

INTERNATIONAL WEIGHTLIFTING FEDERATION (“IWF”)

DECISION OF THE INDEPENDENT MONITORING  
GROUP IN THE MATTER INVOLVING THE THAI  
AMATEUR WEIGHTLIFTING ASSOCIATION

Case 2020-1

I. Proceedings before the Independent Member Federations Sanctions Panel

- <sup>1</sup> On 1 April 2020, the Independent Member Federations Sanctions Panel (“**IMFSP**”) issued a decision (the “**IMFSP Decision**”) against the Thai Amateur Weightlifting Association (“**TAWA**”) with the following ruling:

27. *TAWA junior athletes (athletes under the age of 18 at the time of a competition) and their athlete support personnel shall continue to remain ineligible to participate in international competition until 5 months following the next IWF calendar event which takes place. (At the present time, no IWF calendar events are taking place because of the Coronavirus pandemic);*
28. *All other TAWA athletes and their athlete support personnel shall continue to remain ineligible to participate in international competition until 11 months following the next IWF calendar event which takes place. Pursuant to ADP Article 12.1 this suspension may be lifted as early as the date set forth in paragraph 27 above upon satisfaction of the conditions set forth in paragraph 31 below;*
29. *No TAWA athlete shall be eligible to participate in the XXXII Summer Olympic Games, whenever those Games may occur;*
30. *Except for the early participation opportunity for TAWA athletes and their athlete support personnel to participate in international competition after the dates set forth in paragraphs 27 and 28 above, the membership status of TAWA is otherwise suspended for a period of 3 years through 1 April 2023. (As previously noted above, except for TAWA athletes and their support personnel not being allowed to participate in international events, there was never any limitation in the Undertaking on the ability of TAWA technical officials or other TAWA representatives to participate in IWF activities. For avoidance of doubt, current TAWA officials are suspended for 2 years and are not eligible to be appointed to any IWF position so long as TAWA remains suspended);*
31. *Pursuant to Article 12.5.1 of the ADP the 3 years suspension of TAWA may be lifted on or after 7 March 2022 if TAWA can demonstrate to the IWF Independent Monitoring Group.*
  - a) *TAWA athletes, athlete support personnel and officials are receiving anti-doping education at a level which complies with the WADA International Standard for Education;*
  - b) *TAWA provides evidence that, notwithstanding the fact that the Sports Authority of Thailand is the party contracting with coaches working at the Chiang Mai training center, TAWA has the authority to vet and approve any coach hired by the Sports Authority of Thailand to coach TAWA athletes. Further, prior to approving the hiring of any weightlifting coach training TAWA athletes at the Chiang Mai training*

*center, or other TAWA national team training center or camp, TAWA will thoroughly investigate that coach's anti-doping background, for example prior anti-doping rule violations committed by that coach or one of his/her athletes, whether that coach comes from a country or countries with a track record of doping in weightlifting and whether the coach is familiar with the basic principles of the IWF ADP together with the potential causes of unintentional anti-doping rule violations.*

*c) TAWA shall actively supervise any coach working with its athletes at the Chiang Mai training center or other TAWA national team training center or camp, TAWA shall provide evidence that it has the authority to have the coach removed when that coach's performance is not consistent with best practices of anti-doping.*

*d) The fine set forth in paragraph 32 below has been paid in full.*

2. The facts underlying the IMFSP Decision will be referred to if and when they are relevant to the adjudication of this case.
3. An appeal filed by TAWA before the Court of Arbitration for Sport ("CAS") against the IMFSP Decision is pending.

## **II. Proceedings before the Independent Monitoring Group**

4. On 10 December 2020, the International Testing Agency ("ITA"), acting on behalf of the IWF, sent a Notice for Referral to the Independent Monitoring Group ("IMG") and requested the IMG to adjudicate the case in accordance with the relevant provisions of the IMFSP Decision and the IWF Anti-Doping Policy ("IWF ADP").
5. Following three Procedural Orders issued by the Panel constituted for this case (the "Panel"), both TAWA and the IWF presented their prayers and arguments, and TAWA answered in writing some specific questions from the IMG, along with additional documents.

