



Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2007/A/1399 WADA v/FILA & Stadyk

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President of the Panel:
Arbitrators:

Dr. Christian Duve, Attorney-at-Law, Frankfurt am Main, Germany
Mr. Quentin Byrne-Sutton, Attorney-at-Law, Geneva, Switzerland
Mr. Türker Arslan, Attorney-at-Law, Istanbul, Turkey

in the arbitration involving:

World Anti-Doping Agency (WADA), Geneva, Switzerland
represented by Dr. Francois Kaiser, Carrard & Associés, Lausanne, Switzerland

Appellant

versus

International Federation of Associated Wrestling Styles, Corsieur-sur-Yevry, Switzerland
and
Respondent 1

Maria Stadyk, c/o Azerbaijan Wrestling Federation, Baku, Azerbaijan
represented by Dr. Lucien Valloni, Froriep Renggli, Zurich, Switzerland
and
Respondent 2

Azerbaijan Wrestling Federation, Baku, Azerbaijan
represented by Dr. Lucien Valloni, Froriep Renggli, Zurich, Switzerland
Respondent 3

Jointly referred to as "the Parties"

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I. The Parties

1. The World Anti-Doping Agency (hereinafter referred to as "WADA") is an independent international anti-doping agency whose aim is to promote, coordinate and monitor, at the international level, the fight against doping in sports in all its forms.
2. The International Federation of Associated Wrestling Styles (hereinafter referred to as "FILA") is the international body responsible for promoting and developing the game of wrestling and maintaining control of the game, particularly with reference to the rules and regulations governing its conduct. According to its statutes, FILA is a Swiss association.
3. Maria Stadnyk (hereinafter referred to as "Stadnyk" or the "athlete") is a professional wrestler who is registered with the Azerbaijan Wrestling Federation.
4. The Azerbaijan Wrestling Federation (hereinafter referred to as "AWF") is the national body responsible for promoting and developing the sport of wrestling in Azerbaijan and maintaining control of the game, particularly with reference to the rules and regulations governing its conduct.

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II. The Facts

5. On 25 and 26 April 2006, Stadyk participated in the European Wrestling Championship in Moscow. The athlete won the competition in her category (48kg). At that time, Stadyk was registered with the Ukrainian Wrestling Association.
6. Stadyk tested positive to Furosemide, a prohibited diuretic, on the basis of a test which took place on the evening of 26 April 2006. Furosemide is listed on the WADA 2006 Prohibited List under class S5 "*Diuretics and other Masking Agents*". Furosemide is prohibited at all times, in and out of competition.
7. On 31 May 2006, the FILA Sporting Judge sanctioned Stadyk with a one-year period of ineligibility pursuant to Art. 10.3 FILA Anti-Doping Regulations for specified substances (Exhibit 2 of the Appeal). In that decision, the reason given for the consumption of the diuretic was that the athlete wanted to fit into her weight category.
8. On 9 June 2006, FILA informed WADA of the decision by the FILA Sporting Judge (Exhibit 2 of the Answer). On 27 July 2006, WADA asked for the complete file and, at the same time, declared its intention to file an appeal to CAS (Exhibit 3 of the Answer of 18 January 2008). By fax of 28 July 2006, FILA sent WADA the complete file (Exhibit 4 of the Answer).
9. As WADA had expressed its intent to lodge an appeal against such decision (Exhibit 3 of the Appeal), FILA informed WADA on 28 July 2006 that it decided to reopen the case on its own initiative. Accordingly, WADA did not file an appeal against the decision of 31 May 2006.
10. On 11 August 2006, the Ukrainian Wrestling Association asked FILA not to increase the suspension period.
11. On 4 September 2006, the FILA Sporting Judge rendered a new decision imposing a two-year period of ineligibility on Stadyk while setting aside the decision of the Sporting Judge of 31 May 2006 (Exhibit 4 of the Appeal).
12. In a letter of 23 November 2006 to FILA, the Ukrainian Wrestling Association claimed that it had carried out further investigations; the letter being signed by Mr. E. Tedeyev, the President of the Ukrainian Wrestling Association (Exhibit 9 of the Appeal, pièce no.1).
13. In particular, the Ukrainian Association alleged to have conducted interrogations of Stadyk, her personal coach O. Skobelsky and "other sportsmen and coaches" using a polygraph. While these

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- interrogations were ongoing, a friend and former competitor of Stadyk, Vera Tkhorovska, allegedly admitted to have poured the forbidden substance into a bottle of mineral water that the athlete drank from on the evening of 24 April 2006, during a supper at the Hotel "Cosmos" in Moscow.
14. Allegedly, Mrs. Tkhorovska did this, i.e. spiked the bottle of water, because she was jealous and envious of Stadyk. The allegation is supported by the translation of an affidavit of Vera Tkhorovska, dated 17 November 2006.
15. According to a copy of the minutes of a meeting of the Presidium of the Ukrainian Wrestling Association, Mrs. Tkhorovska was disqualified for life on 22 November 2006 as a result of her action (Exhibit 7 of the Answer).
16. On 14 December 2006, the FILA President submitted Stadyk's file to the FILA Federal Appeal Commission (made up of the Executive Committee members) describing the above-outlined outcome of the alleged investigations into the conduct of Mrs. Tkhorovska. In this letter, the FILA President states that
- "...Mrs Stadyk and the President of the Ukrainian Wrestling Federation are now appealing against this decision as new developments came to light which enable us to review this judgement. [...] Considering this claim as unquestionable, we have decided to submit this appeal to your kind assessment and to ask you to pronounce in favour of her rehabilitation, notwithstanding the start of legal proceedings against Mrs. Tkhorovska Vera.*
- To support your thought, I suggest you could refer to the FILA Anti-Doping Regulations: article 10.5 – 10.51 which are attached. [...]"* (Exhibit 8 of the Answer)
17. By fax of 18 June 2007, the Ukrainian Wrestling Association applied to FILA again as follows:
- "[...] I appeal to you with a request about reduction of disqualification term of female wrestler [...]"* (Exhibit 10 of the Answer)
18. By fax of 20 June 2007, FILA President Mr. Raphael Martinetti wrote to the Ukrainian Wrestling Association as follows:
- " [...] I have reviewed the file again. [...] But I give her the benefit of the doubt and as FILA President I accept to reduce her penalty which forbids her to take part in competitions from 23 months to 15 months.*

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Therefore Mrs Stadyk Maria is authorised to participate in all national and international competitions as from 26 July 2007." (Exhibit 9 of the Appeal, pièce no. 4).

