred to as "FIG") is the world governing body of gymnastics and has its seat in Lausanne, Switzerland.

B. The Factual Background of the Dispute

4. In the summer of 2012, the Athlete participated in the 2012 Olympic Games in London, Great Britain.
5. On 25 July 2012, the Athlete was subject to an in-competition urine doping control.
6. On the Doping Control Form that she duly signed the same day, under the section requesting her to list the medications "... taken over the past 7 days ..." she indicated "vitamins, heart medication, pain killers, sleeping medication", and did not make any comment under the following section "Athlete's comments".
7. The Analysis Result Reports dated 27 and 30 July 2012 issued by the British WADA accredited laboratory of London, indicated that there had been an Adverse Analytical Finding and specified that the prohibited substance found in the sample was "furosemide" which, under section S5 of the applicable WADA Prohibited List, is a prohibited substance classified as *Specified Stimulant*.
8. On 28 July 2012, the IOC notified the Athlete of the Adverse Analytical Finding.
9. On the same day, the Athlete requested the analysis of the B-sample, but waived her right to attend the opening of the B-sample.
10. The analysis of the B-sample confirmed the presence of "furosemide".
11. By decision of 1 August 2012, the IOC Disciplinary Commission decided that the Athlete was excluded from the Olympic Games as a result of the Adverse Analytical Finding and that some further disciplinary action would be taken by the FIG.

12. On 6 November 2012, the FIG decided to impose a 6-month period of ineligibility on the Athlete from 1 August 2012 until 31 January 2013 ("the Decision").
13. The Decision was notified to WADA on 13 November 2012.
14. WADA decided to challenge before the Court of Arbitration for Sport ("CAS") the foregoing Decision.

II. SUMMARY OF THE ARBITRATION PROCEEDINGS

15. On 21 December 2012, WADA filed its Statement of Appeal, serving as Appeal Brief, with CAS against the Decision.
16. WADA's Prayers for relief are as follows:
 1. *The Appeal of WADA is admissible.*
 2. *The decision rendered by the FIG Disciplinary Commission in the matter of Ms Luiza Galiulina on 6 November 2012 is set aside.*
 3. *Ms Luiza Galiulina is sanctioned with a two-year period of ineligibility starting on the date on which the CAS award enters into force. Any period of ineligibility, whether imposed on, or voluntarily accepted by, the Athlete before the entry of force of such award, shall be credited against the total period of ineligibility to be served.*
 4. *All competitive individual results obtained by Ms Luiza Galiulina from 25 July 2012 through the commencement of the applicable period of ineligibility shall be annulled.*
 5. *WADA is granted an award for costs.*
17. On 22 January 2013, the FIG filed its Answer with CAS requesting "*the Panel to take its thoughts and motives into consideration when reviewing the Decision of the FIG Disciplinary Commission.*"
18. On 26 January 2013, the Athlete filed her Answer with CAS, stating in particular that she had nothing to add to the explanations she had given to the FIG Disciplinary Commission.
19. By letter of 28 February 2013, the CAS Court Office informed the parties, on behalf of the President of the CAS Appeals Arbitration Division, that the Panel had been constituted as follows: Prof. Jan Paulsson, President of the Panel, Mr. Jacopo Tognon and Prof. Denis Oswald as co-arbitrators by the parties.
20. The parties agreed not to have a hearing in this matter. However, the Appellant reserved its right to reconsider its position with respect to this issue depending on whether or not the Respondent(s) would submit some additional evidence or submissions. The Second Respondent for its part reserved its right to attend a hearing in the event the Athlete or her national federation requested a hearing.

21. By CAS letter of 4 April 2013, the parties were informed that the Panel had decided not to hold a hearing in the present matter.
22. On 18 April 2013, the CAS issued an Order of procedure which was signed on by the parties.

III. THE PARTIES' SUBMISSIONS

23. This section of the award does not contain an exhaustive list of the parties' contentions; its aim being to provide an overview of the substance of the parties' main arguments.
24. In considering and deciding upon the parties' claims in this award, the Panel has accounted for all of the submissions made and evidence adduced by the parties, whether or not they are specifically referred to.

