



**Arbitration CAS 2016/A/4777 Izzat Artykov v. International Olympic Committee (IOC), award of 21 April 2017**

Panel: Prof. Christoph Vedder (Germany), President; Mr Jeffrey Benz (USA); Prof. Martin Schimke (Germany)

*Weightlifting*

*Doping (strychnine)*

*Right to appeal against a decision taken by the CAS Anti-Doping Division (ADD)*

*Standing to be sued*

*Scope of jurisdiction of the panel in the context of an appeal against a decision of the CAS ADD*

*Notification of the Adverse Analytical Finding (AAF) to the athlete*

*Representation of an athlete at the B sample opening*

*Apparent authority of the NOC during the Olympic Games*

- 1. According to Article 12.2 in conjunction with Article 12.1 of the IOC Anti-Doping Rules (ADR) as well as Article 21 of the Arbitration Rules (AR) of the Anti-Doping Panel (ADD), the athlete has the right to appeal the decision of the CAS ADD exclusively and directly to the permanent CAS. Therefore, the CAS has jurisdiction to hear the dispute.**
- 2. A person or entity has no standing as a respondent in a dispute before the CAS if the deadline provided for in Article R49 of the CAS Code has expired and if the latter is not named as respondent in the “application” issued by the CAS used to fill the appeal. Such participation as a respondent would exceed the jurisdiction of the Panel *ratione personae*. Though, pursuant to Article R57 of the CAS Code, a CAS panel, in an appeals arbitration, has the full power to review the facts and the law, such scope of review is limited to the subject-matter and the parties of the dispute which lead to the appealed decision.**
- 3. Though a CAS panel has jurisdiction *de novo* by virtue of Article R57 of the CAS Code, its appeal jurisdiction is limited to the extent of the jurisdiction allocated to the tribunal whose decision has to be reviewed. Rule 59.2 of the Olympic Charter, in conjunction with the IOC ADR and the AR ADD which implement the transfer of competence from the IOC Executive Board to the CAS ADD, display that the jurisdictional power of the CAS ADD including, in particular, the extent of the sanctions is confined to the range of the Olympic Games. Consequently, the results management should be referred to the federation which means that the sanctions beyond the jurisdiction of the CAS ADD fall under the responsibility of the competent international federation.**

4. Throughout the Olympic Charter and related rules, in general, and the IOC ADR, in particular, it is provided that the IOC communicates not directly with the athletes rather than via the NOCs as intermediary and leaves the further steps to the responsible NOC. Therefore, the task to notify the athletes is, by virtue of the IOC ADR, assigned to the NOC which has the responsibility to notify the athlete and the duty *“to exercise best efforts”* i.e. to take any appropriate and possible action under the given circumstances of the case to forward the information to the athlete. With respect to the receiving and countersigning of the notification of an AAF, the Chef de Mission of an athlete’s NOC is authorized to do so by virtue of the applicable rules without any particular authorization by the athlete.
5. Regarding the representation of an athlete at the B sample opening, it can be concluded from an athlete’s statements that he deliberately accepted the actions taken by his NOC and, thus, at least implicitly or even openly authorized the opening of the B sample in the presence the NOC’s Secretary General, acting as his representative. An athlete duly informed of his rights related to the B sample analysis may exercise these rights by accepting what the NOC already had initiated to do.
6. According to the rules of the Olympic Charter, in general, and of the IOC ADR, in particular, during the Olympic Games, the NOCs and in particular their Chefs de Mission act as a kind of intermediary between the IOC and the athletes. However, this does not mean that the applicable rules grant to the Chefs de Mission a general power to represent the athletes or their delegations. This remains a matter of the legal regulations and other arrangements which govern the relationship between the athletes and their respective NOCs. Nevertheless, under the specific circumstances during the Olympic Games and given the interaction of the IOC and NOCs, in the light of the applicable rules, there is an apparent authority of the NOCs which, independent of the internal legal relations between the athletes and their respective NOCs, exclusively and formally applies in external terms vis-à-vis the IOC. This authority, however, solely applies when there is no will or intention to the contrary expressed by the athlete in question or any indication that the athlete does not agree.

## I. PARTIES

1. Mr. Izzat Artykov (hereinafter: the Athlete or the Appellant), is a 23 year old professional weightlifter under the jurisdiction of the Weightlifting Federation of Kyrgystan (hereinafter: WFK) who represented the National Olympic Committee of the Kyrgyz Republic (hereinafter: KNOC) at the Olympic Games 2016 in Rio de Janeiro (hereinafter: Rio Games).
2. The International Olympic Committee (hereinafter: IOC) is the international non-governmental organization leading the Olympic Movement under the authority of which the Olympic Games are held. The IOC has its seat in Lausanne, Switzerland.

## **II. FACTUAL BACKGROUND**

### **A. Background Facts**

3. The Athlete participated in the Men's 69 kg Weightlifting competition at the Rio Games which took place on 9 August 2016 and was awarded the bronze medal.
4. On the same day, right after the competition, the Athlete submitted to an in-competition doping control for a urine sample.
5. On 10 August 2016, the Athlete and his coach flew back to Kyrgystan.
6. The Athlete's A sample was analysed by the WADA accredited laboratory in Rio de Janeiro on or before 12 August 2016.
7. On 12 August 2016, the IOC notified the Athlete and the KNOC that the results of the analysis of his A sample revealed the presence of strychnine which is a stimulant prohibited under S6 of the 2016 WADA Prohibited List. Strychnine is a specified substance. The Notice of Charge was addressed to the Athlete and Mr. Tologon Maratov, the Chef de Mission of the KNOC. Mr. Maratov acknowledged receipt of the Notice.
8. The B sample was analysed on 13 August 2016 in the presence of Mr. Ergeshov, the Secretary General of the KNOC. The results of the B sample analysis confirmed the results of the A sample analysis.

### **B. Proceedings before the CAS Anti-Doping Division**

9. On 12 August 2016, the IOC filed an application with the Anti-Doping-Division of the Court of Arbitration for Sport (hereinafter: CAS ADD), a tribunal set up by virtue of the IOC Anti-Doping Rules applicable at the Rio Games (hereinafter: IOC ADR) to adjudicate doping-related disputes arising during the Rio Games. The IOC mainly requested to determine that the Athlete committed an Anti-Doping Rule Violation (hereinafter: ADRV) in the sense of Article 2.1 IOC ADR and be excluded from the Rio Games with all results obtained in the Men's 69 kg Weightlifting event or other competitions at the Rio Games be disqualified.
10. On 13 August 2016 at 17.58 h, the CAS ADD, after its composition had been notified to the Parties, provisionally suspended the Athlete from competition.
11. On 14 August 2016 at 12.00h, the IOC provided the CAS ADD with the results of the analysis of the B sample which was conducted on 13 August 2016.
12. None of the Parties filed written submissions or asked for a hearing. Therefore, on 16 August 2016, the Panel, pursuant to Article 15(c) and (e) of the Arbitration Rules applicable to the CAS ADD (hereinafter: AR ADD) informed the Parties that it will render a decision without an oral hearing.

13. The CAS ADD, in its award issued on 18 August 2016, ruled that the Athlete committed an ADRV, that all results obtained at the Rio Games were disqualified and the Athlete was excluded from the Rio Games. The operative part of the appealed decision reads as follows:

*“1. The Athlete has committed an anti-doping rule violation in accordance with Article 2.1 of the IOC Anti-Doping Rules applicable to the Olympic Games of Rio 2016.*

*2. All results obtained by the Athlete in the Olympic Games Rio 2016 are disqualified with all consequences, including forfeiture of all medals, points and prizes.*

*3. The Athlete is excluded from the Olympic Games Rio 2016.*

*4. The Athlete’s Accreditation (number 1087397) is withdrawn.*

*5. The responsibility for the Athlete’s results management in terms of sanction beyond the Olympic Games Rio 2016 is referred to the International Weightlifting Federation being the applicable International Federation”.*

14. The CAS ADD determined its jurisdiction as first instance authority for doping-related matters under the IOC ADR. Its jurisdiction was not contested.

15. Based upon Articles 2. 3.1 and 10 IOC ADR, the CAS ADD Panel came to the following “Merits”:

*“26. The results of the analysis of the Athlete’s A and B Sample revealed the presence of strychnine. This substance is a specific stimulant, prohibited under S6 of the WADA Prohibited List. It is a specified substance.*

*27. The Athlete has not challenged the result of the analysis or made any other submission to the effect that he is not guilty of an anti-doping rule violation”.*

and the following “Conclusion”:

*“29. In view of the above considerations, the Panel finds that the IOC met its burden of proof under Art.3.1 IOC ADR. The documents adduced by the IOC establish sufficient proof, to the comfortable satisfaction of the Panel, that the Athlete committed an anti-doping rule violation under Art. 2.1 IOC ADR”.*

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

16. With respect to the award rendered by the CAS ADD on 18 August 2016 (CAS AD 16-07 IOC v. Izzat Artykov), the Athlete filed a Statement of Appeal, dated 29 August 2016, together with an “Application” dated “21 July/August 2016” against the IOC with the CAS. Mr. Pedro Fida, Attorney-at-law in São Paulo, Brazil, acted as Counsel for the Athlete. Mr. David Rivkin was nominated as arbitrator.

17. By letter of 9 September 2016, the Parties were notified that, pursuant to Article S20 of the Code of Sports-related Arbitration (2016 edition) (hereinafter: the Code), the dispute was

assigned to the Appeals Arbitration Division and, therefore, shall be dealt with in accordance with Articles R47 et seq. of the Code.

