

ETHICS and DISCIPLINARY COMMISSION

of the INTERNATIONAL WEIGHTLIFTING FEDERATION

EDC 2021/2, Dr. Dominik Doerr & Luxemburg Weightlifting Federation (WFL) v. International Weightlifting Federation (IWF)

DECISION

delivered by the

Ethics and Disciplinary Commission (EDC) of the International Weightlifting Federation (IWF)

sitting in the following composition:

Dr. Despina Mavromati, Lausanne, Switzerland, Panel Chair

Mr. Andrew Minogue, Brisbane, Australia

Prof. Dr. Moni Wekesa, Nairobi, Kenya

in the procedure between

Dr. Dominik Doerr & Luxemburg Weightlifting Federation (WFL)

Complainant

and

International Weightlifting Federation (IWF)

Represented by Mr. Nicolas Zbinden, Kellerhals Carrard, Lausanne, Switzerland

Respondent

I. PARTIES

1. Dr. Dominik Doerr is the President of the WFL and a former Member of the IWF Medical Committee. To the extent that Dr. Doerr is acting on behalf of the WFL, both Dr. Doerr and the WFL are hereinafter jointly referred to as the “Complainant”. WFL is a Member Federation (MF) of the IWF with its seat in Luxemburg and was provisionally suspended by a Decision of the Executive Board dated 17 June 2021.
2. The IWF is the world-governing body of Weightlifting and has its seat in Lausanne, Switzerland (hereinafter the “Respondent”).
3. Both the Complainant and the Respondent are hereinafter referred to as the “Parties”.

II. OVERVIEW OF THE FACTUAL BACKGROUND, THE PROCEEDINGS AND THE PARTIES’ SUBMISSIONS BEFORE THE EDC

4. Below is a summary of the relevant facts and allegations based on the parties’ written submissions. While the EDC has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in its Decision only to the submissions it considers necessary to explain its reasoning.
5. On 17 June 2021, the IWF sent a letter to the WFL entitled “Decision of the IWF Executive Board – Temporary Suspension” (hereinafter the “Decision”). According to the Decision, the IWF Executive Board decided to temporarily suspend the WFL as of 15 June 2021 for failing to fulfil its obligations defined in Article 3.4.6 of the 2017 IWF Constitution. On 21st June 2021, the Complainant wrote to the Membership Commission inquiring whether the Commission had recommended the suspension of WFL. On 24th June 2021, Complainant wrote another e-mail to the Chair of the Membership Committee inquiring whether IWF had asked the Membership Committee to suspend WFL. It does not appear as if the Membership Commission responded to any of those letters. On 27th June 2021, the WFL wrote a letter to the Interim President, General Secretary and the EB indicating that there was no Membership Commission to recommend the suspension of WFL to the EB. On even date, the Complainant wrote another letter to Ms Karolina Lundhahl inquiring whether there was a decision of the EB to cancel his nomination as a competition doctor at Tokyo 2020. On 19 September 2021, Dr. Doerr, acting on behalf of the WFL, sent an email to the EDC Secretariat. In his email, Dr. Doerr argued that the WFL provisional suspension by the IWF Executive Board (EB) was “unjustified and obviously politically motivated”. He referred to his disagreement about an attempt to thwart “his right for open speech in front of the congress” and the non-consideration of his proposal concerning a modification to the constitution. He also indicated another complaint of being removed from the list of Competition doctors for Tokyo 2020.
6. On 6 September 2021, the EDC acknowledged receipt of said letter and found such complaint to be incomplete; the EDC granted a deadline of 14 days, requesting the Complainant to explain how his complaints are matters falling within the EDC jurisdiction, with reference to the IWF Constitution (2017 version) and the EDC Interim Rules (February 2021 version). The Complainant was also requested to formulate his requests for relief and adduce all relevant evidence and legal arguments.
7. By a letter dated 20 September 2021, Dr. Doerr filed an additional letter, alongside several exhibits.
8. On 1 October 2021, the EDC forwarded the Complaint to the IWF and granted a deadline to respond. In the same letter, the EDC informed both parties of the constitution of the EDC Panel.

9. On 15 October 2021, the IWF, acting through its counsel, responded to the Complaint.
10. On 29 October 2021, the EDC informed the Parties that it considered itself sufficiently informed; in view of the fact that neither of the parties had requested an oral hearing, the EDC decided to proceed to the deliberations and to issue its final decision without the need to hold an oral hearing.

