

ETHICS and DISCIPLINARY COMMISSION
of the **INTERNATIONAL WEIGHTLIFTING FEDERATION**

EDC2021/1 Mr Maxim Agapitov (RUS) v. Mr Phil Andrews (USA)

DECISION

delivered by the

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

sitting in the following composition:

Mr Andrew Minogue (AUS) – Chair of Tribunal

Professor Dr Dr Moni Wekesa (KEN) - Tribunal Member

Mr Yoshihiro Takatori (JPN) – Tribunal Member

in the procedure between

Mr Maxim Agapitov (RUS)

Complainant

and

Mr Phil Andrews (USA)

Respondent

I. PARTIES

1. The Complainant is Mr Maxim Agapitov, President of the Russian Weightlifting Federation, Acting President of the European Weightlifting Federation (EWF) and member of the IWF Executive Board.
2. The Respondent is Mr Phil Andrews, Chief Executive Officer of USA Weightlifting.

II. FACTUAL BACKGROUND

3. Below is a summary of the relevant facts and allegations based on the parties' written submissions. Additional facts and allegations found in the parties' written submissions, pleadings and evidence are set out, where relevant, in connection with the legal discussion that follows. 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 and evidence it considers necessary to explain its reasoning.
4. On 28 June 2021, the Respondent wrote, on USA Weightlifting letterhead in his capacity as its Chief Executive Officer, to the "Interim President and Members of the Executive Board of the International Weightlifting Federation", with copy to the "International Olympic Committee Leadership" and to the "Member Federations of the IWF".
5. In this letter of 28 June, the Respondent called upon six (6) members of the IWF Executive Board to "do the right thing for the sport and take action upon themselves to resign" prior to the IWF Constitutional Congress scheduled for 30 June 2021. One paragraph was written on each of the 6 Executive Board members identified with the basis upon which the Respondent believed that each of them should resign.
6. The Complainant was the sixth and final Executive Board member identified in the letter – the others being from Great Britain, Romania, Australia, Thailand, and Egypt. The paragraph pertaining to the Complainant read as follows:

"With respect to Mr. Maxim Agapitov of the Russian Federation, Mr. Agapitov is currently serving in violation of the CAS decision in WADA vs RUSADA, which provides that no official representing the Russian Federation may serve in a position on an IF board, therefore we (the IWF) are operating in violation of this decision".
7. On 3 July 2021, the Complainant filed his complaint with the EDC Secretariat with a copy of the Respondent's 28 June letter to the IWF membership enclosed as Annex 1.
8. It is relevant to note that in the immediate aftermath of the 28 June letter and before the Constitutional Congress of 30 June, two events occurred which are not in dispute:

- a. The Complainant was contacted by an English-language on-line media organisation, “Inside the Games”, for his comment on the Respondent’s 28 June letter. The Complainant told “Inside the Games” that the CAS award (“CAS decision 2020/O/6689 World Anti-Doping Agency v. Russian Anti-Doping Agency”) only pertained to “representatives of the Government of the Russian Federation”, of which he had never been one, and therefore the Respondent’s letter insofar at least as it pertained to him, was misleading and consequently damaging.
- b. The Respondent made his own comment to “Inside the Games” when contacted by them for a response, which is quoted as follows:

“If our advice on the wording of the WADA versus RUSADA decision is incorrect in practical application, then of course we withdraw our comments regarding Mr. Agapitov, who is not part of that particular decision personally, while our comments on the other serving individuals stand.”

9. On the submissions presented by both parties in this matter, it appears that no further action or comment related to this matter, except for their correspondence with the EDC, was undertaken by the Respondent at that time or since.

10. In his letter of complaint on 3 July to the EDC, the Complainant reiterated the comments he made to “Inside the Games” and warranted that he had:

“Never been a member of the Government or the Russian parliament, neither worked for the Administrative Directorate of the Russian President and/or for the Russian Investigative Committee – and I’m sure all weightlifting community knows this very well”.

11. The Complainant alleges that the Respondent’s letter caused “damage to (his) reputation” because he failed to issue a “correction letter by email to all recipients” in support of the clarifying comments quoted above, which were made only to “Inside the Games”.

12. The Complainant alleges that the Respondent’s letter of 28 June was “misleading and discriminatory based on nationality” and whose purpose was to “cast some shadows” on him as well as on the other members identified “on the eve of the IWF Constitutional Congress and the IWF Executive Board elections, (an) obviously deliberate attempt to influence the result”. He further alleges that the timing of the comments and the lack of a “correction letter” indicated that the Respondent’s comments were “intentional” and designed to give him only one day to respond before the Congress convened.