18. Within the time-limit set, by letter of 14 September 2016, Counsel for the IOC, Mr. Jean-Pierre Morand, nominated Prof. Martin Schimke as arbitrator. Prof. Schimke disclosed some professional connections of his law firm and himself with the IOC. However, by letter of 26 September 2016, the CAS Court Office stated that no challenge had been filed against the nomination of Prof. Schimke.
19. Upon an agreement reached by the Parties, the CAS Court Office, by letter of 20 September 2016, extended the deadline for the Appellant to file the Appeal Brief by 15 days. Following a further agreement between the Parties the deadline to file the Appellant's Appeal Brief was extended until 7 October 2016 by the CAS Court Office by letter of 4 October 2016.
20. Following Mr Rivkin's declination to serve as an arbitrator, the Appellant nominated Mr Jeffrey Benz as arbitrator by letter of 6 October 2016.
21. Within the time-limit set, the Appeal Brief was filed on 7 October 2016. In the Appeal Brief, the Appellant nominated the KNOC as Second Respondent.
22. However, by letter of 17 October 2016, the CAS Court Office advised the Appellant that, pursuant to Article R48 of the Code, "*the Respondent(s)*" must be designated in the Statement of Appeal within the time-limit prescribed by Article R49 of the Code. Since such deadline expired on 8 September 2016, the Appellant's designation of the KNOC as respondent "*shall be considered inadmissible*".
23. By the same letter, a deadline of 20 days of receipt of that letter was fixed for Respondent to file the Answer.
24. By letter of 26 October 2016, the Parties were notified that, pursuant to Article R54 of the Code, the Panel appointed by the President of the CAS Appeals Arbitration Division was constituted of Christoph Vedder (President) and Jeffery Benz and Martin Schimke (arbitrators).
25. Upon agreement between the Parties, by letters of 8 and 18 November 2016 respectively, an extension of 10 days and a further extension of the time-limit to file the Answer until 22 November 2016 were granted to Respondent.
26. On 22 November 2016, the Respondent filed its Answer.
27. By letter of 23 November 2016, the Parties were invited to inform the CAS Court Office by 30 November 2016 whether they prefer a hearing to be held or for the Panel to render an award solely based on the Parties' written submissions. While the Respondent, by letter of 23 November 2016, left the holding of a hearing to the Panel's decision, the Appellant, by letter of 6 December 2016, requested a hearing. On the same day, the Parties were notified of the decision of the Panel, adopted pursuant of Article R57 of the Code, that a hearing shall be held.

28. As a result of various exchanges of correspondence, the Parties were informed, by letter of 19 December 2016, that the Panel denied the Appellant's request for an additional round of submissions and, by letter of 20 December 2016, that the hearing shall be held on 11 January at the premises of the CAS at 9.30h.
29. On 20 December 2016, the Order of Procedure was forwarded to the Parties. The Order of Procedure was signed and returned by the Respondent on 20 December and by the Appellant on 29 December 2016.

#### IV. SUBMISSIONS OF THE PARTIES

##### 1. The Appellant

30. The Athlete did not challenge the results of the analysis. Rather he claimed procedural flaws committed by the KNOC and the IOC invalidating the results of both the A and B samples analysis.
31. According to the Athlete, Mr. Moratov, the Chef de Mission of the KNOC who received the IOC's Notice of Charge which was likewise addressed to the Athlete did not do "*his best efforts to duly notify the Athlete*" of the AAF. The Athlete was informed about the AAF on 12 August 2016 only through his coach, Mr. Usen Mainazarov, who had received an information via telephone.
32. The Athlete's coach was informed on 12 August 2016 by Mr. Amankulov, former Secretary General of the KNOC, about the results of the A sample analysis via telephone and a WhatsApp message. It is submitted that by both phone and WhatsApp Mr. Amankulov requested the coach to remain silent about the AAF.
33. From the fact that, at the time of the conversation, Mr. Amankulov was no longer working for the KNOC, the Athlete concludes that Mr. Amankulov "*had no power to do so*" and therefore the Athlete "*was not duly communicated of the results of the A sample and neither of the B sample, in accordance with the WADA International Standards*".
34. Furthermore, it is submitted on behalf of the Athlete that, on 12 August 2016, Mr. Maratov, Chef de Mission, had "*no authorization*" to sign the letter from the IOC to the Athlete and to request, *inter alia*, the analysis of the B sample and nominate himself and Mr. Ergeshov as representing the Athlete at the B sample analysis.
35. Thirdly, the Athlete submits that he was never communicated the proceedings before the CAS ADD against him and, in particular, the information issued on 16 August 2016 that the CAS ADD would render its decision. Only Mr. Ergeshov, current Secretary General of the KNOC, was duly notified.
36. Fourthly, the Athlete was not informed and "*notified by any official means*" of the opening of the B sample. Only his coach was informed via phone on 14 August 2016, Bishkek time, by the Kyrgyz delegation in Rio that the B sample analysis shall take place now. The Athlete claims

that *“the Kyrgyz NOC and the IOC failed to abide by the WADA ISL and the minimum standards as required by the law”*.

37. Fifthly, the Athlete submits that the B sample analysis *“happened without the Athlete and/or his duly appointed representative”* and, therefore, he was *“not able to exercise his fundamental right to be present or appoint a duly authorized representative to attend the opening of the B Sample”*.
38. Sixthly, the Athlete claims to have become aware of the result of the B sample analysis and of the consequences of such alleged ADRV as late as on 18 August 2016 when the media reported on the decision of the CAS ADD.
39. Following that decision, as claimed by the Athlete, his coach had tried to obtain, several times, official information about the Athlete’s situation after the decision, in vain. Only on 19 September 2016, Mr. Ergeshov, Secretary General of the KNOC, provided the relevant documents to Ms. Aidai Masytkanova, the Athlete’s representative. However, there is a dispute on whether the Athlete received all of the documents.
40. In conclusion, the Athlete submits that his

*“case has been conducted by Kyrgyz NOC and IOC in a discretionary manner and thus is full of serious flaws and procedural errors, as the Athlete was not able to exercise his fundamental rights effectively”*.

According to the Athlete,

*“the seriousness of these flaws shall prevent the Panel of analyzing the merits of an eventual anti-doping rule violation, which per se shall annul the present proceedings”*.

41. In support of his submission, the Athlete relied on rules set forth in the Olympic Charter and the IOC ADR.
42. First, the provisions of the Olympic Charter on the role of the Chef de Mission and of the IOC ADR, according to the Athlete, do not confer a power to represent athletes in general and in doping-related matters, in particular. Rule 37 sec. 2 of the Olympic Charter provides that

*“during the Olympic Games, the competitors ... of each NOC are placed under the responsibility of a chef de mission ... whose task ... is to liaise with the IOC ...”*.

According to Article 13.5 IOC ADR, notifications to an athlete *“may be accomplished by delivery of the notification to that NOC”* and notifications to an NOC *“may be accomplished by delivery ... to either the President, or the Secretary General, or the chef de mission...”*.

43. The Athlete is of the opinion that neither the above provisions foresee a representation of athletes through their Chef de Mission or others nor any other applicable rule

*“provides a delegation of powers, neither an authorization for the Chef de Mission to act on behalf of the athletes and duly represent them, especially when the Chef de Mission does so without the athlete’s knowledge as occurred in the present case”.*

The Athlete never chose to appoint Mr. Maratov or Mr. Ergeshov as his representative and, therefore, the Athlete was not represented at the B sample analysis.

44. The second step of the Athlete’s legal reasoning is that the Athlete, according to Articles 7.2.5 to 7.2.8 IOC ADR and Article 5.2.4.3.2.6 ISL, has the right to be informed of and to attend the opening of the B sample *in persona* and/or by a representative. This right applies whenever a B sample is analysed, irrespective of who requested it or whether the athlete has waived the analysis.
45. Since the Athlete was not given an opportunity to attend the B sample analysis or to appoint an expert on his behalf, and was not communicated the AAF by the Chef de Mission or the IOC, it is submitted by the Appellant that the B sample results of the Athlete *“are invalid and inadmissible”*.
46. The Athlete concludes from the above that

*“since the B sample results are inadmissible ... no violation of Article 2.1.2 [of the IOC ADR] can be established to have occurred”.*

The Athlete submits that, according to Article 2.1.2 IOC ADR, there are two ways to establish sufficient proof of an ADRV. The first is the presence of a prohibited substance in the A sample which needs two cumulative requirements to be met: *“that the athlete waived the B sample and the B sample was not analysed”*. The second, according to the Athlete, is that if there is a B sample analysis the A sample results must be confirmed by the B sample analysis irrespective of who requested the opening of the B sample.

