Arbitration CAS 2021/ADD/21 International Weightlifting Federation (IWF) v. Nijat Rahimov, award of 22 March 2022

Panel: Mr John Boultbee (Australia), Sole Arbitrator

Weightlifting
Doping (urine substitution)
Liability of the athletes for the actions of their close entourage
Burden of proof and duty to substantiate
Assessment of the evidence in case of limitations of such evidence
Proof by any reliable means
Speculative inferences

1. **The World Anti-Doping Code (WADC) and the anti-doping regulations replicating the WADC treat the athletes as being responsible for the actions of their close entourage. The coach of an athlete or the head coach of the national team to which the athlete belongs are not third parties entirely unconnected with the athlete, and in respect of whom the athlete has no knowledge or control; they are part of the close entourage of the athlete.**

2. **According to the general rules and principles of law, facts pleaded have to be proved by those who plead them, whether it be proof establishing those facts on the one hand, or proof to exclude those facts as being established on the other. In order to fulfil its burden of proof, a party must provide the deciding body with all relevant evidence that it holds, and, with reference thereto, convince the deciding body that the facts it pleads are true, accurate, and produce the consequences which the party alleges. The CAS Code provides for an essentially adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some facts (or alternatively to contradict some facts) and persuade the deciding body, it must actively substantiate its allegations with convincing evidence.**

3. **A sports body is not a national or international law enforcement agency. Its investigatory powers are substantially more limited than the powers available to such bodies. Since the sports body cannot compel the provision of documents or testimony, it must place greater reliance on the consensual provision of information and evidence, and on evidence that is already in the public domain. The CAS panel's assessment of the evidence must respect those limitations. In particular, it must not be premised on unrealistic expectations concerning the evidence that the sports body is able to obtain from reluctant or evasive witnesses and other sources. A sports body may properly invite the CAS panel to draw inferences from the established facts that seek to fill in gaps in the direct evidence. The CAS panel may accede to that invitation where it considers that the established facts reasonably support the drawing of the inferences. So long as the**

CAS panel is comfortably satisfied about the underlying factual basis for an inference that an athlete has committed a particular anti-doping rule violation (ADRV), it may conclude that the sports body has established an ADRV notwithstanding that it is not possible to reach that conclusion by direct evidence alone.

4. Any reliable means includes, but is not limited to witness evidence, documentary evidence, and conclusions drawn from analytical information other than providing the actual presence of a prohibited substance.

5. If not based on direct evidence, inferences used to draw other inferences are speculative and cannot be used to establish an ADRV to the appropriate standard of proof of comfortable satisfaction, bearing in mind the seriousness of the allegation that is made.

I. PARTIES

1. The International Weightlifting Federation ("IWF") is the world governing body for the sport of Weightlifting, with registered offices in Lausanne, Switzerland.

2. Mr. Nijat Rahimov ("the Athlete") is a 27-year-old elite weightlifter and 2016 Olympic Gold Medallist. He is considered to be "an international level athlete" within the meaning of the IWF Anti-Doping Policy 2015 ("the IWF ADP"). He competes for Kazakhstan, having previously represented Azerbaijan.

II. FACTUAL BACKGROUND

3. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the parties' written submissions, pleadings and evidence may be set out, where relevant, in the legal discussion which follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in these proceedings, he refers in this Award only to the submissions and evidence he considers necessary to explain his reasoning.

(i) The Athlete's early competition and anti-doping testing history

4. 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.

5. 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.

6. Following the expiry 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

7. 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.

8. 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, by the National Anti-Doping Organisation of Hungary ("HUNADO") on behalf of the IWF. No prohibited substances were subsequently detected in that sample. The 15 March 2016 sample was collected in the presence of the Athlete's coach and Kazakhstan national coach, Mr. Victor Ni according to the Doping Control Form. 19 other Kazakhstani weightlifters also provided samples during that mission.

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

10. 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 mission at a training centre in Almaty, Kazakhstan, again by HUNADO on behalf of the IWF. No prohibited substances were subsequently detected in that sample. The 10 June 2016 sample was collected in the presence of the Kazakhstan Head Coach, Mr Alexey Ni, according to the Doping Control Form. Seven other Kazakhstan national team weightlifters also provided samples during that mission. The HUNADO doping control officer reported that the coaches had brought a person other than the Athlete to the sample collection for the Athlete.

11. 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 mission at the Kazzhol Hotel in Almaty, Kazakhstan, by HUNADO on behalf of the IWF. No prohibited substances were subsequently detected in that sample. The 17 July 2016 sample was collected in the presence of the Athlete's coach and Kazakhstan national coach, Mr. Victor Ni according to the Doping Control Form. Six other Kazakhstan national team weightlifters also provided samples during that mission.

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 Rio Olympic Games. No prohibited substances were subsequently detected in that sample.

13. On 10 August 2016, the Athlete competed in the men's 77kg category at the Rio Olympic Games. 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. No prohibited substances were subsequently detected in that sample.

(iii) Subsequent Investigations by WADA and the International Testing Agency ("ITA")

14. In September 2019 WADA instigated 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 the 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. WADA commenced its analytical investigation into the relevant samples of the Athlete in March 2020, some five months into the Operation Arrow investigation.

16. In respect of the Athlete Nijat Rahimov, the World Championship sample from 24 November 2015, the 10 June 2016 sample and the Olympic sample existed and were available for DNA analysis. The 15 March 2016, the 17 July 2016 and the 18 July 2016 samples ("the additional samples") had been discarded. Copies of all the Doping Control Forms, except the 18 July 2016 Form, were still in existence.

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. The urine from the additional samples was no longer in existence and available for DNA analysis. However, the Athlete's Biological Passport ("ABP") was examined to analyse the steroid profile data recorded from those additional 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 additional samples 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 additional samples originated from other individuals.

(iv) Procedure leading up to the CAS proceedings

21. On 14 December 2020, WADA informed the ITA of the results of, and provided supporting documents relating to, the Operation Arrow Investigation.

22. On 18 January 2021, the ITA, on behalf of the IWF served a Notice of Charge and supporting documentation on the Athlete, outlining the alleged anti-doping rule violations ("ADRVs") 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 ADRVs and on 10 March 2021, the ITA advised the Athlete that the matter would be referred to the CAS ADD under Article 8.1.1. of the 2021 IWF Anti-Doping Rules.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

(i) The Request for Disciplinary Proceedings and Written Submissions

25. On 29 April 2021, the IWF (through the ITA) 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, together with witness statements, exhibits, legal authorities, an expert report by Dr Hans Geyer dated 27 March 2021, and submissions.

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

27. From 11 May 2021 and on other dates the Athlete sought orders under Article 19.4 of the CAS ADD Rules that the IWF be ordered to produce a number of documents relating to the 10 June 2016 sample and the additional samples, as well as the Athlete's biological passport and WADA's Anti-Doping Administration and Management System ("ADAMS") record. Correspondence ensued, whereby some documents were provided by the IWF, others were noted as not existing, and on 3 June 2021 the Arbitrator declined to order that others should be produced on the grounds of relevance and privacy, as they related to athletes other than the Athlete who is the Respondent. During this period, extensions were granted for the filing of the Athlete's Answer and subsequent pleadings.

28. On 21 June 2021, the Athlete filed his Answer.

29. On 30 June 2021 the IWF was granted leave under Article 19.1 of the CAS ADD Rules to file a Reply and the Athlete to file a Second Response.

30. On 5 July 2021 the IWF filed its Reply.

31. On 12 July 2021 the Athlete filed his Second Response.

32. The Athlete requested a hearing, and the IWF submitted a hearing was not necessary. The Arbitrator decided that a hearing should be held.

33. On 20 and 23 August 2021 respectively, the IWF and the Athlete both signed and returned the Order of Procedure.

(ii) The Hearing

34. The hearing was held by video conference on 26 August 2021.

35. In addition to the Arbitrator and the CAS Counsel, Mr Fabien Cagneux, the following people participated.

36. For the Athlete: The Athlete appeared with his Counsel, Mr Claude Ramoni and Mr Yvan Henzer of Libra Law, Lausanne, Switzerland. Mr Oscar Albert Gallardo, Intern at Libra Law was also present.

37. For the IWF: The IWF appeared through its Counsel, Ms Dominique Leroux and Mr Damien Clivaz of the ITA, Lausanne, Swizerland.

38. It was agreed between the parties that Mr Aldiyar Nuralinov and Mr Ruslan Adambeyev from the Weightlifting Federation of the Republic of Kazakhstan ("WFRK") would also be present.

39. Mr Peter Koczoh (Hungarian – English) and Ms Dyussenova (Russian-English), Interpreters, were also present.

40. Mr Denis Ulanov attended as a witness for the Athlete. Ms Rozalia Bajzi attended as a witness for the IWF. Their evidence is outlined below. The Athlete was present but chose not to give evidence. He made a personal statement at the conclusion of the hearing.

41. No objection was made at the outset of the hearing to the composition of the Panel and at its conclusion the parties confirmed that their procedural rights had been respected. Counsel for the Athlete noted that its request for production of documents relating to the testing of other athletes on 15 March 2016 and 17 July 2016 had not been granted, as indicated in paragraph 27.

IV. SUMMARY OF THE PARTIES' SUBMISSIONS

A1. The IWF's submissions

42. The IWF's essential claims are that the Sole Arbitrator should conclude that:

1. The Sole Arbitrator should be comfortably satisfied that the Athlete has committed an Anti-Doping Rule Violation for the Use of a Prohibited Method (urine substitution) as per Article 2.2 of the 2015 IWF Anti-Doping Policy ("IWF ADP") on 15 March, 10 June, 17 July and 18 July 2016, and that the Athlete knew or at least could not ignore that his urine was being substituted, and allowed for that substitution.