13. The Complainant also alleges that the CAS award in question was “widely discussed by the sports community, and it is highly unlikely that Mr. Andrews, especially being a native English speaker, did not know the contents”. He goes on to state that, “even assuming that he was mistaken in good faith ... this does not relieve him of his responsibility to double-check the information he

disseminates to a wide range of people holding one of the highest positions in weightlifting”.

14. The Complainant refers to the following clauses of the IWF Ethics and Disciplinary Commission Interim Rules as relevant for the EDC to consider when examining the Respondent’s conduct:
 - a. Article 114 - “to act in accordance with the highest standards of integrity and honesty” and “not engage in any conduct which amounts to harassment or discrimination”;
 - b. Article 121 - “public statements of a defamatory nature”; and
 - c. Article 130 - “aggravating circumstances...(where) a person holds a high position”.
15. The Complainant concludes by alleging that “a reasonable and responsible individual would have made all efforts to give his apologies and to inform his addressees as soon as possible of the mistake. None of this was made by Mr. Andrews so far, which is itself shocking.”

III. OVERVIEW OF THE PROCEEDINGS BEFORE THE EDC

16. Following receipt of the letter of complaint dated 3 July 2021 through the EDC Secretariat, the full EDC convened on 14 July via Zoom link and agreed to open an investigation of the matter.
17. The EDC empanelled Vice Chair Mr Andrew Minogue (as Chair), Secretary Professor Dr Dr Moni Wekesa and Member Mr Yoshihiro Takatori to consider the matter and make relevant determinations.
18. The EDC Tribunal agreed to write, via the EDC Secretariat, to the Respondent informing him of the Tribunal’s formation and seeking his response to the Complainant’s letter of 3 July and providing him with a copy of such.
19. The EDC Tribunal also agreed to write, via the EDC Secretariat, to the Complainant advising him of the investigation and of the Tribunal’s formation, and that a submission had been sought from the Respondent.
20. The Respondent lodged a submission in the form of a letter with the EDC Secretariat on 28 July. The EDC Tribunal held a preliminary meeting on 2 August 2021 via Zoom link and agreed to provide the Complainant, via the EDC Secretariat, with a copy of the response received from the Respondent on 28 July and to invite the Complainant to make any further submissions.
21. The EDC Tribunal sought indications, via the EDC Secretariat, from both parties as to whether they wished to proceed to a hearing (on-line) or whether they would agree to permitting the EDC to make its determinations based on the documentation provided.

22. The Respondent replied by e-mail to the EDC Secretariat on 2 August that he was agreeable to the EDC Tribunal making its determination based on the written submissions provided.
23. The Complainant wrote to the EDC Secretariat on 10 August in the form of an e-mail, with his response to the Respondent's submission, in which he also agreed that the matter could be resolved by the EDC Tribunal based on the written submissions.
24. As no hearing of the parties was deemed necessary, the EDC Tribunal therefore convened on 16 August via Zoom link to consider the matter and make its determination based on the written submissions provided.

IV. SUBMISSIONS OF THE PARTIES

25. The submission by the Respondent dated 28 July says of the paragraph in his 28 June letter pertaining to the Complainant, that "he (now) understands this was incorrect" and that the relevant paragraph was "not associated with Mr. Agapitov personally".
26. The Respondent further states that the Complainant "did not contact me in any fashion directly" to address his concerns, but instead spoke to "Inside the Games". The Respondent then did the same, where he "retracted the comments at issue" to the "Inside the Games" organisation.
27. The Respondent denied that he breached the EDC Interim Rules, specifically Article 121 "public statements of a defamatory nature", on the basis that,

"My statement in my June 28 letter amounted to a simple misunderstanding, which was corrected almost immediately. This was not an intentional attempt to tarnish Mr. Agapitov's reputation with false information".
28. The Respondent also denied that he breached Article 114 of the EDC Interim Rules – which require persons to "act in accordance with the highest standards of integrity and honesty", and to "not engage in any conduct which amounts to harassment or discrimination of any kind against any person," on the basis that,

"My misunderstanding was corrected so quickly that no damage could have been done to Mr. Agapitov's reputation. Moreover, my June 28 letter was directed to asking that certain members of the Executive Board be removed or resign. However, Mr. Agapitov is still a member of the IWF Executive Board. As a result, no damage resulted from my comments regarding Mr. Agapitov in the June 28 letter".
29. The Respondent concluded his submission by stating:

"Contrary to Mr. Agapitov's allegations, my comments about him in the June 28 letter were not intentionally false or misleading, but rather reflected my honest understanding of the CAS Decision. Moreover, my comments did not amount to

harassment or discrimination against Mr. Agapitov. He suggests in his letter that this had to do with his nationality. As evidenced by the fact that my June 28 letter had to do with a number of individuals of different nationalities, clearly it was not related to Mr. Agapitov's nationality".