A. WADA

25. In essence, the Appellant submits the following:
 - The Athlete did not challenge the presence of the prohibited substance furosemide in her body within the context of the proceedings before the FIG.
 - In accordance with article 2.1 of the FIG Anti-doping rules (FIG ADR), the mere presence of the prohibited substance in the bodily sample is sufficient to demonstrate an anti-doping rule violation.
 - It has therefore met its burden of proof by establishing that the Athlete has committed an anti-doping rule violation under article 2.1 of the FIG ADR.
 - The Athlete did not provide any convincing explanation to the FIG Disciplinary Commission on how the prohibited substance had entered her body. She stated that she had been subject to various medical treatments in the days and weeks prior to the Games, but that none of the medicines or products taken contained furosemide.
 - The certificate of her doctor which the Athlete produced with her submission before the FIG Disciplinary Commission made it clear that she had received anti-doping education: "*During the last three years gymnast had lectures about rules of taking medicines with proclaiming the list of prohibited substances, and aftermath and sanctions for taking banned drug.*"
 - The Athlete only mentioned globally the medications and supplements on her doping control form.
 - The Athlete has therefore entirely failed to explain, on a balance of probabilities, the presence of furosemide in her body and consequently no reduction under the terms of articles 10.4 or 10.5.2 of the FIG ADR of the sanction can be applied.

- Considering the above, the Athlete shall be sanctioned with the two-year period of ineligibility provided for in article 10.2 of the FIG ADR.

B. RESPONDENTS

26. In essence, the Athlete submits the following:
- She had nothing to add to her previous explanation in front of the FIG Disciplinary Commission.
 - During her preparation for the Olympic Games she only took those drugs and supplements which were listed by her National team doctor.
 - She neither took the prohibited substance furosemide nor any other medicines containing such substance.
 - She hopes that the Panel's decision will not be too severe.
27. In essence, the FIG submits the following:
- In view of the particular circumstances of the Athlete, it fully supports the Decision.
 - Even if it understands WADA's viewpoint with respect to the fight against doping, it considers that the *"fair judgment and the sense of proportion of the FIG Disciplinary Commission should be respected since this commission consists in renowned experts in the sport of gymnastics, is familiar with the particularities of this sport and has profound knowledge of the personal and sporting situations of the gymnasts, their coaches and their entourage."*
 - That the FIG Disciplinary Commission carefully evaluated the evidence brought before it and found some of the defence arguments raised by the Athlete credible.
 - The Athlete had already harshly been punished by her exclusion of the Olympic Games and the fact that she could not participate in the Olympic events which are elements that cannot be ignored when determining the additional sanction imposed on the Athlete.
 - It further supports the Decision due to the fact that it had requested several times SportAccord and ASOIF to review whether furosemide should remain listed as a prohibited substance.
 - Finally, it considers that a 2-year sanction imposed on a female gymnast ends her sports career, since female gymnasts generally do not compete for more than 5-6 years. Accordingly, it seems not correct to impose the same sanction as for an athlete competing for decades.

IV. DISCUSSION OF THE CLAIMS

A. CAS Jurisdiction and admissibility

28. The jurisdiction of CAS, which is not disputed by the parties, derives from article R47 of the Code of Sports-related Arbitration ("CAS Code") and articles 13.1.1 and 13.2.1. and 13.2.3 of the FIG ADR.
29. Consequently, the CAS has jurisdiction to adjudicate this appeal.
30. Based on article R57 of the CAS Code the Panel has full power to review the facts and the law of the case. Furthermore, the Panel may issue a new decision which replaces the decision challenged or may annul the decision and refer the case back to the previous instance.
31. The contested decision was rendered on 6 November 2012 and, according to the Appellant's Statement of Appeal, the complete file was received by WADA on 4 December 2012. The Appeal was filed with CAS on 21 December 2012 and therefore within the one-month deadline of the receipt of the complete file provided by article 13.6 of the FIG ADR. Accordingly, the appeal is admissible.

B. Applicable Law

32. Art. R58 of the CAS Code provides that:
"The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision."
33. Consequently, given the scope of application of the FIG ADR defined therein, this appeal shall be decided on the basis of the FIG ADR as well as Swiss law subsidiarily.

C. The Merits of the Appeal

34. In this case, no objection has been raised as to the admissibility of WADA's appeal, or as to the finding that a prohibited substance was found in the Athlete's body during the tests conducted during the Olympic Games.
35. Rather, the Athlete explains that she took various medicines and products (such as natural herbs) during the period immediately prior to the Games. She affirms that she cannot account for the presence of the prohibited substance in her body, and suggests the adverse analytical finding must find its explanation in one of the unspecified medications or products she had taken prior to the Games. Needless to say, she provides no explanation as to what properties of these medications or products could have led to the adverse finding.