2. The Sole Arbitrator should be comfortably satisfied that the Athlete has committed an ADRV the Use of (one or more unspecified) Prohibited Substances as per Article 2.2 of the IWF ADP, as that is the only explanation for the Athlete's use of the prohibited method of urine substitution.

3. The numerous ADRVs should be treated as a single ADRV pursuant to Article 10.7.4.1 of the IWF ADP.

4. Article 10.2 of the IWF ADP provides that the period of ineligibility for the violation of Article 2.2 shall be four years, on the basis that the ADRVs should be considered to be intentional within the meaning of Article 10.2.3 of the IWF ADP.

5. Due to the fact that, on 18 November 2013, the Athlete received a two-year sanction for the use of anabolic steroids, the ADRVs in the current case constitute the Athlete's second ADRV, under Article 10.7.1 (c) of the IWF ADP, the period of ineligibility should be twice the otherwise applicable period of four years, that is to say a period of ineligibility of eight years.

6. There is no ground for reducing or suspending the period of ineligibility under Articles 10.4, 10.5, 10.6 or 10.11 of the IWF ADP.

7. The period of ineligibility should commence on the date of the final hearing decision.

8. All competitive results of the Athlete obtained from the date of the first urine substitution (15 March 2016) until the commencement of the provisional suspension of the Athlete (18 January 2021) should be disqualified pursuant to Article 10.8 of the IWF ADP.

9. The Athlete should pay costs of the proceedings pursuant to Articles A24 and A25 of the CAS ADD Rules.

A2. Relief sought by the IWF

43. The relief sought by the IWF is a decision that:

1. The ITA's request is admissible.

2. *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.*

3. *Mr Nijat Rahimov is sanctioned with a period of ineligibility of 8 years starting on the date one which the CAS award enters into force. Any period of provisional suspension or ineligibility effectively served ty Mr Nijat Rahimov before the entry into force of the CAS Award shall be credited against the total period of ineligibility to be served.*

4. *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.*

5. *The costs of the proceedings, if any, shall be borne by Mr Nijat Rahimov.*

6. *The ITA is granted an award for its legal and other costs.*

7. *Any other prayer for relief that the Hearing Panel deems fit in the facts and circumstances of the present case.*

B1. The Athlete's Submissions

44. The Athlete's essential claims are that the Sole Arbitrator should conclude that:

1. The samples collected by HUNADO prior to the Olympics do not meet the applicable standards.

2. The consequences of HUNADO'S numerous failures to comply with the WADA International Standard for Testing and Investigation ("ISTI") are that HUNADO bears the responsibility for not having been able to collect samples from the Athlete, allowing urine substitution.

3. The failure of HUNADO to report promptly to the IWF and WADA that a third party provided urine in lieu of the Athlete imposed an almost impossible burden on the Athlete to bring explanations and evidence about events more than five years earlier.

4. The Athlete was not aware and has never been aware of any strategy or plan to protect him through urine substitution.

5. The IWF has not established that the Athlete is connected with any urine substitution or committed any act or omission that would have facilitated the urine substitution, or that the Athlete had actual or constructive knowledge of the doping controls and the urine substitution.

6. The offence of use of prohibited substances or methods is not established and no sanction should be imposed on the Athlete.

B2. Relief sought by the Athlete

45. The relief sought by the Athlete is that the Arbitrator should rule that:

1. *The Request for disciplinary proceedings filed by the International Weightlifting Federation is dismissed.*

2. *Mr Nijat Rahimov is granted an award for costs.*

V. JURISDICTION

46. The Introduction and Article 8.1.1 of the 2021 IWF Anti-Doping Rules, which were in force when the charges in this matter were brought against the Athlete, provide that the ADD of CAS is delegated jurisdiction by the IWF to arbitrate in any hearing concerning the assertion of ADRVs involving members of an IWF Member Federation. There is no dispute that the Athlete is a member of the Weightlifting Federation of the Republic of Kazakhstan, WFRK, which is a Member Federation of IWF. It is therefore concluded that the Arbitrator has jurisdiction under Article A2 of the Arbitration Rules of the CAS Anti-Doping Division to hear and determine this matter.

47. Furthermore, the jurisdiction of the CAS ADD is further confirmed by the signing by the Order of Procedure by both Parties.

VI. ADMISSIBILITY

48. The circumstances leading to the Request for Disciplinary Proceedings being made to the CAS ADD and the timeliness thereof are set out in paragraphs 22, 23 and 24. There was no argument as to the admissibility of the matter on the basis of timeliness, and the Request for Disciplinary Proceedings is found to be admissible under Article 8.1.2.1 of the 2021 IWF Anti-Doping Rules.

VII. APPLICABLE LAW

A. Arbitration Rules of the CAS Anti-Doping Division

49. Article A20 of the Arbitration Rules of the CAS Anti-Doping Division provides:

> ***Law Applicable to the Merits***
>
> *The Panel shall decide the dispute according to the applicable ADR or the laws of a particular jurisdiction chosen by agreement of the parties or, in the absence of such a choice, according to Swiss law.*

50. It was submitted by the IWF and not disputed by the Athlete, that the applicable anti-doping rules in terms of the merits of the case, would be those in force at the time of the asserted ADRVs, namely in 2016. At that time the prevailing IWF rules were the 2015 IWF Anti-Doping

Policy, and therefore under Article A20 of the CAS ADD Rules, the 2015 IWF ADP applies. In the absence of any other agreement by the parties, Swiss Law will also apply.

B. The 2015 IWF Anti-Doping Policy (IWF ADP)

51. The relevant Articles of the IWF ADP in respect of establishing an ADRV, and notes appended to those articles, are as follows:

Article 2.2 Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method

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.

[Comment to Article 2.2.2: Demonstrating the "Attempted Use" of a Prohibited Substance or a Prohibited Method requires proof of intent on the Athlete's part. The fact that intent may be required to prove this particular anti-doping rule violation does not undermine the Strict Liability principle established for violations of Article 2.1 and violations of Article 2.2 in respect of Use of a Prohibited Substance or Prohibited Method. An Athlete's "Use" of a Prohibited Substance constitutes an anti-doping rule violation unless such substance is not prohibited Out-of-Competition and the Athlete's Use takes place Out-of-Competition. (However, the presence of a Prohibited Substance or its Metabolites or Markers in a Sample collected In-Competition is a violation of Article 2.1 regardless of when that substance might have been administered)].

Article 3.1 Burdens and Standards of Proof

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 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.

Article 3.2 Methods of Establishing Facts and Presumptions

Facts related to anti-doping rule violations may be established by any reliable means, including admissions. The following rules of proof shall be applicable in doping cases:

[Comment to Article 3.2: For example, IWF may establish an anti-doping rule violation under Article 2.2 based on the Athlete's admissions, the credible testimony of third Persons, reliable documentary evidence, reliable analytical data from either an A or B Sample as provided in the Comments to Article 2.2, or conclusions drawn from the profile of a series of the Athlete's blood or urine Samples, such as data from the Athlete Biological Passport].

3.2.3 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.

52. In respect of sanctions the following Articles of the IWF ADP, and notes appended to those Articles, are applicable:

Article 10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method

The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6: 46

10.2.1 The period of Ineligibility shall be four years where:

10.2.1.1 The anti-doping rule violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.

10.2.3 As used in Articles 10.2 and 10.3, the term "intentional" is meant to identify those Athletes who cheat. The term therefore requires that the Athlete or other Person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk …

Article 10.4 Elimination of the Period of Ineligibility where there is No Fault or Negligence

If an Athlete or other Person establishes in an individual case that he or she bears No Fault or Negligence, then the otherwise applicable period of Ineligibility shall be eliminated.

[Comment to Article 10.4: This Article and Article 10.5.2 apply only to the imposition of sanctions; they are not applicable to the determination of whether an anti-doping rule violation has occurred. They will only apply in exceptional circumstances, for example where an Athlete could prove that, despite all due care, he or she was sabotaged by a competitor. Conversely, No Fault or Negligence would not apply in the following circumstances: (a) a positive test resulting from a mislabeled or contaminated vitamin or nutritional supplement (Athletes are responsible for what they ingest (Article 2.1.1) and have been warned against the possibility of supplement contamination); (b) the Administration of a Prohibited Substance by the Athlete's personal physician or trainer

without disclosure to the Athlete (Athletes are responsible for their choice of medical personnel and for advising medical personnel that they cannot be given any Prohibited Substance); and (c) sabotage of the Athlete's food or drink by a spouse, coach or other Person within the Athlete's circle of associates (Athletes are responsible for what they ingest and for the conduct of those Persons to whom they entrust access to their food and drink). However, depending on the unique facts of a particular case, any of the referenced illustrations could result in a reduced sanction under Article 10.5 based on No Significant Fault or Negligence].

Appendix 1 of the IWF ADP defines "No Fault or Negligence" in the following way:

No Fault or Negligence: The Athlete or other Person's establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system.

Article 10.5 Reduction of the Period of Ineligibility based on No Significant Fault or Negligence

10.5.1 […]

10.5.2 Application of No Significant Fault or Negligence beyond the Application of Article 10.5.1

If an Athlete or other Person establishes in an individual case where Article 10.5.1 is not applicable that he or she bears No Significant Fault or Negligence, then, subject to further reduction or elimination as provided in Article 10.6, the otherwise applicable period of Ineligibility may be reduced based on the Athlete or other Person's degree of Fault, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this Article may be no less than eight years.

