**CAS 2022/A/8802 Nijat Rahimov v. International Weightlifting Federation (IWF)**
**CAS 2022/A/9048 International Weightlifting Federation (IWF) v. Nijat Rahimov**

# ARBITRAL AWARD

**delivered by the**

# COURT OF ARBITRATION FOR SPORT

**sitting in the following composition:**

| | |
|---|---|
| President: | Dr Hans Nater, Attorney-at-Law in Zurich, Switzerland |
| Arbitrators: | Mr Jeffrey G. Benz, Attorney-at-law and Barrister in London, United Kingdom |
| | Mr Romano F. Subiotto K.C., Avocat, Brussels, and Solicitor-Advocate, London, United Kingdom |
| Clerk: | Ms Stéphanie De Dycker, CAS Clerk in Lausanne, Switzerland |

**in the arbitration between**

**Mr Nijat Rahimov, Almaty, Kazakhstan**

Represented by Mr Yvan Henzer and Ms Monia Karmass, Attorneys-at-Law, Libra Law, Lausanne, Switzerland

**Appellant in the matter CAS 2022/A/8802**
**Respondent in the matter CAS 2022/A/9048**

**and**

**The International Weightlifting Federation (IWF), Lausanne, Switzerland**

Represented by Ms Dominique Leroux-Lacroix and Mr Damien Clivaz, International Testing Agency, Lausanne, Switzerland

**Respondent in the matter CAS 2022/A/8802**
**Appellant in the matter CAS 2022/A/9048**

## I. PARTIES

1. Mr Nijat Rahimov (the "Athlete" or "Mr Rahimov") is an elite weightlifter and 2016 Olympic Gold Medallist. He was an "international-level athlete" within the meaning of the International Weightlifting Federation (the "IWF") Anti-Doping Policy 2015. He competed for Kazakhstan, having previously represented Azerbaijan.

2. The IWF is the world governing body for the sport of weightlifting, recognized as such by the International Olympic Committee, with registered offices in Lausanne, Switzerland.

3. The Athlete and the IWF are jointly referred to as the "Parties."

## II. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced at the hearing held on 22 September 2022. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

### A. Background Facts

5. The Athlete has competed in international weightlifting events since 2009. He originally competed for his native Azerbaijan. He has been subject to many anti-doping sample collections.

#### *(i) The Athlete's competition and anti-doping testing history from 2013 to 2015*

6. On 19 June 2013, whilst competing for Azerbaijan, the Athlete tested positive for two prohibited anabolic androgenic steroids following an out-of-competition doping control commissioned by the IWF and on 18 November 2013 he was sanctioned by the IWF for a period of two years.

7. Following the expiration of his period of ineligibility on 19 June 2015, the Athlete changed his nationality to compete for Kazakhstan.

#### *(ii) The Athlete's competition and anti-doping testing history from 2015 to 2016*

8. On 24 November 2015, the Athlete competed in the 2015 IWF World Championships in Houston, USA. At that event he won the gold medal in the men's 77 kg category. On that occasion he was subjected to an in-competition doping control where a urine sample no. 1582115 ("the World Championship sample") was collected from him by the United

States Anti-Doping Agency ("USADA") on behalf of the IWF. No prohibited substances were subsequently detected in that sample.

9. Between March and July 2016, ahead of the 2016 Rio Olympic Games, the Athlete was subject to target-testing by the IWF. The testing was performed by the National Anti-Doping Organisation of Hungary ("HUNADO") on behalf of the IWF:

   - On 15 March 2016 a urine sample no. 3986455 (the "15 March 2016 sample") was supposedly collected from the Athlete during an out-of-competition testing mission at a training centre in Almaty, Kazakhstan. The sample revealed no prohibited substances. The 15 March 2016 sample was collected in the presence of the Athlete's coach and Kazakhstan national team coach, Mr Victor Ni, according to the Doping Control Form ("DCF"). Nineteen other Kazakhstan weightlifters also provided samples during that visit by HUNADO.

   - On 10 June 2016, a urine sample no. 3987560 (the "10 June 2016 sample") was supposedly collected from the Athlete during an out-of-competition testing at a training centre in Almaty, Kazakhstan. The sample revealed no prohibited substances. The 10 June 2016 sample was collected in the presence of the Kazakhstan national team Head Coach, Mr Alexey Ni, according to the DCF. Seven other Kazakhstan national team weightlifters also provided samples during that visit by HUNADO. The HUNADO doping control officer ("DCO"), Ms Rozalia Bajzi, reported that the coaches had brought a person other than the Athlete to the sample collection for the Athlete.

   - On 17 July 2016, a urine sample no. 4045254 (the "17 July 2016 sample") was supposedly collected from the Athlete during an out-of-competition testing at the Kazzhol Hotel in Almaty, Kazakhstan. The sample revealed no prohibited substances. The 17 July 2016 sample was collected in the presence of the Athlete's coach and Kazakhstan national team coach, Mr Victor Ni, according to the DCF. Six other Kazakhstan national team weightlifters also provided samples during that mission.

10. On the day of each of these testing missions, the Athlete was registered in his ADAMS Whereabouts Information to be located at his home address between 8 a.m. and 9 a.m., some 500 m from the national training centre of Almaty, Kazakhstan.

11. On 6 June 2016, the Athlete participated in the 2016 Kazakh National Weightlifting Championships in Taldykorgan, Kazakhstan, and won the gold medal in the men's 85 kg category.

12. On 18 July 2016, a urine sample no. 3950218 (the "18 July 2016 sample") was supposedly collected from the Athlete by and under the authority of the Kazakhstan National Anti-Doping Organisation ("KAZ-NADO") during an out-of-competition

doping control for athletes selected to compete in the 2016 Olympic Games to be held in Rio de Janeiro, Brazil. The 18 July 2016 sample revealed no prohibited substances.

13. On 10 August 2016, the Athlete competed in the men's 77 kg category at the 2016 Olympic Games in Rio de Janeiro, Brazil. The Athlete won the gold medal and broke the Olympic and world records for that category. After the competition he was subjected to an in-competition doping control where a urine sample no. 6222194 ("the Olympic sample") was collected from him by the International Olympic Committee. The Olympic sample revealed no prohibited substances.

***(iii) Investigation by WADA and the International Testing Agency***

14. In September 2019, the World Anti-Doping Agency ("WADA") Intelligence & Investigation Department ("WADA I&I") initiated an investigation known as "Operation Arrow" into the existence of urine substitution at the time of sample collection in the sport of weightlifting.

15. As part of that investigation, negative samples provided by weightlifting athletes since 1 January 2012 were, where available, subjected to DNA testing to discover whether any of these negative samples supposedly provided by a particular athlete were in fact provided by another person, as indicated by differences in the DNA between the various samples attributed to that athlete.

16. In respect of the Athlete, the World Championship sample, the 10 June 2016 sample and the Olympic sample existed and were available for DNA analysis. However, the 15 March 2016 sample, the 17 July 2016 sample and the 18 July 2016 sample (the "additional samples") had been discarded and were therefore not available for DNA testing.

17. A comparison of the DNA analyses of the two in-competition test samples, namely the World Championship sample and the Olympic sample, indicated that they came from the same person, the Athlete.

18. A comparison of the DNA analysis of the 10 June 2016 sample as against the World Championship sample and the Olympic sample indicated that that sample came from another person, that is to say, not the Athlete.

19. Since DNA analysis was not possible for the additional samples, WADA I&I had the Athlete's Biological Passport ("ABP") examined to analyse the steroid profile data recorded from those samples. The steroid profile data from the additional samples and from the 10 June 2016 sample were examined for comparison with the data from the World Championship sample and the Olympic sample (and other samples of the Athlete) to evaluate whether there were any discrepancies in the steroid values.

20. Dr Hans Geyer, the Director of the Athlete Passport Management Unit of the Cologne WADA-accredited laboratory, concluded in an Expert Report dated 27 March 2021 that the testosterone/epitestosterone ratios of the 15 March 2016 sample, the 17 July 2016

sample and the 18 July 2016 sample showed similar low testosterone/epitestosterone as the 10 June 2016 sample, being ratios below the lower individual reference limit of the athlete and therefore atypical for the Athlete. Dr Geyer concluded that the 15 March 2016 sample, the 17 July 2016 sample and the 18 July 2016 sample originated from other individuals.

21. On 14 December 2020, WADA informed the International Testing Agency ("ITA") of the results of, and provided supporting documents relating to, the Operation Arrow Investigation.

22. On 18 January 2021, the ITA served, on behalf of the IWF, a Notice of Charge on the Athlete, outlining the alleged anti-doping rule violation (the "ADRV") and the potential consequences thereof, and provisionally suspended him from competition and training from that date. The Athlete was invited to provide his explanations as to the asserted ADRVs.

23. Between 27 January and 3 March 2021, the Athlete's legal representatives sought and were provided with further evidence supporting the Notice of Charge.

24. On 3 March 2021, the Athlete advised the ITA he was challenging the asserted ADRV.

25. On 10 March 2021, the ITA advised the Athlete that the matter would be referred to the CAS Anti-Doping Division ("CAS ADD") under Article 8.1.1 of the 2021 IWF Anti-Doping Rules.

**B. Proceedings before the Anti-Doping Division of the Court of Arbitration for Sport**

26. On 29 April 2021, the IWF filed a Request for Disciplinary Proceedings under Article 8.1.1 of the 2021 IWF Anti-Doping Rules and Article 13 of the CAS ADD Rules with the CAS ADD.