30. The second submission by the Complainant, dated 10 August 2021, was sent in response to the Respondent's submission of 28 July, and says:

"Unfortunately, Mr. Andrews has never personally apologized to me or sent an official letter informing the original recipients of his letter that he had changed his position, even though he officially admits that he was wrong. The opinion expressed in the media that "If our advice is incorrect, then we withdraw our comments" can in no way serve as evidence of the complete and quick rebuttal which is mentioned in Mr. Andrews's response.

"I would like to point out that before making such statements that require immediate action involving resignation from one's position, at a minimum, a responsible person should carefully read the document to which he or she is referring. To do otherwise indicates either extreme unprofessionalism or deliberate action.

"I sincerely believe that Mr. Andrews's words were discriminatory, as he automatically extended the consequences of the CAS decision, which were of a limited nature, to me based on my nationality only. In the light of the above, I believe that Mr. Andrews should be held accountable."

31. The Complainant in his letter of 3 July 2021 sought the following reliefs:

- i. Mr. Phil Andrews' statements concerning me be reviewed for compliance with the IWF Ethics and Disciplinary Code, and following a due investigation procedure;
- ii. Mr. Phil Andrews, USA, be sanctioned in accordance with the Code at the discretion of the IWF EDC Tribunal;
- iii. Mr. Phil Andrews shall bear the entirety of the costs;
- iv. Mr. Phil Andrews is ordered to pay fair compensation to Mr. Maxim Agapitov's legal costs and other expenses.

32. The Respondent, in his response to the Complainant's letter, requested that the complaint against him be "dismissed".

V. ISSUES FOR DETERMINATION

33. Arising from the documentation supplied by both parties, the issues that stand out for determination are:

- a. Whether the action by the Respondent amounts to discrimination of the Complainant based on nationality, and

- b. Whether the statement by the Respondent was defamatory of the Complainant.

VI. JURISDICTION

34. Both the Complainant and the Respondent have by their written submissions acceded to the EDC's jurisdiction in this matter, in accordance with the IWF Constitution (2017) and the EDC Interim Rules (2021).

VII. APPLICABLE LAW

35. Article 5 of the EDC Interim Rules (Section B - 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..”

36. Article 114 of the EDC Interim Rules (Section D - Ethics and Disciplinary Code) states:

“Any person or organization bound by this Ethics and Disciplinary Code of Ethics must at all times: (a) comply with all applicable rules, including – but not limited to - the Governance Principles and the fundamental principles of Olympism; (b) act in accordance with the highest standards of integrity and honesty; (c) not engage in any conduct which is detrimental to, brings into disrepute or is materially inconsistent with the best interests or welfare of the Federation, the Sport, the Olympic Movement, the members of the Federation as a collective or the person or organization concerned; and (d) not engage in any conduct which amounts to harassment or discrimination of any kind against any person”.

37. Article 121 of the EDC Interim Rules (Section D - Ethics and Disciplinary Code) states:

“Public statements of a defamatory nature: Persons bound by the Ethics and Disciplinary Code are forbidden from making any public statements of a defamatory nature towards the Federation and/or towards any other person or Organization bound by the Ethics and Disciplinary Code in the context of IWF events. Officials bound by the Ethics and Disciplinary Code shall refrain from making any public statement (including in the media or social media) in respect or in connection with the Federation, its Members, the Sport, the Olympic Movement any Athlete or official of the Federation without the express permission of the President or the Executive Board”.

38. Article 126 of the EDC Interim Rules (Section D - Ethics and Disciplinary Code) states:

“In accordance with By-Laws 12.1, 12.7 of the IWF Constitution and the Terms of Reference, after determining that a violation of the Ethics and Disciplinary Code has been established, and except where a sanction is expressly provided for, the IWF EDC may take any of the following measures and sanctions or a combination of several such measures and sanctions : (a) Reprimand; (b) Suspension; (c) Temporary or permanent ineligibility ; (d) Disqualification; (e) Withdrawal from the IWF Development Program; (f) Imposition of financial sanctions, including fines (g) Exclusion from the competition; and/or (h) Expulsion from the IWF and from any of its bodies”.