[Comment to Article 10.5.2: Article 10.5.2 may be applied to any anti-doping rule violation except those Articles where intent is an element of the anti-doping rule violation (e.g., Article 2.5, 2.7, 2.8 or 2.9) or an element of a particular sanction (e.g., Article 10.2.1) or a range of Ineligibility is already provided in an Article based on the Athlete or other Person's degree of Fault].

10.6.4 Application of Multiple Grounds for Reduction of a Sanction

Where an Athlete or other Person establishes entitlement to reduction in sanction under more than one provision of Article 10.4, 10.5 or 10.6, before applying any reduction or suspension under Article 10.6, the otherwise applicable period of Ineligibility shall be determined in accordance with Articles 10.2, 10.3, 10.4, and 10.5. If the Athlete or other Person establishes entitlement to a reduction or suspension of the period of Ineligibility under Article 10.6, then the period of Ineligibility may be reduced or suspended, but not below one-fourth of the otherwise applicable period of Ineligibility.

[Comment to Article 10.6.4: The appropriate sanction is determined in a sequence of four steps. First, the hearing panel determines which of the basic sanctions (Articles 10.2, 10.3, 10.4, or 10.5) apply to the particular anti-doping rule violation. Second, if the basic sanction provides for a range of sanctions, the hearing

panel must determine the applicable sanction within that range according to the Athlete or other Person's degree of Fault. In a third step, the hearing panel establishes whether there is a basis for elimination, suspension, or reduction of the sanction (Article 10.6). Finally, the hearing panel decides on the commencement of the period of Ineligibility under Article 10.11. Several examples of how Article 10 is to be applied are found in Appendix 2].

10.7 Multiple Violations

10.7.1 For an Athlete or other Person's second anti-doping rule violation, the period of Ineligibility shall be the greater of: a) six months; b) one-half of the period of Ineligibility imposed for the first anti-doping rule violation without taking into account any reduction under Article 10.6; or c) twice the period of Ineligibility 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. The period of Ineligibility established above may then be further reduced by the application of Article 10.6.

10.7.4.1 For purposes of imposing sanctions under Article 10.7, an anti-doping rule violation will only be considered a second violation if IWF can establish that the Athlete or other Person committed the second anti-doping rule violation after the Athlete or other Person received notice pursuant to Article 7, or after IWF made reasonable efforts to give notice of the first anti-doping rule violation. If IWF cannot establish this, the violations shall be considered together as one single first violation, and the sanction imposed shall be based on the violation that carries the more severe sanction.

10.8 Disqualification of Results in Competitions Subsequent to Sample Collection or Commission of an Anti-Doping Rule Violation

In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9, all other competitive results of the Athlete obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes.

10.10 Commencement of Ineligibility Period

Except as provided below, the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date Ineligibility is accepted or otherwise imposed.

10.10.1 Delays Not Attributable to the Athlete or other Person

Where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Athlete or other Person, IWF may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. All competitive results achieved during the period of Ineligibility, including retroactive Ineligibility, shall be Disqualified.

[Comment to Article 10.10.1: In cases of anti-doping rule violations other than under Article 2.1, the time required for an Anti-Doping Organization to discover and develop facts sufficient to establish an anti-doping rule violation may be lengthy, particularly where the Athlete or other Person has taken affirmative action to avoid detection. In these circumstances, the flexibility provided in this Article to start the sanction at an earlier date should not be used].

10.10.2 Timely Admission

Where the Athlete or other Person promptly (which, in all events, for an Athlete means before the Athlete competes again) admits the anti-doping rule violation after being confronted with the anti-doping rule violation by IWF, the period of Ineligibility may start as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. In each case, however, where this Article is applied, the Athlete or other Person shall serve at least one-half of the period of Ineligibility going forward from the date the Athlete or other Person accepted the imposition of a sanction, the date of a hearing decision imposing a sanction, or the date the sanction is otherwise imposed. This Article shall not apply where the period of Ineligibility has already been reduced under Article 10.6.3.

10.10.3 Credit for Provisional Suspension or Period of Ineligibility Served

10.10.3.1 If a Provisional Suspension is imposed and respected by the Athlete or other Person, then the Athlete or other Person shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed. If a period of Ineligibility is served pursuant to a decision that is subsequently appealed, then the Athlete or other Person shall receive a credit for such period of Ineligibility served against any period of Ineligibility which may ultimately be imposed on appeal.

10.10.3.2 If an Athlete or other Person voluntarily accepts a Provisional Suspension in writing from IWF and thereafter respects the Provisional Suspension, the Athlete or other Person shall receive a credit for such period of voluntary Provisional Suspension against any period of Ineligibility which may ultimately be imposed. A copy of the Athlete or other Person's voluntary acceptance of a Provisional Suspension shall be provided promptly to each party entitled to receive notice of an asserted anti-doping rule violation under Article 14.1.

[Comment to Article 10.10.3.2: An Athlete's voluntary acceptance of a Provisional Suspension is not an admission by the Athlete and shall not be used in any way as to draw an adverse inference against the Athlete].

10.10.3.3 No credit against a period of Ineligibility shall be given for any time period before the effective date of the Provisional Suspension or voluntary Provisional Suspension regardless of whether the Athlete elected not to compete or was suspended by his or her team.

[Comment to Article 10.10 makes clear that delays not attributable to the Athlete, timely admission by the Athlete and Provisional Suspension are the only justifications for starting the period of Ineligibility earlier than the date of the final hearing decision].

C. WADA International Standard for Testing and Investigations (January 2015)

53. The Athlete has raised in his Answer claims that there were departures from the WADA International Standard for Testing and Investigations ("ISTI") in force in 2016, specifically in regard to the 10 June 2016 sample. The relevant clauses of the ISTI are as follow. The emphasis by underlining it that of the Arbitrator.

4.0 Planning effective testing

4.5.5 For the avoidance of doubt, notwithstanding the development of criteria for selection of Athletes for Testing, and in particular for Target Testing of Athletes, as well as the fact that as a general rule Testing should take place between 5 a.m. and 11 p.m. unless valid grounds exist for Testing overnight, the fundamental principle remains (as set out in Code Article 5.2) that an Athlete may be required to provide a Sample at any time and at any place by any Anti-Doping Organization with Testing Authority over him/her, whether or not the selection of the Athlete for Testing is in accordance with such criteria. Accordingly, an Athlete may not refuse to submit to Sample collection on the basis that such Testing is not provided for in the Anti-Doping Organization's Test Distribution Plan and/or is not being conducted between 5 a.m. and 11 p.m., and/or that the Athlete does not meet the relevant selection criteria for Testing or otherwise should not have been selected for Testing.

5.0 Notification of Athletes

5.1 Objective

The objective is to ensure that an Athlete who has been selected for Testing is properly notified of Sample collection as outlined in Article 5.4.1, that the rights of the Athlete are maintained, that there are no opportunities to manipulate the Sample to be provided, and that the notification is documented.

5.2 General

Notification of Athletes starts when the Sample Collection Authority initiates the notification of the selected Athlete and ends when the Athlete arrives at the Doping Control Station or when the Athlete's possible Failure to Comply is brought to the Testing Authority's attention. The main activities are: a) Appointment of DCOs, Chaperones and other Sample Collection Personnel; b) Locating the Athlete and confirming his/her identity; c) Informing the Athlete that he/she has been selected to provide a Sample and of his/her rights and responsibilities; d) For No Advance Notice Testing, continuously chaperoning the Athlete from the time of notification to the arrival at the designated Doping Control Station; and e) Documenting the notification, or notification attempt.

5.3 Requirements prior to notification of Athletes

5.3.1 Save in exceptional and justifiable circumstances, No Advance Notice Testing shall be the method for Sample collection.

[Comment to 5.3.1: It is not justifiable for a National Federation or other body to insist that it be given advance notice of Testing of Athletes under its jurisdiction so that it can have a representative present at such Testing].

5.3.3 Sample Collection Personnel shall have official documentation, provided by the Sample Collection Authority, evidencing their authority to collect a Sample from the Athlete, such as an authorisation letter from the Testing Authority. DCOs shall also carry complementary identification which includes their name and photograph (i.e., identification card from the Sample Collection Authority, driver's licence, health card, passport or similar valid identification) and the expiry date of the identification.

5.3.4 The Testing Authority or otherwise the Sample Collection Authority shall establish criteria to validate the identity of an Athlete selected to provide a Sample. This ensures the selected Athlete is the Athlete who is notified. The method of identification of the Athlete shall be documented on the Doping Control form.

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.

5.3.6 The Sample Collection Authority shall establish a system for the detailed recording of Athlete notification attempt(s) and outcome(s).

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.

5.4 Requirements for notification of Athletes

5.4.1 When initial contact is made, the Sample Collection Authority, DCO or Chaperone, as applicable, shall ensure that the Athlete and/or a third party (if required in accordance with Article 5.3.8) is informed: a) That the Athlete is required to undergo a Sample collection; b) Of the authority under which the Sample collection is to be conducted; c) Of the type of Sample collection and any conditions that need to be adhered to prior to the Sample collection; d) Of the Athlete's rights, including the right to: i. Have a representative and, if available, an interpreter accompany him/her, in accordance with Article 6.3.3(a); ii. Ask for additional information about the Sample collection process; iii. Request a delay in reporting to the Doping Control Station for valid reasons; and iv. Request modifications as provided for in Annex B – Modifications for Athletes with Impairments. e) Of the Athlete's responsibilities, including the requirement to: i. Remain within direct observation of the DCO/Chaperone at all times from the point initial contact is made by the DCO/Chaperone until the completion of the Sample collection procedure; ii. Produce identification in accordance with Article 5.3.4; iii. Comply with Sample collection procedures (and the Athlete should be advised of the possible Consequences of Failure to Comply); and iv. Report immediately for Sample collection, unless there are valid

reasons for a delay, as determined in accordance with Article 5.4.4. f) Of the location of the Doping Control Station; g) That should the Athlete choose to consume food or fluids prior to providing a Sample, he/she does so at his/her own risk; h) Not to hydrate excessively, since this may delay the production of a suitable Sample; and i) That any urine Sample provided by the Athlete to the Sample Collection Personnel should be the first urine passed by the Athlete subsequent to notification, i.e., he/she should not pass urine in the shower or otherwise prior to providing a Sample to the Sample Collection Personnel.