## **III. Parties' Prayers for Relief**

6. TAWA applies for the Panel to rule as follows:
  - i. TAWA has fully complied and is in compliance with the conditions set at § 31 of the Decision of the IMFSP of 1 April 2020.
  - ii. Pursuant to § 31 of the Decision of the IMFSP of 1 April 2020, the sanction imposed on all TAWA athletes was to be lifted back on 18 December 2020 and should thus be immediately lifted.
  - iii. In the unlikely event that [the IMFSP Decision] would be confirmed by the CAS, the 3-year suspension imposed on TAWA should be lifted on 7 March 2022 pursuant to § 30.
7. IWF made no specific prayers for relief.
8. The Parties' arguments have been fully considered and will be referred to more specifically if and when they are relevant to the adjudication of this case.

## **IV. Preliminary Matters**

### **i. Applicable Law and Regulation**

9. The applicable rules are the IMFSP Decision, the IMG Terms of Reference (IMG-ToR), the IWF ADP, the IWF Constitution and Swiss law on a subsidiary basis. The IMFSP

Decision applied the 2018 IWF ADP. The Parties concurred to the application of the 2019 IWF ADP. As the sole relevant IWF ADP provision to consider is Art. 12.5.1, which wording is identical in the 2018 and 2019 versions, a potential discussion on what version applies is irrelevant in this particular case.

10. In its Statement before the Panel, TAWA brings forward that it ignores if the IMG is governed by any other rules than Article 12.5.1 ADP. IWF clarified that IMG was governed by IMG-ToR adopted by IWF's Executive Board. The Panel shared the IMG-ToR with TAWA, for its complete information. TAWA raised other arguments as regards IWF's governance which are not for this Panel to address.

## ii. Jurisdiction

11. TAWA did not challenge IMG's jurisdiction. The IMG has jurisdiction to hear and adjudicate this case based on Art. 12.5.1 IWF ADP and Art. 7.1 IMG-ToR.
12. The scope of this Panel's review is to consider whether, pursuant to § 28 of the IMFSP Decision, TAWA athletes and athlete personnel shall be eligible to participate in international competition, following an assessment of TAWA's compliance with the terms of § 31 of the IMFSP Decision.
13. TAWA's prayer for relief III., through which TAWA seeks confirmation that its 3-year suspension imposed on TAWA should be lifted on 7 March 2022 pursuant to § 30 of the IMFSP Decision is, in view of the Panel, to be monitored at a later stage. Whether conditions set out at § 31 of the IMFSP Decision are deemed fulfilled at the date of the present Decision shall not mean that these conditions would automatically be deemed fulfilled on or after 7 March 2022. The fulfilment of these conditions will be scrutinized in due time. The Panel invites TAWA to submit a new application, through the IWF Secretariat for its referral to the IMG according Art. 7.1 IMG-ToR, on or after 1 January 2022 so as to enable the IMG to issue a decision by 7 March 2022.

## iii. Admissibility

14. The case has been referred to the IMG by the IWF Secretariat according Art. 7.1 IMG-ToR, and is, hence, admissible.

## iv. Burden of Proof

15. According the IMFSP Decision, the burden of proof lies with TAWA as "the suspension of TAWA may be lifted [...] if TAWA can demonstrate to the IWF Independent Monitoring Group [that certain criteria are fulfilled]" (§ 31 IMFSP Decision). According to Art. 12.5.1 IWF-ADP, TAWA must "satisfy certain criteria".
16. The Panel is not bound by the prayers for relief made by the Parties.

## V. Merits

17. As a result of the Parties' requests and submissions, there are 7 main issues that need to be addressed by this Panel:

### i. Issue 1: Reinstatement date

18. § 28 of the IMFSP Decision reads as follows:

*All other TAWA athletes and their athlete support personnel shall continue to remain ineligible to participate in international competition until 11 months following the next IWF calendar event which takes place. Pursuant to ADP Article 12.1, this suspension may be lifted as early as the date set forth in paragraph 27 above [5 months following the next IWF*

*calendar event which takes place (at the present time, no IWF calendar events are taking place because of the Coronavirus pandemic)] upon satisfaction of the conditions set forth in paragraph 31 below.*

19. Upon TAWA's request, IWF's counsel confirmed that this date was set at 18 December 2020, as a competition ("1<sup>st</sup> Online PanAm Cup Live by ZKC") was held on 18 and 19 July 2020. IWF did not challenge this allegation before the IMG and the Panel has no reason to consider this otherwise.
20. Consequently, the Panel is satisfied that the reinstatement date is set at 18 December 2020.