27. On 18 May 2021, the Sole Arbitrator to hear this case was appointed and the Parties were advised.

28. Following an exchange of written submissions, a remote hearing was held on 26 August 2021.

29. On 22 March 2022, the CAS ADD rendered an Award (the "CAS ADD Award"), the operative part of which states as follows:

> "*1. The request for arbitration filed by the International Weightlifting Federation on 29 April 2021 against Mr. Nijat Rahimov is upheld.*
>
> *2. Mr Nijat Rahimov is found to have committed an Anti-Doping Rule Violation of Use of a Prohibited Method pursuant to Article 2.2 of the IWF Anti-Doping Rules.*
>
> *3. Mr Nijat Rahimov is sanctioned with a period of ineligibility of eight (8) years.*

*4. The period of ineligibility shall commence from 18 January 2021 which is the date when the provisional suspension imposed on Mr Nijat Rahimov started to run.*

*5. All competitive results of Mr Nijat Rahimov from and including 15 March 2016 to and including 18 January 2021 are disqualified with all consequences, including forfeiture of any medals, points and prizes.*

*6. The award is pronounced without costs, except for the ADD Court Office fee of CHF 1,000 (one thousand Swiss Francs) paid by the International Weightlifting Federation, which is retained by the ADD.*

*7. Mr Nijat Rahimov shall pay an amount of CHF 4,000 (four thousand Swiss francs) to the International Weightlifting Federation as a contribution towards its legal and other costs incurred in connection with these proceedings.*

*8. All other motions or prayers for relief are dismissed.*"

30. The CAS ADD Award was notified on the same day to the Parties.

## III. THE PRESENT PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

31. On 12 April 2020, the Athlete filed his appeal before the Court of Arbitration for Sport (the "CAS") against the IWF (as duly represented by the ITA) with respect to the CAS ADD Award and submitted his Statement of Appeal according to Articles R47 and R48 of the Code of Sports-related Arbitration (the "CAS Code"). The Athlete nominated Mr Jeffrey G. Benz, Attorney-at-Law and Barrister in London, United Kingdom, as an arbitrator.

32. On 29 April 2022, the IWF nominated Mr Romano F. Subiotto, K.C., Avocat in Brussels, Belgium, and Solicitor-Advocate in London, United Kingdom, as arbitrator.

33. On 23 May 2022, within the agreed time limit, the Athlete filed his Appeal Brief with the CAS Court Office in accordance with Article R51 of the CAS Code.

34. On 12 July 2022, within the agreed time limit, the IWF filed its Answer with the CAS Court Office, including a "cross-appeal" within the meaning of Article 13.2.4 of the World Anti-Doping Code of the World Anti-Doping Agency (the "WADA Code"), in accordance with Article R55 of the CAS Code.

35. On 15 July 2022, the CAS Court Office invited the Parties to indicate whether they prefer a hearing to be held in the present matter or for the Panel to issue an award based solely on the Parties' written submissions.

36. On 21 July 2022, the Athlete informed the CAS Court Office that he preferred a hearing to be held in the present matter.

37. On 22 July 2022, the CAS Court Office invited the Athlete to file his position on the IWF's appeal, and informed the Parties, pursuant to Article R54 of the CAS Code and on behalf of the President of the CAS Appeals Arbitration Division, that the Panel appointed to decide the present matter is constituted as follows:

    President: Dr Hans Nater, Attorney-at-Law in Zurich, Switzerland

    Arbitrators: Mr Jeffrey G. Benz, Attorney-at-law and Barrister in London, United Kingdom

    Mr Romano F. Subiotto K.C., Avocat in Brussels, Belgium, and Solicitor-Advocate in London, United Kingdom

    The CAS Court Office further informed the Parties that Ms Stéphanie De Dycker, CAS Clerk, would assist the Panel in the present matter.

38. On 3 August 2022, the CAS Court Office informed the Parties that the Panel had decided to hold a hearing in the present matter, and consulted the Parties on possible hearing dates.

39. On 11 August 2022, within the prescribed time limit, the Athlete filed his Answer on the IWF's appeal in accordance with Article R55 of the CAS Code.

40. On 16 August 2022, the CAS Court Office informed the Parties that a hearing in the present matter would be held on 22 September 2022 at the CAS Court Office in Lausanne, Switzerland, and invited the Parties to communicate the list of hearing attendees.

41. On 24 August 2022, the CAS Court Office, on behalf of the Panel, requested the Athlete to provide an English translation of one of his exhibits and issued an order of procedure (the "Order of Procedure") asking the Parties to return a signed copy of it.

42. On 1 September 2022, the Parties separately provided a signed copy of the Order of Procedure, and communicated the list of their respective hearing attendees.

43. On 2 September 2022, the CAS Court Office invited the Appellant to provide a witness statement of Mr Farkhad Kharki.

44. On 5 September 2022, the Athlete provided the requested English translation of one of his exhibits.

45. On 8 September 2022, the CAS Court Office, on behalf of the Panel, provided a tentative hearing schedule for the hearing scheduled for 22 September 2022.

46. On the same date, the IWF requested that Mr Denis Ulanov, whose statement was filed by the Appellant as one of his exhibits, be made available for examination at the hearing. In addition, the IWF also requested that other witnesses, i.e. Mr Kenzhegulov and Ms Sadykova, who were called by the Athlete in his written submissions, be made available for examination at the hearing and that the Athlete be asked to provide witness statements for these witnesses too.

47. On 9 September 2022, the Athlete filed a witness statement for Mr Farkhad Kharki, together with a translation into English.

48. On 15 September 2022, the Athlete informed the Panel that he had renounced to hear Mr Kenzhegulov and Ms Sadykova at the hearing and that, with respect to Mr Ulanov, the Athlete did not call him as a witness in the present proceedings and the produced witness statement for Mr Ulanov shall be freely assessed by the Panel.

49. On the same date, the CAS Court Office, on behalf of the Panel, ordered the examination of Mr Ulanov and requested the IWF to provide a summary description of the topics on which Mr Ulanov should be examined.

50. On 19 September 2022, the IWF informed the CAS Court Office that it would examine Mr Ulanov on the facts included in his witness statement, more precisely on the anti-doping control which he underwent on 9 June 2016 and on the circumstances under which he was informed of such control.

51. On 20 September 2022, the Athlete informed the CAS Court Office that Mr Ulanov was unavailable to attend the hearing as scheduled.

52. On 22 September 2022, a hearing was held in the present matter at the headquarters of the CAS in *Palais de Beaulieu*, Lausanne, Switzerland. In addition to the members of the Panel, Dr Björn Hessert, CAS Counsel, and Ms Stéphanie De Dycker, CAS Clerk, the following persons attended the hearing:

For the Athlete:

Ms Monia Karmass, counsel
Mr Claude Ramoni, counsel
Mr Aldiyar Nuralinov, General Secretary of the Weightlifting Federation of the Republic of Kazakhstan ("WFRK") [by videoconference]
Mr Nijat Rahimov, Athlete [by videoconference]
Ms Amina Dyssenova, interpreter [by videoconference]
Mr Alexei Ni, witness [by videoconference]
Mr Victor Ni, witness [by videoconference]
Mr Farkhad Kharki, witness [by videoconference]

For IWF:

Ms Dominique Leroux-Lacroix, counsel
Mr Damien Clivaz, counsel
Ms Rozalia Bajzi, witness [by videoconference]
Mr Peter Koczoh, witness [by videoconference]

53. At the outset of the hearing, the Parties declared that they had no objections as to the constitution of the Panel.

54. At the hearing, the Panel took note of the fact that the Parties agreed that the Panel may consider the witness statement of Mr Denis Ulanov, submitted by the Athlete as part of his case as Exhibit A-33, as well as the submissions made by the Athlete and the IWF as part of their cases, in the proceedings. As a result, the IWF indicated there was no need to cross-examine Mr Ulanov.

55. After the opening statements, the Panel heard evidence from the following experts and witnesses: Mr Alexei Ni, Mr Victor Ni and Mr Farkhad Kharki, all named by the Athlete, as well as Ms Rozalia Bajzi named by IWF. Before taking their evidence, the President of the Panel informed all of the witnesses of their duty to tell the truth subject to sanctions of perjury under Swiss law. The Parties and the Panel had the opportunity to examine and cross-examine them. Each of them confirmed their written statement. Finally, the Athlete also made a statement.

56. The testimony of the above-mentioned witnesses can be summarised as follows:

- Mr Alexei Ni: Mr Alexei Ni was the Head Coach of the Kazakhstan national team of weightlifting in 2016. HUNADO performed doping controls on Kazakh athletes in 2016. As a practice, they were coming to the national training centre of the Kazakhstan junior team at the Palace of Culture and Sport in Almaty, Kazakhstan. They never travelled to the training centre at Tekeli, Kazakhstan. The HUNADO DCOs did not call the athletes themselves. Usually, what they would do is establish a list of the athletes to be tested and would provide such list to the director who would read it to him, the Head Coach, who would then in turn contact the personal coaches of the concerned athlete to require from them to call the concerned athletes for testing. He explained that, at the time, since it was an Olympic year, he was travelling a lot, and was not always with the team. At the end of the three days of visit by the DCOs, he would meet the DCOs, and he would sign the DCFs according to the DCOs’ instructions. When he was not available, he would ask his brother, Mr Victor Ni, to come and sign the documents on his behalf. Mr Alexei Ni does not remember calling Mr Rahimov for a doping test in 2016. If he had called the Athlete and the Athlete had not come, he would have been informed by the DCOs. Mr Alexei Ni does not recall any incident of persons pretending to be Mr Rahimov, who were having their sample collected instead of him. The HUNADO officers never raised any identity issue as to the doping tests performed.