5.4.2 When contact is made, the DCO/Chaperone shall: a) From the time of such contact until the Athlete leaves the Doping Control Station at the end of his/her Sample Collection Session, keep the Athlete under observation at all times; b) Identify themselves to the Athlete using the documentation referred to in Article 5.3.3; and c) Confirm the Athlete's identity as per the criteria established in Article 5.3.4. Confirmation of the Athlete's identity by any other method, or failure to confirm the identity of the Athlete, shall be documented and reported to the Testing Authority. In cases where the Athlete's identity cannot be confirmed as per the criteria established in Article 5.3.4, the Testing Authority shall decide whether it is appropriate to follow up in accordance with Annex A – Investigating a Possible Failure to Comply.

5.4.3 The Chaperone/DCO shall have the Athlete sign an appropriate form to acknowledge and accept the notification. If the Athlete refuses to sign that he/she has been notified, or evades the notification, the Chaperone/DCO shall, if possible, inform the Athlete of the Consequences of refusing or failing to comply, and the Chaperone (if not the DCO) shall immediately report all relevant facts to the DCO. When possible the DCO shall continue to collect a Sample. The DCO shall document the facts in a detailed report and report the circumstances to the Testing Authority. The Testing Authority shall follow the steps prescribed in Annex A – Investigating a Possible Failure to Comply.

5.4.4 The DCO/Chaperone may at his/her discretion consider any reasonable third party request or any request by the Athlete for permission to delay reporting to the Doping Control Station following acknowledgment and acceptance of notification, and/or to leave the Doping Control Station temporarily after arrival, and may grant such permission if the Athlete can be continuously chaperoned and kept under direct observation during the delay. For example, delayed reporting to/temporary departure from the Doping Control Station may be permitted for the following activities … b) For Out-of-Competition Testing: i) Locating a representative; ii) Completing a training session; iii) Receiving necessary medical treatment; iv) Obtaining photo identification; or v) Any other reasonable circumstances, as determined by the DCO, taking into account any instructions of the Testing Authority.

5.4.8 If Sample Collection Personnel observe any matter with potential to compromise the collection of the Sample, the circumstances shall be reported to and documented by the DCO. If deemed appropriate by the DCO, the DCO shall follow the requirements of Annex A – Investigating a Possible Failure to Comply, and/or consider if it is appropriate to collect an additional Sample from the Athlete.

Annex A - Investigating a Possible Failure to Comply

A.2 Scope
Investigating a possible Failure to Comply begins when the Testing Authority or a DCO becomes aware of a possible Failure to Comply and ends when the Testing Authority takes appropriate follow-up action based on the outcome of its investigation.

A.3 Responsibility
A.3.1 The Testing Authority is responsible for ensuring that: a) when the possible Failure to Comply comes to its attention, it notifies WADA, and instigates an investigation of the possible Failure to Comply based on all relevant information and documentation; b) the Athlete or other party is informed of the possible Failure to Comply in writing and has the opportunity to respond; c) the investigation is conducted without unnecessary delay and the evaluation process is documented;

A.4 Requirements
A.4.1 Any potential Failure to Comply shall be reported by the DCO and/or followed up by the Testing Authority as soon as practicable.

VIII. MERITS

54. The substantive basis of the ADRVs asserted by the IWF is the evidence of the alleged urine substitution. Both the ADRV of use of a prohibited method and that of use of a prohibited substance flow from whether that evidence is substantiated or not. The argument of the Athlete in his Answer is based on there having been departures from the testing standards on the occasions of the alleged urine substitution on one hand, and on the other hand, on the lack of knowledge or constructive knowledge of, or involvement in, any substantiated urine substitution.

A. Urine substitution

55. The evidence to support the IWF's contention of the provision of some other person's urine at tests which were supposedly being undertaken by the Athlete on 15 March, 10 June, 17 July and 18 July 2016 came in the form of:

(i) DNA evidence of the 10 June 2016 sample, being the only sample which had not been destroyed, compared to the DNA of the Athlete provided in the in-competition World Championship and Olympic samples; in combination with

(ii) testosterone/epitestosterone ratio profiling of all four samples and comparison of that profiling in the Athlete Biological Passport (ABP) of the Athlete as well as with the World Championship sample, and the Olympic sample, which, being in-competition test samples were undoubtedly those of the Athlete; backed up by

(iii) evidence of Ms Bajzi, the doping control officer carrying out the 10 June 2016 test, of her recognising that the person providing the sample was not the Athlete; and

(iv) the admission by the Athlete in his Answer that he *"never underwent doping controls on 15, March, 10 June and 17 July 2016"*. This admission does not extend to the 18 July 2016 sample.

56. The DNA evidence adduced by the IWF consisted of reports from the *Institut für Blutgruppenforschung* of the WADA-accredited laboratory in Cologne, Germany, and from the *Unité de génétique forensique* of Lausanne, Switzerland. The Athlete produced no contrary scientific evidence and did not dispute the content of those reports. The uncontested reports lead to the conclusion that the World Championship and Olympic samples came from the Athlete, while the 10 June 2016 sample did not come from the same person, and the Sole Arbitrator so finds.

57. The 15 March, 17 July and 18 July 2016 samples had been destroyed and there was no similar DNA evidence in relation to those samples. However, the IWF adduced evidence that the ABP steroid profile attributed to the Athlete in respect of those samples, as well as of the 10 June 2016 sample, were analysed by Dr Geyer, the Director of the Athlete Passport Management Unit of the Cologne WADA-accredited laboratory. The IWF put an expert report from Dr Geyer into evidence. The conclusion of Dr Geyer is that in his opinion *"the T/E ratios of the* [additional samples] *show similar low T/E as* [the 10 June 2016 sample]. *All these ratios are below the lower individual reference limit of the athlete … and are therefore atypical for* [the Athlete]*"*. Furthermore, he concluded that the additional samples *"originate from other individuals"* and that *"according to my experience* [urine substitution] *is the only explanation for the decreased T/E values of* [the additional samples]*"*.

58. The Athlete did not request Dr Geyer's attendance for cross-examination, nor challenge his expertise, and did not adduce any evidence in relation to the expert report, which, together with his conclusion, is therefore accepted. Specifically, no evidence is presented by the Athlete to challenge Dr Geyer's conclusion in relation to the profiling of the samples from the 15 March, 10 June and 17 July 2016, or any scientific or other evidence to challenge his conclusion in relation to those samples or the 18 July 2016 sample. It is noted that the conclusion of Dr Geyer applies to the 18 July 2016 sample equally as to the other samples.

59. In his Second Response the Athlete claims that *"it shall be considered that the Athlete was tested by KAZ-NADO on 18 July 2016"*, and that *"there are many explanations about the T/E ratio variations and the scenario of tampering is a mere hypothesis. But such hypothesis is contradicted by the evidence provided by KAZ-NADO"*. The evidence of KAZ-NADO consists of a letter from its Director, dated 17 June 2021, to the effect that there were *"no issues or suspicious behaviour registered"* in relation to the 18 July 2016 sample. The letter points out that KAZ-NADO was not in a position to comment on suspicious changes to the ABP. The analysis and conclusion of Dr Geyer makes no distinction in relation to the 18 July 2016 sample. Absent any clear direct evidence that the Athlete did in fact provide the sample on the 18 July 2016, the scientific evidence of Dr Geyer becomes cogent evidence to the contrary. The Athlete gave no evidence by way of witness statement or oral evidence before the CAS. In the personal statement he made at the hearing he did not allude at all to the KAZ-NADO test, although his Counsel submitted in argument on his behalf, that he remembered one test before the Olympic Games, but was not sure when or where it was, in effect inviting the Sole Arbitrator to infer that it might have been the 18 July 2016 test, and therefore to reject Dr Geyer's evidence. The Arbitrator however accepts the evidence of Dr Geyer in relation to all the four samples in question.

60. One of the HUNADO Doping Control Officers in charge of the testing mission on 9 and 10 June 2016, Ms Rozalia Bajzi, provided a witness statement dated 12 October 2020 and gave evidence at the hearing where she was cross-examined by the Athlete's counsel.