19. On 21 September 2007, an anonymous person informed WADA that Stadyk had participated in the World Championship in Baku with the team of Azerbaijan (Exhibit 5 of the Appeal). Stadyk ranked 7th within that tournament, which constituted a qualifying rank for participation in the Olympic Games in Beijing 2008. On the same day, by email, WADA asked FILA's Secretary General, Mr. Michel Dusson, for an explanation (Exhibit 6 of the Appeal).
20. On 26 September 2006, WADA received an answer by email from FILA send on behalf of Mr. Michel Dusson stating, among others, that further to an appeal by the Ukrainian Wrestling Association on 18 June 2007, the FILA Appeal Commission had reduced the sanction applicable to Ms. Stadyk to 15 months (Exhibit 7 of the Appeal).
21. On the same day, WADA asked FILA for a copy of the decision of 20 June 2007 and for a more detailed explanation (Exhibit 8 of the Appeal).
22. By letter of 28 September 2007, FILA explained the decision-making process to WADA (Exhibit 9 of the Appeal) in more detail. The letter was co-signed by the President of FILA, Mr. Raphael Martinetti and by the Secretary General of FILA, Mr. Michel Dusson.
23. They stated that, following an appeal by the Ukrainian Wrestling Federation on 23 November 2006, the FILA Federal Appeal Commission had been consulted regarding the reduction of the sanction and that the majority had pronounced itself in favour of a reduction. Moreover, they indicated that because the decision was not deemed urgent due to the athlete's next main goal being the World Championships in September 2007, the decision by the FILA Appeal Commission had not been communicated to the athlete pending confirmation by a unanimous decision in June 2007.
24. Thus, according to the explanations given in FILA's letter of 28 September 2007, it is only at another meeting of the FILA Federal Appeal Commission, after an inauguration on 15 June 2007 at the headquarters, that the Commission's unanimous decision was made and that such decision was notified by means of the FILA President's letter of 20 June 2007 (see above/ Exhibit 9 of the Appeal, pièce no. 4).

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25. On 1 October 2007, WADA asked for further clarifications (Exhibit II of the Appeal). On 3 October 2007, FILA sent WADA a letter implying that it was the FILA President under Art. 60 of the FILA Disciplinary Regulations who had rendered the decision to reduce the sanction applicable to Stadyk. However, only the Secretary General, Mr. Michel Dusson, signed this letter.
26. On 11 October 2007, WADA appealed to the CAS the FILA decision communicated to the athlete on 20 June 2007, irrespective of whether it had been taken by the FILA Federal Appeal Commission or by the President.

III. Summary of Parties' Positions

27. In reaching its decision, the Arbitral Tribunal has taken into account all the Parties' submissions in their entirety. However, for reasons of efficiency the Tribunal shall only be providing hereunder a summary of the Parties' arguments rather than an exhaustive list. Likewise, references to the Parties' submissions and exhibits are illustrative and not exhaustive.

I. WADA's Position

28. WADA underlines that Stadyk was tested positive for Furosemide. WADA highlights that Furosemide can be used to induce weight loss without being detrimental for spring and power performance. In addition, WADA maintains that Furosemide is frequently used to mask the use of other prohibited substances. WADA filed a witness statement by Dr. Olivier Rabin outlining the medical background (Exhibit 15 of the Answer of February 6, 2008) and relied in the hearing on the testimony of Dr. Alain Garnier as a member of its medical team.
29. WADA contends that the applicable sanction is a two-year suspension and that it cannot be reduced because Stadyk has neither convincingly established how the Furosemide entered her system nor established that she committed no fault or no significant fault.

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2. **FILA's Position**

30. FILA previously replied to inquiries by WADA, as evidenced by the documents on record, but refrained from submitting briefs in these proceedings. FILA's representative at the hearing, Mr. Michel Dusson, answered questions but did not make an oral statement.

3. **Stadyk and AWF's Positions**

31. Respondents 2 and 3 contend that CAS lacks jurisdiction to adjudicate the appeal and that furthermore the appeal is inadmissible due to being late.
32. Respondents 2 and 3 invoke that the Ukrainian Wrestling Association provided FILA on 23 November 2006 with the information surrounding its investigations and the confession by Vera Tkhorovska (Exhibit 5-7 of the Answer).
33. Respondents 2 and 3 underline that Stadyk never admitted to have taken intentionally a prohibited substance and that she never had problems to fit into her weight category. The allegations are supported among others by a witness statement by Stadyk's coach, Orest Skobolskij (Exhibit 12 of the Answer).
34. Furthermore, Respondents 2 and 3 maintain that Mrs. Tkhorovska was also a very successful wrestler, as supported by a witness statement by the Ukrainian Wrestling Association (Exhibit 13 of the Answer), and was therefore not sacrificed in any way. According to Respondents 2 and 3, the use of a polygraph was not the reason for the confession.
35. According to Respondents 2 and 3, Stadyk was diligent when handling her drink. They allege the water bottle was closed when given to Stadyk and that she checked whether the bottle was closed or not. It was allegedly a bottle of the Hotel Cosmos. Allegedly, Mrs. Tkhorovska had no access to the bottle and Stadyk did not entrust access to the bottle to Mrs. Tkhorovska. Only after the bottle was opened, while the athlete was fetching some fruit from the buffet table, did Ms. Tkhorovska allegedly put Furosemide into the bottle. They maintain more generally that Stadyk is at all times very cautious about her food and beverages and never consumes unknown new food or beverages without asking her coach. She allegedly always uses beverages from closed bottles or well-known sources.