47. Concerning the B sample results, the Appellant, with reference to the case law of the CAS and other adjudicating bodies, comes to the conclusion

*“that the IOC and specially the Kyrgyz NOC failure to adhere to the applicable rules in analyzing the B sample, without informing Mr. Artykov or giving him an opportunity to attend or have an expert representing him, renders the B sample results automatically invalid and inadmissible and therefore incapable of satisfying the requirement of Article 2.1.2 of the IOC ADR. Article 2.1.2 requires admissible B sample results confirming the A sample results, but such admissible results of B sample do not exist”.*

48. The Athlete further concludes that

*“taking into account that the B sample does not confirm the A sample since it is inadmissible, ... the A sample shall also be considered in invalid and disregarded”.*

49. The Athlete requests for relief are as follows:

*“For all of the foregoing reasons, the Appellant points out that it would be appropriate to accept that he has met his burden of showing that it is more likely than not that due to the procedural flaws observed in this case, it is requested that:*

- (i) That the present Appeal is admissible;*
- (ii) That the Challenged Decision rendered by the CAS ADD on 18 August 2016 be set aside;*
- (iii) That Mr. Izzat Artykov has not committed any anti-doping rule violation and, consequently:*
  - a. Be allowed to keep his results obtained in the Olympic Games Rio 2016, including Bronze medal, points and prizes;*
  - b. Be allowed to keep his accreditation (number 1087397);*
- (iv) No sanction be imposed on Mr. Izzat Artykov, since there is no reliable basis or evidence upon which to find that the Athlete has committed an anti-doping rule violation; or alternatively:*
- (v) That Mr. Izzat Artykov be reinstated to sports participation with immediate effect;*
- (vi) That Mr. Artykov is awarded moral and material damages in an amount to be determined by the CAS in view of the serious procedural and formal errors committed by the IOC and the Kyrgyz NOC, which resulted in losses to the Athlete;*
- (vii) The CAS notifies the International Weightlifting Federation that the Appellant has not committed any Anti-Doping rule violation;*
- (viii) The IOC covers and reimburses any and all costs and expenses of the Appellant, in relation to the present proceedings and be the sole responsible for any eventual costs in connection with this appeal:*
- (ix) The Athlete is reimbursed of any costs and expenses in connection with this appeal, including the CAS Court Office fee; and*
- (x) The IOC and the Kyrgyz NOC pay the Athlete a contribution towards his legal costs and attorneys fees in the minimum amount of CHF 10'000,00 (ten thousand Swiss francs)”.*

## **2. The Respondent**

- 50. The Respondent submits that the analysis of the B sample which was conducted on 13 August in the presence of Mr. Ergeshov, Secretary General of the KNOC, confirmed the results of the A sample analysis which revealed the presence of strychnine, a prohibited substance under S6 of the WADA Prohibited List 2016, and, therefore, an ADRV in the sense of Article 2.1 IOC ADR is established. The Respondent emphasizes that the Athlete did not challenge the analytical finding.
- 51. Contrary to the Athlete's submissions, the Respondent claims that the Athlete's rights with regard to the B sample analysis were respected. The relevant legal framework is to be found

in Article 7.2.4 IOC ADR and Article 5.2.4.3.2.6 WADA ISL. Pursuant to Article 7.2.4 IOC ADR, the IOC must notify the athlete and his NOC of an AAF and inform the athlete concerned of his rights in a manner set out in Article 13.1 IOC ADR. Art. 5.2.4.3.2.6. ISL provides for the right of the athlete's or the athlete's representative to attend the B sample analysis

52. The Respondent contends that the Athlete was "*validly represented by his NOC at the B sample opening*".

53. According to the Respondent, the notification procedure took place as follows:

- on 12 August 2016, at 12.15h the IOC notified Mr. Maratov, the Chef de Mission of the KNOC, of the AAF by a Notification Letter;
- immediately, Mr. Maratov informed Mr. Ergeshov, the Secretary General of the KNOC, of the AAF by phone; at that moment Mr. Ergeshov attended a competition together with Mr. Amankulov, Minister of Sports and part of the delegation of the KNOC, and the President of the KNOC;
- the three of them immediately returned to the Olympic Village and met Mr. Maratov who forwarded them the documents provided by the IOC;
- during that meeting, Mr. Ergeshov called the IOC and informed that he would attend the B sample opening;
- furthermore, still on 12 August 2016, Mr. Ergeshov asked Mr Amankulov to inform Mr. Mainazanov, the Athlete's coach, and the Athlete of the AAF; through the channel of the Kyrgyz Weightlifting Federation; Mr. Amankulov reached the coach at around 10pm Bishkek time and explained the situation; the coach asked Mr. Amankulov to provide evidence of the prohibited substance in order to investigate with the Athlete; the laboratory report was sent to the coach;
- during that phone call, Mr. Amankulov informed the coach of the B sample analysis scheduled for the next morning, i.e. on 13 August 2016 at 10am; the coach responded "*good*" and said that they were "*clean*";
- the coach immediately informed the Athlete of the AAF; the Athlete described the situation:  
  
*"My coach told me to calm down and wait for the situation to be clarified by the NOC. I was anxious but decided that it was best to do what my NOC advised me"*.
- the coach also informed the Athlete that the B sample would be analysed the next day;
- neither the coach nor the Athlete informed the KNOC or the IOC that the B sample opening should not take place;

- the B sample was opened on 13 August 2016 at 10.00h in the presence of Mr. Ergeshov signing as the “Athlete’s Representative”.

54. From the above facts, the Respondent concludes that

*“it clearly appears that the NOC was acting as representative of the Athlete at the opening of the B Sample”.*

According to the Respondent, the Athlete “did not even seek to contradict” to be represented by somebody from the KNOC. He rather “decided that it was the best to do what my NOC advised me”. Back home in Kyrgyzstan he was not present in Rio de Janeiro to attend the B sample opening.

55. The Respondent puts forward legal reasons that, during the Olympic Games, a NOC represents the athletes. According to the Bye-law to Rule 27 and 28 of the Olympic Charter

*“during the Olympic Games, the competitors ... are placed under the responsibility of a chef de mission appointed by his NOC and whose task ... is to liaise with the IOC”.*

The Respondent states that, during the Games, the IOC is normally not in direct contact with the athletes but communicates with the NOCs which are in charge of getting in touch with their athletes and refer back to the IOC in the name of the athletes.

56. For anti-doping matters, according to the Respondent, such rule is mirrored in Article 13.5 IOC ADR which provides that:

*“any notification under these Rules to an Athlete ... may be accomplished by delivery of the notification to that NOC”.*

More specifically, for an AAF, Article 7.2.4 IOC ADR provides that *“it is the responsibility of the NOC to notify the Athlete”.*

57. For many reasons, in particular in view of the urgency of the proceedings and the often lack of command of the English language by the athletes, the Respondent emphasizes that the NOC acts as relay between the IOC and the athletes and concludes:

*“Therefore, as per the Olympic Charter, during the Olympic Games the athletes are represented by their NOC in their relation with the IOC”.*

58. The Respondent distinguishes the CAS case law referred to by the Appellant, in particular the decisions in CAS 2010/A/2161 and CAS 2015/A/3977, from the situation of the present dispute. The Respondent states that, in the pending case, (1) the KNOC informed the IOC that it would represent the Athlete in the B sample opening and did so, (2) that the Athlete was aware of that representation, (3) that the Athlete did not express any disagreement, and (4) that, given the situation at the Olympic Games, there was sufficient time for the Athlete to consider and to respond.

59. Furthermore, according to the Respondent, the Athlete was not unfairly treated. All anti-doping proceedings during Olympic Games were managed in the same way and all athletes

are treated in the same manner. In general, the Respondent concludes that to find that the Athlete was not provided with a reasonable opportunity to attend or to be represented at the B sample opening

*“would effectively question the whole (extremely effective and swift) regime applicable during the Olympic Games and would therefore be an extremely dangerous precedent”.*

60. Moreover, the Respondent contends that the Athlete who was aware that his B sample would be analysed but remained silent and did not even attempt to stop the process, abuses his rights and should be estopped from making arguments in this respect.
61. Finally, the Respondent wishes to point out that, unlike in other CAS precedents, the KNOC was acting in the best interest of the Athlete when it requested and attended the opening of the B sample on his behalf. Otherwise the B sample analysis would have been deemed waived by the Athlete and the CAS ADD, based upon the A sample, would have rendered the same decision.

62. The Respondent requests for relief are as follows:

*I. The Appeal filed by Mr. Izzat Artykov is dismissed.*

*II. The IOC is granted an award for costs”.*

## **V. THE HEARING**

63. The hearing took place on 11 January 2017 at the premises of the CAS in Lausanne. Present were, in addition to the Panel and Mr. William Sternheimer, Deputy Secretary General of the CAS:

on behalf of the Athlete:

- the Athlete himself
- Mr. Pedro Fida, Counsel to the Athlete, via Skype or phone, respectively
- Ms. Aidai Masytkanova, as a personal representative of the Athlete
- Mr. Ulan Moldodosov, Vice-President of the National Weightlifting Federation of Kyrgyzstan, representing the Athlete

on behalf of the IOC:

- Mr. Jean-Pierre Morand, Counsel for the IOC
- Mr. Nikolas Zbinden, Counsel for the IOC.

64. After the opening of the hearing by the President, the Panel asked Ms. Masytkanova and Mr. Moldodosov to clarify their respective positions in the hearing. Ms. Masytkanova declared that she is a personal representative of the Athlete but is not admitted to the bar. She would mainly act as an interpreter to the Athlete and Mr. Moldodosov who both had no command of the English language, and intervene in other respects as appropriate. In response to a question by the Panel, Mr. Fida declared that Ms. Masytkanova, though named as a witness in the Appeal Brief, will not be called as witness. Mr. Moldodosov declared that he “*represents*” the Athlete. Counsel for the IOC did not object to the presence of both representatives of the Athlete.
65. The Panel asked the Parties whether they had observations with regard to the proceedings so far, in particular concerning the jurisdiction, the composition of the Panel as well as the applicable law. Both Parties declared not to have any objections.
66. At the outset of the hearing, the President stated that the results of the analysis of both the A and the B samples were not challenged. The Athlete and the IOC confirmed such statement.
67. Furthermore, the President instructed the Parties about the time-table proposed for the hearing which was accepted by the Parties. The IOC announced that the witnesses called by it, Mrs. Maratov, Ergeshov, and Amankulov, would be available via Skype or phone.
68. In his Opening Statement, Counsel for the Athlete stated that various procedural flaws were committed by the IOC and KNOC and violated the rights of the Athlete related to the B sample. Those rights were recognized by the case law of the CAS. The Athlete was never “*duly notified*” of the AAF and the B sample opening nor informed about his rights by the IOC or the CAS ADD. The representatives of the KNOC did not do their best to inform the Athlete. The Athlete did not choose a representative for the B sample analysis.
69. In addition, Ms. Masytkanova summarized the flaws allegedly committed by both the IOC and the KNOC in Rio de Janeiro and what had happened in Kyrgyzstan. According to her, the Athlete had no knowledge of the CAS ADD and had no opportunity to make submissions before that tribunal of the first instance. Back home in Kyrgyzstan, he was requested to “*keep calm*”. After having emphasized the economic and moral damages suffered by this young athlete in Kyrgyzstan she concluded that the Athlete’s rights were not respected by the IOC and the KNOC which committed procedural flaws triggered by corruption in the KNOC. It was submitted that “*human rights were not respected*”.
70. The Respondent, in its Opening Statement, pointed out that the results of the analyses were not challenged and, therefore, the presence of a prohibited substance is sufficiently established as required by Article 3.2 IOC ADR. According to the Respondent, the Athlete tried to escape from the consequences thereof.
71. The Respondent emphasized the procedural specificities of the doping control system at the Olympic Games in Rio de Janeiro which are justified by the extreme time constraints. The foremost aim is to award the medals to the correct winners within a short time at the place of the Olympic Games. The functioning of the system is dependent on efficient communication. The Respondent relies on the Bye-Law to Rules 27 and 28 of the Olympic Charter which