61. Ms Bajzi said in her statement that she completed the Doping Control Report Form for the testing mission on 9 and 10 June 2016, and that the Report dated 10 June 2016 was annexed to her statement. In the Report it is written:

> *"Instead of Rahimov Nijat [and two other athletes] the WFRK representatives brought another persons (sic). When we mentioned this thing, they did not argued (sic)".*

62. In her witness statement she indicated that the mission was an out of competition testing mission of the national team of weightlifters at the National Training Centre in Almaty. On 9 June 2016, she met the Head Coach of the National Team, Mr Aleksey Ni, whom she knew. She gave to him the names of the athletes they wanted to test. He brought some of the athletes on 9 June 2016 and some on 10 June 2016. He was present during the testing and countersigned all the Doping Control Forms. Her statement states:

> *"29. On 10 June 2016, I observed another three instances where the person presenting as the targeted athlete was likely a doppelgänger. The doppelgängers presented in Doping Control pretending to be Mr Rahimov [and two other athletes].*
>
> *30. All three doppelgängers produced seemingly correct photographic identification, meaning, the identification they produced had the name of the target athlete but the picture of the doppelgänger. However, I was suspicious (believing them to be doppelgängers) because their physical appearances did not match photographs we had found on the internet of the targeted athletes.*
>
> *31. Moreover, the doppelgängers had no idea of the sample collection process and required constant instruction and explanation, despite all three targeted athletes having been subject of many previous tests. I raised my concerns about the doppelgängers with Coach Mr Ni. However, Coach Ni did not acknowledge me and ignored what I was telling him about my concerns".*

63. In evidence at the hearing, she said that to identify an athlete for testing she would ask for picture ID and also seek verbal communication that it is the person. If the athlete is "high level" she could also check photos on the internet. Additionally, she had a copy of the athletes' whereabouts forms which contain a photo of the athlete in each case. In the case of the Athlete Nijat Rahimov she said she was suspicious because, in respect of one athlete, the previous day the person who presented for testing was not similar to the athlete she had met on previous tests, and as a result she searched for pictures of the Athlete Nijat Rahimov on the internet prior to his test. The cross-examination did not suggest to her that the athlete she tested was in fact the Athlete. The Sole Arbitrator accepts her evidence.

64. As indicated earlier, the Athlete admits in his Answer, that it was not his urine that was tested on 15 March, 10 June and 17 July 2016. There is a submission that it would be open to infer

that he provided the urine for the 18 July 2016 sample, and that issue is discussed at paragraph 59 above.

65. The totality of the evidence outlined in paragraphs 51 - 60 is such that the Sole Arbitrator is comfortably satisfied that urine substitution occurred in relation to the 10 June 2016 sample. Not only is there the uncontradicted DNA evidence of that, and the ABP profiling evidence, there is the corroborating evidence of Mr Bajzi, and the admission of the Athlete in his Answer.

66. Moreover, even without the DNA evidence, the Sole Arbitrator finds that the ABP profiling evidence, together with the admission of the Athlete, sufficient to permit him to be comfortably satisfied that the 15 March 2016 and the 17 July 2016 samples were of urine which was not the Athlete's urine.

67. In respect of the 18 July 2016 sample, however, there is no admission that the urine in that sample was not the Athlete's and there is the suggestion in the Athlete's Second Response that the Athlete may have been the person tested on that occasion. However, the absence of any evidence to support that suggestion, the lack of credibility of the Athlete as outlined in paragraph 77 below, and the acceptance of the unchallenged evidence of Dr Geyer, which does not distinguish between the samples analysed by him, are, when considered together, sufficient to enable the Sole Arbitrator to be comfortably satisfied that the urine tested on that date was also not the Athlete's urine, and that urine substitution had occurred by use of a doppelgänger.

68. In relation to all four samples referred to, the Sole Arbitrator is comfortably satisfied that the IWF has, through evidence of the nature outlined in Article 3.2 of the IWF ADP, met the standard of proof required by Article 3.1 of the IWF ADP to establish the fact of urine substitution on each occasion, which is an essential element of establishing whether an Anti-Doping Rule Violation of use of a prohibited method has occurred.

69. The Athlete submits that there is however no Anti-Doping Rule Violation, as the Athlete was not involved in or had no actual or constructive knowledge of the urine substitution, and that there were departures from the International Standards of Testing and Investigation which rendered the testing invalid, and even caused or at least permitted the urine substitution.

B. The Athlete's implication in urine substitution

70. The Athlete's submissions in respect of his lack of involvement or knowledge are that:

(i) The Athlete was not aware and has never been aware of any strategy or plan to protect him through urine substitution.

(ii) The IWF has not established that the Athlete is connected with any urine substitution or committed any act or omission that would have facilitated the urine substitution, or that the Athlete had actual or constructive knowledge of the doping controls and the urine substitution.

(i) The Athlete's knowledge of the urine substitution

71. The Athlete did not give evidence but his Answer claims that he was not aware of the tests on 15 March, 10 June, and 17 July 2016, had never been notified of the tests and has absolutely no idea how the tests were conducted by HUNADO, and does not know who passed the urine on his behalf. He filed an expert report to establish that the signatures on the Doping Control Forms were not his signature. He claims that he may have been tested by KAZ-NADO on 18 July 2016, and that the result was negative. It is noted that KAZ-NADO has not retained the Doping Control Form (or other documents) relating to that test. Therefore, there is no evidence about who signed that Form.

72. The Athlete contends that it is the IWF which bears the burden of proving the existence of an Anti-Doping Rule Violation under Article 2.2 of the IWF ADP, and that this includes proving the Athlete's actual or constructive knowledge of and/or involvement of the substitution of urine on the occasions of the HUNADO tests, *"otherwise the Athlete would be liable for substitution by a person entirely unconnected with the Athlete of whom the athlete has no knowledge or control"*. He relies on the case of *Alexander Legkov v IOC (CAS 2017/A/5379)*. His Answer also denies that the IWF can establish that he committed any act or omission that would have facilitated the urine substitution.

73. The evidence relied on by the Athlete to validate these contentions about lack of knowledge is the Athlete's WADA Whereabouts Declaration for the months of March, June and July of 2016. That document was tendered by the Athlete with his Answer in order to show that the Athlete declared that he was at home in Almaty and available for testing for an hour from 9 a.m. on each of the days of the tests, and in fact for every day from 4 to 31 March, and from 30 May to 30 June, and from 8 to 31 July 2016. The Answer states that his home was Baizakov Street 305, Almaty, and a map produced by the Athlete shows that this was less than 500 metres from the National Training Centre, where the testing in March and June was carried out, and about 1 kilometre from the Hotel where the testing on 17 July 2016 was carried out. He claims he was not notified and did not know of the testing taking place at the National Training Centre near his home. This amounts to a suggestion on his part that he may have been at home at the time of the testing, although there is no statement or other evidence adduced by him that he was at home.

74. It is only after social media evidence was filed by the IWF in Reply to his Answer that the Athlete conceded in his Second Response *"According to the best of his knowledge, he did train both in Almaty and Tekeli"*, but states that *"he cannot be expected to explain in details – more than five years after the course of the events – where he was training ahead of the Rio Olympics"*.

75. The inference the Athlete would have the Sole Arbitrator draw is that he should have been notified and/or tested during that hour at home, on the days in question, not anywhere else at any other time. The Sole Arbitrator declines to draw that inference, for the following reasons.

76. First, the Athlete has produced no evidence to corroborate the claims in his submissions that he was in fact in Almaty on the days of the testing. On the contrary. there is direct evidence to

suggest otherwise, being the social media evidence referred to in paragraph 74 above, as well as his late concession that he was sometimes training in Tekeli, as well as Almaty.

77. Upon receipt of the Athlete's Answer, the IWF sought and were granted leave to a file a Reply relating to the matters raised in the Answer, including the attached Whereabouts Declaration. As part of the Reply, the IWF produced a report from Sportradar AG, of an analysis of the Athlete's and other athletes' social media posts, and other publicly available information which indicated that the Athlete was not in Almaty for the whole period from 15 March to 18 July 2016 but was for some of this period training in the region of Tekeli, 300 kilometres from Almaty, as well as competing in Taldykorgan, Kazakhstan. Specifically, the Athlete's social media posts indicated that he was in the Tekeli region on 15 July and on 23 July 2016 and in Taldykorgan in early June. The Second Response from the Athlete does not provide any evidence to contradict the proposition that the Athlete was not in Almaty for the whole period when his Whereabouts Declaration said he would be, but rather concedes that the whereabouts information may be inaccurate, and that the Athlete, to the best of his knowledge, did train both in Almaty and Tekeli. The Sole Arbitrator accepts the Sportradar AG evidence as being convincing and rejects the Athlete's submission that it was not admissible on procedural grounds. The Sole Arbitrator also rejects the Athlete's argument that it was inconsistent for HUNADO to test the national team in Almaty, when the national team is supposed to have been in Tekeli. There is no suggestion from the IWF or HUNADO that the whole team was only in one place – for some individuals to be in Almaty and some in Tekeli is not an impossibility or even unlikely.

78. Secondly, the argument in the Athlete's Answer is that the Athlete *"has never been notified to provide samples for the purpose of doping control when he was at home, as indicated in ADAMS"* and that that was the appropriate place and times for any testing to take place. However, the 2015 edition of the *WADA International Standard for Testing and Investigation* ("ISTI") Article 4.5.5 provides that:

> *"an Athlete may be required to provide a Sample at any time and at any place by any Anti-Doping Organization with Testing Authority over him/her".*

In other words, an Anti-Doping Organisation is not restricted to the times declared in a whereabouts form for the carrying out of out-of-competition testing. The arguments made by the Athlete to suggest that HUNADO had not complied with the ISTI in this regard are not accepted.

79. There was no dispute that the Almaty Centre was the training centre, or at least one of the training centres, for the National Team, and that the Athlete was part of the national team. The evidence of Ms Bajzi at the hearing was that the WFRK Training Centre in Almaty was chosen for the 9-10 June 2016 out-of-competition testing mission because according to the whereabouts list, there were a number of athletes who had to be there, and that according to habit they probably checked ADAMS for the whereabouts for all 16 athletes on their list. She also indicated that she had called a colleague who had done previous missions there and was told that the Olympic training centre was where they were likely to find the athletes. She said her instructions did not include a requirement to test the athletes at the time and place indicated

on their whereabouts form. The Sole Arbitrator finds that the evidence of Ms Bajzi is credible and she was entitled to expect he would be at or near the training centre, especially in light of his own Whereabouts Declaration, which up until the Second Response, he was putting forward as accurate.