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36. Respondent 2 and 3 point out that Stadyk had always been available for re-instatement testing.
37. Respondent 3 also asks the Tribunal to disregard the statement by Dr. Olivier Rabin as it deems the answer of 6 February 2008 to be inadmissible under Rule 56 of the CAS Code; and Stadyk and AWF object to the use of the laboratory findings and to the scope of questions to the experts.
38. With respect to the Experts' reports, Respondent 2 and 3 invoke among others that the Experts' answers to the Appellant's questions of 15 April 2008 lack credibility and should be disqualified, that the findings of the Experts contradicted the assertion of Dr. Garnier and that they support Respondent 2 and 3's contention on important points such as the detection time.

IV. Summary of the Proceedings

39. On 11 October 2007, WADA filed an Appeal with the Court of Arbitration for Sport (hereinafter referred to as CAS) against the FILA decision communicated to the athlete on 20 June 2007, irrespective of whether it had been taken by the FILA Federal Appeal Commission or by the President. Within its statement of appeal, WADA appointed Mr. Quentin Byrne-Sutton as arbitrator. In its submission, WADA made the following prayers for relief:
 1. The Appeal of WADA is admissible.
 2. The decision of FILA dated June 20, 2007, in the matter of Maria Stadyk is set aside.
 3. Maria Stadyk is sanctioned in accordance with articles 10.2 of the FILA Anti-Doping Rules with a two-year period of ineligibility, starting on the date on which the CAS award enters into force. Any period of suspension (whether imposed to or voluntarily accepted by Maria Stadyk) before the entry into force of the CAS award shall be credited against the total period of suspension to be served.
 4. All competitive results obtained by Maria Stadyk from July 26, 2007, through the commencement of the applicable period of ineligibility shall be disqualified with all of the resulting consequences including forfeiture of any medals, points and prizes.
 5. WADA is granted an award for costs.

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40. On 23 October 2007, WADA filed an Appeal Brief with the CAS.
41. FILA replied on 7 November 2007, by submitting the FILA Disciplinary Regulations and the FILA Anti-Doping Regulations as well as, among other documents, a copy of the FILA President's letter of 20 June 2007 to the Ukrainian Wrestling Association. FILA also submitted a letter of the FILA President to the members of the FILA Federal Appeal Commission of 14 December 2006, asking the Executive Committee members to revisit the sanction of the athlete.
42. On 10 and 18 December 2007, WADA respectively agreed and the Panel granted an extension to Stadyk to file an answer to the Appeal and to AWF to file an application for intervention, initially until December 20, 2007 and, subsequently, until January 18, 2008.
43. On 18 January 2008, Stadyk and AWF submitted to CAS a joint statement of defence to the appeal, along with the AWF's application for intervention. They appointed Mr Türker Arslan as arbitrator. In their submissions, the Respondents 2 and 3 made the following prayer for relief:
 1. The Appeal of the Appellant against the decision of FILA dated June 20, 2007 is not to be admitted (due to lack of jurisdiction of CAS and/or due to missing of deadline) and, to the extent it can be admitted, the appeal is to be entirely dismissed.
 2. The decision of FILA dated June 20, 2007 (including the decision of the FILA Sporting Judge of 31st May 2006 and 4 September 2006) is to be annulled and any sanction imposed on Maria Stadyk is to be eliminated and it has to be declared that Maria Stadyk is not guilty of and doping offence in connection with the European Wrestling Championship held in April 2006.
 3. Maria Stadyk is to be declared the winner of the European Wrestling Championship held in April 2006 in Moscow in her category (48 kg) and the respective FILA classification shall be corrected accordingly. Maria Stadyk shall be awarded all prize money and medals in connection with her victory at the European Wrestling Championship held in April 2006 in Moscow.
 4. *Eventualiter* to motions 2 and 3 above: the decision of FILA dated June 20, 2007 is to be annulled and the period of ineligibility of 15 months imposed on Maria Stadyk has to be reduced to not more than one month and further, the violation shall not be considered a

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violation for the limited purpose of determining the period of ineligibility for multiple violations under Article 10.2, 10.3 and 10.6 of the FILA Anti-Doping Regulations.

5. The Appellant shall bear all costs of the arbitration proceedings and the legal costs of Respondents 2 and 3.”
44. In addition, Respondents 2 and 3 made the following procedural motions:
 - A. Respondent 3 shall be granted the right to participate as a party in these appeal proceedings.
 - B. Respondent 2 and 3 reserve the right to make further motions or prayers for relief.”
45. On 25 January 2008, FILA indicated it would not disagree with a possible new hearing of Ms Stadnyk.
46. On 28 January 2008, Stadnyk and AWF indicated that no hearing was necessary if CAS wanted to determine the admissibility of the appeal first, but that a hearing would be necessary in case of admissibility of the appeal.
47. On 6 February 2008, WADA submitted an answer to the intervention by AWF, filing a Statement of Dr. Olivier Rabin on the prohibited substance Furosemide.
48. By a submission dated 7 February 2008, counsel for Stadnyk and AWF requested that the Panel disregard the Statement of Dr. Olivier Rabin, indicating it was filed too late in the proceedings.
49. By a brief of 8 February 2008, counsel for WADA invoked its right to submit a short answer to the Application for Intervention filed by AWF.
50. The Panel scheduled a hearing that took place on 11 March 2008, at the Hotel Royal Savoy in Lausanne.
51. At the hearing, WADA was represented by its counsel, Mr. Francois Kaiser, Mr. Claude Rannoni and Dr. Alain Garnier. FILA was represented by its Secretary General, Mr. Michel Dusson. Stadnyk appeared, accompanied by Elnur Mammadov, counsel to AWF, and Dr. Lucien Valloni, counsel to Stadnyk and AWF. Vera Tkhorovska appeared as witness.