**ii. Issue 2: Education.**

21. The condition set at § 31.a of the IMFSP Decision reads as follows:

*TAWA athletes, athlete support personnel and officials are receiving anti-doping education at a level which complies with the WADA International Standard for Education*

22. The IMFSP Panel considered a "voluminous" file amounting to "probably 1'000 pages" (p. 1). In view thereof, the IMFSP Panel considered several corrective actions and mitigating factors, among which "the enhanced anti-doping education now provided to TAWA members". Thus, the IMFSP Panel did not find this education insufficient, at the time its Decision was rendered. Hence, the Panel finds that the condition set at § 31.a requires that the quality and quantity of education provided until 1 April 2020 had to be maintained but that there was no requirement in the IMFSP Decision that this education had to be improved in quality and quantity until that date.
23. The IMFSP Decision sets the WADA International Standard for Education ("ISE") as the standard against which this criterion must be appreciated. ISE came into force on 1 January 2021 and was, hence, not in force when the IMFSP Decision was issued, and until 31 December 2020. Hence, ISE was not in force during the period under review. Hence, the Panel finds that it cannot be assessed whether the education provided complies with a Standard that has not been yet applied by the Signatories of the World Anti-Doping Code nor monitored by WADA. As the reinstatement date is 18 December 2020, the ISE will not be taken in consideration.
24. It appears from TAWA's Appeal Brief to CAS dated 19 May 2020 (p. 10) that, in 2018, TAWA had organised four coaching and anti-doping seminars and another one for athletes and support personnel. In 2019, TAWA had organised two coaching courses and two anti-doping seminars. During the period under review in 2020, TAWA claims to have organised the following (pp. 10-13 of its Statement): a coaching seminar (28-30 April 2020), an anti-doping seminar (14-16 August 2020), an anti-doping workshop (15-24 September 2020) and anti-doping activities (15-20 November 2020). As far as quantity is concerned, the Panel finds that the education provided in 2020 was equivalent to that provided in 2018 and 2019. The Panel also observes that the budget dedicated to education was of around 1'300'00 Thai Baht per year (approx.. 40'000 USD) in 2018 and 2019 according TAWA's appeal to CAS (p. 10), which is the same budget mentioned before the Panel as for 2020 (p. 13 of its Statement). As regard the educational material at disposal of TAWA athletes, the description brought before CAS (pp. 10-11) and before the Panel (pp. 14-16) does not seem to be significantly different. Hence, as far as quality is concerned, the Panel finds that the education provided in 2020 was equivalent to that provided in 2018 and 2019.

25. In consideration of the above elements, the Panel is satisfied that the condition is fulfilled as of the date of this decision.
26. In view of an eventual future submission by TAWA for full anticipated reinstatement in 2022, the Panel notes that the ISE is now in force and that any future review of TAWA's education requirement will be reviewed against the implementation of the ISE provisions.