provides that the Chef de Mission of each NOC "*liaises*" between his NOC and the IOC. During the Olympic Games, communication must be made in short time and on location. Based on what happened in this case in Rio de Janeiro, the Respondent concludes that the Athlete was duly notified through the notification to the KNOC.

72. Furthermore, the Respondent submitted that the Athlete did know about the AAF and the B sample opening and relied on what his NOC was doing. The Respondent referred to the fact that the Athlete had signed the entry form.
73. Although the Respondent acknowledged that "*the reality is different*", it again submitted that the system is based on the deemed knowledge of the results and notification. If, during the Olympic Games, the IOC was not able to rely on deemed notification and information, it would be impossible to manage the anti-doping policy at the Olympic Games and to award the medals to the clean athletes. Notification and information, therefore, is a matter between the IOC and the NOCs on the one hand and the NOCs and their athletes on the other hand.
74. As conclusion, the Respondent submitted that the IOC conducted the procedures in accordance with the rules and relied on these procedural tracks.
75. At the outset of the evidentiary proceedings, Counsel to the Athlete requested the witnesses called by the Respondent to be available for examination by Skype or phone.
76. Then, Counsel for the Athlete attempted to examine the Athlete. The Panel advised that the Parties would be examined after the witnesses were heard. Ms. Masykhanova intended to make a statement about a procedural dispute between the Athlete and the KNOC about the documents concerning the Athlete's case. The Panel terminated these attempts by the representatives of the Athlete and advised them of the procedural situation and the fact that Ms Masykhanova is not called as a witness and, therefore, could not testify at the hearing. The Respondent had objected to Ms. Masykhanova delivering a witness statement.
77. The Respondents' witnesses were heard by telephone. The questions asked to the witnesses were translated, in Bishkek, by an interpreter to the witnesses and their answers, re-translated by the interpreter in Bishkek, then communicated to the courtroom. The interpreter admitted to not be court-approved. In the course of the examination of the witnesses it became obvious that all three witnesses were in the same room and present during the examination of the other witnesses. Nevertheless, that way of examination of the witnesses was accepted by the Parties.
78. Mr. Maratov, Chef de Mission of the Kyrgyz delegation to the Rio Games appointed by the KNOC, was called first and sworn in. Mr. Maratov was examined by the Appellant exclusively and testified that he had signed receipt of the notification of the AAF. He deducted his authority to do so from his position as the Chef de Mission. Upon receipt of the notification, he informed the Secretary General of the KNOC, Mr. Ergeshov, and the Kyrgyz Minister of Sports, Mr Amakulov. The latter, according to Mr. Maratov, was part of the Kyrgyz delegation. Mr. Maratov twice denied to answer the question whether or not he and Mr. Amankulov were relatives. He confirmed that, during the Rio Games, he was employed with the KNOC as of one year and acted as Chef de Mission of the Kyrgyz delegation.

79. Mr. Amankulov was sworn in and heard second and examined by the Appellant first. He declared that he was the Minister of Sports and had acted as the head of the Kyrgyz delegation but was not employed by or a member of the KNOC. He confirmed to have gained such experience at previous Olympic Games. He further testified that he was informed about the Athlete's AAF by the Secretary General of the KNOC, Mr. Ergeshov. The Athlete was informed about the B sample opening through his coach who was informed by Mr. Amankulov. That way of information was considered by Mr. Amankulov "*adequate*" being aware of the WADA rules on the B sample opening.
80. In reply to the question asked by the Respondent, Mr. Amankulov testified that he had contacted the coach because the Athlete "*was not reachable*".
81. Mr. Ergeshov, the Secretary General of the KNOC at the time of the Rio Games, was sworn in and gave testimony third and was exclusively examined by the Appellant. He testified that he was not in the possession of the Athlete's details and, in general, the athletes were contacted through the channel of their respective federations. Therefore, the Athlete was not directly notified. The Athlete, according to Mr. Ergeshov, was informed about the B sample opening via his coach. In reply to the question whether there was enough time for the Athlete to assign a representative for the B sample opening, Mr. Ergeshov stated that he assumed that the coach acted with the consent of the Athlete. Mr. Ergeshov further stated that he understood to be authorized to represent the Athlete at the B sample opening because the Athlete had agreed via his coach. After the B sample analysis had been conducted, the Athlete was not notified directly because he was "*not reachable*". Mr. Ergeshov confirmed that he was informed about the AAF by the IOC "*by several e-mails*" and that he received "*multiple e-mails*" from the CAS ADD. Repeatedly, Mr. Ergeshov testified that he did not forward information and documents to the Athlete directly because the latter was "*not reachable*". In reply to the question why he did not inform Ms. Masytkanova, he stated that he was not aware that the Athlete was represented by her.
82. Next, the Athlete was called by his Counsel to give his statement. The Athlete stated that he did not receive any anti-doping education by his federation or the KNOC and that he was not familiar with anti-doping rules and procedures. He declared that he never tested positive before.
83. In cross-examination by the Respondent, he replied to the question whether he signed the entry form that he does not remember. Upon express enquiry by the Respondent, Counsel for the Athlete declared that it is not disputed that the Athlete actually signed the entry form.
84. The Panel referred the Athlete to his Affidavit dated 4 October 2016 where he described his situation after having been informed by his coach about the AAF on 12 August 2016:

*"My coach told me to calm down and wait for the situation to be clarified by the NOC. I was anxious but decided that it was the best to do what my NOC advised me".*

and asked him to explain what he meant by this statement and what he did when he was informed by his coach that the B sample would be opened on the same day. Furthermore, the

Panel asked the Athlete why he did not express any wish or his disagreement. The Athlete answered:

*“I was not asked about the B sample. It was not a question to me”.*

In reply to the Panel’s question whether or not pressure was exercised on him by the KNOC, the Athlete denied and declared that there was no threat or advice. He expressly stated that he was *“not intimidated”*.

85. Furthermore, the Panel referred the Athlete to his Affidavit and asked why he checked the WADA Prohibited List. The Athlete answered that he checked the List every time prior to a competition.
86. In reply to the Panel’s request to elaborate on the legal basis for the power of representation of the Athlete, the Respondent answered that the terms *“notification”*, during the Olympic Games under the time constraint, and *“liaison”*, employed in the Bye-Law to Rules 27 and 28 of the Olympic Charter go both ways and covers the representation of the athletes by the Chef de Mission. During the Olympic Games, it is an *“accepted necessity”* to proceed that way. In a situation where the Athlete did not make known what he wished to do otherwise, the IOC had to rely on what was communicated by the KNOC.
87. At the end of the evidentiary proceedings, the Panel reminded the Parties that the dispute before it is between the Athlete and the IOC, exclusively.
88. In his final oral pleadings, Counsel to the Athlete submitted that the latter was *“never officially notified”* and informed about his rights. Mr. Amankulov who contacted the Athlete’s coach had no power to represent the KNOC and no authority at all to act vis-à-vis the Athlete. A current practice does not justify that way of communication.
89. Upon the Panel’s invitation to identify a legal basis which required that the Athlete must be contacted by the IOC directly, no specific answer was provided. Rather, Counsel for the Athlete referred to the CAS 2015/A/3977 case. The Athlete should have been notified of the right to appoint a representative according to the WADA rules and, pursuant to Article 7.2.6 IOC ADR, the Athlete should have been informed *“officially”*.
90. Counsel to the Athlete conceded that the Athlete actually knew about the situation but did not receive legal advice nor was he educated in this respect. The KNOC, after having received and signed the Notice of Charge, did *“not do their best”* to notify the Athlete. Only Mr. Amankulov communicated with the coach and advised to *“remain silent”*.
91. Counsel for the Athlete emphasized that there is no rule in the Olympic Charter or otherwise authorizing others to represent the Athlete in the process.
92. When the Panel stated that the Athlete actually was informed and accepted what the KNOC would do, Counsel for the Athlete referred to a conspiracy within the KNOC and Ms. Masykkanova attempted to elaborate on internal matters of the KNOC that were not otherwise in evidence. The Respondent objected to those statements. The hearing was suspended and

after deliberation, the Panel advised the Parties that, according to Article R56 of the Code, no new arguments were allowed at that stage of the proceedings and the pleadings are reserved to the legal arguments.