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52. At the hearing, the Parties and the Arbitral Tribunal agreed to consult an expert in order to provide an opinion on questions relating to Puroseamide. After the hearing, CAS appointed Prof. Pierre-Yves Martin, Département de Médecine Interne, and Dr. Jules Semmeles, Département d'Anesthésiologie, Pharmacologie et Soins Intensifs (APSD), at the University Hospital of Geneva, to serve as experts and to respond to the questions submitted by the Parties.
53. The CAS Secretariat submitted the questions of Respondents to the Experts on 20 March 2008.
54. On 7 April 2008, the experts answered to the questions of counsel for Stadyk and AWF.
55. On 10 April 2008, the CAS Secretariat submitted the Appellant's questions to the Experts.
56. By report of 15 April 2008, the Experts submitted their answers to the questions of counsel for WADA.
57. On 23 April 2008, both parties filed written observations on the Experts' reports on behalf of the Panel's request.

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V. Legal Discussion

1. CAS Jurisdiction

a) WADA's Position

58. WADA claims that CAS has jurisdiction, based on Art. 13 of the FILA Anti-Doping Regulations and Art. 14 of the FILA Disciplinary Regulations, which provide as follows:

"13.2.1 Appeals from international level athletes

In cases arising from competition in an international event or in cases involving international level athletes, the FILA Sporting Judge's decision may be appealed to the FILA's Federal Appeal Commission. In case of disagreement about the decision, the parties may appeal exclusively to the Court of Arbitration for Sport (C.A.S.), in accordance with the provisions applicable before such court. The CAS decision is executory and final.

[...]

13.2.3 Persons authorized to appeal

In cases mentioned in Article 13.2.1, at the first level of appeal, the following parties shall have the right to appeal to the FILA Federal Appeal Commission:

[...]

and

e) WADA "

Art. 14 of the FILA Disciplinary Regulations:

"With the aim of resolving lawsuits more easily in sport which cannot be settled by the Federal Appeal Commission, an arbitration body, the Court of Arbitration for Sport (CAS) has been created.

All disciplinary matters which inflict a sentence are within the competence of

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the FILA Sporting Judge nominated for this post.

The National Federations affiliated to the FILA and all FILA members (Bureau members, wrestlers, coaches, referees, doctors and leaders) agree by adhering to the FILA that they will only accept the FILA to settle all sporting differences they may have between themselves and which they are unable to settle amicably.

An appeal against the judgment can be transmitted to the secretary of the International Council of Arbitration in Sports which will judge how well-founded the appeal is before transmitting it to the CAS. The FILA, as it accepts no other jurisdiction, can be called to settle sporting conflicts.

The appealing parties agree to conform exclusively to the FILA, ICAS and CAS Constitution and Regulations and agree to carry out the sentence laid down."

59. WADA argues that its appeal to the CAS is admissible pursuant to Art. 13.2.1 and 13.2.3 of the FILA Anti-Doping Regulations if the decision was rendered by the FILA Federal Appeal Commission.

60. However, if, in fact, it would have been the FILA President himself who rendered the decision pursuant to Art. 60 of the FILA Disciplinary Regulations, WADA's right of appeal would follow from Art. 14 of the FILA Disciplinary Regulations.

61. In addition, WADA claims that Art. 13 of the FILA Anti-Doping Regulations has to be read as granting WADA a right of appeal against decisions by the FILA President in doping matters, as confirmed by Art. 18.5 of the FILA Anti-Doping Regulations.

62. Art. 60 of the FILA Disciplinary Regulations reads as follows:

"ARTICLE 60 AMNESTIES, REDUCTION OF SENTENCE AND PARDON

60.1 The FILA Executive Committee can grant amnesties [...]

60.5 The FILA President, at the request of the interested party, can give a pardon, only if the interested party has carried out at least half of the sentence and, in the event of expulsion, that at least five years have expired since the adoption of the final sentence.

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Art. 18.5 of the FILA Anti-Doping Regulations provides as follows:

"ARTICLE 18 AMENDMENT AND INTERPRETATION OF ANTI-DOPING REGULATIONS

[...]

18.5 These Anti-Doping Regulations have been adopted pursuant to the applicable provisions of the Code and shall be interpreted in a manner that is consistent with applicable provisions of the Code. The comments annotating various provisions of the Code may, where applicable, assist in the understanding and interpretation of these Anti-Doping Regulations."

b) **Stadenyk and AWT's Position**

63. Respondent 2 and 3 maintain that FILA made it clear that the decision of 20 June 2007 was made by the FILA President on the basis of Art. 60 of the FILA Disciplinary Regulations.
64. They argue that Art. 13.2.1 of the FILA Anti-Doping Regulations applies only to decisions made by the FILA Federal Appeal Commission. Hence, no right to appeal follows from Art. 13.2.1. They highlight that this follows from the wording of Art. 13.1 of the FILA Anti-Doping Regulations as the provision is restricted to "[d]ecisions made under these Anti-Doping Regulations".

c) **The Panel's Findings**

65. In this case, the Panel finds that jurisdiction of the CAS derives from Article R47 of the CAS Code and Article 13.2.1 of the FILA Anti-Doping Regulations. The latter is quoted above and Article R47 of the CAS Code provides as follows:
- "An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body."*
66. Contrary to the Respondents' foregoing assertions, which have been carefully considered, the Panel finds that the evidence on record quite clearly establishes that it was the FILA Federal

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Appeal Commission that took the decision to reduce Ms. Stadyk's sanction from 2 years to 15 months when it revisited her sanction at its meeting after the 15 June 2007 inauguration, and that such decision of the Federal Appeal Commission was notified on its behalf by FILA's President, Mr. Raphaël Martinetti, in his letter of 20 June 2007.