**iii. Issue 3: Coach Vetting and Approval**

27. The first condition set at § 31.b of the IMFSP Decision reads as follows:
- Notwithstanding the fact that the Sports Authority of Thailand is the party contracting with coaches working at the Chiang Mai training center, TAWA has the authority to vet and approve any coach hired by the Sports Authority of Thailand to coach TAWA athletes.*
28. The IMFSP Decision had found that SAT hired coaches for TAWA, leaving TAWA off the vetting process (§ 20).
29. TAWA brings forward that it has hired a new national coach, Coach Lukman, whose name was presented to the Sports Authority of Thailand ("**SAT**") (§ 65-66 TAWA Statement). TAWA describes SAT's role as that of an entity related to the Ministry of Sports and Tourism and which notably enters into contracts with coaches, who are then attributed to the different sports organisations, such as TAWA (§ 2-3 TAWA Statement). Upon request of the Panel, TAWA clarified: "SAT still enters into contracts with coaches in other sports but not in weightlifting any more. SAT also confirmed that TAWA has the power to terminate or refuse foreign coach employment whom salary is supported by SAT".
30. These statements are consistent with the coaches' contract provided by TAWA that are posterior to the IMFSP Decision. It appears from the documentation provided by TAWA that SAT "approved" the list of foreign coaches, including Coach Lukman, on 26 November 2019 (A-68). Following such approval, TAWA entered into a labour contract with Coach Lukman which seems to have started in September 2020, but in any event after SAT's approval (A-70).
31. Consequently, it appears that TAWA holds a firm vetting power and the Panel is satisfied that the condition is fulfilled as of the date of this decision.

**iv. Issue 4: Coach Background Review**

32. The second condition set at § 31.b of the IMFSP Decision reads as follows:
- Prior to approving the hiring of any weightlifting coach training, TAWA athletes at the Chiang Mai training center, or other TAWA national team training center or camp, TAWA will thoroughly investigate that coach's anti-doping rule violations committed by that coach or one of his/her athletes, whether that coach comes from a country or countries with a track record of doping in weightlifting and whether the coach is familiar with the basic principles of the IWF ADP together with the potential causes of unintentional anti-doping rule violations.*
33. The IMFSP Decision found that TAWA had looked at [the previous coach]'s profile to see whether he was qualified to be a coach. However, TAWA did not look at his anti-doping background (§ 20).

34. TAWA brings forward that it has thoroughly investigated Coach Lukman before hiring him. TAWA produced several diplomas that Coach Lukman had successfully passed and certificates of participations to various world-class weightlifting competitions (A-58 to A-67). Upon the Panel's request, TAWA clarified the specific education in anti-doping Coach Lukman had followed. The Panel finds that Coach Lukman did not seemingly follow a particularly intense *curriculum* in anti-doping and that the anti-doping content of some courses, seminars or certificate is not clear. However, the Panel notes that the IMFSP Decision required not Coach Lukman to have a specific education in anti-doping but merely to be familiar with the basic principles of the IWF ADP together with the potential causes of unintentional anti-doping rule violations. There is also no indication on file nor any information available to the Panel that Coach Lukman (or his athletes) would have a poor track record in anti-doping and Indonesia is currently not suspended from IWF.
35. Hence, and after hesitations, the majority of the Panel considers that this condition is met as of the date of this decision.
36. In view of a future application for TAWA's full and anticipated reinstatement, information regarding Coach Lukman's continuing anti-doping education will have to be provided.

**v. Issue 5: Coach Supervision**

37. The first condition set at § 31.c of the IMFSP Decision reads as follows:
- TAWA shall actively supervise any coach working with its athletes at the Chiang Mai training center or other TAWA national team training center or camp.*
38. The IMFSP Decision found that the previous coach was supervised by TAWA while he was working at the Chiang Mai training center and it was up to TAWA to decide whether he was doing a good job or bad job, but that TAWA had not "properly" supervised the previous coach at the Chiang Mai training center (§ 20).
39. TAWA brings forward that it has assigned, as from 10 April 2020 right after the IMFSP Decision, two individuals to fill out new roles of managers, present at the Chiang Mai training center, in order to implement this condition. One of these managers has been assigned there 24/7. Among the various tasks of these managers, they must "ensure that athletes, coaches and officials will follow the rules and regulations strictly" and "ensure that the athletes will have education on anti-doping violation and able to avoid the prohibited substances including direct and indirect way".
40. Consequently, the Panel is satisfied that this condition is met as of the date of this decision.
41. In view of a future application for TAWA's full and anticipated reinstatement, the Panel draws TAWA's attention to then present a comprehensive report of supervisions activities at the Chiang Mai training center so as to enable the IMG to fully appreciate the actual involvement, presence and impact of the managers newly in place.

vi. **Issue 6: Coach Removal**

42. The second condition set at § 31.c of the IMFSP Decision reads as follows:

*TAWA shall provide evidence that it has the authority to have the coach removed when that coach's performance is not consistent with best practices of anti-doping.*

