4A_80/2017[1]

Judgment of July 25, 2017

First Civil Law Court

Federal Judge Kiss, Presiding,
Federal Judge Hohl
Federal Judge Niquille,
Clerk of the Court: Mr. Luczak.

A._____,
Represented by Dr. Lucien W. Valloni and Dmitry A. Pentsov,
Appellant,

v.

International Weightlifting Federation (IWF),
Represented Messrs. Jean-Pierre Morand and Nicolas Zbinden,
Respondent

Facts:

A.
A.a. A._____ (Appellant) is a successful Russian weightlifter at international level.

The International Weightlifting Federation (IWF, Respondent) is the International Federation of Weightlifting and is based in Lausanne.

A.b. The Appellant participated in the 2015 World Championships of Weightlifting in Houston, USA, as a member of the Russian team. He won the gold medal and set two world records.

On November 28, 2015 the IWF received – and tested – the urine sample No. xxx from the Appellant. This showed a deviation from the norm (or Adverse Analytical Finding, AAF) and the presence of the prohibited substance Ipamorelin, in an extremely low concentration of 0.1 ng/ml. The analysis was carried out on

[1] Translator's note: Quote as A._____ *v.* IWF, 4A_80/2017.
The decision was issued in German. The original text is available on the website of the Federal Tribunal, www.bger.ch.

December 10, 2015, by the World Anti-Doping Agency (WADA)-accredited *Laboratoire de contrôle du dopage*[2] at Institute B._____ (hereafter, the B._____ Laboratory). The B._____ Laboratory applied the International Standard of Laboratories, 2015 (ISL) and the TD2015IDCR Technical Documents (Minimum Criteria for Chromatographic-Mass Spectrometry) and TD2015MRPL (Minimum Required Performance Levels [MRPL] for detection and identification of non-threshold substances) of WADA.

On February 29, 2016, the B._____ Laboratory performed the analysis of the B sample using the same method, which confirmed the values of the A sample.

A.c. The IWF relied on its Anti-Doping Policy 2015 (IWF ADP), which is based on the revised World Anti-Doping Code 2015 (WADC, in force since 1 January 2015). The IWF ADP has been recognized by both parties and applies to their case.

A.d. On April 26, 2016, a hearing took place before the IWF Committee in Budapest. By decision of May 13, 2016, the Committee held that it was convinced ("comfortably satisfied") that the analytical reports confirmed the existence of the prohibited substance Ipamorelin in the Appellant's sample, and decided to impose the following sanctions:

> Further to Article 9 of the ADP, all results obtained by the Athlete at the 2015 World Championships are disqualified with all resulting consequences, including forfeiture of any medals, points (including Olympic Games qualification points) and prizes won.
>
> Further to Article 10.8 of the ADP and where applicable to the Athlete, all results obtained in competitions subsequent to the 2015 World Championships are also disqualified with any resulting consequences including forfeiture of any medals, points and prizes.
>
> A sanction of ineligibility for four (4) years from the date of this decision, with that period to be reduced by the time for which the athlete was provisionally suspended.[3]

B.

On June 1, 2016, the Appellant appealed against the IWF Decision to the Court of Arbitration for Sport (CAS). The hearing took place in Lausanne on July 6, 2016. The CAS rejected the appeal and confirmed the IWF decision with an arbitral award rendered on December 1, 2016.

C.

The Appellant lodged a civil law appeal to the Swiss Federal Tribunal requesting that the CAS Award be annulled and the case be sent back to the CAS for a new decision, and that the Respondent pay the procedural costs. The Swiss Federal Tribunal dismissed the Appellant's request for provisional measures through a Presidential Order of April 25, 2017. The Respondent and the CAS requested the dismissal of the civil law appeal. The Appellant subsequently filed an unsolicited reply to the Swiss Federal Tribunal.

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[2] Translator's note: In French in the original text.
[3] Translator's note: In English in the original text.

Reasons:

1.
According to Art. 54(1) BGG,[4] the judgment of the Federal Tribunal is issued in an official language,[5] as a rule, in the language of the decision under appeal. When the decision under appeal is in another language, the Federal Tribunal resorts to the official language chosen by the parties. The decision under appeal is in English. As this is not an official language and the parties have filed their submissions in accordance with Art. 42(1) BGG and Art. 70(1) BV[6] in German (Appellant) and French (Respondent) the judgment of the Federal Tribunal shall be issued in the language of the appeal, in accordance with its practice (BGE 142 III 521[7] at 1 p. 524 f.).