67. Significant in that respect is the fact that the President of FILA co-signed FILA's letter of 28 September 2007 explaining in detail as follows that such had been the decision-making process within FILA: "*La Commission n'étant pas unanime et malgré que l'unanimité n'était pas requise pour une décision d'appel, la réduction de sanction n'a pas été communiquée à l'athlète immédiatement mais après la réunion tenue au siège de la FILA lors de l'inauguration le 15 juin 2007 où l'unanimité a été acquise, la décision à prendre n'ayant pas un degré d'urgence car l'objectif de la lutteuse étant le Championnat du Monde en septembre 2007. Suite à cette réunion la notification de réduction de peine a été notifiée par courrier du 20 juin 2007 (pièce N°4)*" [which is the letter of notification signed by the President of FILA].

68. Furthermore, FILA's Secretary General co-signed the letter of 28 September 2007. Thus two top officials of FILA confirmed, at the time of the facts, that the decision notified by means of the letter of 20 June 2007 and signed by the President was made by the FILA Federal Appeal Commission. This fact is also clearly stated in an earlier email of 26 September 2007 in which FILA explains to WADA that: "*Suite au recours de l'Ukraine du 18 juin 2007, la Commission de Recours a réduit la sanction à 15 mois, c'est-à-dire jusqu'au 26 juillet 2007, le doute subsistant quant à la culpabilité de l'athlète*".

69. The Panel considers that the subsequent letter from FILA's Secretary General alone, dated 3 October 2007, which makes reference to the FILA disciplinary rules, could appear to detract partly from the earlier email and letter of 28 September 2007. Nevertheless, the Panel deems the latter to be more relevant, among others because the letter of 28 September 2007 was signed by the FILA President, who was also the signatory of the 20 June 2007 letter, and because it provides a detailed and logical explanation for the decision-making process, which fits with the letter of 14 December 2006, whereby the FILA President first asked the FILA Federal Appeal Commission to pronounce itself.

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70. For the above reasons, the Panel considers that the appealed decision was being taken by the FILA Federal Appeal Commission and communicated to the Ukrainian Wrestling Association by the FILA President by letter of 20 June 2007.
71. Therefore, as mentioned above, CAS has jurisdiction on the basis of article 13.2.1 of the FILA Anti-Doping Regulations.
2. **Timeliness of the Appeal**
72. Under Art. 13.5 of the FILA Anti-Doping Regulations, the following time-limit to file an appeal applies:
- "[...] The following shall apply in connection with appeals filed by a party entitled to appeal but which was not a party to the proceedings having lead to the decision subject to the appeal: (a) Within ten (10) days from notice of the decision, such party/ies shall have the right to request from the FILA Secretariat a copy of the FILA Sporting Judge's decision; (b) If such a request is made within the ten-day period, then the party making such request shall have twenty-one (21) days from receipt of the file to file an appeal to CAS."*
73. On 21 September 2007, FILA informed WADA about the applicable decision to reduce the sanction. The same day, WADA requested a copy of that decision and of the complete case file. On 28 September 2007, FILA sent the decision to WADA. Consequently, WADA argues that the deadline of Art. 13.5 of the FILA Anti-Doping Regulations had not expired when it filed an appeal on 1 October 2007.
74. Respondents 2 and 3 argue that WADA has not proven that it lacked notice of the decision before September 2007. In addition, they point out that decisions by the FILA President are publicly available documents, and that FILA is obliged to publish those according to art. 14.4 of the FILA Anti-Doping Regulations. Thus, they contend the deadline already expired in September 2007.
75. The Panel finds there is no obligation for WADA to inform itself on an ongoing basis about decisions that are going to be taken by associations and federations. Rather, federations, such as FILA obligate themselves to report on compliance with the World Anti-Doping Code in order to keep WADA updated (see Art. 17 of FILA Anti-Doping Regulations).
76. It cannot possibly be expected of WADA to monitor the web sites of sport associations in order to find out whether any sanctions have been suspended. As a matter of practice, it is also often

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impossible for WADA to monitor such decision-making processes as these proceedings and decisions are not necessarily displayed on websites.

77. The current case rather serves as an example of how disciplinary sanctions sometimes risk being revisited in a manner that is not transparent. Indeed, if WADA had not received anonymous information about Stadyk's participation in the World Championship in Baku with the team of Azerbaijan on 21 September 2007, it would not have had the opportunity to intervene at all.

3. **Res Judicata/Art. 28 of the Swiss Civil Code**

78. Respondents 2 and 3 argue that FILA was not entitled to annul the first decision of 31 May 2006 as no appeal was filed against the decision. They highlight that no possibility to overrule a decision without any appeal is provided by the FILA Anti-Doping Regulations. Hence, they argue that Stadyk's rights under Art. 28 of the Swiss Civil Code were violated by the subsequent decisions, which are all null and void. Therefore, they maintain that any appeal against those decisions is inadmissible.