93. In conclusion, Counsel to the Athlete submitted that, due to the procedural flaws, the results of the B sample analysis were invalidated and, therefore, pursuant to Article 2.1.2 IOC ADR, no sufficient proof for an ADRV was available. He made express reference to and upheld the full set of requests for relief submitted in the Appeal Brief, including the requests for damages. The alleged amount of damages was not specified but left to the discretion of the Panel as no other proof was submitted thereon.
94. At the outset of its final oral pleadings, Counsel for the Respondent made reference to the Doping Control Form (“DCF”) where the Athlete’s coach signed in the box “*Representative*”. According to the Respondent, this clearly evidences that the coach acted as representative of the Athlete. That mirrored the normal procedure that everything operates via the coach. It was emphasized that the communication within the KNOC is not the IOC’s concern and the IOC cannot know about those internal matters. The IOC cannot require high standards of internal communication and authorization for all countries.
95. In essence, it is submitted that the notification of the IOC, via the Chef de Mission, Mr. Maratov, was made according to the Olympic Charter and the IOC ADR. The IOC notified the KNOC which informed the Athlete via his coach and the Athlete relied upon his NOC. The Athlete was supposed to know the rules including, in particular, that during the Olympic Games, the Chef de Mission is representing the athletes.
96. In addition, the IOC submitted that the KNOC did not wrong the Athlete. The opening of the B sample was in the interest of the Athlete because otherwise the results of the A sample would remain sufficient and conclusive evidence for the ADRV. The Athlete, throughout the proceedings, did not indicate what he would have done instead.
97. The Respondent concluded that, as a matter of fact, the Athlete was informed and gave the power to represent him in the B sample opening without being intimidated. The IOC had no reason to doubt that. The Respondent made reference to Article 3.2 IOC ADR pursuant to which facts can be established by all reliable means including admissions.
98. The Respondent upheld the requests for relief submitted in its Answer.
99. Before the end of the hearing, the Athlete was granted the opportunity to make a personal statement. In particular, he stated that he was never tested positive. Mr. Moldodosov appended a personal statement.
100. The Parties confirmed that, during the hearing, they had the full and fair opportunity to make their case.
101. The President announced that the Panel will deliberate the facts and the law and render a written reasoned award in due time and closed the hearing.

## VI. JURISDICTION

102. Article R47 of the Code provides as follows:

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

### 1. Right to appeal

103. According to Article 12.2 in conjunction with Articles 12. 1 and 12.2 IOC ADR as well as Article 21 of the AR ADD which are the rules applicable to the present dispute (see below), the Athlete has the right to appeal the decision of the CAS ADD exclusively and directly to the permanent CAS.

104. Therefore, the CAS has jurisdiction to hear the present case. The Panel’s jurisdiction was not contested.

### 2. Position of the KNOC

105. The KNOC was designated as Second Respondent by the Athlete in his Appeal Brief dated 7 October 2016. In response, in its letter of 17 October 2016, the CAS Court Office advised the Appellant that *“the Respondent(s) must be designated together with the Statement of Appeal or within the deadline provided for”* in Article R49 of the Code. Since such deadline had expired earlier to the Appeal Brief the CAS Court Office stated that the designation of the KNOC as Respondent *“shall be considered inadmissible”*.

106. This clarification was not opposed by the Appellant. Nevertheless, at the hearing, procedural flaws committed by the KNOC were claimed and the Athlete consciously upheld his prayers for relief including for damages caused by the behaviour of the KNOC and for a contribution towards the legal costs to be paid by the KNOC.

107. However, for the sake of legal certainty, the Panel wishes to determine that the KNOC has no standing as a respondent in the present dispute before the Panel. The Appeal dated 21 August 2016 was lodged by using a form called *“Application”* issued by the CAS. In the box *“Respondent”* the Applicant designated the IOC exclusively. In the next box, under the heading of *“Other parties, if any”* and the explanation: *“Since, depending on the circumstances, it may be necessary or desirable that the competent IF and/or NOC participate in the hearing, please specify their contact details”*, the IWF and the KNOC were named. In the same box, under the question whether there are any athletes or teams who *“may ... be adversely affected by any decision of the CAS”*, the Athlete had named a competitor and his NOC. It follows from this *Application* considered as a whole that the KNOC was not named as a formal respondent at that stage. In the following communications between the CAS Court Office and the Parties the case was referred to as *“Artykov v. IOC”*.

108. As the CAS Court Office stated on 17 October 2016, the designation of the KNOC as a formal respondent was late.
109. Furthermore, a participation of the KNOC as a respondent would exceed the jurisdiction of the Panel *ratione personae*. Though, pursuant to Article R57 of the Code, the Panel, in an appeals arbitration, has the full power to review the facts and the law, such scope of review is limited to the subject-matter and the parties of the dispute which lead to the appealed decision. Any appealed decision exclusively has legal effects towards the parties to that proceedings. The dispute before the CAS ADD was between the IOC and the Athlete and, therefore, the appealed decision rendered by the CAS ADD on 18 August 2016 pertains to the Athlete and the IOC, exclusively.
110. Finally, the IOC did not request the joinder of the KNOC nor did the latter requested its intervention in the present proceedings.
111. The Panel concludes from the above that the Appellant's requests for relief as far as they concern the KNOC must be dismissed as exceeding the jurisdiction of the Panel.

### 3. Claim for damages

112. Though the Panel advised the Parties that the proceedings before it were between the Athlete and the IOC exclusively, the Appellant expressly upheld all of his prayers for relief submitted in his Appeal Brief including the claims for damages to be jointly paid by the IOC and the KNOC and submitted alleged procedural flaws committed by the KNOC.
113. The subject matter of alleged damages exceeds the jurisdiction of the Panel *ratione materiae*. Though the Panel has jurisdiction *de novo* by virtue of Article R57 of the Code, its appeal jurisdiction is limited to the extent of the jurisdiction allocated to the tribunal whose decision has to be reviewed.
114. The IOC Executive Board, pursuant to Rule 59.2.4 of the Olympic Charter, has delegated its power to decide upon any violation of the WADA Code arising from the occasion of the Olympic Games and thus established a tribunal of first instance for doping-related disputes occurring during the Olympic Games. This happened for the first time and specifically for the Rio Games and was promulgated by an IOC Circular Letter of 27 April 2016. Hence, the AR ADD in Article 1 provide:

*“The CAS ADD shall be the first instance authority for doping-related matters, responsible for the conduct of the proceedings and the issuance of decisions when an alleged anti-doping rule violation has been asserted and referred to it under the IOC ADR”.*

115. Article 8.2.2 IOC ADR provides:

*“Pursuant to Rule 59.2.4 of the Olympic Charter, the IOC Executive Board delegates to the CAS Anti-Doping Division all powers which are necessary for it to take the measures and sanctions envisaged by these Rules including, in particular, Articles 9, 10.1, 10.2 and 11”.*

Articles 9, 10.1, 10.2 and 11 IOC ADR provide for the automatic disqualification of individual results in the event of an in-competition test, the disqualification of all of the athlete's individual results obtained in the Rio Games, the ineligibility for other competitions in the Rio Games and the exclusion from the Games as well as the withdrawal of the accreditation, and the consequences relevant for team sports.

116. Rule 59.2 of the Olympic Charter establishes the disciplinary power of the IOC Executive Board and limits the range of sanctions strictly to the sphere of the Olympic Games and, therefore, to what falls under the authority of the IOC:

*“In the context of the Olympic Games, in the case of any violation of the Olympic Charter, of the World Anti-Doping Code, or of any other decision or applicable regulation issued by the IOC or any IF or NOC, including but not limited to the IOC Code of Ethics, or of any applicable public law or regulation, or in case of any form of misbehaviour:*

*2.1 with regard to individual competitors and teams: temporary or permanent ineligibility or exclusion from the Olympic Games, disqualification or withdrawal of accreditation; in the case of disqualification or exclusion, the medals and diplomas obtained in relation to the relevant infringement of the Olympic Charter shall be returned to the IOC. In addition, at the discretion of the IOC Executive Board, a competitor or a team may lose the benefit of any ranking obtained in relation to other events at the Olympic Games at which he or it was disqualified or excluded; in such case the medals and diplomas won be him or it shall be returned to the IOC Executive board;*

*2.2 ...”.*

The transfer of such power, envisaged in Rule 59.2.4 of the Olympic Charter, which was made towards the CAS ADD cannot extend to more powers than granted to the IOC Executive Board by virtue to Rule 59.2 of the Olympic Charter.

117. Rule 59.2 of the Olympic Charter, in conjunction with the IOC ADR and the AR ADD which implement the transfer of competence from the IOC Executive Board to the CAS ADD, display that the jurisdictional power of the CAS ADD including, in particular, the extent of the sanctions is confined to the range of the Olympic Games. This is mirrored in Article 8.2.2 IOC ADR. Accordingly, the CAS ADD, in its appealed decision, correctly confined itself to rule that the Athlete committed an ADRV, his result be disqualified, the Athlete be excluded from the Games, and his accreditation be withdrawn. Consequently, at the end of its *Conclusion* the CAS ADD states that the results management is referred to the IWF which means that the sanctions beyond the jurisdiction of the CAS ADD fall under the responsibility of the competent international federation. This clearly demonstrates the limits of the jurisdiction of the CAS ADD.
118. Accordingly, the Panel rules that the Appellant's requests for relief with regard to damages must be dismissed as exceeding the Panel's jurisdiction.

## VII. ADMISSIBILITY

119. Article R49 of the Code provides as follows:

*“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late”.*

120. By virtue of Articles 12.2, 12.2.1, 12.2.2 and 12.5 IOC ADR which are the rules applicable to the present dispute (see below), the Athlete is entitled to appeal from the decision of the CAS ADD to the permanent CAS within *“twenty-one days from the date of the receipt of the decision by the appealing party”*.