III. SUBMISSIONS OF THE PARTIES

A. Submissions of the Complainant

11. In essence, the Complainant supports that the temporary suspension of the WFL falls within Rule 3.8.1 of the IWF Constitution (2017 version) but that the conditions for the WFL provisional suspension were not met. The two conditions that need to be fulfilled to allow IWF to suspend a Member Federation were, in the Complainant's view, not met in the case at hand. To the extent that there was no existing Membership Commission anymore, the first condition was not fulfilled. Moreover, the Complainant asserted that there were also other Member Federations that did not fulfil the conditions of Article 3.4 IWF Constitution (2017) but they were not suspended by the IWF Executive Board.
12. In the Complainant's view, and by reference to Rules 111, 113a and 114c of the EDC Interim Rules, the WFL provisional suspension was "unfair and not justified". The Complainant further expressed its view that the provisional suspension was "politically motivated" since Dr. Doerr, after his resignation from the IWF Medical Commission and as representative of IWF in the ASOIF MSCG in October 2020, called upon every official to resign too.
13. In an effort to establish that the IWF Decision was "politically motivated", Dr. Doerr further submitted that, during the 2017 Electoral Congress, another IWF Executive Board Member had unsuccessfully tried to convince Dr. Doerr (as the WFL President) to vote for his favoured presidential candidate.
14. In the same letter dated 19 September 2021, Dr. Doerr complained of his (personal) removal from the list of the Technical Officials for the Tokyo Olympic Games through an IWF letter dated 9 March 2021. To the extent that this is a personal complaint not directly related to the challenged Decision, the EDC will address such complaint separately below.
15. Dr. Doerr also supported that the IWF violated its "right of open speech" and failed to take into consideration its suggestions for the amendment of the IWF Constitution. In support of his complaints regarding the right of open speech and the "non-consideration of the WFL proposal, Dr. Doerr referred to the evidence submitted along with his email and "other communications".
16. Finally, Dr. Doerr submitted that, in his view, the Interim President, the Secretary General, the Vice-Presidents and EB- Members no longer have a mandate to act as such.

B. Submissions of the Respondent

17. In its response, the IWF supports that the purpose of the Complaint is "to seek to challenge the so-called 'WFL provisional suspension' by the IWF Executive Board, which the Complainant characterises as politically motivated" and as "unfair and not justified". In essence, the IWF supports that the Complaint falls outside the scope of EDC's scope of review and the EDC has therefore no jurisdiction to entertain the Complaint.
18. According to the IWF, Rule 11 of the EDC Interim Rules provides that the EDC's role is to "investigate, adjudicate and sanction reported infringements of the EDC Interim Rules and the

IWF Constitution and By-Laws” by individuals (or Member Federations). As such, the EDC is not the “appeal instance” against decisions of the IWF Executive Board and has no jurisdiction in this respect.

19. The IWF further notes that the “WFL Provisional Suspension” decision was approved by the IWF Executive Board by a majority of 16 out of 20 votes, with 4 members not having voted.
20. Moreover, the IWF considers that the allegations brought forward by Dr. Doerr regarding his withdrawal from the list of technical officials for the Tokyo Olympic Games cannot establish a violation of the IWF Constitution or any other IWF Rules. In any event, the IWF decision to withdraw the technical officials including Dr. Doerr was eventually approved by the IWF Executive Board, following which such decision cannot be reviewed by the EDC.
21. With respect to the Complainant’s allegation that the IWF did not take its proposal of 7 February 2021 regarding the IWF Constitution into account, the IWF supports that such proposal referred to the 2017 IWF Constitution, which was substantially revised in the meantime; the IWF initiated an official consultation of the Member Federations on the new draft 2021 IWF Constitution in March 2021, almost a month after the Complainant sent its proposal. According to the IWF, the proposal had therefore become “manifestly redundant” since it related to a provision that no longer existed. Additionally, the Complainant could have filed its suggestions on the new draft but chose not to do so. In any event, the IWF supports that the allegations made by the Complainant do not establish a violation of any of the IWF Rules in this case.
22. Overall, the Respondent submits that the Complaint falls outside the scope of the EDC jurisdiction and is devoid of any basis. It is merely an attempt to seek to challenge decisions rendered by the IWF Executive Board “through the back door”. The Respondent requested therefore the EDC to “close the matter” for lack of jurisdiction and reserved its right to file an additional response and adduce further evidence if needed.

IV. APPLICABLE LAW

23. Dr Doerr filed his complaint when the EDC Interim Rules and the 2017 version of the IWF Constitution were still applicable.
24. Article 5 of the EDC Procedural Rules provides as follows: *“The EDC Interim Rules govern every subject to which the text or the meaning of its provisions refers. The applicable law in case of lacunae in the EDC Interim Rules is Swiss law along with the general principles of law.”*
25. The EDC will therefore apply the EDC Interim Rules and the IWF Constitution (2017 version) and Swiss law along with the general principles of law, if needed.