80. In these circumstances, the Sole Arbitrator concludes that there was no requirement for the Doping Control Officer to check if the Athlete was at his home on that day, and the only conclusion to be drawn from the Athlete's Whereabouts Declaration, which the Athlete put into evidence to show that he was at home, has been to show that it was not a reliable record of where the Athlete was on that day or any other day.

81. The fact that the Athlete submitted his Whereabouts Declaration as an Exhibit to his Answer and relied on it, until evidence was produced that showed he was not always where he said he would be over that period, which he then admitted, is damaging to the Athlete's credibility, including importantly the credibility of the claim in his Answer that he did not know of the testing. It also constitutes a course of action which may be considered quite probably to be a course of action taken to avoid being tested, and to enable the urine substitution to be perpetrated. On its own, without further evidence, this is not sufficient to comfortably satisfy the Sole Arbitrator that the Athlete had knowledge or constructive knowledge of, or involvement in, the substantiated urine substitutions.

82. The Athlete argued that *"The ITA* [representing the IWF] *shall establish that the athlete is connected with the substitution"* (Athlete's Answer paragraph 48).

83. The Athlete also argued that the case of *Alexander Legkov v IOC, CAS 2017/A/5379* (the Legkov case) establishes at paragraph 798 that *"an athlete can only be held liable under article 2.2 of the WADC* [which is replicated in the IWF ADP] *for the substitution of their urine by another person if: a) the athlete has committed some act or omission that facilitates the substitution; and b) they have done so with actual or constructive knowledge of the likelihood of that substitution occurring. Thus, an athlete who commits an act which contributes to the subsequent substitution of their urine sample by another person, and who knew or ought to have known that substitution was likely to occur is guilty of an ADRV under article 2.2 of the WADC* [or IWF ADP]*"* (Athlete's Answer paragraph 49).

84. The statement of the panel in the Legkov case is of course relevant to the facts of that case. In a sense it does run counter to the Comment in respect of Article 2.2 of the WADC or IWF ADP, which suggests that strict liability still applies to the ADRV of use of a prohibited method:

> *Comment to Article 2.2.2: Demonstrating the "Attempted Use" of a Prohibited Substance or a Prohibited Method requires proof of intent on the Athlete's part. The fact that intent may be required to prove this particular anti-doping rule violation does not undermine the Strict Liability principle established for violations of Article 2.1 and violations of Article 2.2 in respect of Use of a Prohibited Substance or Prohibited Method.*

It is noted that Article 24.2 of the WADC and of the IWF ADP provides that *"The comments annotating various provisions of the Code shall be used to interpret the Code"*.

85. However, in case the panel's view in the Legkov case may be said to have a more general application in regards to urine substitution than the relevant facts in that case, it is appropriate to consider the questions of any acts or omissions of the Athlete that facilitated the substitution, leading to actual or constructive knowledge of the likelihood of that substitution occurring.

(ii) The Athlete's connection with, facilitation of and constructive knowledge of the urine substitution

86. The evidence of Ms Bajzi is that Mr Aleksey Ni was the National Head Coach. This has not been disputed by the Athlete. This was also confirmed by the only witness called by the Athlete, Mr Denis Ulanov.

87. Evidence in the form of a report of a media interview with the Athlete on 26 December 2016 shows that the Athlete identified Mr Victor Ni as his Coach. The following is an answer given in that interview:

> *"I train mainly at the training camp with the national team of Kazakhstan - most often in Almaty, Taldykorgan. My trainers are Victor Gennadievich Ni and Enver Turkeleri".*

There is no evidence from the Athlete to retract or contradict that statement and the fact that Mr Victor Ni was the Athlete's coach.

88. The evidence establishes that the Head Coach of the National Team, Mr Aleksey Ni, was party to the urine substitution on at least one occasion, and also that the coach of the Athlete, Mr Viktor Ni was also involved in the urine substitution on two occasions.

89. On 15 March 2010 the Doping Control Form lists Mr Victor Ni as present for the testing of the person who gave urine pretending to be the Athlete. He appears to have signed the Form.

90. On 10 June 2016, the evidence of Ms Bajzi is that Mr Aleksey Ni brought to her the person who claimed to be the Athlete, supervised the testing process on behalf of the WFRK, and was challenged by her as to the identity of the person who provided the sample on behalf of the Athlete, and ignored her concerns. He appears to have signed the Doping Control Form.

91. On 17 June 2016, the Doping Control Form lists Mr Victor Ni as present for the testing of the person who gave urine pretending to be the Athlete. He appears to have signed the Form.

92. There is no evidence as to who was present at the testing and provision of the sample on 18 June 2016, due to the KAZ-NADO Doping Control Form no longer being in existence.

93. The Athlete has adduced no evidence to contradict the presence of Mr Victor Li and Mr Aleksey Ni at the various HUNADO testing occasions and the Sole Arbitrator finds that they were present as set out in paragraphs 89, 90 and 91, and that they held the positions outlined in paragraphs 86 and 87. It is conceded by the Athlete that someone other than the Athlete provided the urine collected as the Athlete's samples on those occasions and it cannot be

suggested that the Athlete's coaches present were unaware of the fact that someone other than the Athlete was providing urine in his name. In fact, they were parties to the urine substitution on those three occasions. The coaches are not *"third part[ies] who [are] entirely unconnected with the athlete, and in respect of whom the athlete has no knowledge or control"* as was the case with those who were involved in the alleged urine substitution in the Legkov Case.

94. The IWF sought to rely on the fact that the doppelgänger on 10 June 2016 had an identity card which showed the name and other details of the Athlete, but with a photograph of the doppelgänger. There is no direct evidence that the Athlete took any steps in providing the wherewithal to produce this counterfeit identify card, and without any such evidence, the Sole Arbitrator is not comfortably satisfied to draw an inference that the Athlete was involved in its production, or that he even saw it. However, due to the presence of Mr Alexey Ni during the testing process, and the fact that he signed the Doping Control Form, together with his obvious knowledge of the Athlete, the inference of Mr Ni's knowledge of this counterfeit can readily be drawn.

95. The Sole Arbitrator is comfortably satisfied that the coaches were totally involved in the urine substitution. They oversaw someone other than the Athlete providing a sample in his name, providing false identification. The Sole Arbitrator is also comfortably satisfied that they were closely connected with the Athlete. The Sole Arbitrator notes that the World Anti-Doping Code and the IWF ADD treats the athletes as being responsible for the actions of their close entourage. This is apparent from the Comments to Article 10.4 of the IWF ADR, and whilst that Article and those Comments do not apply directly here, the principle expressed in the Comments logically does.

96. The level of comfortable satisfaction of the Athlete's involvement in the urine substitution through those closely connected to him, and as a consequence, of his constructive knowledge of the substitution, is heightened by a number of other circumstantial factors, which are the subject of evidence adduced by IWF, or inferred from the submissions of the Athlete. These factors of their own are not probative, but together are persuasive. The circumstantial evidence can be used to supplement the solid direct evidence of the urine substitution and of the established involvement of those closely connected to the Athlete.

97. First, the possibility that the identity card on which the doppelgänger's photograph had been attached was provided by the Athlete. There is no direct evidence of this, and the weight to be given to that possibility is limited.

98. Secondly, the evidence provided by the witness Denis Ulanov, the only witness called by the Athlete, was that his coach, on instruction from the National Coach Mr Alexey Ni, called him into the doping control in June 2016, even though he was some hundreds of kilometres away. The Athlete's objective in calling him as a witness was to suggest that the HUNADO officials were not following the relevant processes of notification, but it does not achieve that objective, as indicated above in paragraphs 78 to 80. However, it does establish that Mr Ni was inclined to call some athletes in – presumably those who could provide a clean sample – but not the Athlete Rahimov. A contrary presumption may be made in relation to the failure to call him in,

irrespective of whether he was 500 metres away at home, or in Tekeli, or somewhere else. No evidence from the coaches or otherwise was tendered on behalf of the Athlete as to why the Athlete Rahimov was not called in, or if he was called in why he did not attend. An adverse inference is able to be drawn from the contrast between this evidence concerning Mr Ulanov and the lack of evidence in relation to Mr Rahimov, and that inference would be that the coaches and the Athlete were together ensuring he was not in attendance at the testing. His absence facilitated the urine substitution. His presence would presumably have had the opposite effect.

99. Thirdly, the evidence of Ms Bajzi that other athletes of the Kazakhstan team were represented by doppelgängers at the same time and in the same circumstances as the Athlete, in the testing which occurred on 9 and 10 June 2016, one of whom did not appeal a decision that she committed an ADRV of use of a prohibited method (urine substitution).

100. Fourthly, the lack of credibility of the Athlete surrounding his untruthful Whereabouts Declaration.

101. Fifthly, the status and experience of the Athlete as an international level athlete and current World Champion, who would reasonably be expected to have known that he would be the subject of out-of-competition testing leading up to the Olympic Games, especially given his prior suspension for an ADRV, and the well-known other doping violations of Kazakhstani weightlifters.

102. Sixthly, his unpersuasive and vague suggestion in his submissions that he might have been tested by KAZ-NADO on 18 July 2016, in contrast to the persuasive evidence of Dr Geyer, which was not contradicted by any other expert opinion or evidence.

103. Seventhly, the general inferences that can be drawn from the fact that the Athlete did not give evidence, or make a witness statement, and was not available for cross-examination on highly relevant matters that would clearly be within his knowledge.