36. The Athlete cannot contend that she is without fault and on that basis invoke Article 10.5.1 of the ADR, for the simple reason that she did not contest the Appealed Decisions, which as stated excluded her from the Olympic Games, suspended her from all competition for a further six months, and found her explanations unsatisfactory. The present Panel cannot proceed on the basis that parts of the Appealed Decisions which have not been challenged were wrongly decided.
37. In the Panel's view, the Athlete's defence is disarmingly candid in its admission of her careless use of the unspecified "medications" or "products". Her case seems to be at the opposite extreme of a carefully concealed programme of conscious ingestion of performance-enhancing substances. Unfortunately for the Athlete, there is no such thing as "innocent" violation of the rules. In the interest of fair competition, the anti-doping rules must be applied with equality to all competitors, and ignorance is no defence. Athletes and their coaches and teams must take care to conduct themselves in accordance with the rules and regulations that correspond to their sport and to their level of competition. In sum, this is an open-and-shut case in which WADA's appeal is irresistible, irrespective of the Athlete's apparent naivety.
38. The Panel has also considered with sympathy the stance taken by the FIG and the arguments it has developed in this case. Ultimately, however, they are unavailing for reasons set forth in this Award, to which might be added the specific considerations that the Panel is not attracted to the arguments that a federal disciplinary commission can make judgments that take into account the "personal and sporting situation" of the individuals concerned; and that Furosemide is a substance whose inclusion on the list of prohibited substances has been questioned. In the Panel's view, it is undesirable that doping sanctions be decided on the basis of personal knowledge of the athletes, because that introduces elements of subjectivity which can lead to favouritism. Nor is it possible to consider that prohibited substances are somehow less prohibited because some persons or groups believe that they do not really belong there. On that basis, the fight against doping would become chaotic and unpredictable. The applicable rules do indeed call for consideration of the individual circumstances of infractions, but for reasons well articulated by WADA and accepted by the Panel, the facts of this case do not open the door, as already explained, to the adjustments of sanctions by reason of mitigating circumstances.
39. As a consequence, WADA's appeal shall be upheld and a 2-year period of ineligibility shall be imposed on the Athlete. The suspension shall start on 1 August 2012, i.e. on the date when the initial suspension imposed by the FIG started. Any period of suspension already served by the Athlete shall be credited against the total period of ineligibility to be served. Furthermore, all competitive individual results obtained by the Athlete from 25 July 2012, i.e. on the date of the anti-doping test, through the commencement of the applicable period of ineligibility shall be annulled.

V. COSTS

40. Pursuant to article R65 of the CAS Code, disciplinary cases of an international nature ruled in appeal shall be free.
41. Article R65.3 of the CAS Code provides:

“The costs of the parties, witnesses, experts and interpreters shall be advanced by the parties. In the award, the Panel shall decide which party shall bear them or in what proportion the parties shall share them, taking into account the outcome of the proceedings, as well as the conduct and financial resources of the parties.”
42. Having taken into account the outcome of the present arbitration procedure, the Panel is of the view that the costs have been kept to a minimum, as the Athlete has contented herself until extremely succinct explanations in which she does not attempt to be misleading in any way, while the FIG has sought to defend its decision in a manner which has allowed a very expeditious disposition of the appeal. In these circumstances, the Panel does not deem it appropriate to assess costs against the unsuccessful Respondents.

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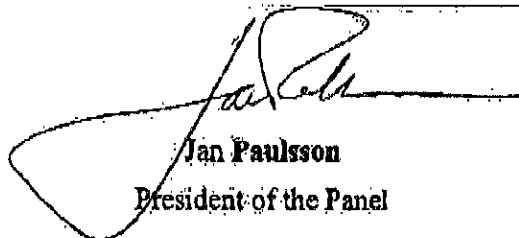
ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by WADA on 21 December 2012 against the decision rendered by the FIG Disciplinary Commission on 6 November 2012 is upheld.
2. The decision of the FIG Disciplinary Commission of 6 November 2012 is set aside.
3. Ms. Luiza Galiulina is subject to a two year period of ineligibility starting on 1 August 2012. Any period of suspension already served by Ms Luiza Galiulina shall be credited against the total period of ineligibility to be served.
4. All competitive individual results obtained by Ms. Luiza Galiulina from 25 July 2012 through the commencement of the applicable period of ineligibility shall be annulled.
5. This award is pronounced without costs, except for the CAS Court Office fee already paid by the Appellant, to be retained by the Court of Arbitration for Sport.
6. Each party shall bear its own costs.
7. All other requests for relief are rejected.

Lausanne, 27 May 2013

THE COURT OF ARBITRATION FOR SPORT



Jan Paulsson
President of the Panel