V. JURISDICTION

26. At the outset, the EDC notes that it can only entertain a complaint if such complaint falls within the remit of its own jurisdiction, as established by the relevant applicable laws and regulations.
27. In order to determine whether the EDC has jurisdiction in this case, the EDC first needs to delimit the scope of the complaint: Indeed, the Complainant filed one complaint divided into several heads or several complaints, namely:
 - The provisional suspension of the WFL by a decision of the IWF Executive Board communicated to the Complainant through a letter dated 17 June 2021;

- The non-taking into consideration of the Complainant’s suggestion for an amendment to the 2017 IWF Constitution and the decision of the IWF not to add the Complainant’s suggestion to the list of proposals;
 - The withdrawal of Dr. Doerr from the list of technical officials for the Tokyo Olympic Games communicated to Dr. Doerr through a letter dated 9 March 2021;
28. The EDC considers the provisional suspension of the WFL to be the “main” complaint, with the non-taking into consideration of the Complainant’s proposals to the Constitution and the withdrawal of Dr. Doerr from the list of technical officials for the Tokyo Olympic Games as the additional complaints that aim at corroborating the main complaint of a “politically motivated” decision. In any event, the EDC does not need to decide on the merits of these complaints since, as will be set out in more detail below, they all fall outside the remit of the EDC jurisdiction.
29. According to Rule 3.1.4 of the IWF Constitution (2017 version), “*Members shall be affiliated/suspended/expelled upon resolution of the Executive Board. Members have the right to appeal suspension/expulsion*”. This provision shows that a) the IWF Executive Board has the authority to suspend a Member Federation upon resolution and b) the Member Federations have the right to appeal such decision. However, while the right to appeal against such decision is undoubtedly provided for in the IWF Constitution, the venue of appeal is not.
30. Article 3.8.2 of the 2017 IWF Constitution provides for members to appeal a decision on suspension or expulsion. Art 4.2.11 provides for a right to appeal the decision of the EB. Art 12.1 - decisions of DEC (precursor to the current EDC) are decisions of EB such that the EB makes final pronouncement on a sanction/measure. Art 12.2 excludes the Federation - read - EB from the fangs of the DEC. Art 12.8 provides that decisions of DEC through the EB can be appealed to CAS. Under the 2017 Constitution therefore, the DEC had no jurisdiction over EB decisions.
31. Rule 11 of the EDC Interim Rules provides that the EDC “*may order an investigation, adjudicate and sanction reported infringements of the EDC Interim Rules and the IWF Constitution and By-Laws (adjudicating jurisdiction)*”. As stated by the Respondent, said provision does not indicate that the EDC is the appeal instance against decisions rendered by the IWF Executive Board in the exercise of its powers.
32. If there was any doubt about EDC’s lack of jurisdiction over EB decisions, Schedule 1 of the 2021 Constitution at section B (2)(a) excludes IWF & the EB from the personal scope of application of the EDC Rules. The Panel’s reading of the 2017 and 2021 constitutions is that there was a deliberate intention to exclude decisions of the EB from review by the EDC.
33. While the Complainant supports that the IWF Decision to provisionally suspend the WFL is “unfair” and “politically motivated”, it fails to indicate how such criticisms fall within the ambit of the EDC jurisdiction. The same applies to the other two complaints regarding the suggestions for the new IWF Constitution and the withdrawal of Dr. Doerr from the list of the IWF Technical Officials. Indeed, all the aforementioned criticisms / complaints seem to fall within the autonomy of the IWF Executive Board in the exercise of its powers, which cannot be reviewed by the EDC according to the EDC Interim Rules.
34. In view of the foregoing, the EDC Panel holds that the EDC has no jurisdiction over said complaints.

VI. COSTS

35. In accordance with Rule 70 of the EDC Interim Rules, *“Under certain exceptional circumstances, the EDC may award costs against a party. Otherwise, the proceedings shall be borne by the IWF but the parties have to bear their own legal costs, particularly in relation to legal representation, experts and interpreters”*.

In view of the above, the EDC decides that this case is rendered without costs.

ON THESE GROUNDS

The Ethics and Disciplinary Commission decides as follows:

1. The EDC does not have jurisdiction to hear the complaint filed by Dr. Doerr / the Luxemburg Weightlifting Federation.
2. This decision is rendered without costs.
3. Each party shall bear its own costs and other expenses incurred in connection with these proceedings.
4. All other requests are dismissed.

Seat of the EDC: Lausanne, Switzerland

Date: 3 November 2021

The Ethics and Disciplinary Commission of the International Weightlifting Federation



Despina Mavromati
Chair



Andrew Minogue



Moni Wekesa