- Mr Victor Ni: Mr Victor Ni is a coach for the Kazakhstan national weightlifting team and was the private coach of the Athlete in 2016. In such capacity, he confirmed that he was fully aware of the Athlete's day-to-day training activities, not his out of training activities. He stated that HUNADO performed doping controls on Kazakh athletes in 2016. HUNADO would usually provide a list of athletes to be tested to any coach they would find at the training centre in Almaty, asking that coach to call the concerned athletes. Sometimes the coaches present would be totally unconnected to the athletes on the list. When he was the one notified of the tests by HUNADO, he would always call the concerned athletes or their private coaches. He, however, does not recall being asked to call or calling Mr Rahimov for a test in 2016 during the preparation for the Olympic Games. He never attended the sample collections as he was in charge of adult athletes only; he would come at the end and sign the DCFs. He also recalls being called by his brother, Mr Alexei Ni, to sign the DCFs, in his absence. He does not recall having seen Mr Rahimov at the doping control station when he came to sign the forms – as a matter of facts, most of the athletes were usually gone when he arrived to sign the forms. Mr Victor Ni does not recall any incident of persons pretending to be athletes, who were having their sample collected instead of them. The HUNADO DCOs never raised any identity issue as to the doping tests performed. Finally, in 2016, the athletes of the Kazakhstan national weightlifting team were training in Almaty and in Tekeli, which are 200 km away from each other. HUNADO officers never attempted to test athletes at their domicile as indicated in ADAMS but simply requested the coaches to bring the athletes to where the doping control officers were based, namely in Almaty. In his capacity, he confirmed that he would be aware if the Athlete was undergoing a doping control. When he signed the DCFs as a representative of the tested athlete, he would sign those forms blindly trusting the HUNADO DCO who would confirm that "everything was ok". This is what happened on 17 July 2016 when he signed the DCF of the Athlete he was coaching, certifying that the Athlete underwent a doping control that same day.

- Mr Farkhad Kharki: Mr Kharki is a former international-level athlete in the sport of weightlifting. During his career, he underwent numerous doping tests, before and after competitions. He was tested several times by HUNADO, including before the Olympic Games in 2016. HUNADO would notify his trainer that he had to undergo a doping control and his trainer would inform him. At that moment, Mr Kharki was likely in Tekeli. Mr Kharki would then travel to Almaty, usually the Palace of Culture, where HUNADO would collect the samples. Sometimes the coach was with them at the doping test, sometimes he was waiting outside for them, sometimes we were travelling to the doping test location on our own. At the end of the doping control, he would sign the DCF, and the doctor and the coach also would sign the forms – however he never saw them sign the forms. He had not heard about incidents of athletes being replaced by someone else for the sample collections. The national team often travelled

between Tekeli and Almaty for training purposes. For ease of organisation, he and his colleagues would be advised to mention being in Almaty in ADAMS as they would in any case not be further than 2-3 hours away from the location of testing. He confirmed that HUNADO's way of processing was different than what was happening when he was tested by other agencies; in the latter case, he would be put under supervision from the moment he was called for a doping control until he provided the sample. In 2013, he was suspended for use of steroids; he never understood how it was possible that he tested positive.

Ms Rozalia Bajzi: Ms Bajzi has been a DCO since 2007. Ms Bajzi was DCO for the testing performed for HUNADO in Kazakhstan on 9-10 June 2016. The DCOs sought out-of-competition samples from 16 Kazakhstan weightlifters (male and female) from the national team over two days, and the collection was conducted at the national training center, in Almaty. She and her colleagues arrived in Kazakhstan on 9 June 2016. On 9 June 2016, she arrived at the training centre and notified the Head Coach, Mr Alexei Ni, of the names of the athletes to be tested that day. Some of the athletes were present at the training centre, while others were not and arrived later. On 10 June 2016, she and her colleagues again went to the training centre in Almaty because this is the location where they would likely find the athletes selected for the testing mission that day, including the Athlete. She stated that, once at the training centre, she provided to the Head Coach the names of the eight athletes to be tested that day. If the athletes did not come for their doping control, she would note their absence. At the doping control station, she observed that, in three instances, the person presenting as the targeted athlete, including the Athlete, was likely a doppelgänger. The doppelgängers produced seemingly correct photographic identification, i.e. the identification they produced had the name of the Athlete but the picture was that of the doppelgänger. However, the physical appearance of the person presenting himself for the doping control did not match photographs of the Athlete Ms Bajzi and her colleagues had found on the internet. Moreover, the doppelgängers, including that of the Athlete, had no idea of the sample collection process and required constant instruction and explanation, despite all three athletes, including the Athlete, having been subject to many previous tests. Mr Alexei Ni was present at the doping control station on 10 June 2016 at the signature of the DCFs on the conclusion of the sampling of each athlete. When the DCF was signed, Mr Alexei Ni was in the same room as the Athlete's doppelgänger. Ms Bajzi raised her concerns with Mr Alexei Ni, who did not acknowledge and ignored what she had said to him; she asked him to bring the right person. She then consulted her supervisor, who instructed her to continue with the doping control mission, and to document her concerns, what she had observed and what had happened, which she did. The Internal Control Report was drafted in the days following the testing in June 2016 but it was translated in April 2020.

57. Mr Denis Ulanov, who is an international weightlifting athlete from Kazakhstan, provided, on request of the Athlete, the following written testimony:

> To the best of my recollection, I have been tested by HUNADO on 9 June 2016.
>
> I would like to explain how I became aware of this doping control. While I was training in Astana (now Nur-Sultan), I received a phone call from my coach Erzhas Baltayev. The National Coach, Alexei Ni, had told him that I had to go immediately to Almaty in order to submit to sample collection as HUNADO wanted to test me.
>
> I remember this well because I had to fly from Astana to Almaty, which represents a 2 hours flight approximatively, for a doping test. This test took place in the "Baluan Sholak Sport Palace", located in Almaty, Abay avenue 44, corner of Baytursynov street, where the Youth and Junior Team used to train in the past.
>
> The other reason why I keep a special recollection of this doping control is that I found it awkward to be told by my coach to go to a certain place, on my own, in order to be tested the day after.
>
> According to my experience with other Anti-Doping agencies, the process would be different: normally, I would be notified by a doping control officer who would tell me that I was selected to be tested. I would then be placed under constant supervision until I could provide a sample.

58. The Athlete's statement can be summarised as follows:

- Mr Rahimov confirmed that when he received the notification of charge of an alleged ADRV from the ITA, he was very shocked. Because of the time that had passed, he had no specific recollection of all the tests he had undergone and in which year exactly; for sure he would have remembered a substitution of his urine or the fact that other persons pretended to be him at the doping control. Mr Rahimov can certify that he did not attend any doping control on 15 March, 10 June, or 17 July 2016 conducted by HUNADO. This is because he would have remembered being called by DCOs from HUNADO in the preparation of the 2016 Olympic Games. Yet, Mr Rahimov was never called to be tested by anyone on these dates, be it by the DCOs of HUNADO or his coaches. Mr Rahimov was always available for testing anytime and anywhere, being nearby to the address submitted according to the Whereabouts Information in ADAMS. It was usual for the athletes of the national team to train at various training centres, namely in Almaty and Tekeli, which are 2-3 hours away. He received advice, namely from his doctor, to always be available at Almaty for testing, which was apparently the standard location for testing, and this is why he was mainly located there. When he would be away from the Almaty region, for example in China or Rio, he would also indicate that in his Whereabouts Information. As for the doping control of 18 July 2016 by KAZ-NADO, he has no precise recollection either, but makes the supposition that he might have provided a sample at that occasion. He could not verify the DCF of that doping control to verify the signature. The Athlete further stated that he is not aware of the presence of doppelgängers at doping controls he was supposed to attend. He

does not know the persons who did that and he did not contribute to any kind of urine substitution. He stated that he was clean and still is a clean athlete. He was tested at the Olympic Games and tested negative. At the Olympic Games, he reached his personal goal, and thereafter decided to dedicate himself to his family. This is the reason why his results dropped after the Olympic Games; in addition, as in 2018, the IWF announced new categories, so he had to change his usual weight category.

59. The Parties thereafter were given full opportunity to present their case, submit their arguments and submissions and answer the questions from the Panel. At the end of the hearing, the Parties confirmed that they were satisfied with the procedure throughout the hearing, and confirmed that their right to be heard had been fully respected.

## IV. SUBMISSIONS OF THE PARTIES

60. This section of the award does not contain an exhaustive list of the Parties' contentions, its aim being to provide a summary of the substance of the Parties' main arguments. In considering and deciding upon the Parties' claims in this Award, the Panel has accounted for and carefully considered all of the submissions made and evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the Award or in the discussion of the claims below.

### A. The Athlete's Position

61. In his Appeal Brief, the Athlete requested as follows:

"*I. The appeal is upheld.*
*II. The arbitral award delivered by the Anti-Doping Division of the Court of Arbitration for Sport on 22 March 2022 in the case CAS 2021/ADD/21 International Weightlifting Federation (IWF) v Nijat Rahimov is annulled.*
*III. Mr Nijat Rahimov did not commit any Anti-Doping rule violation of Use of a Prohibited Method pursuant to Article 2.2 of the IWF Anti-Doping Rules nor any other Anti-Doping Rule Violation and is not sanctioned.*
*IV. The International Weightlifting Federation shall be ordered to reimburse Mr Nijat Rahimov the amount of CHF 4,000 he was ordered to pay to the IWF as contribution towards its legal and others costs incurred in connection with the CAS ADD proceedings. The International Weightlifting Federation shall be ordered to pay to Mr Nihat Rahimov an amount of CHF 4,000 as contribution to his legal and other costs incurred in connection with the CAS ADD proceedings.*
*V. The International Weightlifting Federation shall be ordered to bear all arbitration costs and to reimburse Mr Nijat Rahimov the minimum CAS Court Office fee of CHF 1,000.*
*VI. The International Weightlifting Federation shall be ordered to pay Mr Nijat Rahimov a contribution towards the legal and other costs incurred in the framework of these proceedings in an amount to be determined at a later stage or at the discretion of the Panel.*"

62. In addition, in its Answer to IWF's appeal, the Athlete requested as follows:

*"I. The cross-appeal filed on 12 July 2022 by the ITA on behalf of the International Weightlifting Federation is inadmissible, respectively shall be dismissed.*
*II. The ITA, on behalf of the International Weightlifting Federation, shall bear the arbitration costs and shall be ordered to compensate Nijat Rahimov with a contribution towards its legal and other costs incurred within the framework of these proceedings, in an amount to be determined at the discretion of the Panel."*

63. The Athlete's submissions, in essence, may be summarised as follows:

- The Athlete never attended any doping controls on 15 March, 10 June and 17 July 2016 conducted by HUNADO and he never got notified of such doping controls by any DCO from HUNADO or his coaches. The Athlete therefore agrees that, at these doping controls, urine samples were collected from doppelgängers pretending to be him.