121. The Athlete’s *“Application”* dated *“21 July/ August 2016”*, was received by the CAS Court Office on 22 August 2016 followed by a *“Statement of Appeal”* dated 29 August 2016. Therefore, the appeal against the decision rendered on 18 August 2016 was lodged within the time limit of twenty-one days irrespective of when the Athlete received the decision. The admissibility of the appeal was not challenged by the Parties.

## VIII. APPLICABLE LAW

122. Article R58 of the Code provides as follows:

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

123. Pursuant to the introductory *Scope* of the IOC ADR,

*“These Rules shall, without limitation apply automatically to (a) the IOC; (b) all Athletes entered in the Olympic Games Rio 2016 ... Athletes entered in the Olympic Games Rio 2016 ... are bound by these Rules as a condition of eligibility to participate in the Olympic Games Rio 2016”.*

124. The Athlete was entered into the Rio Games by the KNOC and signed the Entry Form. This fact was expressly acknowledged by the Athlete and in the *Application* form; it was confirmed that the jurisdiction of the CAS was *“based on the arbitration clause inserted in the official entry form for the O.G”*.

125. The complete set of the Olympic regulations including, in particular, the Olympic Charter, the IOC ADR and, by reference, the AR ADD, therefore, constitute the applicable rules of law for the dispute before the Panel. The application of those rules which, pursuant to Article 17 AR ADD, had been applied by the CAS ADD in its appealed decision, was not contested by the Parties

## **IX. MERITS**

126. The CAS ADD, in its decision of 18 August 2016, relied on the results of the B sample analysis which confirmed the findings of the A sample analysis. The B sample analysis was not challenged in substance or procedurally before the CAS ADD.

127. However, in this appeal proceedings, according to Article R57 of the Code, the Panel has the power to review the facts and the law *de novo*.

### **1. Presence of a prohibited substance, Article 2.1 IOC ADR**

128. The analysis of the B sample which was conducted on 13 August 2016 revealed the presence of strychnine which is a stimulant and a specified substance prohibited in-competition under S6 of the 2016 WADA Prohibited List. Thus, the B sample analysis confirmed the results of the A sample analysis. No applicable TUE nor any apparent departure from the ISL were revealed nor were the results of both the A and B samples analysis challenged by the Appellant at any stage of the proceedings.

### **2. Proof of an Anti-Doping Rule Violation, Article 2.1.2 IOC ADR**

129. According to Article 2.1.2 IOC ADR

*“Sufficient proof of an anti-doping rule violation is established by any of the following: presence of a Prohibited Substance ... in the Athlete’s A sample where the Athlete waives analysis of the B sample and the B sample is not analysed: or, where the Athlete’s B sample is analysed and the analysis of the B sample confirms the presence of the Prohibited Substance; or ...”.*

130. The Athlete submitted that, due to various procedural flaws, the B sample analysis was invalidated and, therefore, the ADRV was not proven. According to him, neither the first nor the second condition set forth by Article 2.1.2 IOC ADR were met.

131. In support of his submission, the Athlete claims that he was not able to exercise his rights effectively and relies on seven arguments:

- first, the Athlete claims that he was not duly communicated the A sample results; Mr. Maratov, the Chef de Mission, did not do his best efforts to duly notify the Athlete of the AAF; instead, the Athlete, via his coach, was informed by Mr. Amankulov who, at that time, had no power to act;
- second, Mr. Maratov had no authorization to sign the letter from the IOC, to request the B sample opening and to nominate Mr. Ergeshov, the Secretary General of the KNOC, and himself as representing the Athlete at the B sample opening;
- third, the Athlete was never communicated the proceedings before the CAS ADD;
- fourth, the Athlete was not “notified by any official means” of the opening of the B sample;

- fifth, the B sample opening happened without the Athlete or his duly appointed representative being present;
- sixth, the Athlete became aware of the results of the B sample analysis and the decision of the CAS ADD on 18 August 2016 only via media reports;
- seventh, the Athlete did not obtain official information about his situation after the decision and did not receive all relevant documents from the KNOC.

132. The common legal core of these arguments is the twofold question whether or not the Athlete was (1) duly notified of the various steps of the procedures, and (2) duly represented at the B sample opening. In any event, his non-participation before the CAS ADD (third argument above) is cured by these appeal proceedings. With respect to the seventh argument, the Panel concludes that this allegation is a matter of the internal relationship between the Athlete and the KNOC and, therefore, beyond the Panel's jurisdiction.

**a. Notification of the Athlete**

133. Article 13.1 IOC ADR which pertains to, *inter alia*, the information concerning AAFs in general provides that the notice to the athletes

*“shall occur as provided under Articles 7 and 13 of these Anti-Doping Rules”.*

With respect to the Notification of an AAF by the IOC Article 7.2.4 IOC ADR provides

*“that (the IOC) ... shall notify (d) the Athlete; (e) the Athlete's NOC ... of the existence of the [AAF], and the essential details available ...”* and *“the notification specified above under (d) to (g) shall be done in the manner set out in Article 13.1 ...”.*

Article 7.2.4 IOC ADR further stipulates:

*“It shall be the responsibility of the NOC to notify the Athlete ... [of the AAF]”.*

134. Article 13.1 IOC ADR specifies technical and substantial aspects for the notification of an AAF which have no meaning for the present case. Article 13.5 IOC ADR, under the heading of *“Deemed notifications”*, applies to any notification to the athletes:

*“Any notification under these Rules to an Athlete ... may be accomplished by delivery of the notification to that NOC”.*

*“Notifications under these Rules to an NOC may be accomplished by delivery of the notification to either the President, or the Secretary General, or the chef de mission, or the deputy chef de mission or another representative of the NOC in question designated for that purpose”.*

135. The Notification of the alleged ADRV issued by the IOC on 12 August 2016 was expressly addressed, *inter alia*, to *“Izzat Artikov – Athlete”* and *“Tologon Maratov, Chef de Mission ...”* An

asterisk attached to the box where Mr. Maratov countersigned the Notification reads as follows:

*“Best efforts will be exercised in order that this letter be countersigned by the athlete concerned. However, countersignature by the Chef de Mission of the athlete concerned shall be deemed to be equivalent to notice of the contents of such letter to the athlete concerned (Article 13.5 of the IOC Anti-Doping Rules)”.*

136. The Notification in question informed not only about the AAF but also about the right to request the B sample be opened in the presence of the Athlete and/or his representative and that, in case of no such request, the Athlete will be deemed to have waived the right to have the B sample analysed. Furthermore, the Notification informed about the task and jurisdiction of the CAS ADD and that the IOC files an application with the CAS ADD and that the Athlete’s right to be heard will be exercised before the CAS ADD.
137. According to the undisputed facts, the Notification of the AAF including the information about the rights concerning the B sample analysis was addressed to both the Athlete and the Chef de Mission of the KNOC and was countersigned by the latter. Therefore, the Panel concludes that the IOC acted in full accordance with the rules applicable to notifications to the athletes, in general, and to the Notification to the Athlete, in particular. Furthermore, in the Notification itself, the IOC explained what follows from the IOC ADR, i.e. the obligation of the countersigned person, in the particular case the Chef de Mission, to exercise best efforts that the letter be countersigned by the Athlete and that the countersignature will be deemed to be equivalent to *“the notice of the contents”* of the letter.
138. The task to notify the athletes is, by virtue of the applicable rules, assigned to the NOCs. The *“responsibility of the NOC to notify the Athlete”* set forth in Article 7.2.4 IOC ADR which is mirrored in the Notification as the duty *“to exercise best efforts”* is the only obligation imposed upon the KNOC by virtue of the IOC ADR. The applicable rules, however, do not provide any requirement for how the athletes must be notified or contacted by their NOCs. Instead, throughout the Olympic Charter and related rules, in general, and the IOC ADR, in particular, it is provided that the IOC communicates not directly with the athletes rather than via the NOCs as intermediary and leaves the further steps to the responsible NOC. This is in line with the general provision set forth in sec. 4 of the Bye-law to Rules 27 and 28 of the Olympic Charter (of the 2015 version while Appellant referred to Rule 37 of the previous version of the Olympic Charter which, however, was identical) according to which, during the Olympic Games, the Athletes *“are placed under the responsibility of the Chef de Mission”* appointed by the NOC whose task it is *“to liaise with the IOC”*. According to Article 13.1.4 IOC ADR, it is another task of the NOC also to notify the NADO of the AAF which shows that the NOCs operate as intermediaries.
139. According to the rules, the obligation to exercise best efforts means to take any appropriate and possible action under the given circumstances of the case in order to forward the information to the athletes. There is no *“official”* means of communication between the KNOC and the Athlete required by the applicable rules. On 12 August 2016 and the following days, the Athlete was no longer present in Rio de Janeiro and it was not possible to inform him *in persona* and to get his countersignature. Especially, the applicable rules do not foresee

restrictions as to who within the KNOC has the authority to communicate with the athletes. Article 13.5 IOC ADR which designates the President, the Secretary General, the Chef or Deputy Chef de Mission or any other person designated by the NOC for the purpose of validly receiving notifications, only relates to a particular aspect of the external representation of the NOC towards the IOC, i.e. the receipt of a notification.