2.
In the field of international arbitration, a civil law appeal is admissible pursuant to the requirements of Art. 190-192 PILA[8] (SR 291) (Art. 77(1)(a) BGG).

2.1. The seat of the Arbitral Tribunal is in Lausanne. At the decisive time, in accordance with to Art. 176(1) PILA, the Appellant was domiciled outside of Switzerland. As the parties have not expressly waived the applicability of the Chapter 12 PILA, the provisions of that chapter apply (Art. 176(2) PILA).

2.2. Only the grievances listed in Art. 190(2) PILA are admissible (BGE 134 III 186[9] at 5 p. 187; 128 III 50 at 1a p. 53; 127 III 279 at 1a p. 282). According to Art. 77(3) BGG, the Federal Tribunal reviews only the grievances raised and reasoned in the appeal brief; this corresponds to the duty to provide reasons at Art. 106(2) BGG for the violation of constitutional rights and of cantonal and intercantonal law (BGE 134 III 186 at 5 p. 187 with references). Criticisms of appellate nature are inadmissible (BGE 134 III 565[10] at 3.1 p. 567; 119 II 380 at 3b p. 382; see also judgment 4A_470/2016 of April 3, 2017, at 2.3).

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[4] Translator's note: BGG is the German abbreviation for the Federal Statute of June 17, 2005, organizing the Federal Tribunal, RS 173.110.

[5] Translator's note: The official languages of Switzerland are German, French and Italian.

[6] Translator's note: BV (Bundesverfassung) is the German abbreviation for the Swiss Federal Constitution of 18 April 1999 (SR 101).

[7] Translator's note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/federal-tribunal-upholds-independence-members-cms-network

[8] Translator's note: PILA is the English abbreviation of the Federal Statute of December 18, 1987, on private international law, RS 291.

[9] Translator's note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/right-to-be-heard-equality-between-the-parties

[10] Translator's note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/extension-of-arbitration-clause-to-non-signatories-case-of-a-gua

As only the specific grievances listed in Art. 190(2) PILA may be raised in an appeal against an international arbitral award and not a direct violation of the federal constitution, of the ECHR,[11] or of other international treaties (BGE 142 III 360[12] at 4.1.2 p. 362), the various arguments as to the violation of such provisions are in principle not admissible. However, recourse may be made to principles from the ECHR in order to apply the guarantees of Art. 190(2) PILA (BGE 142 III 360 at 4.1.2 p. 362; judgment 4A_178/2014[13] of June 11, 2014 at 2.4 with references); as there is a requirement for reasons (Art. 77(3) BGG) the appeal itself must show to what extent one of the grounds for appeal contained in the aforesaid provision should apply. The Appellant does not meet these requirements when he argues a violation of Art. 6(1) ECHR. In particular, the principles of evidence applicable in private law – even when disciplinary measures of private sport are assessed – cannot be determined from the point of view of the guarantees resulting from the ECHR as the Federal Tribunal confirmed several times in particular in cases concerning doping violations (judgments 4A_178/2014 at 5.2; 4A_488/2011[14] of June 18, 2012 at 6.2; 4A_612/2009[15] of February 10, 2010 at 6.3.2).

2.3. The Federal Tribunal bases its judgment on the factual findings of the arbitral tribunal (Art. 105(1) BGG). This includes the findings as to the facts upon which the dispute is based and those concerning the course of the first instance proceedings, *i.e.*, the findings as to the content of the case, which include, in particular, the submissions of the parties, their factual allegations, legal arguments, statements in the case, evidence and offers of evidence the content of a witness statement or an expert report, or the findings as to a visual inspection (BGE 140 III 16 at 1.3.1 p.17 f. with references).