- Urine substitution, for the purpose of establishing the use of a Prohibited Method, refers to the process of replacing the collected urine with another sample of urine, with the aim of "*altering the integrity and validity*" of the initial sample. *In casu*, the facts of the present case fall outside of the scope of application of Prohibited Method: since the Athlete was absent at the doping controls dated 15 March, 10 June and 17 July 2016, it is materially impossible that a sample of the Athlete was altered by being replaced by the urine of someone else, as Prohibited Method M2 of the WADA 2015 Prohibited List requires. Therefore, the Athlete did not use the "Prohibited Method" of urine substitution and, as a result, the Athlete committed no ADRV of use of Prohibited Method M2 of the WADA 2015 Prohibited List. The IWF should have considered charging the Athlete on the basis of Article 2.5 of the IWF ADP instead of Article 2.2 of the IWF ADP. However, in the present appeals proceedings, the Panel is limited by the scope of the first instance proceedings, which is restricted to the violation of Article 2.2 of the IWF ADP.

- The evidence on record does permit the Panel to conclude that the Athlete was involved in any way in the presence of doppelgängers at his doping controls: the Athlete was not aware of the doping controls let alone of the presence of doppelgängers at the doping controls; the coaches and the DCO testified that they did not see the Athlete at the doping controls. In addition, the Athlete cannot abstractly be held liable for the actions of his entourage.

- The doping controls that were performed by HUNADO suffered from numerous departures from WADA's International Standards, in particular the fact that HUNADO never notified the Athlete correctly, that HUNADO never tried to test the Athlete at the place registered in ADAMS, and that there was no prompt investigation as to the identity issue regarding the Athlete; these departures allowed samples to be collected from doppelgängers instead of the Athlete.

- The Sole Arbitrator in the CAS ADD Award should have eliminated the period of ineligibility in application of Article 10.4 IWF ADP and the principle of fairness requires that the results of the Athlete not be disqualified.

- Since the IWF's appeal does not impact the sanction to be imposed on the Athlete, the IWF lacks any legal interest in the appeal and therefore has no legal standing to appeal the CAS ADD Award. Alternatively, there is no evidence on record that shows that the Athlete used a prohibited substance.

**B. The IWF's Position**

64. In its Answer, the IWF requested as follows:

*"1. The Answer is admissible and that the IWF's cross-appeal on the limited issue of the finding of the ADRV for Use of Prohibited Substances is admissible.*
*2. The Award is upheld, but for the Sole Arbitrator's finding at paragraphs 118-123 of the Award that the Athlete did not commit an ADRV for the Use of Prohibited Substances.*
*3. Mr Nijat Rahimov is found to have committed one or multiple anti-doping rule violations pursuant to Article 2.2 of the IWF Anti-Doping Rules for Use of a Prohibited Method and/or the Use of one or more Prohibited Substances.*
*4. Mr Nijat Rahimov is sanctioned with a period of Ineligibility of 8 years starting on the date on which the CAS award enters into force. Any period of provisional suspension or ineligibility effectively served by Mr Nijat Rahimov before the entry into force of the CAS award shall be credited against the total period of ineligibility to be served.*
*5. All competitive results of Mr Nijat Rahimov from and including 15 March 2016 are disqualified with all resulting Consequences, including forfeiture of any medals, points and prizes.*
*6. The costs of the proceedings, if any, shall be borne by Mr Nijat Rahimov.*
*7. The ITA is granted an award for its legal and other costs.*
*8. Any other prayer for relief that the Panel deems fit in the facts and circumstances of the present case."*

65. The IWF's submissions, in essence, may be summarised as follows:

- The evidence on record shows that all four samples collected on 16 March, 10 June, 17 July and 18 July 2016, were collected from doppelgängers *in lieu* of the Athlete: first, DNA analysis demonstrates that the 10 June 2016 sample is not from the Athlete; second, the evaluation of the ABP steroidal passport of the 16 March 2016 sample, the 17 July 2016 sample and the 18 July 2016 sample revealed decreased T/E ratio values, which are similar to the T/E ratio values of the 10 June 2016 sample which does not belong to the Athlete, and the T/E ratio values in all four samples are below the lower individual reference limit for the Athlete and are therefore atypical; third, the occurrence of urine substitution is further supported by the statement of Ms Bajzi from HUNADO who observed that the individual presenting himself as the Athlete was in fact another person than the Athlete.

Finally, the Athlete confirmed that he never attended any doping control on 15 March, 10 June and 17 July 2016 conducted by HUNADO.

- Article 2.2 of the IWF ADP does not require the actual or constructive knowledge of the Athlete; hence, the mere use of a prohibited method shall constitute an ADRV regardless of the intent, fault, negligence or knowing use on the Athlete's part.

- In any case, in the present matter, the Athlete did have constructive and/or actual knowledge that a Prohibited Method was being used. This is demonstrated by reference to the involvement of the Athlete's coach and of the head coach of the Kazakh national team and the general architecture of the urine substitution enterprise whereby the whereabouts information for the WFRK athletes would be purposely wrong and whereby the WFRK coaches would only call certain athletes to the doping controls, presumably only those who could provide a clean sample. Moreover, Ms Bajzi confirmed that other WFRK athletes were represented by doppelgängers at the same time and in the same circumstances as the Athlete, in the sample collection sessions which took place on 10 June 2016, and were sanctioned accordingly.

- The use of doppelgängers is a Prohibited Method under M2 of the WADA 2015 Prohibited List: the Athlete's restrictive interpretation goes against the far-reaching definition of Prohibited Method in the WADA 2015 Prohibited List; second, the Athlete fails to demonstrate why substituting the Athlete, including his urine, at the time of sample collection would not fall under the definition of urine substitution.

- The Athlete has the burden of showing the existence of any departure from WADA's International Standards for Testing and Investigations ("ISTI") and that such departures are causally linked to the ADRV. However, in the present matter, no departures from ISTI have been established and the evidence on record shows that such alleged departures could in any case not have reasonably caused the ADRV or the factual basis thereof.

- IWF's appeal is well-founded: the systematic and sophisticated substitution of the Athlete's urine provides compelling evidence that the Athlete committed an ADRV by using a prohibited substance. Indeed, the only motive for engaging in this elaborate process was to conceal the fact that the Athlete was using one or more Prohibited Substances. This is further corroborated by the Athlete's abnormal performances coming out of his two-year period of ineligibility.

- Since the Athlete already committed an ADRV, the period of ineligibility is twice the otherwise applicable period of four years, i.e. eight years. Article 10.4 of the IWF ADP is inapplicable in the present matter.

## V. JURISDICTION

66. Article R47 of the CAS Code provides as follows:

"*An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.*

*An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned.*"

67. The Panel further notes that Article A21 para. 5 of the Arbitration Rules of the CAS ADD provides as follows:

"*Unless Article 15 para. 1 applies, the award may be appealed to the CAS Appeals Arbitration Division within 21 days from receipt of the notification of the final award with reasons by mail or courier in accordance with Articles R47 et seq. of the Code of Sports-Related Arbitration, applicable to appeals procedures*."

68. Since the CAS ADD Award was rendered by a sole arbitrator, the exception of Article A15 para. 1 of the Arbitration Rules of the CAS ADD does not apply in the present matter. The Panel therefore finds that CAS has jurisdiction to decide on the present matter in appeals proceedings. By signing the Order of Procedure, the Parties also confirmed the jurisdiction of the CAS to decide on the present matter.

69. The Panel now turns to the jurisdiction of the CAS to decide on the appeal filed by the IWF. The Panel notes that the issue of CAS jurisdiction to decide on an appeal is procedural by nature. As a result, based on the principle of *tempus regit actum*, the rules in force at the time of the initiation of the present proceedings and the filing of IWF's appeal apply, i.e. the edition of 2021 of the WADA Code and of the IWF Anti-Doping Rules.

70. Article 13.2.4 of the WADA Code (2021 edition) provides as follows:

"*Cross appeals and other subsequent appeals by any respondent named in cases brought to CAS under the Code are specifically permitted. Any party with a right to appeal under this Article 13 must file a cross appeal or subsequent appeal at the latest with the party's answer*."

71. The IWF Anti-Doping Rules (2021 edition) do not contain the mirror provision of Article 13.2.4 of the WADA Code, which is included in the previous edition of the IWF Anti-Doing Policy (2015 edition) (the "IWF ADP") only. Article 24.3 of the IWF Anti-Doping Rules (2021 edition) nevertheless provides:

"*These Anti-Doping Rules have been adopted pursuant to the applicable provisions of the [World Anti-Doping] Code and the International Standards and shall be interpreted in a manner that is consistent with applicable provisions of the Code and the International Standards. The [World Anti-Doping] Code and the International Standards shall be considered integral parts of these Anti-Doping Rules and shall prevail in case of conflict.*"

72. The Panel notes that both Parties signed the Order of Procedure, and thereby accepted the jurisdiction of the CAS to decide on IWF's appeal as well. In addition, the Parties never objected to the exercise of jurisdiction by this Panel during the proceedings. The Panel therefore finds that CAS holds jurisdiction to decide on the appeal filed by the IWF.