104. According to the general rules and principles of law, facts pleaded have to be proved by those who plead them, whether it be proof establishing those facts on the one hand, or proof to exclude those facts as being established on the other. It is well established CAS jurisprudence that in order to fulfil its burden of proof, a party must provide the Sole Arbitrator with all relevant evidence that it holds, and, with reference thereto, convince the Sole Arbitrator that the facts it pleads are true, accurate, and produce the consequences which the party alleges. The Code provides for an essentially adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some facts (or alternatively to contradict some facts) and persuade the deciding body, it must actively substantiate its allegations with convincing evidence (see for example CAS 2010/A/2160 para. 23 and further references, CAS 2017/A/5336 and CAS 2019/A/6496 para 91 and DAVID P., A Guide to the World Anti-Doping Code, Third Edition, 2017, Pages 285-287*,* and the cases cited).

105. In the light of the direct evidence of urine substitution overseen by the Athlete's coaches, and the additional circumstantial evidence and available inferences set out above, the Sole Arbitrator

is comfortably satisfied that the Athlete contributed to the urine substitution by his deliberate absence, and had constructive knowledge of that substitution through his coaches, and has thus had committed the ADRV of Use of a Prohibited Method under Article 2.2 of the IWF ADP.

106. In weighing the evidence, drawing these inferences and coming to these conclusions, the Sole Arbitrator is aware of the limitations of evidence facing the IWF (and the ITA on its behalf) in this case, particularly when no evidence from the Athlete or his coaches is adduced by way of witness statement or oral testimony. The Sole Arbitrator adopts the following statement of the Panel in the Legkov Case:

> *A sports body is not a national or international law enforcement agency. Its investigatory powers are substantially more limited than the powers available to such bodies. Since the sports body cannot compel the provision of documents or testimony, it must place greater reliance on the consensual provision of information and evidence, and on evidence that is already in the public domain. The CAS panel's assessment of the evidence must respect those limitations. In particular, it must not be premised on unrealistic expectations concerning the evidence that the sports body is able to obtain from reluctant or evasive witnesses and other sources. In view of the nature of the alleged doping scheme and the sports body's limited investigatory powers, the sports body may properly invite the CAS panel to draw inferences from the established facts that seek to fill in gaps in the direct evidence. The CAS panel may accede to that invitation where it considers that the established facts reasonably support the drawing of the inferences. So long as the CAS panel is comfortably satisfied about the underlying factual basis for an inference that an athlete has committed a particular anti-doping rule violation (ADRV), it may conclude that the sports body has established an ADRV notwithstanding that it is not possible to reach that conclusion by direct evidence alone.*

107. Returning to the statement in the Legkov case outlined in paragraph 83 above, it is noted that this statement is directed to a situation where the athlete provided his own urine at the test, and subsequently, it was alleged, individuals unconnected with the athlete substituted the urine supplied with other, obviously "clean", urine. However, in the case of the athlete Legkov, the Panel found that it could not be proven to their comfortable satisfaction that the athlete's urine was in fact substituted, and that in that case, general (and not very satisfactory) evidence about a widespread urine substitution scheme in Russia was insufficient without direct evidence to be the basis of an ADRV by the athlete concerned. The statement of the Panel in the Legkov case shows an admirable intent to protect athletes from a malicious act of the substitution of their sample by third parties unconnected with the Athlete. Moreover, in the Legkov case, the panel was not comfortably satisfied that the factual elements of the alleged urine substitution had been established by direct evidence.

108. In this Athlete's case, as indicated above, the Sole Arbitrator is comfortably satisfied that there is solid direct evidence of urine substitution in a very different factual situation. The Athlete here did not provide urine, but a doppelgänger did in his place. Also here, there was no allegation of subsequent substitution of his urine, but in fact a substitution at the very time of the giving of the sample, in a situation which was overseen and manufactured by people closely connected with the Athlete, namely his coaches. Thus, the current case is factually distinguished not only from the actual Legkov situation, but also from the hypothetical situation envisaged in the *obiter dictum* passage of the decision set out in paragraph 83, and relied upon by the Athlete.

109. The Athlete further argued that the Legkov case is precedent for the contention that *"establishing that urine substitution occurred is not enough to sanction an athlete"*. The IWF shall establish that the athlete is connected with such substitution. Otherwise, athletes would be held liable for urine substitution by a person entirely unconnected with the athlete and in respect of whom the athlete has no knowledge or control. This argument fails to apply here, as the Sole Arbitrator finds that the persons largely responsible for the urine substitution are, in contrast, closely connected to the Athlete, and the Athlete is thereby connected with the substitution, and his absence has facilitated it. The additional matters set out in paragraphs 97 to 103 above further remove the current case from the situation in Legkov as well as from the argument espoused by the Athlete.

110. The requirement of actual or constructive knowledge is not found within the provisions of the IWF ADP. In fact, Article 2.2.1 of the IWF ADP states: *"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"*. Rather, constructive knowledge in relation to use of the prohibited method of urine substitution warrants consideration because of the importance applied to it in by the panel in the Legkov case. The panel's statement at paragraph 798 of the Legkov award should be read as limited to the situation the panel was dealing with; namely, some relatively unsatisfactory evidence of a general scheme of deception involving subsequent substitution by persons unconnected to the athletes, of the urine provided by the athletes in the doping tests. Where the substitution is by means of someone providing the urine in the place of the athlete under the supervision of his close connections, the Legkov case does not provide binding authority that actual or constructive knowledge on the part of the Athlete is required, such as would displace the clear provision of strict liability in Article 2.2. That being the case, the Sole Arbitrator is of the view that the strict liability principle enshrined in Article 2.2 of the IWF ADP does not cease to apply in this case.

111. In any case, the Sole Arbitrator finds that the clear knowledge of his close connections can constitute constructive knowledge on the part of the Athlete, for whose benefit the dishonest acts of his coaches were being undertaken, and who had facilitated the substitution through his acts of absenting himself and providing misleading whereabouts information. The constructive knowledge here is that the Athlete must have known or ought to have known that on four separate occasions leading up to the Olympic Games, testing sessions were carried out at his normal training centre in the presence of his coaches and his team-mates, at which sessions he was called up for testing and someone else was tested in his place. It is not credible to suggest, without adducing evidence, that none of those present on any of the four occasions refrained from telling him about those incidents. Bearing very much in mind the seriousness of the allegation that is made, as required by Article 3.1 of the IWF ADP, the Sole Arbitrator is comfortably satisfied to draw the inference of the relevant actual or constructive knowledge on the part of the Athlete. The direct evidence on which the inference is based is the compelling evidence of the substitution of someone else's urine in the four samples supposedly provided by him, and the evidence of the circumstances around that substitution on those occasions, including the presence and involvement of his coaches.

C. Departure from the Testing Standards

112. The Athlete raised issues in relation to the HUNADO testing mission on 10 June 2016, and in particular in respect of the requirements of Article 5 of the ISTI regarding the notification of athletes, which are set out above. The claim by the Athlete in his Answer was that HUNADO failed to follow the provisions of Article 5, and in that way was complicit in, caused, allowed or permitted, the prohibited method of urine substitution. The Athlete also claims that the failure of HUNADO to notify WADA that the samples were not provided by the Athlete prevented him from having a fair chance to defend himself.

113. The major premise of the Athlete's claims in relation to the HUNADO testing on 10 June 2016 were that HUNADO did not test him at his home between 9 a.m. and 10 a.m. on that day, being the time he had listed as being when he was available on his Whereabouts Declaration, and nor did HUNADO notify him during that hour of the testing to be carried out later in the day. This claim misinterprets the whole purpose of the Whereabouts Declaration as well as suggesting that this is the only time when he could or should have been tested or notified. Article 4.5.5. of the ISTI stipulates that *"an Athlete may be required to provide a Sample at any time and at any place by any Anti-Doping Organization with Testing Authority over him/her"*. It is also a clear misinterpretation of Article 5.3.1 which provides that *"Save in exceptional and justifiable circumstances, No Advance Notice Testing shall be the method for Sample collection"*. The testing mission on 10 June 2016 was a "no advance notice testing", even though the evidence of Ms. Bajzi establishes that the choice of the time and place of the testing was informed by the Whereabouts Declaration of the Athlete and other athletes of the WFRK. There was no obligation only to test during the hour listed on the Whereabouts Declaration or to notify him during that time. As outlined above, in any case, the Athlete's whereabouts information was false and misleading, and it is not credible for him to seek to rely on it.

114. The second allegation of departure from the ISTI is that the Athlete was not the first person to be notified that he has been selected for sample collection under Article 5.3.7ISTI, because the National Coach was told the names of the athletes to be tested by Ms Bajzi and her colleague when they arrived at the national training centre. Ms Bajzi's evidence is that she did provide these names to the National Coach, who set about finding the named athletes. This is consistent with the standards set out in Article 5.3.5 ISTI which requires the Doping Control Officer to *"establish the location of the selected Athlete and plan the approach and timing of the notification"*, and consistent with the normal circumstances of undertaking such No Advance Notice Testing of several athletes at one place. The notification required in Article 5.3.7 ISTI could only be possible when the Athlete himself was present, and Ms Bajzi's evidence was that *"Coach Ni was initially very helpful and agreed to identify the targeted athletes and accompany them to the Doping Control"*. In fact, the evidence is that the National Coach or others went to some trouble to call the witness Denis Ulanov to the testing, from a considerable distance. In the Athlete's case, they chose instead to interpolate a doppelgänger. To provide notification only to athletes themselves without the intermediary of a coach or federation official to identify them in these circumstances may be considered to be best practice, but it is not the only way that anti-doping authorities may and indeed do carry out unannounced out-of-competition testing. The ISTI do not suggest that this practice would invalidate the testing.

115. Moreover, Article 3.2.3 of the IWF ADP, provides:

> *3.2.4. 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.*

116. The Athlete has not established departures from the ISTI on the basis of a balance of probability, and even if he had done, the Sole Arbitrator is comfortably satisfied that the Athlete has not established that the departures asserted could have reasonably caused the ADRV or the factual basis thereof. The urine substitution was caused by the Athlete's close connections, and was contributed to and facilitated 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.