The Federal Tribunal may not rectify or supplement the factual findings of the arbitral tribunal, even when they are blatantly inaccurate or based on a violation of the law within the meaning of Art. 95 BGG (see Art. 77(2) BGG, ruling out the applicability of Art. 97 BGG). However, the Federal Tribunal may review the factual findings of the arbitral award under appeal when some admissible grievances within the meaning of Art. 190(2) PILA are raised against them or when new evidence is exceptionally taken into consideration (BGE 138 III 29[16] at 2.2.1 p. 34; 134 III 565 at 3.1 p. 567; 133 III 139 at 5 p. 141; each with references). Whoever wishes to claim an exception to the rule that the Federal Tribunal is bound by the factual findings of the arbitral tribunal and seeks to rectify or supplement the facts on this basis must show, with specific

[11] Translator's note: ECHR (EMRK in the original version of the judgment) stands for the European Convention of Human Rights of November 4, 1950 (SR 0.101).

[12] Translator's note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/agreed-upon-rules-procedure-do-bind-parties

[13] Translator's note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/no-substantive-review-assessment-evidence

[14] Translator's note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/the-federal-tribunal-leaves-undecided-the-issue-as-to-whether-an

[15] Translator's note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/limited-judicial-review-of-awards-independence-of-cas-reaffirmed

[16] Translator's note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/jurisdiction-of-the-cas-upheld-a-pathological-clause-has-to-be-s

references to the record, that the corresponding factual allegations were raised in the arbitral proceedings in accordance with the procedural rules (4A_532/2016 of May 30, 2017, at 2.6 with references; see also BGE 140 III 86 at 2 p. 90).

2.4. The appeal must be filed in a timely manner and be thoroughly reasoned (Art. 42(1) BGG). The Appellant should not employ a potential reply in order to supplement or improve the appeal (see BGE 132 I 42 at 3.3.4 p. 47). The reply can only be used in order to provide explanations to the points that have arisen from the submissions of another party to the proceedings (vgl. BGE 135 I 19 at 2.2 p. 21). The submissions of the Appellant in his reply cannot be considered to the extent that they go beyond the above.

3.
The Appellant argues that CAS violated its right to be heard, the principle of equality of the parties (Art. 190(2)(d) PILA) and the (procedural) public policy (Art. 190(2)(e) PILA) in several respects.

3.1. Art. 190(2)(d) PILA permits an appeal only when the mandatory procedural rules of Art. 183(3) PILA are violated.

3.1.1. Accordingly, the arbitral tribunal must, in particular, guarantee the right of the parties to be heard. This essentially corresponds to the constitutional right embodied in Art. 29(2) BV. Case law infers from this, in particular, the right of the parties to state their views as to all facts important for the judgment with suitable evidence submitted in a timely manner and in the proper format, to participate in the hearings, and to access the record (BGE 142 III 360[17] at 4.1.1; 130 III 35 at 5 p. 38; 127 III 576 at 2c; each with references).

However, the arbitral tribunal can refuse to hear a piece of evidence without violating the right to be heard, when it could reach a conclusion based on the evidence already before it. The Federal Tribunal can only examine an anticipated assessment of evidence from the limited scope of a violation of public policy (BGE 142 III 360 at 4.1.1 p. 361 with reference).

The right to be heard in adversarial proceedings according to Art. 182(3) and Art. 190(2)(d) PILA does not include the right to a reasoned international award, in line with well-established case law (BGE 142 III 360 at 4.1.2 p. 361; 134 III 186[18] at 6.1 with references). However, there is a minimal duty of the arbitrators to review and handle the issues that are important for the decision. This duty is violated when the arbitral tribunal, due to oversight or a misunderstanding, overlooks some legally pertinent allegations, arguments, evidence, or offers of evidence from a party. This does not mean that the arbitral tribunal is compelled to

[17] Translator's note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/agreed-upon-rules-procedure-do-bind-parties

[18] Translator's note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/right-to-be-heard-equality-between-the-parties

address each and every submission of the parties (BGE 142 III 360[19] at 4.1.1 p. 361; 133 III 235 at 5.2 p. 248 f. with references).

3.1.2. The equal treatment of the parties is also provided for in Art. 190(2)(d) and Art. 182(3) PILA. The right of equal treatment requires the arbitral tribunal to treat the parties equally at all stages of the procedure (including the hearing, with the exception of deliberations, see judgment 4A_360/2011[20] of January 31, 2012 at 4.1) (BGE 133 III 139 at 6.1 p. 143) and not to deprive one party what it has granted to the other (Bernard Dutoit, *Droit international privé suisse*, 5. ed. 2016, p. 819 N. 6 ad Art. 182 PILA; Stephanie Pfisterer, in: *Basler Kommentar*, *Internationales Privatrecht*, 3. ed. 2013, N. 62 ad Art. 190 PILA). Both parties must have the same opportunities to present their case during the proceedings (see BGE 142 III 360 at 4.1.1 p. 361).