39. Article 130 of the EDC Interim Rules (Section D - Ethics and Disciplinary Code) states:

“Repeated offenses or the fact that a person holds a high position in the sport of weightlifting shall be considered aggravating circumstances, allowing the IWF EDC to go beyond the maximum limit provided for a violation of the relevant rules foreseen in the Ethics and Disciplinary Code”.

40. By-Law 12.1.3 of the IWF Constitution (2017) states:

“The Parties must comply with the following principles: a) Human dignity. b) Non-discrimination, either on the basis of race, gender, nationality, ethnic origin, religion, philosophical or political opinions, sexual preference or any other grounds. c) Nonviolence, including abstaining from any kind of pressure and harassment, whether physical, mental, professional or sexual. d) Friendship, mutual aid and fair-play. e) Integrity. f) Priority to the interests of the sport of weightlifting and the athletes in relation to financial interests. g) Protection of the environment. h) Political neutrality. i) Promotion of the Olympic Movement Ideals. (12.1.3.1)

“The Parties shall use due care and diligence in fulfilling their mission. They shall, on all occasions and to the best of their ability, serve the interests of weightlifting and IWF. They shall refrain from any behaviour which might jeopardize weightlifting, and they must not act in any manner likely to tarnish the reputation of IWF”. (12.1.3.2)

VIII. MERITS

41. The EDC considered the Respondent’s letter of 28 June 2021 against the Articles of the EDC Interim Rules as referred to by the Complainant.
42. However, whilst both parties referred to the EDC Interim Rules in their submissions, the EDC was cognisant of the fact that the IWF Congress has yet to adopt a new Constitution. Considering that fact, the EDC relied upon By-Law 12.1.3 of the IWF Constitution (2017) to ensure there was no conflict between the prevailing Constitution’s Code of Ethics and the EDC Interim Rules of 2021.

A. Article 114 of the EDC Interim Rules - Discrimination

43. The EDC examined whether the Respondent's letter of 28 June 2021 rose to the standard of "discrimination" towards the Complainant or whether it exhibited a lack of "integrity and honesty" under Article 114 of the EDC Interim Rules and By-Law 12.1.3 of the IWF Constitution (2017).
44. The EDC observed that revelations from several documents attributed to the McLaren Report and the attendant media attention painted the sport of weightlifting in a very negative light, a fact that may have contributed to the clamour for changes at the IWF.
45. The EDC found that the Respondent's letter identified six persons in total, each of whom held a different nationality, and against each of whom were different reasons why they should 'resign'.
46. The EDC is of the persuasion that the letter that forms the basis of the complaint relating to discrimination was therefore grounded in a sincere belief that the respective resignations of the persons so identified was needed for the sport of weightlifting to begin to recover its reputation and integrity within the global sports community.

B. Article 121 of the EDC Interim Rules - Public statements of a defamatory nature

47. The EDC examined whether the Respondent's letter of 28 June, as it pertained to the Complainant, amounted to a statement of a defamatory nature under Article 121 of the EDC Interim Rules.
48. The EDC observed that for a charge of defamation to stand, the statement uttered must be defamatory of the person against whom it is uttered. In addition, for public officials or persons holding offices in trust for members of the public like the Complainant herein, there must be evidence of malice on the part of the Respondent. The criterion of proving malice is to allow members of the public to freely criticize their leaders and hold them accountable and trustworthy.
49. The EDC accepts that the Respondent held a genuine "misunderstanding" of the import of the CAS award in question ("*CAS decision 2020/O/6689 World Anti-Doping Agency v. Russian Anti-Doping Agency*") as it pertained to the Complainant.
50. The EDC finds that the intent and spirit of the Respondent's 28 June 2021 letter was to advocate for improvements in the IWF's reputation via having an untainted Executive Board.
51. The EDC observed that as soon as the Respondent became aware of his 'misinterpretation' of the CAS Award hereinabove referred to, he "corrected" it immediately.