## VI. ADMISSIBILITY

73. Article R49 of the CAS Code provides as follows:

"I*n the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties.*"

74. The Panel notes that the present appeal was filed with the CAS Court Office on 12 April 2022, namely within the time limit of 21 days from receipt of the notification of the CAS ADD Award to the Athlete, which occurred on 22 March 2022. Moreover, the Panel notes that IWF's appeal was filed with its Answer, in accordance with Article 13 of the WADA Code (2021 edition). The present appeals are therefore admissible.

## VII. APPLICABLE LAW

75. Article R58 of the CAS Code provides as follows:

*"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision."*

76. The Panel shall decide the present dispute based on the IWF Anti-Doping Policy. Since the alleged ADRV occurred in 2016, the Panel shall apply the edition of the IWF Anti-Doping Policy that was in force at the time, namely the IWF ADP. In addition, in accordance with Article 4.1 of the IWF ADP, the Panel shall apply the WADA 2016 Prohibited List, which was in force at the time the alleged ADRV occurred.

## VIII. THE PROCEDURAL LEGAL INTEREST OF IWF TO FILE AN APPEAL

77. In the CAS ADD Award, the sole arbitrator found that the Athlete committed an ADRV for the use of a Prohibited Method but not for the use of a Prohibited Substance. In its Answer, the IWF requested the Panel, by means of its appeal, to order that the Athlete committed an ADRV for the use of a Prohibited Substance in addition to confirming the CAS ADD Award with respect to the commission of an ADRV for the use of a Prohibited Method.

78. The Athlete submits that the IWF lacks any procedural legal interest to request the Panel to order that the Athlete committed an ADRV for use of one or more Prohibited Substances, and that, as a result, its appeal should be declared inadmissible. The IWF acknowledged that it filed an appeal as a matter of principle, and that the Panel's finding on this issue will not impact the sanction to be imposed on the Athlete. In the Athlete's view, the fact that the request of the IWF will not impact the sanction imposed on the Athlete by the Panel in the present proceedings shows that the IWF lacks any legal interest to make such request.

79. In the present matter, the Panel's view is that the IWF has a sufficient procedural legal interest in the present appeal filed with its Answer. Indeed, the IWF, like any federation, has a clear interest in fair sport. By pursuing all possible ADRVs, even if there is no impact on sanction, it is merely working on fulfilling its essential mission. That finding does not mean, however, that the Panel has determined the merits of the appeal filed by the IWF, a subject that will be taken up later.

## IX. MERITS

80. The CAS ADD Award found that (i) the Athlete committed an ADRV under Article 2.2 of the IWF ADP for use of a Prohibited Method under class M2 Chemical and Physical Manipulation of the WADA 2015 Prohibited List, but that (ii) there was insufficient evidence on record to conclude that the Athlete used a Prohibited Substance within the meaning of the same Article 2.2 of the IWF ADP.

81. Article 2.2 of the IWF ADP provides as follows:

"*2.2.1 It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body and that no Prohibited Method is Used. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete's part be*

*demonstrated in order to establish an anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method.*

2.2.2 *The success or failure of the Use or Attempted Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was Used or Attempted to be Used for an anti-doping rule violation to be committed.*"

82. Section M2 of the WADA Prohibited List (2016 edition) provides as follows:

"*The following are prohibited: 1. Tampering, or Attempting to Tamper, to alter the integrity and validity of Samples collected during Doping Control. Including, but not limited to: Urine substitution and/or adulteration, e.g. proteases.*"

83. The Panel shall therefore examine whether the Athlete committed an ADRV under Article 2.2.1 of the IWF ADP. The Panel shall however start its examination by recalling some general remarks on evidentiary issues applicable to the present matter.

**A. Evidentiary Issues in relation to "Use" cases**

84. In order to examine whether the Athlete committed an ADRV under the IWF ADP, the Panel shall first define the applicable burden and standard of proof as well as the applicable means of proof.

85. Article 3.1 of the IWF ADP provides as follows:

"*IWF shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether IWF has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules place the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.*"

86. Based on the above provision, the burden of proving that the Athlete committed an ADRV is on the IWF.

87. With respect to the applicable standard of proof of "comfortable satisfaction", the Panel highlights that this standard is higher than a mere balance of probabilities, meaning that it is insufficient for the IWF simply to establish that it is more likely than not that the Athlete committed an ADRV. At the same time, however, a criminal standard of proof is not applicable and the Panel is not required to be satisfied beyond any reasonable doubt of the Athlete's guilt.

88. Moreover, the Panel adheres to the overview of relevant case law that was made by the sole arbitrator in the case CAS 2018/O/5712 at paras. 130-131:

"*The Sole Arbitrator observes that CAS jurisprudence provides important guidance on the meaning of the application of 'comfortable satisfaction' standard of proof. This standard of proof is well-known in CAS practice, as it has been the normal CAS standard in many anti-doping cases even prior to the WADA-code, cf. CAS 2009/A/1912, at para. 54.*

*The Sole Arbitrator aligns with the analysis of CAS jurisprudence by the Panel in CAS 2017/A/5379, at paras. 704-707:*

- *The test of comfortable satisfaction 'must take into account the circumstances of the case', cf. CAS 2013/A/3258, which include '[t]he paramount importance of fighting corruption of any kind in sport and also considering the nature and restricted powers of the investigation authorities of the governing bodies of sport compared to national formal interrogation authorities', cf. CAS 2009/A/1920 and CAS 2013/A/3258.*

- *The gravity of the particular alleged wrongdoing is relevant to the application of the standard in any given case, cf. CAS 2014/A/3526 in which the Panel stated that the comfortable satisfaction standard is 'a kind of sliding scale, based on the allegations at stake: the more serious the allegation and its consequences, the higher certainty (level of proof) the Panel would require to be 'comfortable satisfied.'*

- *However, the standard of proof is not a variable one. The standard remains constant, but inherent within that immutable standard is a requirement that the more serious the allegation, the more cogent the supporting evidence must be in order for the allegation to be found proven, cf. CAS 2014/A/3650 in which the Panel stated that, 'the standard of proof does not itself change depending on the seriousness of (pure disciplinary) charges. Rather the more serious the charge, the more cogent the evidence must be in support'.*"

89. With respect to the applicable means of proof, Article 3.2 of the IWF ADP provides that facts relating to ADRVs may be established by "*any reliable means, including admissions*". The comment to Article 3.2 of the IWF ADP gives examples of such "reliable means": admissions on the part of the athlete, witness statements, documentary evidence, conclusions drawn from longitudinal profiling, or other analytical information, including information that does not otherwise satisfy the requirements to establish "presence" of a prohibited substance. These are mere examples and not an exhaustive list.

## B. The Alleged ADRV for Use of a Prohibited Method

90. In the present section, the Panel shall examine whether the Athlete committed an ADRV as a result of the use of a Prohibited Method under class M2 ("Chemical and Physical

Manipulation") of the WADA Prohibited List, namely by, "*Tampering, or Attempting to Tamper, to alter the integrity and validity of Samples collected during Doping Control*". More specifically, it is alleged that, on four different doping controls targeting the Athlete, urine was collected from doppelgängers *in lieu* of the Athlete.

91. The Athlete, essentially, contends that in this case there can be no ADRV for the use of a Prohibited Method under class M2 para. 1 of the WADA Prohibited List since the alleged facts do not fall within the scope of "urine substitution". Alternatively, even if the Panel considers that Article 2.2.1 of the IWF ADP is applicable *in casu*, the Athlete submits that he did not commit any wrongdoing and therefore cannot be sanctioned. Finally, the Athlete contends that on each testing session performed by HUNADO, the applicable testing standards were not respected, which causes these tests to not have adverse consequences for the Athlete.

92. The IWF, in turn, submits that the urine substitution enterprise at stake in the present matter does qualify as a Prohibited Method under Article 2.2 of the IWF ADP, since through the use of a doppelgänger, the Athlete's sample was indeed substituted by another. The IWF further contends that Article 2.2.1 of the IWF ADP does not require the Athlete's actual or constructive knowledge of the use of a Prohibited Method; alternatively, in any case, the Athlete was aware that a Prohibited Method was used.

93. The Panel shall start its examination with a summary of the relevant facts, and notes that the following is uncontested between the Parties:

- ➢ The Athlete was not present at the doping control that was held on 15 March 2016, 10 June 2016 and 17 July 2016.
- ➢ The DCFs signed at these doping controls held on 15 March 2016, 10 June 2016 and 17 July 2016 with respect to the Athlete, were in fact signed by a person that is not the Athlete.
- ➢ Based on DNA analysis, the World Championships sample and the Olympic Games sample came from the Athlete.
- ➢ Based on DNA analysis, the 10 June 2016 sample came from another person, not the Athlete. This is further confirmed by the fact that the Athlete stated that he did not attend a doping control on that date as well as the DCO's statement that the coach had brought another person than the Athlete to the doping control that day.
- ➢ Based on the ABP and Dr Geyer's expert opinion, the 15 March 2016 sample, the 17 July 2016 sample and the 18 July 2016 sample originated from other individuals, not the Athlete. This is further confirmed by the fact that the Athlete stated that he did not attend doping controls on these dates.