79. It is indeed questionable why the FILA Sporting Judge rendered a second decision.

80. However, after the second Sporting Judge decided, the Ukrainian Wrestling Association appealed to the FILA Federal Appeal Commission and the latter overturned the decision of the FILA Sporting Judge, by reducing the sanction. Consequently, not only was the illicit decision effectively challenged but, in addition, it was set-aside in a manner favourable to the athlete, fact that the athlete did not object to at the time.

81. Furthermore, since, according to art. 57 of the CAS Rules, this Panel is entitled to review the case *de novo*¹, the athlete's rights are preserved notwithstanding how the earlier decision-making process took place within FILA.

82. For the above reasons, the Panel considers that by entertaining jurisdiction in this matter CAS is not violating any of Stadyk's rights.

¹ CAS 2001/A/330 R./FISA, Digest III 197, 202 ("The hearing by the Panel is a complete re-hearing, and the Panel has the full power to review the facts and the law").

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4. Applicable Rules

83. According to Article R58 of the CAS Code:

"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".

84. In the present case the applicable rules and regulations are those of FILA.

85. Among the applicable rules, the following are relevant in determining whether an anti-doping violation has occurred, and, if so, with what consequences.

86. "ARTICLE 2 ANTI-DOPING RULE VIOLATIONS

The following constitute anti-doping rule violations:

2.1 The presence of a Prohibited Substance of its Metabolites or Markers in an Wrestler's bodily specimen.

2.1.1 It is each Wrestler's personal duty to ensure that no Prohibited Substance enters his or her body. Wrestlers are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their bodily Specimens. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Wrestler's part be demonstrated in order to establish an anti-doping violation under Article 2.1. [...]."

87. Under the above rule, the presence of a prohibited substance in a wrestler's bodily specimen is an anti-doping rule violation. Under the strict liability rule of the of the FILA Anti-Doping Regulations, no intent, fault, negligence or knowledge of the wrestler has to be established for a doping offense to arise, however, according to Art. 3 of the FILA Anti-Doping Regulations, the burden of proof that a prohibited substance has entered the athlete's system is on FILA and its National Federations.

88. Pursuant to Art. 10.2, the presence of a prohibited substance in accordance with Art. 2.1 of the FILA Anti-Doping Regulations calls for a two-year term of ineligibility as sanction in case of a first violation. Art. 10.2 reads as follows:

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“10.2 Imposition of Ineligibility for Prohibited Substances and Prohibited Methods

[...]

The following sanctions shall be applied:

First violation: Two (2) years' Ineligibility

Second violation: Lifetime Ineligibility

However, the wrestler or other person shall have the opportunity in each case, before a period of Ineligibility is imposed, to establish the basis for eliminating or reducing this sanction as provided in Article 10.5.”

89. The requirements for a reduction of the Ineligibility period are laid down in Art. 10.5.2 of the FILA Anti-Doping Regulations:

*“10.5 Elimination or Reduction of Period of Ineligibility Based on Exceptional Circumstances
10.5.2 [...]*

If a Wrestler establishes in an individual case involving such violations that he or she bears No Significant Fault or Negligence, then the period of Ineligibility may not be less than one-half of the minimum period of Ineligibility otherwise applicable. [...] When a Prohibited Substance or its Markers or Metabolites is detected in an Wrestler's Specimen in violation of Article 2.1 (presence of Prohibited Substance), the Wrestler must also establish how the Prohibited Substance entered his or her system in order to have the period of Ineligibility reduced.”

5. Merits

a) Appellant's Position

90. WADA invokes that it is undisputed between the parties that Stadyk was tested positive and that Furosemide is a prohibited substance under the 2006 Prohibited List under class S5 “Diuretics and other Masking Agents”. Thus, according to WADA, a two-year suspension should be applied on the basis of the FILA Rules.
91. According to WADA there is no room to reduce the sanction, because the athlete has not proven how the substance entered her body. In that respect, WADA argues that the testimony and alleged confession of Mrs. Tkhorosvska are not credible.

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b) Respondent 2 and 3's Position

92. In their answer of 18 January 2008, Respondents 2 and 3 argued that WADA has failed to prove that Stadyk actually tested positive on Furosemide. At the hearing, they nevertheless conceded that the athlete tested positive.
93. However, Respondents 2 and 3 underline that no admission of any doping offence by Stadyk has been made. Respondents 2 and 3 point out that not asking for a B sample and failing to lodge an appeal against the previous decisions of May and September 2006 cannot be deemed an admission of a doping offence by the athlete.
94. Respondents 2 and 3 argue that the athlete has established how the Prohibited Substance Furosemide entered her system. In that relation, Respondents 2 and 3 stress that Stadyk never admitted to have taken a prohibited substance to fit into her weight category and had never any problem to meet the weight requirements. They underline that Ms. Tkhorovska is also an excellent wrestler; therefore, the idea of a "sacrifice" of Ms. Tkhorovska is untenable. With respect to the sanction, they argue that it must be eliminated or reduced on the basis of Art. 10.5.1/10.5.2 of the FILA Anti-Doping Regulations, among others because Stadyk had no means of preventing Ms. Tkhorovska from committing the act of spiking the water with Furosemide; and that Stadyk acted prudently rather than negligently as she had always been very cautious with her food and beverages.

c) Findings as to Doping Offence and to the Fault

95. Because the positive analytical result from testing of the athlete's A sample constitutes a doping violation under Article 2.1 of the FILA Anti-Doping Regulations and the athlete does not contest the fact that she was tested positive, the threshold question in this case is whether Stadyk has established, as required by 10.5 of the FILA Anti-Doping Regulations, how the Prohibited Substance entered her body.
96. In that respect, in accordance with article 3.1 of the FILA Anti-Doping Regulations, the standard of proof "*... shall be by a balance of probability*".