3.2. Procedural public policy is breached where there is a violation of fundamental and generally recognized procedural principles, whose disregard contradicts the sense of justice in an intolerable way, rendering the decision absolutely incompatible with the values and legal order of a state ruled by law (BGE 140 III 278 at 3.1 p. 279; 136 III 345[21] at 2.1 p. 347 f.; 132 III 389[22] at 2.2.1 p. 392).

4.
The argument that the CAS, by using an incorrect concentration of Ipamorelin, namely 1 ng/mL instead of 0.1 ng/mL, violated the right to be heard and the principle of due process as part of the procedural public policy, is clearly unfounded. There is no violation of the right to be heard within the meaning of Art. 190(2)(d) PILA when an obvious mistake of the arbitral tribunal leads to a wrong decision. A manifestly false or conflicting finding alone is not sufficient to annul an international arbitration award.

The right to be heard does not include the right to a materially correct decision (BGE 127 III 576 at 2b p. 577 f.; citing judgment 4A_612/2009[23] at 6.3.1). The party that seeks to establish an infringement of the right to be heard from an obvious mistake cannot simply show that the alleged mistake led to a faulty assessment of the evidence because, like in the case of an arbitrary assessment of evidence, there is no infringement of the right to be heard. The party concerned should further point out that the judicial oversight

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[19] Translator's note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/agreed-upon-rules-procedure-do-bind-parties

[20] Translator's note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/icc-award-annulled-for-breach-of-the-right-to-be-heard-post-hear

[21] Translator's note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/setting-aside-of-award-for-violation-of-public-policy-principle-

[22] Translator's note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/violation-of-public-policy-notion-of-public-policy-exclusion-of-

[23] Translator's note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/limited-judicial-review-of-awards-independence-of-cas-reaffirmed

deprived him from introducing and proving his position with respect to a procedural issue (BGE 127 III 576 E. 2 f. p. 580).

In addition, there is no illegal act. It is true that para. 47 of the contested Award refers to a concentration of 1 ng/mL. However, the summary of the facts (para. 5) refers to an "extremely low concentration (100 pg/mL)", which corresponds to 0.1 ng/mL. As to the arguments raised by the Appellant with respect to the required limit values for the detection of Ipamorelin, the CAS then refers to the report by Professor C._____ of the B._____ Laboratory, according to which the limit is 0.1 ng/mL before concluding that "*in light of the concentration of Ipamorelin found in the Athlete's samples of the LOD, a false-positive is excluded*" (para. 51), in order to establish (para. 52) that the concentration in the Appellant's case was low, which obviously could not have been said in a concentration of 1 ng/mL. The phrasing in para. 47 thus constitutes an obvious typographical error, as the CAS rightly asserts in its observations.

5.
The Appellant alleges that the CAS wrongly refused to admit his request for an expert report on the Limits of Detection [LOD], on Measurement Uncertainty [MU] and another analysis of the B sample, thereby violating his right to be heard and the principle of equal treatment or equality of the parties, and possibly also the (procedural) public policy.

In the proceedings before the CAS, the Appellant requested that the Respondent disclose the parameters and criteria for LOD and MU for Ipamorelin. In view of the low value of 0.1 ng/mL reported by the B._____ Laboratory, he wished to demonstrate that such a low value cannot be established with sufficient certainty and that there is a doubt as to the measurement value of the B._____ Laboratory. The CAS states in its answer that the Appellant had asked to obtain the parameters for LOD and MU but he had not asked for an expert report on LOD and MU. Accordingly, the CAS never rejected a request for an expert report.

The Appellant does not specify in his appeal at which stage in his submissions he requested an expert report on LOD and MU parameters. In his reply – and irrespective of the fact that the respective statements are late (see para. 2.4 above), he points again only to the fact that he requested the LOD and MU Parameters (in addition to the request for an analysis of his B-sample using to another method) ("The Appellant has at least six times requested the method parameters including LOD [limit of detection] in order to decide reasonably whether to challenge the method as insufficiently selective or not"[24]). The previous instance has not determined anything else. The Appellant's plea therefore fails.