117. The Athlete's submission that HUNADO did not comply with the requirements of Annex A to the ISTI, in that they did not conduct an enquiry into the Athlete's failure to comply without unnecessary delay, has merit. There is no evidence as to why an enquiry was not conducted in 2016. It is conceivable that the Athlete's memory of events would have been clearer at that time, and that the delay has made his defending the matter more difficult. But once again this does not amount to the athlete establishing under Article 3.2.3 that this departure from the ISTI could reasonably have caused the ADRV, and does not invalidate the cogent evidence that has been adduced as to the factual basis of the ADRV.

D. Use of prohibited substances

118. The IWF submitted that the evidence (which has been accepted by the Sole Arbitrator) relating to urine substitution is conclusive of the ADRV of the Use of one or more Prohibited Substances under Article 2.2 of the IWF ADP, in his preparation for the 2016 Rio de Janeiro Olympic Games. The substance of the submission is that the ADRV of Use of a Prohibited Substance, differs from the ADRV of Presence of a Prohibited Substance in an Athlete's Sample under Article 2.1, in that Use may be established by "any reliable means". The jurisprudence of the CAS from the case of *Alexander Zubkov v IOC CAS 2017/A/5422* ("the Zubkov case") establishes that any reliable means includes, but is not limited to *"witness evidence, documentary evidence, and conclusions drawn from analytical information other than providing the actual presence of a prohibited substance".*

119. In the Zubkov case, the panel stated at paragraph 685 that:

> *In view of the nature of the alleged doping scheme and the IOC's limited investigatory powers, the IOC* [the relevant anti-doping authority in that case] *may properly invite the Panel to draw inferences from the*

established facts that seek to fill in gaps in the direct evidence. The Panel may accede to that invitation where it considers that the established facts reasonably support the drawing of the inferences. So long as the Panel is comfortably satisfied about the underlying factual basis for an inference that the Athlete has committed a particular ADRV, it may conclude that the IOC has established an ADRV notwithstanding that it is not possible to reach that conclusion by direct evidence alone.

120. The IWF would in this case rely on a number of inferences being drawn, in the absence of direct evidence of use of a substance. Those inferences are:

    1. The inference that there is no reason for the deliberate substitution of the Athlete's urine on four occasions, other than that he must have been using prohibited substances, and the urine substitution was perpetrated in order to avoid a positive result in an anti-doping test during that period.

    2. The results of the Athlete at the 2016 Olympic Games were manifestly so extraordinarily good that the conclusion to be drawn is that he used prohibited substances in his preparation for those Games (noting that he was tested after his performance at Rio, returning a negative result).

    3. Further, there was a significant drop in the Athlete's weightlifting performances following the Rio Olympic Games.

    4. The Athlete has a history of use of prohibited substances, back in 2013, which makes it reasonable to draw the inferences above.

121. In the Zubkov case, the panel was eventually comfortably satisfied to conclude that the athlete in question not only had facilitated the prohibited method of urine substitution there involved (by providing clean urine in advance of the doping test in question), but also to conclude that the athlete had used a prohibited substance. That conclusion was arrived at on the basis of the evidence in that case, that not only had he facilitated the swapping of urine but that his name was on a list of athletes for whom a specific cocktail of prohibited substances had been concocted for their use. The fact of his name on that list provided the necessary additional factual support that the panel needed to conclude that he had committed the ADRV of use of a prohibited substance (para. 814 of the Zubkov award), as well as the use of a prohibited method. That additional evidence enabled the panel to draw the inference that, not only was there no other reason for the urine substitution which the athlete had facilitated than the reason of likely use of a prohibited substance, there was evidence connecting the athlete to the scheme for such prohibited substance use.

122. In the current case there is no direct evidence of use of a prohibited substance, nor of any scheme for the use of prohibited substances, as was the situation in the Zubkov case. Whilst it might seem probable (on a balancing of the probabilities) 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 take prohibited substances undetected, the Sole Arbitrator is not comfortably satisfied (which is the standard of proof required by the IWF ADP) to draw that inference without it being based on direct evidence. Each of the other three inferences sought by the IWF as outlined above, are

also evidence without suitable direct evidence on which the inferences of use of prohibited substances could be based. It could be said to be probable that the significant results at the Olympic Games were because of the Athlete's use of prohibited substances, but that is not an inference the Sole Arbitrator is comfortably satisfied to draw, absent direct evidence to that effect. Nor is the Sole Arbitrator prepared to draw an inference based on his prior ADRV from 2013, or from his decline in results. In effect that would be using a number of inferences to draw other inferences, rather than on the basis of some direct evidence. If not based on direct evidence, those inferences are speculative. There are several CAS cases where the panel has not been prepared to draw inferences on behalf of athletes on the basis that the inferences sought to be drawn were too speculative. It is clear that the same should be the approach to speculative inferences proposed by the anti-doping authorities.

123. As a result, the Sole Arbitrator is not comfortably satisfied to find that the ADRV of use of a prohibited substance or presence of prohibited substances has been proven to the appropriate standard of proof, bearing in mind the seriousness of the allegation that is made. To do so would be drawing inferences from inferences, rather than from relevant direct evidence.

IX. SANCTIONS

A. Period of Ineligibility

124. The Sole Arbitrator finds that the Athlete is responsible for four urine substitutions which constitute the ADRVs of Use of a Prohibited Method under Article 2.2 of the IWF ADP.

125. The Sole Arbitrator finds that the assertion of an ADRV of Use of a Prohibited Substance under Article 2.2 has not been established.

126. The IWF has contended 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.

127. The period of ineligibility for the violation of Article 2.2 is four years under Article 10.2. The Athlete has not established that these ADRVs were not intentional, and Article 10.2.3 of the IWF ADP does not apply.

128. 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) 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 8 years.

129. No submissions have been made, nor evidence adduced to the effect that the provisions of Articles 10.4, 10.5, 10.6 or 10.10.2 of the IWF ADP apply to reduce the applicable period of ineligibility.

130. The Athlete will therefore be sanctioned with a period of ineligibility of 8 years.

B. Commencement of the period of ineligibility

131. In accordance with Article 10.10 of the IWF ADP the period of ineligibility shall start on the date of the final hearing decision providing for ineligibility.

132. Notwithstanding the above, a provisional suspension was imposed on the Athlete on 18 January 2021. Accordingly, his period of ineligibility shall commence from that date in accordance with Article 10.10.3.2 of the IWF ADP.

C. Disqualification of Results

133. Article 10.8 of the IWF ADP provides that all competitive results of the Athlete obtained from the date of the ADRV through until the commencement of the provisional suspension shall be disqualified *"unless fairness requires otherwise"*. The date of the first established urine substitution was 15 March 2016. The Athlete was provisionally suspended on 18 January 2021.

134. No submissions were made to the Sole Arbitrator about fairness requiring a reduction in the period of disqualification of results outlined in Article 10.8. Nevertheless, the Sole Arbitrator has considered the question of whether fairness might warrant a reduction in this period, and has been assisted by CAS decisions in other cases where the commencement of proceedings against an athlete had occurred some years after the commission of the ADRVs which were found to be established.

135. The recent cases of CAS 2018/O/5712, CAS 2018/O/5713, and CAS 2020/O/6759 consider this question, in the circumstances of the individual cases. In these cases, there were periods of 5 to 6 years between the first ADRV and the provisional suspension, and the consideration was whether the period of disqualification should be reduced to be the same as the period of ineligibility imposed on the athletes concerned, which in each case was a 4-year period of ineligibility. The review of earlier cases set out in paragraphs 70-72 of CAS 2018/O/5713 case shows the range of the discretion exercised by the panels in those cases.

In that case the Sole Arbitrator presiding stated at paragraph 72:

> *CAS case law confirms that the panels have broad discretion in adjusting the disqualification period to the circumstances of the case. Some CAS Panels, in individual cases, have previously considered that it would be unfair to disqualify all results since the doping found, even in the case of a doping scheme. Others have held that it was not appropriate to maintain results on the basis of fairness where the doping was severe, repeated and sophisticated.*

136. In CAS 2020/O/6759, the Sole Arbitrator there presiding noted at paragraph 89:

"… the Sole Arbitrator notes that the retroactive disqualification of the competitive results of an athlete that has committed an ADRV is fair and necessary to restore the integrity of all sporting competitions in which he or she competed, rectifying the record books in the interest of sport. Deciding otherwise would be tantamount to reward the deceiver and would not be fair at all vis-à-vis the rest of the athletes that did not use Prohibited Substances …" or in the current case, Prohibited Methods. He declined to reduce the period of disqualification to align with the period of ineligibility (4 years).

137. It is noted that the period between the first ADRV in the current case and the provisional suspension is approximately 4 years 10 months, and the period of ineligibility will be 8 years. Thus, in contradistinction from the cases mentioned above, in this case, the disqualification period is significantly less, not more, than the period of ineligibility. There is no practical or logical reason to reduce that period, and to do so would offend the principle outlined in paragraph 136 above.

138. All the Athlete's results shall be disqualified from 15 March 2016 to 18 January 2021 including forfeiture of all medals, prizes and points won. This decision is made in full recognition of the fact that it will mean that the Athlete will have his Rio 2016 Olympic Gold Medal result disqualified, amongst other results.

X. COSTS

(…).

XI. APPEAL

142. Pursuant to Article A21 of the ADD Rules, this Award may be appealed to the CAS Appeals Arbitration Division within 21 days from receipt of the notification of the final Award with reasons. Such appeal is to be filed in accordance with Articles R47 et seq. of the CAS Code, applicable to appeals procedures.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

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. (…).

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