43. TAWA submits that, at a Board meeting on 23 April 2020, its Executive Board approved a Rule and Regulations for National Weightlifting Athletes and Coaches which gives TAWA the right to remove a coach's employment in case he/she proves "to be dishonest on the duty or (*sic!*) violation of Thai laws and/or Thai Anti-Doping in Sports Act" as well as if he/she proves "to infringe rules, regulations or any orders stated in the contract". This document was countersigned by Coach Lukman and these clauses are reflected in his labour contract.
44. In consideration of the above elements, the Panel is satisfied that this condition is fulfilled as of the date of this decision.

vii. **Issue 7: Fine Payment**

45. The condition set at § 31.d of the IMFSP Decision reads as follows:

*The fine set forth in paragraph 32 below [the fine imposed on TAWA pursuant to Art. 12.5 shall be \$ 200'000 (one hundred thousand of this amount is imposed as a penalty, the remainder shall be used by IWF to offset the costs it has occurred arising out of the 10 violations committed by TAWA athletes and to pay for additional IWF testing of TAWA athletes] has been paid in full.*

46. TAWA submits that, pursuant CAS consistent jurisprudence (CAS 2004/A/780), a decision of a financial nature issued by a private Swiss association is not enforceable while it is under appeal.
47. Under constant case law of the Swiss Federal Tribunal ("SFT"), jurisdictional bodies of sports associations do not constitute true arbitration tribunals and their decisions are merely expressions of will issued by the interested associations, in other words, acts of management and not judicial acts (see SFT decisions 4A\_492/2016 dated 7 February 2017 consid. 3.3.3 and the referenced cases). Consequently, their decisions are not enforceable *per se* (see SFT decision 119 II 271 consid. 3b) but require the State judge to enforce the sanction (see M. Baddeley, *L'association sportive face aux droit: Les limites de son autonomie*, Basel 1994, p. 226). According to Art. 335.2 of the Swiss Civil Procedure Code, "enforcement" of a decision related to the payment of money refers to the provisions of the Debt Enforcement and Bankruptcy Act, according which the debt is enforced by an official body (the debt enforcement office).
48. IMFSP qualifies as a jurisdictional body of a sports association under this definition and the IMG is not an official entity such as the debt enforcement office. Hence, the payment of the fine by TAWA is not a matter of enforcement and CAS case law referred to by TAWA is not relevant here. To the contrary, the payment of the fine appears to qualify as a condition according Art. 151 of the Swiss Code of Obligations ("SCO"). The fulfillment of that condition depends upon TAWA and not upon its enforcement by an official entity, or upon its enforceability. TAWA is also not coerced to make a final payment: should, after TAWA's payment of the fine to IWF, CAS eventually cancel or reduce such fine, IWF would appear to be enriched

without just cause, and TAWA would be entitled to seek reimbursement of the outstanding part from IWF (Art. 62.2 and 63.1 SCO).

49. As regard TAWA's argument that the fine would not be meant at the fight against doping and, hence, would be contrary to the criteria defined under Art. 12.5.1 ADP, this is an argument that falls outside the scope of review of the Panel and is the object of the appeal before CAS (A-29, § 223).
50. Consequently, the Panel is not satisfied that this condition is met.

## VI. Decision

In consideration of all facts, in light of Art. 12.5.1 IWF ADP and the 1 April 2020 IMFSP Decision, the IMG decides:

1. TAWA athletes and athlete personnel's suspension will be lifted according § 28 of the 1 April 2020 IMFSP Decision, as soon as the \$ 200'000.— fine imposed on TAWA at § 32 of that Decision is paid to IWF. Upon presentation to the IMG of a confirmation of receipt of funds by IWF, the IMG will swiftly issue a Decision and declare TAWA athletes and their athlete support personnel eligible to participate in international competition.
2. All other prayers are dismissed.

\* \* \*

The Panel

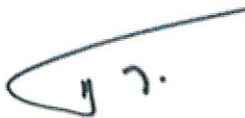
Philippe Vladimir Boss, Chair



Davide Delfini



Francisco Lima



Lausanne, <sup>23</sup>February 2021