94. The Panel notes that the Athlete does not accept that he did not provide the 18 July 2016 sample. The Athlete's position is that while he has no precise recollection,

he makes the supposition that he might have attended a doping control that was performed by KAZ-NADO on 18 July 2016. The Panel notes that according to Dr Geyer's expert opinion, the Athlete did not provide the 18 July 2016 sample either. The Athlete does not contest Dr Geyer's conclusions either. In the Panel's view, since Dr Geyer's evidence was accepted by the Athlete with respect to the 15 March 2016 sample and the 17 July 2016 sample, there is no reason to reject this evidence with respect to the 18 July 2016 sample, especially considering that the Athlete did not dispute it with respect to the 18 July 2016 sample. Moreover, the fact that there is no signed DCF for the 18 July 2016 sample does not impact the scientific evidence on record, which in the Panel's view is sufficient for it to be comfortably satisfied that the Athlete did not attend the doping control for the 18 July 2016 sample.

95. The Panel now turns to the arguments raised by the Parties with respect to the above relevant facts.

**a. Applicability of Article 2.2.1 of the IWF ADP for the use of a Prohibited Method under class M2 para. 1 of the Prohibited List in the present case**

96. The Athlete submits that, since it is uncontested that he was not present at the doping controls of 15 March 2016, 10 June 2016 and 17 July 2016, there was no urine collected from him at these doping controls, and it is therefore materially impossible that his urine was substituted. In the Athlete's view, urine substitution for the purpose of establishing the use of a Prohibited Method M2 refers to the scenario where the concerned athlete provides a urine sample, which is later altered by being substituted with another sample; the facts of the present case manifestly fall outside of the scope of the application of Prohibited Method M2. In support of his position, the Athlete relies on CAS jurisprudence, i.e. CAS 2016/A/4700 *WADA v. Ms Lyudmila Vladimrvma Fedoriva*, as well as on the definition of "substitution" in the dictionary and the fact that the WADA Prohibited List must in any case be interpreted *contra preferentem*.

97. The IWF, in turn, contends that the urine substitution enterprise at stake in the present matter qualifies as a Prohibited Method under Article 2.2 of the IWF ADP, relying on the far-reaching definition contained in the WADA Prohibited List as well as the IWF Hearing Panel's decision in the case of Ms. Nadezhda Nogay (*IWF Hearing Panel, Decision of 9 July 2020, Ms Nadezhda Nogay*).

98. Method M2 of the WADA Prohibited List states – in its relevant parts – as follows:

"*Physical and Chemical Manipulation*

*The following are prohibited:*

*1. Tampering, or Attempting to Tamper, to alter the integrity and validity of Samples collected during Doping Control. Including, but not limited to: Urine substitution and/or adulteration, e.g. proteases*."

99. In the present case, the Panel shall primarily refer to the wording of the provision. The definition of the term "*Physical and Chemical Manipulation"* does not exclude the substitution of an athlete's urine at the time of sample collection through the substitution of the provider of the sample. More specifically, the term "substitution" is defined in the Oxford Dictionary as "*the action of replacing someone or something with another person or thing*". In the Panel's view, this definition does not *per se* require that urine substitution refers necessarily to the action of replacing the urine that is already collected with other urine. Substituting samples can occur through replacing or altering the urine contained in a bottle by other urine or by replacing the bottle containing the urine with another bottle. As from there, there is no reason, in the Panel's view, not to consider that it was the drafters' intention to prohibit the method consisting in replacing the human vessel containing the urine by another human vessel providing another urine. This in addition to including in the definition other accepted methods of urine substitution. Moreover, the use of the terms "*including, but not limited to*" clearly means that "*Tampering, or Attempting to Tamper, to alter the integrity and validity of Samples collected during Doping Control*" can take different forms and that the scope of physical manipulation methods is potentially wide. In the Panel's view, there is no need to refer to further interpretation methods, including the doctrine of *contra preferentem*.

100. The Panel also looked for confirmation of its reading of section M2 para. 1 of the WADA Prohibited List in the CAS case law. As was provided by the Parties, there is almost no relevant case law on the specific issue of the use of doppelgängers. As was explained by the Athlete, in the case CAS 2016/A/4700 *WADA v Ms Lyudmilla Vladimirvma Fedoriva*, the CAS panel dealt with the issue of the presence of a person presenting himself at the doping control to provide his sample *in lieu* of the athlete to be tested. However, the Panel finds that the case at hand must be differentiated from the *Fedoriva* case since Ms Fedoriva was not the athlete to be tested (nor the doppelgänger) but the coach of the athlete, who told the DCO that the doppelgänger was in fact the athlete (while it was another person); as a result, the person to be tested was the doppelgänger. In the Panel's view, this case is not relevant in the present matter, as in any case, coaches unlike athletes cannot be charged for the use of a Prohibited Method. CAS also had several occasions to deal with issues relating to the use of Prohibited Methods through the use of sample substitution; these cases did not involve doppelgängers, but rather the swapping of samples. As a result, those cases do not answer the specific question of whether the use of a doppelgänger to give a sample falls within the scope of section M2 para. 1.

101. The Panel notes that in the case regarding the athlete Ms Nadezhda Nogay, a female athlete from Kazakhstan, the IWF Hearing Panel considered, in a decision dated 9 July 2020, that the use of a doppelgänger at the moment of sample collection falls within the scope of the use of a Prohibited Method under class M2 para. 1 (*IWF Hearing Panel, Decision of 9 July 2020, Ms Nadezhda Nogay*). The Panel also notes that Ms Nogay was supposed to be tested by HUNADO on the same day as the Athlete, and that Ms Nogay did not appeal against the IWF Hearing Panel decision. Even if the Panel is not bound by decisions rendered by the IWF Hearing Panel, the Panel finds that the

decision of the IWF Hearing Panel in a similar case, which was not appealed, is persuasive for the purposes of the present matter.

102. The Panel concludes that the enterprise of sample substitution through the use of doppelgängers in the present matter, falls within the scope of the phrase, "*Physical and Chemical manipulation*", as provided in section M2 para. 1 of the WADA Prohibited List.

**b. Alleged violation of Article 2.2.1 of the IWF ADP for the use of a Prohibited Method under class M2 para. 1 of the Prohibited List**

103. Article 2.2.1 of the IWF ADP provides as follows:

"*2.2.1 It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body and that no Prohibited Method is Used. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method.*

*2.2.2 The success or failure of the Use or Attempted Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was Used or Attempted to be Used for an anti-doping rule violation to be committed.*"

104. The Panel is of the view that section M2 para. 1 of the WADA Prohibited List is applicable and shall consider the case law of the CAS where panels applied the same provision. In a leading CAS case on the issue of the use of Prohibited Methods through sample substitution, namely CAS 2017/A/5379 *Legkov v. IOC*, the CAS panel identified governing principles to guide the assessment of allegations and evidence in cases where use of a Prohibited Method by sample substitution is involved. Notably, it was established that:

- Article 2.2 of the WADC was specifically drafted to cover the use of a Prohibited Method by athletes themselves, notably since Article 2.2 regulates the use or the attempted use "*by an Athlete*".

- "*The Athlete must have committed an act or an omission that was intrinsically linked to the substitution of [the sample] in order to be guilty of the ADRV of using a Prohibited Method. In other words, the Athlete must have done something, or not done something, that directly contributed to the substitution of [the sample] by another person*".

- Pursuant to Article 2.2.1 of the WADC, "*it is not necessary that intent, fault, negligence or knowing use on the Athlete's part be demonstrated*" to establish an ADRV under Article 2.2.

- "*The principle of strict liability does not apply in an identical fashion where an athlete is alleged to have committed an act or omission that contributed to the substitution of the athlete's urine by another person. Were it otherwise, then any athlete who provided a urine sample as part of normal doping control procedures would automatically commit an ADRV if a third party who is entirely unconnected with the athlete, and in respect of whom the athlete has no knowledge or control, later substitutes the content of the athlete's sample*".

105. More specifically, the CAS panel in *Legkov v. IOC* ruled that an athlete who "*commits an act which contributes to the subsequent substitution of their sample by another person, and who knew or ought to have known that such substitution was likely to occur*", is guilty of an ADRV under Article 2.2. In addition, the CAS panel found that athletes can only be held liable under Article 2.2 for the substitution of their sample if:

    a) the athlete committed some act or omission that facilitated the sample substitution; and

    b) the athlete did so with actual or constructive knowledge of the likelihood that substitution would occur.

106. The IWF contends that Article 2.2 of the IWF ADP provides for the strict liability of the athlete for the use of Prohibited Methods and that it is therefore not required to demonstrate that the Athlete had actual or constructive knowledge of the likelihood that his sample would be provided by someone else. It is indeed to be noted, as was explained by the IWF, that the facts in the *Legkov* case are slightly different than the case the hand, since the *Legkov* case involved the substitution of the athlete's sample <u>after</u> it had been collected from him at the doping control, whereas, in the case at hand, the substitution occurred <u>at the very moment</u> of, or before, the sample collection through the use of a doppelgänger.

107. Nevertheless, in the Panel's view, the *ratio* applicable in both cases is quite similar. In the *Legkov* case, the conditions to be met for an athlete to be found guilty for use of a Prohibited Method through sample substitution are driven by the need to avoid the scenario where "*a third party who is entirely unconnected with the athlete, and in respect of whom the athlete has no knowledge or control, later substitutes the content of the athlete's sample"*. In the Panel's view, this *ratio* equally applies in the present case where the Athlete argues that he was not notified directly of the doping controls and therefore could – at least theoretically – not have knowledge of the fact that a doppelgänger would present himself *in lieu* of the Athlete at such doping controls.

108. As a result, the Panel considers that in the present case the Athlete is liable for the use of a doppelgänger at doping controls where he was supposed to be tested if (a) he committed some act or omission that facilitated the use of a doppelgänger; and (b) if he did so with actual or constructive knowledge of the likelihood that substitution would occur.