140. In the present case, shortly after the delivery of the IOC Notification to the KNOC, the Chef de Mission, the Secretary General and Mr. Amankulov met and took action to contact the Athlete. They used the channels of communication available to them. Mr. Amankulov, irrespective of whether he was an officially appointed member or even the head of the Kyrgyz delegation, contacted the Athlete's coach via the National Weightlifting Federation while the Athlete himself was not reachable. The coach then informed the Athlete. The coach, Mr. Mainazanow, was in charge of the Athlete for many years and very close to him. He also acted as representative of the Athlete as shown by the fact that he signed the DCF of the Athlete as his "*representative*".
141. The Athlete actually was informed about the AAF and the opportunity to have the B sample analysed on 12 August 2016. This fact was acknowledged throughout the proceedings and confirmed by the Athlete in his examination at the hearing and the evidence heard from the witnesses. The Athlete rather claims that the Chef de Mission did not do "*his best efforts to duly notify the Athlete*" and he, the Athlete, was "*not duly notified by any official means*". However, he was unable to specify a legal basis to the effect that either the IOC must notify the Athlete directly or the KNOC contact him by the Secretary General or the Chef de Mission, exclusively or in whatever "*official*" way. As determined above, there is no such rule.
142. From the foregoing the Panel concludes that, with regard to the Notification, the IOC fully adhered to the applicable rules of the IOC ADR and did not violate any right the Athlete may have under the IOC ADR or other applicable rules.

***b. Representation of the Athlete at the B sample opening***

143. The Athlete submits that he gave no authorization to the Chef de Mission, Mr. Maratov, to sign the Notification of the IOC, to require the B sample opening, to nominate himself and the Secretary General, Mr. Ergeshov, as representatives of the Athlete and that Mr. Ergeshov eventually attended the B sample opening in the capacity of representing the Athlete. He concludes that he was not duly and validly represented at the B sample analysis which, therefore, was invalidated. According to the Athlete, neither Rule 37 par. 2 of the Olympic Charter on the role of the Chef de Mission and Article 13.5 IOC ADR on the notification nor any other rule granted the power to represent the Athlete.
144. The Athlete's right to a B sample analysis and the consequences thereof are laid down in Article 7.2.5 to 7.2.8 IOC ADR. Article 7.2.5 IOC ADR provides for the right to request the opening of the B sample and Article 7.2.6 IOC ADR stipulates:

*"The Athlete and/or his or her representative shall be allowed to be present at the analysis of the B Sample".*

This right is also provided for in Article 5.2.4.3.2.6 of the WADA International Standard Laboratories (ISL):

*“The Athlete and/ or his/ her representative ... shall be authorized to attend the “B” confirmation”.*

145. With respect to the receiving and countersigning of the Notification, the Panel concludes that Mr. Maratov was authorized to do so by virtue of the applicable rules. Contrary to the Athlete’s submission, Mr. Maratov acting in his capacity as Chef de Mission did not need a particular authorization by the Athlete to sign the receipt of the Notification. He was authorized to receive the Notification on behalf of the KNOC by law, i.e. Article 13.5 IOC ADR.
146. With respect to the B sample opening, the Panel, based upon the facts established in the written submissions and confirmed by the evidence provided by the Athlete and the witnesses at the hearing, concludes that the Athlete was validly represented at the B sample opening. As determined above, the Athlete, when he was called by his coach by phone on 12 August 2016, was sufficiently notified and in fact informed about the AAF and the opportunity of and the conditions for the B sample analysis which was scheduled to take place in the morning of 13 August 2016.
147. The Athlete did know that the B sample would be analysed upon request by and with the presence of the Chef de Mission of the KNOC. In his Affidavit dated 4 October 2016, he described the situation as follows:

*“My coach told me to calm down and wait for the situation to be clarified by the NOC. I was anxious but decided that it would be the best to do what my NOC advised me”.*

At the hearing, the Athlete gave testimony and was interrogated by the Respondent and the Panel in order to explain that situation. He confirmed his statement in the Affidavit and, in response to the Panel’s question why he did not express disagreement, testified:

*“I was not asked about the B sample. It was not a question to me”.*

In reply to a question posed by the Panel, he declared that there was no threat or advice and he was *“not intimidated”*.

148. At no stage of the proceedings including the hearing did the Athlete submit that, at the moment when he was informed about the Notification, he disagreed with the B sample to be analysed and be represented by officials from the KNOC nor did he explain what he would have required otherwise. Nor did his coach acting as his representative, in the course of the communications with the KNOC, express any disagreement on behalf of the Athlete.
149. The Panel concludes from those statements that the Athlete deliberately accepted the actions taken by the KNOC and, thus, at least implicitly or even openly authorized the opening of the B sample in the presence of Mr. Ergeshov, Secretary General of the KNOC, acting as his representative. The Panel finds that the Athlete was informed of his rights related to the B sample analysis and exercised these rights by accepting what the KNOC already had initiated to do.

**c. Apparent authority of the KNOC during Olympic Games**

150. Furthermore and independent of whether there was an authorization by the Athlete, the Panel, based on the rules governing the Olympic Games, finds that the IOC validly could have relied on the behaviour shown by the KNOC without violating the applicable regulations. In the absence of any information to the contrary, made known to the IOC by or on behalf of the Athlete, it appeared to the IOC that the B sample opening was requested by the Chef de Mission on behalf of the Athlete and the Secretary General of the KNOC acted as representative of the Athlete at the B sample opening. The IOC, acting as the competent Anti-Doping Organization (ADO), under the applicable rules of the IOC ADR and the Olympic Charter, could reasonably and lawfully understand and actually did understand the situation to the effect that the Athlete had requested the B sample opening and appointed Mrs. Maratov and Ergeshov to represent him at the B sample analysis.
151. The IOC was entitled to rely on the action taken by the Chef de Mission, Mr. Ergeshov, as representing the Athlete because, according to sec. 4 of the Bye-law to Rules 27 and 28 of the Olympic Charter,
- “(d)uring the Olympic Games, the competitors ... of each NOC are placed under the responsibility of a chef de mission appointed by his NOC and whose task ... is to liaise with the IOC, the IFs and the OCOG”.*
152. According to the Rules of the Olympic Charter, in general, and of the IOC ADR, in particular, during the Olympic Games, the NOCs act as a kind of intermediary between the IOC and the athletes. This is clearly demonstrated by the fact that the competitors are entered to the Olympic Games by their NOCs and that it is the “right” of the NOCs to “send competitors, team officials or other team personnel to the Olympic Games” according to Rules 44 and 27.7.2 of the Olympic Charter. There is a general principle that in relation to and during Olympic Games the competitors – and other personnel of the delegations as well - do not enter into direct contact with the IOC but are addressed through their respective NOC. This is reflected in the position and task of the Chef de Mission, as laid down in the Bye-law to Rules 27 and 28 of the Olympic Charter. For the purpose of the Olympic Games, the Chef de Mission not only performs the role of liaison with the IOC but also “the competitors [are] placed under (his) responsibility”.
153. However, this does not mean that the applicable rules grant to the Chefs de Mission a general power to represent the Athletes of their delegations. It may have been the general understanding of the IOC and the KNOC that sec. 4 of the Bye-law to Rules 27 and 28 of the Olympic Charter suggest that the Chef de Mission was not only the go-between but was authorized to represent the athletes under their “responsibility” vis-à-vis the IOC. Having in depth considered the interpretation of sec. 4 of the Bye-law to rules 27 and 28 of the Olympic Charter the Panel comes to the view that the terms of that provision are not sufficiently precise in order to provide to the NOCs the authority to serve as a general legal representative, or agent, of the athletes. This remains a matter of the legal regulations and other arrangements which govern the relationship between the athletes and their respective NOCs.

154. Nevertheless, under the specific circumstances during the Olympic Games and given the interaction of the IOC and NOCs, it is the Panel's view, that, in the light of the applicable rules, in particular sec. 4 of the Bye-law to Rules 27 and 28 of the Olympic Charter, there is an apparent authority of the NOCs which, independent of the internal legal relations between the athletes and their respective NOCs, exclusively and formally applies in external terms vis-à-vis the IOC. This authority, however, solely applies when there is no will or intention to the contrary expressed by the athlete in question or any indication that the athlete does not agree. In the case before the Panel, there were no signs available to the IOC which would indicate that the Athlete was not represented by the Chef de Mission of the KNOC. In such situation, the IOC was entitled to rely on the actions taken by the KNOC and, in so proceeding, the IOC's good faith was protected by the applicable rules. The IOC acted in conformity with the applicable rules.
155. The Panel finds that there is a clear delimitation of responsibilities between the IOC, on the one hand, and the NOCs, on the another hand, in the relations between NOCs and their athletes. According to the applicable Olympic rules, the IOC acts vis-à-vis the NOCs and, in case the athletes are not available *in persona* at the venue of the Olympic Games, the NOC must ensure the communication and coordination with the athletes. The IOC is not concerned by the internal rules of the NOCs and does not have any knowledge of and cannot be aware of the internal situation of any NOC participating in the Olympic Games. In the present case the IOC did what the applicable rules required to be done and what sec. 4 of the Bye-law to Rules 27 and 28 of the Olympic Charter allowed to do.
156. As a supporting argument, the Panel takes into account that the IOC when it relied on the actions taken by the KNOC proceeded to the presumed benefit of the Athlete because otherwise, assuming that the Athlete would not have requested the B sample analysis, the results of the A sample analysis would have provided sufficient proof of an ADRV. As a matter of fact, both the IOC and the KNOC, in the absence of any direction to the contrary issued by the Athlete, acted in the Athlete's best interest.
157. Lastly, contrary to the Athlete's allegation that he was treated by the IOC and the KNOC in a discretionary and unfair manner, his doping procedure was conducted like any other doping case during the 2016 Olympic Games according to common practice.

**d. Adherence by the IOC to the rules**

158. The Panel concludes from the above considerations that, firstly, the KNOC was entitled to receive the Notification on behalf of the Athlete; secondly, the Athlete was sufficiently informed about the AAF and his rights with regard to the B sample analysis; thirdly, he accepted what the KNOC was doing in his case and, hence, at least implicitly if not expressly, authorized the Chef de Mission to represent him at the B sample opening; and fourthly, the IOC, in the absence of any indication to the contrary, was entitled by law to rely on the behaviour of the KNOC. Under these circumstances, the IOC fully adhered to the applicable rules and did not violate the Athlete's rights in relation to the B sample analysis and, thus, the results of that analysis are not invalidated. Therefore, since a valid B sample analysis requested on behalf of the Athlete and attended by a representative confirmed the findings of the A

sample, sufficient proof of an ADRV was established by the IOC as required by Article 2.1.2 IOC ADR.