52. The EDC is persuaded that the Respondent, by issuing his correction to “Inside the Games”, acknowledged that his comments concerning the Complainant were inaccurate and thus had the potential to cause damage to the Complainant’s standing within the IWF and wider sports fraternity.
53. That this correction occurred almost immediately after the 28 June letter and that the Complainant remains a member of the IWF Executive Board does not in and of itself mean that damage to the Complainant was immaterial.
54. The EDC is persuaded that there are insufficient grounds to prove that malice towards the Complainant was intended in his letter. The effort, of sorts, which was made to correct the record via the Respondent’s comments to “Inside the Games” on the same day as he circulated his letter negates a perception of malice and demonstrates an absence of any intent to defame the Complainant.
55. The EDC observes that as the CEO of a Member Federation writing to the IWF Executive Board with copy to all other Member Federations and the International Olympic Committee Leadership, the Respondent had a duty of care to present his arguments accurately, especially in a matter of significant import for the sport of weightlifting – publicly calling upon a member of the IWF Executive Board to resign.
56. The EDC does not therefore accept the Respondent’s defence that his misunderstanding of the CAS award in question was a “simple” one.
57. The EDC finds that the Respondent’s letter of 28 June 2021 insofar as it pertained to a “misunderstanding” of the Complainant’s eligibility to continue serving as an IWF Executive Board member fell short in fulfilling his obligation under By-Law 12.1.3.2 to exercise “due care and diligence” and that the “misunderstanding” was not a “simple” one.
58. The EDC considers that whereas there was no intention to defame the Complainant, the manner in which the correction was offered by the Respondent was not adequate. The publication which the Respondent used for his correction, “Inside the Games”, is a daily English-language and on-line only publication, whose readership within IWF circles cannot be assumed to be as wide as the readership of a letter sent directly to every Member Federation of the IWF. The Respondent’s correction via that method is unlikely to have been viewed by an equal number of persons in Member Federations who read his letter of 28 June.
59. Having circulated his initial letter of 28 June 2021 to all Member Federations of the IWF, it was incumbent upon the Respondent, upon realizing his mistake, to use the same medium to inform the same recipients of his correction.

C. Article 130 of the EDC Interim Rules – Aggravating Circumstances

60. The EDC reviewed Article 130, which allows for the EDC “to go beyond the maximum limit provided for a violation” in the “aggravating circumstances...(where) a person holds a high position” and is persuaded that it is not applicable in this matter.

IX. COSTS

61. As the matter has been determined by the EDC based upon the written submissions provided by both parties and without the need for a hearing and/or the engagement of legal representation, the EDC finds that costs in this matter are negligible.

ON THESE GROUNDS

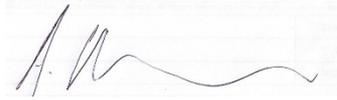
The Ethics and Disciplinary Commission decides as follows:

62. The complaint filed by the Complainant on 3 July 2021 is partially upheld.
63. The EDC finds that the Respondent's letter of 28 June 2021 does not rise to the standard of "harassment or discrimination" towards the Complainant nor a lack of "integrity and honesty" under Article 114 of the EDC Interim Rules and By-Law 12.1.3 of the IWF Constitution (2017).
64. The EDC finds that the Respondent's letter of 28 June, as it pertained to the Complainant, did not amount to a statement of a defamatory nature under Article 121 of the EDC Interim Rules.
65. Under the powers conferred by Article 126 of the EDC Interim Rules and By-Law 12.1.3 of the IWF Constitution (2017) and having found that the correction offered by the Respondent was not addressed to all recipients of the letter of 28 June 2021, the EDC hereby reprimands the Respondent.
66. As a remedy, the EDC, under the powers granted by Articles 68 and 69 of the EDC Interim Rules (Procedural Rules) directs the IWF to convey this decision to all Member Federations within 3 working days of this EDC decision being rendered.
67. This EDC decision is rendered without costs.
68. Each party shall bear its own costs and other expenses incurred in connection with this arbitration.
69. All other requests are dismissed.

Seat of the EDC: Lausanne, Switzerland

Date: 24 August 2021

The Ethics and Disciplinary Commission of the International Weightlifting Federation

A handwritten signature in black ink on a light-colored background, appearing to read 'A. Minogue'.

Mr Andrew Minogue
Chair

A stylized handwritten signature in black ink, consisting of several bold, sweeping strokes.

Professor Dr Dr Moni Wekesa
Member

A handwritten signature in black ink, written in a cursive style, appearing to read 'Yoshihiro Takatori'.

Mr Yoshihiro Takatori
Member