6.
Regarding the further requested report on the analysis of the B sample, the CAS considered that the Appellant had requested the B sample be tested in a WADA-accredited laboratory, as determined by the CAS, by another method, i.e. the method HRMS (high resolution mass spectrometry), to be performed in

[24] Translator's note: In English in the original text.

"full MS" (or "t-SIM" [targeted-Selective Ion Monitoring]) in combination with "t-MS2" with ion mobility division, in the presence of the parties and/or their representatives. However, the Appellant had no right to an additional analysis of the sample (even if the admissibility of such an approach were to be adopted in accordance with the applicable provisions), unless he could raise doubts about the results of the B._____ Laboratory. The Appellant could not, however, raise any such doubts. Furthermore, if he had actually been able to raise sufficient doubts, he would no longer have needed the additional analysis requested. Even if another analysis could solve the issue and thus free the CAS from its task of assessing the existing evidence, the CAS could not open this Pandora's box. This is even more true because, contrary to the Appellant's assertions, there is no further duty of analysis arising out of Article 6.5 WADC or any other provision. Finally, the CAS disputed whether the method requested by the Appellant was more reliable, by referring to a letter from Professor D._____ of the Deutsche Sporthochschule,[25] Cologne, on June 27, 2016; in any event the CAS held that this was not a (WADA-approved) detection method for Ipamorelin.

6.1. Thus, the request for a further expert report with the method requested by the Appellant was rejected by the CAS for several reasons. In support of his argument that the requested method for the proof of Ipamorelin is more reliable (which was disputed) the Appellant merely stated that this was a recognized method developed by Professor D._____. Therefore, the Appellant did not respond to the arguments brought forward by the CAS, namely the letter of Professor D._____, on which the CAS argument was based. Such argument cannot be sustained for lack of sufficient legal reasoning (see para. 2.2 above).

Moreover, the plea is unfounded. By designating the proposed method as controversial, the CAS proceeded to the expected assessment of evidence and considered said evidence as inadequate. The Appellant would therefore have to demonstrate that this violated public policy (para. 3.1.2). In that letter, however, Professor D._____ himself pointed out that the requested method does not exist for the detection of Ipamorelin. Apart from that, the Appellant does not specify how the principle of the right to be heard or the principle of equal treatment of the parties in the arbitration proceedings should allow further analysis to be carried out by using other methods in addition to the testing procedures provided for by the applicable anti-doping rules (see also 4A_178/2014[26] at 5.2).

6.2. The Appellant raises formal pleas according to Article 190(2) PILA. However, his reasoning deviates from the considerations of the CAS, without making a plea under Article 190(2) of the PILA. In doing so, he raises inadmissible criticisms of appellatory nature and the pleas cannot be sustained.

6.3. According to Art. 3.1 of the IWF ADP, the Respondent has the burden of proving that there is a violation of the anti-doping rules. The Respondent must be able to demonstrate this in a convincing manner ("to the comfortable satisfaction"). The standard of proof is, therefore, greater than the mere probability ("greater than a mere balance of probability") but lower than a standard of proof excluding any doubt ("less

[25] Translator's note: German used in the original version of the judgment.
[26] Translator's note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/no-substantive-review-assessment-evidence

than proof beyond a reasonable doubt"). Therefore, it is the responsibility of the athlete to rebut the justified presumption of the violation of the anti-doping rules ("to rebut a presumption"). For such rebuttal, the applicable standard of proof is that of probability ("balance of probability").

6.3.1. The CAS relied on these arguments when it held that the Appellant would not have even needed the additional analysis he requested if he had been able to raise sufficient doubts about the results of the B._____ Laboratory. Indeed, in this case, the Appellant had not provided the proof in accordance with Article 3.1 IWF ADP, which is why a further test of proof (in support of the opposite proof) would have been redundant.