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97. Indeed, under the applicable rules establishing how a prohibited substance entered an athlete's system is a fundamental precondition to the defence of "no significant fault or negligence".²
98. The Panel shall thus begin by examining whether Stadnyk has met that burden of proof.
99. Having carefully considered the testimony and all the written evidence on record, and bearing in mind, among others, that the acts in question would have been undertaken by an adolescent athlete (Ms Tkhorovska) who was still a minor at the time, the Panel finds that the following alleged facts are rather improbable:
- i) That Ms Tkhorovska - who at the relevant time was at a lower level, i.e. not in the same "league" as Stadnyk, and was not in that sense her competitor - would premeditate a plan to spike Stadnyk's drink simply because of jealousy that had developed a few years earlier.
 - ii) That at such a young age Ms Tkhorovska would have, alone, sought a chemist shop in the middle of a town to buy a product such as Furosemide.
 - iii) Ms Tkhorovska purchasing the capsules containing Furosemide a considerable period beforehand without knowing when and how she might put a plan into execution; and that she would nevertheless have safely kept only one capsule and then later have put it in her bag/pocket during the trip to Moscow/the hotel without ever knowing whether she might decide and/or have the opportunity to use it to spike Stadnyk's water.
 - iv) Taking a long trip alone with a trainer to Moscow to watch a competition and then subsequently taking a taxi alone to a hotel where she is not staying to spend the afternoon and evening with someone who is not her friend, bearing in mind that Ms Tkhorovska was allegedly staying elsewhere with a family and presumably had to return to the family that evening, especially if she was only visiting for two nights.
 - v) That Ms Tkhorovska would be eating alone with Stadnyk on the eve of the competition, whereas they were not close friends and Stadnyk was staying in the hotel with the other Ukrainian team members and coaches.
 - vi) Stadnyk being so obsessed about prudence with bottles/drinking precautions and remembering with such detail how the bottles were handled before, during and after the meal, while at the same

² See CAS 2006/A/1130 WADA v. Stanic and Swiss Olympic, at para. 39 ("Obviously this precondition is important and necessary otherwise an athlete's degree of diligence or absence of fault would be examined in relation to circumstances that are speculative and that could be partly or entirely made up.")

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time not recalling other contemporary facts such as what she ate (which Ms Tkhorovska did not recall either).

vii) The act of Ms Tkhorovska quickly taking a glass capsule out of her pocket and breaking it open under the tablecloth and pouring it into a bottle in a hotel dining room at supper time, while Stadyk was fetching some fruit.

100. In relation to the testimony and statements during the hearing, the Panel was struck how clearly the recollection of Stadyk and the testimony of Ms. Tkhorovska appeared to overlap with respect to what happened during the day of 24 April 2006. To the extent they described how they spent the afternoon together, watching TV in a hotel room and how the two of them had dinner together, their accounts were largely in line with each other. It was striking how well both could remember the handling of the water bottles, where they were placed and what they did with the water bottles over dinner.

101. However, the Panel found at least as striking what Stadyk and Ms. Tkhorovska did not remember compared to what they allegedly recalled. For example, neither of them knew what they had for dinner, whereas both were certain of how the water bottles were being placed and how carefully Stadyk treated the water bottle, making sure it was closed. Even if one assumed that both athletes were particularly thoughtful, the panel finds it rather unusual that two teenagers remembered that Stadyk did everything she could to prevent somebody else from drinking from her bottle and that her only moment of inattention was when she went to the fruit buffet, thus allowing Ms. Tkhorovska to quickly pour the prohibited substance into the water when Stadyk.

102. With respect to the testimony of Ms. Tkhorovska, there were additional striking differences between what she could and what she could not remember. For example, Ms. Tkhorovska described exactly how the capsule of Furosemide that she used looked like. She also knew that she had bought a box of capsules in her hometown. At the same time, she had no precise recollection regarding the whereabouts of the pharmacy she bought the Furosemide from and she did not remember whether the pharmacist was male or female. If one takes into consideration what Ms. Tkhorovska said she had in mind when she bought the Furosemide, it is strange that she would not remember more clearly these significant facts.

103. Moreover, Ms. Tkhorovska had no recollection of the names of the persons she was staying with in Moscow. She suggested that she used the taxi in Moscow and, therefore, could not remember

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- the exact location in the city either. Furthermore, Respondents could, for example, have submitted documentary evidence regarding her stay in Moscow, but did not.
104. Ms. Tkhorovska conceded that she was competing on another (lower) level than Stadnyk and that at the point in time the idea of participating in the Olympic Games was little more than a dream. Ms. Tkhorovska said that she had travelled to Moscow by train, but was confused about how her train ticket was purchased.
105. With respect to Ms. Tkhorovska's confession document, it is significant that a signed original was never offered as evidence, and that only a non-signed English language translation was filed.
106. Given the evidence that Mrs. Tkhorovska and Stadnyk had been competitors (in particular at national level) rather than friends, it remained unclear why both nonetheless spent the afternoon as well as the dinner on the day before the competition with each other. This appears particularly unusual as Ms. Tkhorovska was not participating in the competition and that Stadnyk would have had team members and coaches in her environment.
107. For all the above reasons combined, the Panel finds that - on balance, and despite the coinciding statements and testimony of Ms. Tkhorovska and Stadnyk on certain points of relevance - it is improbable that Stadnyk's drinking water was spiked with Furosemide by Ms. Tkhorovska as alleged.
108. In other words, the Panel finds it more probable than not that Ms. Tkhorovska did not sabotage Stadnyk's drink.
109. The experts' findings support this assessment. The experts consider that it is theoretically possible to detect Furosemide more than 48 hours after its ingestion. However, at the same time, they indicated that they find it very unlikely that the quantity of Furosemide that was found in the athlete's urine on 26 April 2006 was ingested two days earlier. In finding this, the experts referred among others to the fact that the chromatographic peak was at least 5-fold higher than the limit of detection; thereby leading them to the conclusion that:
- "it is highly unlikely that the result reported may be caused by the ingestion of 20 mg or 40 mg Furosemide 48 hours before the urine collection".*
110. Furthermore, the experts considered it as unlikely that the results reported may be caused by the oral ingestion of a capsule of Furosemide.