109. The Athlete contends that he did not commit any wrongdoing: he was not notified of such doping controls by the coaches or by the DCO; he was not present at the doping controls, which was confirmed by the DCO and the coaches. Moreover, Mr Ulanov confirmed that it was usual for athletes to be declared present in Almaty while they were actually training in the training centre in Tekeli (some 300 km away) and that, in the case of doping controls, the athlete would travel from Tekeli to Almaty to be available for testing in Almaty within a few hours. Finally, the HUNADO tests were performed in gross departure of the ISTI and as a result cannot have adverse consequences for the Athlete.

110. The IWF, in turn, submits that by providing misleading Whereabouts Information and not attending the doping controls on 15 March 2016, 10 June 2016, 17 July 2016 and 18 July 2016, the Athlete allowed for sample substitution to occur thus committing an ADRV under Article 2.2 of the IWF ADP.

***i. Did the Athlete commit an oct or omission that facilitated the use of a doppelgänger at his doping controls?***

111. The Athlete indicated in his Whereabouts Information included in ADAMS, that he was at his home, near the training centre in Almaty, every morning from 8 to 9 a.m. on the doping controls that took place on 15 March 2016, 10 June 2016, 17 July 2016 and 18 July 2016. The report from Sportradar, which is part of the evidence on record, however, confirms that the Athlete was in fact in Tekeli at the time of the doping controls, contrary to what he had indicated in his Whereabouts Information. By intentionally filling in intentionally false Whereabouts Information, the Athlete made the DCO believe that he was training in Almaty and was available to be tested that day in Almaty, while he was actually in Tekeli.

112. The Athlete also contends that he could not have contributed to the ADRV as he was never notified directly. The Panel notes that the notification process performed by HUNADO is evidenced by the testimonies of the DCO Ms Bajzi, the coaches Mr Alexei Ni and Mr Victor Ni, as well as the witness statement of Mr Denis Ulanov: Upon arrival in Kazakhstan, Ms Bajzi and her colleagues went to the training centre in Almaty, the location where HUNADO would likely find the athletes selected for the testing mission that day, including the Athlete. Ms Bajzi would be introduced to the Head Coach and provide him with the names of the athletes to be tested that day. The Head Coach would identify the targeted athletes or their personal coach so as to get the concerned athletes to the doping control station. Some of the athletes that HUNADO intended to test were already at the training centre, while others were not. If the athletes did not come for their doping control, she would note they were absent. To rely on coaches or other qualified persons is justifiable on the basis of Article 5.3.5 of the ISTI which allows, for the DCO to "*establish the location of the selected Athlete and plan the approach and timing of notification, taking into consideration the specific circumstances of the [...] situation in question*". The athlete's notification is mandatory, even if another person is contacted by the DCO prior to the notification. To rely on other persons to approach the athlete to be tested is all the more justified when, as was the

case on the doping controls of 10 June 2016, several athletes were tested at the same place and at the same time.

113. The Panel considers that the Athlete's explanation that he could not have contributed to the ADRV as he ignored everything about the ongoing doping controls is not convincing at all. In 2016, the Athlete was a professional athlete at the highest level in his sport in the preparation phase for the Olympic Games and was involved in a sport that was historically under close scrutiny for doping cases; he was himself already found guilty of doping; he clearly was – or at least ought to be - aware of the likelihood of frequent targeted doping controls, particularly for athletes at the highest levels. His colleague, Mr Ulanov, travelled on 9 June 2016, the day before the Athlete's doping control of 10 June 2016, from Tekeli where he was training with the Athlete, to Almaty for a doping control. It is just not credible and stands up against the Athlete's narrative that the Athlete was unaware of the doping controls. It may be added that the performed doping controls are registered in ADAMS and visible to the athletes after the doping tests and at all other times. This means that the Athlete, when consulting his ADAMS, assuming he did so, would see that a doping test was performed on him. However, he never raised any issue in this respect. The Panel finds that athletes should regularly monitor their anti-doping controls listed on ADAMS to ensure that the information is accurate and to raise and dispute any inaccuracies that might appear. The Athlete failed to consult ADAMS at a time he should have done so.

114. The Panel therefore concludes that the Athlete facilitated the sample substitution through the use of a doppelgänger at the doping controls that took place on 15 March 2016, 10 June 2016, 17 July 2016 and 18 July 2016.

***ii. Did the Athlete have actual or constructive knowledge of the likelihood of the use of doppelgängers at his doping controls?***

115. The Panel first notes that the Athlete's coaches were involved in the sample substitution enterprise using doppelgängers: it appears from testimony of Ms Bazji, the DCO, that upon arrival at the training centre, the DCO requested the Head Coach to identify the Athlete at the training centre, and to bring the Athlete to the appropriate location for a doping control. Ms Bajzi also confirmed that the Head Coach, Mr Alexei Ni, or the Athlete's personal coach, Mr Victor Ni, was present at the doping control station with the doppelgänger of the Athlete, and signed the DCF after the sample collection. The testimony of the Head Coach, Mr Alexei Ni, and of the Athlete's personal coach, Mr Victor Ni, according to which they were never notified of a doping control regarding the Athlete, is not credible and does not match the DCO's testimony, who has no interest in lying. Moreover, the sample substitution enterprise using doppelgängers was already identified in the Nogay case that was decided upon by the IWF Hearing Panel, and never appealed against or disputed. As a result, the Panel is of the view, based on the evidence on record, that the coaches were orchestrating the sample substitution using a doppelgänger at the doping controls *in lieu* of the Athlete, and the Athlete must bear the consequence of that finding.

116. However, it is on the Panel to examine the extent to which the Athlete was involved in this sample substitution enterprise. Especially, for the purpose of the present section, the Panel needs to assess whether he was, or ought reasonably to have been, aware of the likelihood of that a doppelgänger would be presented at doping controls he would be called for in a location away from where he had listed his Whereabouts.

117. The Panel first notes that the Athlete, as a professional high-level athlete who was formerly found to have committed a doping offense and who was at the highest levels in his sport and in the preparation phase for the 2016 Olympic Games in Rio in a sport under close scrutiny for doping cases, is clearly – or at least ought to be – aware of the likelihood of frequent doping controls. His colleague, Mr Ulanov, travelled on 9 June 2016, the day before the Athlete's doping control of 10 June 2016, from Tekeli where he was training with the Athlete, to Almaty for a doping control. It is just not credible and stands up against the Athlete's narrative that the Athlete was unaware of the doping controls and on the presence of doppelgängers (as acknowledged by his coach) at the doping controls. Moreover, the Panel notes that the evidence is unrefuted that (i) the sample substitution operation was implemented on four different occasions with respect to the Athlete, and (ii) also involved other athletes' training. Cleary, these facts are not consistent with his testimony.

118. Given that the Athlete provided false Whereabouts Information in ADAMS while he knew he would be tested on a frequent basis, combined with the clear involvement of the Athlete's close entourage on various occasions, his statement is not credible that he did not know anything about the use of a doppelgänger at possible doping controls. This is all the more so when considering that performed doping controls are registered in ADAMS and visible to the Athlete, which means that the Athlete, when consulting the ADAMS portal, could - and should - have taken note that a doping test was performed on him, and could have easily checked whether he had actually given a sample. It is telling that the Athlete never raised any issue in this respect until the allegations were made against him in the proceedings below and in these proceedings.

119. Based on the above consideration, the Panel concludes that the Athlete knew or should have known that sample substitution would be performed through the use of doppelgängers at the doping controls that took place on 15 March 2016, 10 June 2016, 17 July 2016 and 18 July 2016. This finding is sufficient to ground a violation of Article 2.2 of the IWF ADP.

120. Considering the Athlete's involvement and knowledge of the sample substitution process through the use of doppelgängers, the Panel rejects the Appellant's argument that the IWF should have considered charging the Athlete under Article 2.5 instead of Article 2.2 of the IWF ADP. According to CAS jurisprudence, recourse to Art. 2.5 WADC is excluded, "*if the elements of Art. 2.2 of the WADA Code concerning a prohibited method are fulfilled*" (CAS 2018/A/5511).

**C. The Alleged Departures from Testing Standards**

121. The Athlete contends that HUNADO failed to notify him personally of the sample collection on 10 June 2016 and never tried to test him at the location registered in ADAMS. Moreover, the Athlete submits that HUNADO failed to report to WADA that the samples were not provided by the Athlete and to conduct prompt investigations about the identity issue. In the Athlete's view, the alleged ADRV related to the use of doppelgängers could only be achieved because of these gross departures from the ISTI, especially in the notification process and the review of the sample provider's identity. As a result, pursuant to Article 3.2.3 of the IWF ADP, these tests cannot have adverse consequences for the Athlete.

122. The IWF, in turn, submits that the ISTI does not provide such obligation to notify or test athletes at the exact place and within the time frame registered in ADAMS nor to notify athletes personally. As a result, no departures from the ISTI have been established. In addition, even if they were established the IWF submits that these departures could not have caused the ADRV, which was facilitated and contributed by the Athlete, through his absenting himself from his usual place of training and through the false and misleading statements in his Whereabouts Declaration, which led HUNADO to assume that he was in Almaty on the days when they were testing there.

123. Pursuant to Article 3.2.3 of the IWF ADP:

*"Departures from any other International Standard or other anti-doping rule or policy set forth in the Code or these Anti-Doping Rules which did not cause an Adverse Analytical Finding or other anti-doping rule violation shall not invalidate such evidence or results. If the Athlete or other Person establishes a departure from another International Standard or other anti-doping rule or policy which could reasonably have caused an anti-doping rule violation based on an Adverse Analytical Finding or other anti-doping rule violation, then IWF shall have the burden to establish that such departure did not cause the Adverse Analytical Finding or the factual basis for the anti-doping rule violation."*

124. The Panel notes that, based on the above provision of the IWF ADP, the Athlete has the burden of showing not only that the testing was performed in violation of the standards included in the ISTI but also that such departures could reasonably have caused the ADRV.