However, the core argument of CAS was that the Appellant could not raise sufficient grounds to question the analysis of the B._____ Laboratory. It considered that the Laboratory had complied with the identification criteria applicable to Ipamorelin in accordance with the WADA technical documents TD2015IDCR and the ISL, which indicates that Ipamorelin was detected. Since Ipamorelin is not a substance with a threshold value ("not a threshold substance") according to the WADA criteria, a sample can be detected as positive regardless of the concentration found. With regard to the measurement accuracy (MU) raised by the Appellant, Prof. D._____ of the Deutsche Sporthochschule Köln and Prof. C._____ of the B._____ Laboratory said that this parameter is not relevant for the qualitative determination of substances without a threshold value such as Ipamorelin and it is only used in the WADA documents in connection with the quantitative determination of threshold substances. It is undisputed that a laboratory must comply with the WADA Technical Document TD2015MRPL, which deals with the MRPL, for the detection of Ipamorelin. The B._____ Laboratory met these requirements, and it had shown that the estimated limit for the detection of Ipamorelin was 0.1 ng/mL. The Appellant contested this value only in an unsubstantiated manner.

6.3.2. The Appellant alleges a violation of his right to be heard and the obligation to state reasons, because the CAS, without further discussion, refrained from testing the LOD of 0.1 ng/mL estimated by the B._____ Laboratory, and did not give further reasons for this; the B._____ Laboratory further failed to justify the value argued by the Appellant and he met the concentration of 0.1 ng/mL “accidentally”. There is always uncertainty as to the precision of the machine and method used, which is why he could have demonstrated with the LOD and the MU that the results of the analyzes of the B._____ Laboratory were outside of the minimum concentration which can be determined with certainty (LOD), as well as the safety interval of the MU.
6.3.3. The CAS respected its obligation to state reasons (see para. 3.1.1 above). It has examined and addressed the decisive questions. In addition to the minimum obligations, it also determined that the B._____ Laboratory had estimated the limit value from which a finding can be obtained in accordance with the WADA Technical Document TD2015MRPL. It denied, in an acceptable manner, the doubts about the approach of the B._____ Laboratory because it respected the specifications of the WADA technical documents and ISL and the Appellant could not disprove the estimated limit of 0.1 ng/mL.

In his observations on the determination of the limit value, the Appellant merely criticized the content of the contested award and submitted his own view to the Federal Tribunal, without, however, indicating a violation of his right to be heard. The CAS noted and acknowledged the Appellant's objections and thereby respected his right to be heard.

7.
The plea of a breach of the principle of equal treatment because the CAS did not reveal a third analysis carried out by the B._____ Laboratory is also unfounded. The CAS accepted this analysis because, contrary to the Appellant's view, it was permissible under Article 3.2 IWF ADP and, moreover, was also in his interest. It is further not clear what the admission of this evidence has to do with the principle of equal treatment. The Appellant relies on the rejection of his own request for a further test based on another method. However, this allegation of violation of equal treatment is to be dismissed to the extent that the plea cannot be upheld (see para. 6.1) with respect to the doubts as to the higher reliability of the method and the fact that it was not approved for Ipamorelin.

8.
Finally, it was alleged that the contested award was contrary to the principle of good faith and the prohibition of abuse of rights, thereby infringing the Appellant's personal rights through the four-year ban on his professional activities, which in turn constitutes a breach of public policy. The CAS did not wish to order the requested additional expert opinion in order to avoid political problems as expressed by the fact that it did not want to "open the Pandora's Box".[27] Thus, the CAS misused the rules in order to serve its own purposes. The Appellant therefore alleges that, according to Art. 190(2)(d) PILA, the award must be annulled. Again, the Appellant implicitly assumes that the method that he suggested was more reliable than the one applied by the B._____ Laboratory and should be treated in the same way as the one approved for Ipamorelin. However, he does not show the manner in which the different assessment of the CAS infringes public policy. This plea is therefore inadmissible.

9.
The appeal must be rejected insofar as the matter is capable of appeal. In view of the outcome of the proceedings, the Appellant must pay the costs (Art. 66(1) and Art. 68(2) BGG).

Therefore, the Federal Tribunal Pronounces:

1.
The appeal is rejected to the extent that the matter is capable of appeal.

2.
The judicial costs set at CHF 5'000 shall be borne by the Appellant.

[27] Translator's Note: In English in the original text.

3.
The Appellant shall pay the Respondent CHF 6‘000 for costs incurred in relation to the proceedings before the Federal Tribunal.

4.
This judgment shall be notified in writing to the parties and to the Court of Arbitration for Sport (CAS).

Lausanne, July 25, 2017

In the name of the First Civil Law Court of the Swiss Federal Tribunal

Presiding Judge:	Clerk:
Kiss	Luczak