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111. That being said, because the Panel is not basing its decision on the medical evidence adduced by Appellant or on the experts' opinions, but on the lack of credibility of Ms. Tkhorovska's testimony and confession balanced with the other evidence on record, it is unnecessary to rule on the objections raised against the testimony of Dr. Rabin and Dr. Garnier or on those relating to the use of the laboratory findings and the experts' approach.

112. For the above reasons, the Panel considers that it has not been proven how the Furosemide entered Stadnyk's system, and that therefore she cannot invoke "no fault or no significant fault" under the applicable FILA Anti-Doping Regulations and the two-year suspension for a first offense must be applied.

113. This means the only question remaining to be examined in that respect is when the suspension must be deemed to have begun and ended and with what consequences.

d) Findings as to the suspension period

114. Under Art. 10.8 of the FILA Anti-Doping Regulations, where an athlete has been subject to an interim suspension prior to a doping hearing, the length of the athlete's interim suspension is to be credited as time served against the athlete's final suspension.

115. The FILA Sporting Judge imposed a two-year sanction on Stadnyk. Following the decision of the FILA Appeals Commission communication by FILA's President on 20 June 2007, her suspension was reduced to 15 months but she had nevertheless served her suspension in the meantime.

116. If the athlete's remaining nine-months period of ineligibility were to run as of the day of the hearing or of the notification of the award, the sanction would not expire before spring 2009. Therefore, Respondent 2 and 3 have asked the Tribunal to re-calculate the period of ineligibility in such a manner that the period starts at the earliest possible date, leaving her a chance to qualify for the 2008 Beijing Olympic Games.

117. Pursuant to Art. 10.8 of the FILA Anti-Doping Regulations, where required by fairness, such as delays in the hearing process or other aspects of Doping Control not attributable to the Wrestler, the FILA or Anti-Doping Organization imposing the sanction may start the period of Ineligibility at an earlier date commencing as early as the date of sample collection.

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118. The Panel finds that in this case fairness does require that the period of ineligibility start earlier because - for reasons beyond the Athlete's control, notably linked to the fact that WADA was informed very late about the FILA decision under appeal and therefore this proceeding began later and linked to the fact that the number of questions raised by this case made the CAS proceedings more protracted than usual - the athlete had to live with the uncertainty of whether she could prepare for and validly participate in qualifications for the Olympic Games, despite this being a particularly important event in any Athlete's career.

119. Consequently, the Panel finds the fairest and most balanced solution is begin the two-Year suspension period as from the date that the positive doping samples were taken, namely, on 26 April 2006.

120. As a result and in accordance with article 10.7 of the FILA Anti-Doping Regulations, the Panel finds that nevertheless any and all results obtained by the athlete between 26 April 2006 (when the positive doping samples were taken) and 25 April 2008 (when the suspension ended according to this award) must be disqualified, including the forfeiture of any medals, points and prizes.

121. For the above reasons, the Panel decides that the Ineligibility period ran from 26 April 2006 to 25 April 2008 and that all results obtained during that period are disqualified and any medals, points or prizes obtained are forfeited.

VII. Costs

122. With respect to disciplinary cases of an international nature, which corresponds to this case, Article R65, para. 4 of the CAS Code provides that: "*The fees and cost of the arbitrators, calculated in accordance with the CAS fee scale, together with the costs of the CAS are borne by CAS*".

123. Consequently, no cost will be ordered in that respect.

124. Concerning the parties' legal fees and expenses, article R64 para. 5 of the Code provides:

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"The arbitral award shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule, the award shall grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the outcome of the proceedings, as well as the conduct and the financial resources of the parties."

125. In view of the outcome of the proceedings - i.e. that Appellant fully prevailed in the arbitration, but accounting for the fact that Stadnyk is a young athlete with limited financial means, while on the other hand she was backed in this arbitration by the Azerbaijan Wrestling Federation and the defences opposed by the Respondents required WADA to invest considerable time and effort in this case - the Panel finds it appropriate that the Azerbaijan Wrestling Federation shall pay to the Appellant an amount of CHF 5,000 as a contribution towards the latter's fees and expenses incurred in relation to the proceedings.

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ON THESE GROUNDS

The Court of Arbitration for Sport hereby rules:

1. The Court of Arbitration for Sport has jurisdiction to decide the present dispute.
2. The appeal filed by the World Anti-Doping Agency on 11 October 2007 is admissible.
3. The World Anti-Doping Agency's appeal is granted.
4. The decision of FILA, dated 20 June 2007, is set aside.
5. Ms. Maria Stadnyk is sanctioned with a two-year period of ineligibility, starting on 26 April 2006 and having expired on 25 April 2008.
6. All results obtained by Ms. Maria Stadnyk in any competitions between 26 April 2006 and 25 April 2008 are disqualified and any medals, points or prizes obtained are forfeited.
7. The Azerbaijan Wrestling Federation shall pay to WADA an amount of CHF 5,000 (five thousand Swiss Francs) as compensation for fees and expenses incurred in connection with this arbitration.
8. The award is rendered without costs, except for the CAS office fee that is retained by CAS.
9. All other prayers for relief are dismissed.

Lausanne, 17 July 2008.

THE COURT OF ARBITRATION FOR SPORT


Dr. Christian Duvic