125. The ISTI provides – in its pertinent parts – as follows:

"*5.3.5 The Sample Collection Authority, DCO or Chaperone, as applicable, shall establish the location of the selected Athlete and plan the approach and timing of notification, taking into consideration the specific circumstances of the sport/Competition/training session/etc. and the situation in question.*

*5.3.7 The Athlete shall be the first person notified that he/she has been selected for Sample collection, except where prior contact with a third party is required as specified in Article 5.3.8.*

*5.3.8 The Sample Collection Authority/DCO/Chaperone, as applicable, shall consider whether a third party is required to be notified prior to notification of the Athlete, when the Athlete is a Minor (as provided for in Annex C – Modifications for Athletes who are Minors), or where required by an Athlete's impairment (as provided for in Annex B - Modifications for Athletes with Impairments), or in situations where an interpreter is required and available for the notification.*

*[Comment to 5.3.8: In the case of In-Competition Testing, it is permissible to notify third parties that Testing of Minors or Athletes with impairments will be conducted, where required to help the Sample Collection Personnel to identify the Athlete(s) to be tested and to notify such Athlete(s) that he/she is required to provide a Sample. However, there is no requirement to notify any third party (e.g., a team doctor) of the Doping Control mission where such assistance is not needed. Any third party notification must be conducted in a secure and confidential manner so that there is no risk that the Athlete will receive any advance notice of his/her selection for Sample collection. Generally it should occur at the end of the Competition in which the Athlete is competing or as close as possible to the end.]*"

126. The Panel already found that the use of coaches or other persons in the planning of the notification process may be justified on the basis of Article 5.3.5 of the ISTI, especially when, as was the case on the doping control of 10 June 2016, several athletes were tested at the same place and at the same time. Further, the Panel found that the Athlete's explanation that he ignored everything about the ongoing doping controls is not convincing. As was stated by the Panel, the Athlete was a professional athlete at the highest level in his sport preparing to compete for a gold medal (which he won) at the 2016 Olympic Games in Rio de Janeiro and was involved in a sport under close scrutiny for doping activities. He had already been found to have committed a doping offense. He clearly is – or at least ought to have been – aware of the likelihood of frequent doping controls and the importance of being able to be found and tested. Finally, doping controls that had been performed on the Athlete are registered in ADAMS and visible to the Athlete after his doping test, which means that the Athlete, when consulting his ADAMS would see that a doping test was performed on him. It is telling that he never raised any issue in this respect.

127. Even if it were demonstrated that the Athlete was not notified of the doping controls that took place on 15 March 2016, 10 June 2016, 17 July 2016 and 18 July 2016, in the Panel's view, it has not been established that such failure to notify the Athlete could reasonably have caused the sample substitution through the use of doppelgängers. The Athlete must have been aware of the sample substitution enterprise and the likelihood of the use of doppelgängers at those doping controls; he also facilitated the sample substitution through the use of misleading information in his Whereabouts Information, which led HUNADO to assume he was available in Almaty on the days they were

testing there. The same applies with respect to the other alleged departures from testing standards by HUNADO. Even if they were justified – an issue that can remain undecided – the Panel is of the view that, in the context of the present matter where the Athlete ought to know about the sample substitution enterprise and the likelihood of the use of doppelgängers at his doping controls and facilitated such use, possible departures from testing standards – even considered together – could in any case not have caused the ADRV.

128. The Panel finds this to be a clear case of cheating by an athlete seeking to avoid anti-doping testing. The Panel notes that while aside from his ADRV this Athlete had never tested positive in or out of competition for a prohibited substance. Had the proper testing been conducted on the Athlete for the samples where samples from other individuals had been given, it is not clear what would have been found. There is simply no other possible logical explanation for the presence of DNA and other indicators of individuals other than the Athlete having given their sample in his name aside from someone trying to hide ADRVs. This is the kind of cheating the anti-doping rules are designed to prevent.

**D. The Alleged ADRV for Use of a Prohibited Substance**

129. The IWF submits that the Athlete's samples substitution through the use of doppelgängers provides compelling inferential evidence that he also committed an ADRV consisting of the use of a prohibited substance, because the use of a prohibited substance is the only explanation for the Athlete's use of a prohibited method of urine substitution in this case. In addition, the IWF relies on the fact that (i) the Athlete was previously tested positive for two anabolic androgenic steroids ("AAS") which are a known and rampant issue in the sport of weightlifting, (ii) the Athlete performed extraordinarily well at the 2016 Rio Olympic Games, and (iii) the Athlete experienced a sudden and significant drop-off in performance after the Rio Olympic Games.

130. The Athlete, in turn, contends that the claim regarding the use of a prohibited substance is based on mere assumptions that are contradicted by the Athlete's testing history. Moreover, the IWF does not invoke any new evidence in support of its claim.

131. In the Panel's view, whilst it might seem possible or even probable that the absence of the Athlete from the four testing sessions, and the use of someone else in his place, was to enable him to benefit from ingesting prohibited substances undetected, the Panel is not comfortably satisfied to draw that inference in the absence of any other evidence. Moreover, the fact that the Athlete already committed an ADRV in the past, that he performed extraordinarily well at the 2016 Olympic Games and thereafter experienced a significant drop-off – even combined – are not convincing enough for the Panel to be comfortably satisfied that the Athlete used Prohibited Substances in the present matter. In short, to establish a substance use violation, anti-doping organisations must provide more than mere speculation about use; they must be able to show what was used and that it was present in samples, even if undetected, when those samples were collected, and that the substance used was prohibited in or out of competition as the case may be.

## E. Consequences

132. The Panel finds that the Athlete is responsible for the use of a Prohibited Method on four occasions which constitutes the ADRV of Use of a Prohibited Method under Article 2.2 of the IWF ADP.

133. The Panel finds that the assertion of an ADRV of Use of a Prohibited Substance under Article 2.2 of the IWF ADP has not been established.

134. The IWF contends, and the Panel agrees, that although there are findings of four separate occasions of urine substitution, the case should be treated as a single ADRV pursuant to Article 10.7.4.1 of the IWF ADP.

135. The period of ineligibility for the violation of Article 2.2 of the IWF ADP is four years under Article 10.2. There is no dispute that the Athlete received a two-year suspension for the use of anabolic steroids on 18 November 2013, and therefore the ADRV referred to above is the Athlete's second ADRV and the provisions of 10.7.1 (c ) of the IWF ADP apply so that the period of ineligibility shall be "*twice the period otherwise applicable to the second anti-doping rule violation treated as if it were a first violation, without taking into account any reduction under Article 10.6*." – that is to say the period of ineligibility will be eight years.

136. The Athlete contends that the period of ineligibility must be eliminated completely based on no fault or negligence under Article 10.4 of the IWF ADP. The Panel however already found that the Athlete facilitated the use of the Prohibited Method in the present matter. The Panel therefore finds that there is no ground for the elimination of the period of ineligibility on this basis.

137. As to the commencement of the period of ineligibility, as per Article 10.10 of the IWF ADP, the period of ineligibility shall start on the date of the final hearing decision providing for the ineligibility, and time served under any provisional suspension and as per the CAS ADD Award shall be taken into consideration. In the present matter, a provisional suspension was imposed on the Athlete on 18 January 2021, and no evidence was provided that he has violated that suspension. Accordingly, his period of ineligibility shall commence from that date of the imposition of the provisional suspension on 18 January 2021 in accordance with Article 10.10.3.2 of the IWF ADP.

138. The Athlete also submits that fairness requires that his results should not be disqualified under Article 10.8 of the IWF ADP. The Athlete submits that he is in a difficult situation to prove his innocence more than five years after the events, and recalls that the doping test he underwent at the Olympic Games was negative. The IWF, in turn, submits that the Athlete did not provide any evidence that he deserves to keep his results since he participated in an elaborate urine substitution enterprise in order to avoid detection and thus severely distorted the competition in the sporting events in which he participated. The Panel finds that since the Athlete contributed to or facilitated the implementation of a large sample substitution enterprise, it is appropriate to disqualify the Athlete from his results as from the date of the first ADRV, i.e. 15 March 2016, until the date of the

Athlete's first provisional suspension on 18 January 2021, meaning that there is no time gap between the retroactive disqualification (from 15 March 2016 to 17 January 2021) and the provisional suspension (from 18 January 2021 onwards).

## X. COSTS

(…).

# ON THESE GROUNDS

**The Court of Arbitration for Sport rules that:**

1. The appeal filed by Mr Nijat Rahimov on 12 April 2022 against the Award rendered by the CAS Anti-Doping Division in the matter *CAS 2021/ADD/21 International Weightlifting Federation v. Nijat Rahimov* on 22 March 2022, is dismissed.

2. The appeal filed by the International Weightlifting Federation against the Award rendered by the CAS Anti-Doping Division in the matter *CAS 2021/ADD/21 International Weightlifting Federation v. Nijat Rahimov* on 22 March 2022, is dismissed.

3. The Award issued on 22 March 2022 by the CAS Anti-Doping Division in the matter *CAS 2021/ADD/21 International Weightlifting Federation v. Nijat Rahimov* is confirmed.

4. (…).

5. (…).

6. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 20 September 2023

# THE COURT OF ARBITRATION FOR SPORT

Dr Hans Nater
President of the Panel

Jeffrey G. Benz
Arbitrator

Romano F. Subiotto K.C.
Arbitrator

Stéphanie De Dycker
Clerk