159. The Panel wishes to emphasize that these conclusions take into consideration the particular situation present at the Olympic Games and do not necessarily apply to doping-related disputes, in general. The IOC ADR applicable at the Rio Games for the first time are intended to resolve the matter of alleged ADRVs by a specially established tribunal, external to the IOC, in an efficient and speedy manner in order to enable the IOC to award the medals to clean athletes at the place and time of the Games. Therefore, short deadlines, deemed notifications and representation of athletes by their respective Chefs de Mission are justified and this does not reflect any change to past practice of the IOC.

**e. Case law invoked by the Athlete**

160. The conclusion reached by the Panel is in line with the precedents invoked by the Appellant. The facts as established above clearly distinguish the case at hand from the case law referred to by the Appellant. In all of these judgements, it was emphasised that the right to request the B sample to be analysed and to be present or represented at the opening of the B sample is a “*fundamental*” one and must be strictly adhered to. Failing to respect these rights the B sample analysis is invalidated and the ADRV not sufficiently proven under Article 2.1.2 IOC ADR or other relevant ADR. However, in all of the precedential cases the ADO was in direct contact with the athletes, or with those responsible for the horse, and the athletes in fact opposed or did not openly request the B sample opening or were not informed about the B sample analysis and the ADOs did not fully adhere to the applicable rules.
161. In its *Sheikh Hazzan Bin Sultan Bin Zayed* decision of 25 May 2007, the Judicial Committee of the FEI, in the matter of a protest against the award ceremony at the Endurance World Championship, emphasised the “*basic right*” character of the rights related to the B sample but there are no precedential similarities with the case before the Panel. In the case of the *Welsh Rugby Union v. Hopkins and Jones* (National Anti-Doping Panel, Decision of 25 May 2010), the ADO was in direct contact with the athletes concerned and the dispute was about the interpretation of letters by the athletes who did not openly request the B sample opening but denied the charge of an ADRV.
162. In CAS 2002/A/385, the athlete was notified by the FIG of the AAF and informed of her rights in relation to the B sample. She requested the analysis of the B sample but neither the Athlete nor her National Federation were informed by the FIG of the date and time of the B sample analysis which confirmed the result of the A sample. The panel concluded that the National Federation and the athlete were deprived of the right to the B sample analysis. However, the panel left the question of the consequences thereof undecided because the ADRV was established by other evidence than the analysis of the samples.
163. In CAS 2003/A/477, a case of alleged horse-doping, the responsible for the horse, was informed about the AAF and, following various conversations between him and the FEA, the B sample was analysed and confirmed the results of the A sample. It was disputed and no clear evidence was available as to whether or not the responsible for the horse requested the

B sample opening. When he, at a later stage, eventually did request the opening of the B sample he learned that the B sample was analysed already. The single arbitrator, due to the lack of evidence to the contrary, found that the responsible for the horse did not request the B sample analysis and concluded that, therefore, the B sample had been analysed in the absence of and “*without knowledge or authority*” of the responsible for the horse. Therefore, the determination of an ADRV was set aside. This case is distinguished from the case before this Panel in that the responsible for the horse was in direct contact with the FEA at various occasions and the FEA was not able to evidence that he actually requested the B sample opening.

164. Also the judgement in CAS 2008/A/1607 does not establish an applicable precedent. In the course of a numerous e-mail traffic between the Athlete and the IBU, the athlete originally had requested the B sample opening but wanted to examine the documents related to the A-sample previously. After the IBU had scheduled the B sample analysis for a particular date the athlete requested to postpone the opening because she wanted to be represented by an expert in biochemistry who was not available at the proposed date. She officially protested against the B sample opening which, nevertheless, was conducted as scheduled in the absence of the athlete or any representative. The panel found that the IBU, in breach of the applicable rules, failed to make reasonable attempts to accommodate with the athlete and, therefore, violated the athlete’s right. As a result, the results of the B sample analysis must not be accepted as proof of an ADRV and “*the absence of any “B” Sample testing to corroborate the finding to the “A” Sample must result in the conclusion by us that the IBU has failed to establish an anti-doping rule violation on the part of the Appellant*”.
165. In CAS 2010/A/2161, the panel, by reference to the judgements in CAS 2002/A/385, CAS 2008/A/1607 and CAS 2003/A/477, stated that “*it is now established CAS jurisprudence that the athlete’s right to attend the opening and analysis of her B sample is fundamental and, if not respected, the B sample results must be disregarded*”. More specifically, the panel ruled that this right applies irrespective of who requested the B sample analysis and even if the athlete had waived the right to the B sample analysis. Amongst other procedural mistakes committed by the IJF, the panel relied on the fact that the IJF, after the athlete had withdrawn her request for the B sample opening, requested the opening of the B sample on its own right but did not inform the athlete about the opening and her right to attend or be represented at the B sample opening. This was in clear breach of the applicable rules. This situation is dissimilar to the facts of the case before this Panel. Here, the IOC, in compliance with the rules, informed the Athlete, and he himself actually got the information about the B sample analysis and his related rights and could, according to the applicable rules, reasonably and lawfully assume that the Athlete was represented.
166. The CAS 2015/A/3977 award constitutes the most recent CAS judgement concerning the rights of the athletes related to the B sample analysis. Shortly before the Olympic Games London 2012 which were opened on 27 July 2012 and where the athlete was supposed to compete, the IAAF instructed the Lausanne laboratory to re-test the samples of the athlete collected in 2005 during the IAAF World Championships in Helsinki. The IAAF was reported by the laboratory of the AAF on 26 July 2012 and notified the AAF including the information about the rights related to the B sample analysis to the athlete via his National Federation on

30 July 2012 at 20.00 h London time. He was immediately contacted by phone at his home in Belarus at shortly after 22.00 h Belarus time. According to the notification he was granted two hours to request the B sample analysis and to appoint a representative to attend the B sample opening scheduled for the next morning to be conducted by the Lausanne laboratory. At that time the B sample would be opened and split into B1 and B2 aliquots the first of which was analysed on 30 July and confirmed the positive result of the A sample analysis. Eventually, the B2 sample was opened on 4 October 2012 in the presence of an expert appointed by the athlete.

167. The panel in CAS 2015/A/3977 considered two questions pivotal: whether, first, the athlete was actually represented at the B sample opening on 30 July 2012 and, second, did the athlete have a reasonable opportunity to be present or represented by an expert of his choosing at the B sample opening on 30 July 2012. Based upon the evidence before it, the panel found that the athlete accepted to be represented at the B sample opening on 30 July 2012 by the head of the Belarus WADA accredited laboratory who was present in Lausanne for another B sample opening. But the panel found that, in the circumstance of the case, he was not granted a reasonable opportunity to be present himself or to appoint an expert of his choice to represent him on 30 July 2012. The panel focussed on the following reasons: He was given only two hours-time to make a decision between 22.00 and midnight Belarus time. In being so strict IAAF violated the applicable rules. It was a re-test and the IAAF did not have to wait until 17 July 2012 to commission the re-analysis, nor was a fast result needed in the circumstances of the case. The IAAF received the laboratory report on 26 June 2012 and did not send out the notification before 30 July 2012 at 20.00 h London time with the B sample opening already scheduled for the next morning. Since the B sample opening can be made only once when the seal is broken the analysis of the B1 aliquot which was conducted in breach of the athlete's rights cannot be remedied by the B2 analysis which took place in the presence of an expert appointed by the athlete.

168. The essential reasons of the panel are stated as follows in paras. 163 and 164 of the award:

*"163. In the light of the above, the Athlete was required to make a decisive and possibly life-changing decision within two hours but without knowledge of all the facts, e.g. that he could reschedule the analysis of his B sample, the exact content of the IAAF Notification, what prohibited substance had been detected, etc".*

*"164. In fact, the Athlete was only left with no ability to choose whether he wanted to attend in person the confirmatory procedure as, at the time of the notification, it was unreasonable to believe that he would be able to travel fromn Belarus to Lausanne in order to be present at the opening and splitting of the B sample no 691793. Likewise, with the limited time available, the Athlete was also not in a position to truly choose his own representative and had to rely on a person (i.e. Mr. Serguey Beliaev), who he did not know and who just happenend to go to the Lausanne laboratory on behalf of another athlete. Effectively the Athlete was acting under duress".*

169. Though some similarities with regard to the imminent Olympic Games can be found, in CAS 2015/A/3977 it was about a re-test matter and, as the athlete withdrew from competing in the London Olympic Games prior to the Games, there was no such urgency in respect of the scheduling of the B sample analysis which would justify the two-hour time-limit while, in the

case before this Panel, the rewarding of medals was at stake. Furthermore, the athlete was in direct communication with the IAAF.

170. The dispute before the Panel is distinguished from the cases invoked by Appellant mainly in three aspects: first, the Athlete was not in direct communication with the IOC as relevant ADO; second, the IOC followed the applicable rules and, therefore, did not violate any rights of the Athlete arising from those rules; and, third and most importantly, the Athlete, as a matter of fact, decided to accept what the KNOC already did and intended to do in his case and, therefore, implicitly or even expressly authorized the Chef de Mission and other representatives of the KNOC to request the opening of the B sample and to represent him at that occasion. As a result, the Panel, taking into account the established jurisprudence of the CAS as followed by other tribunals, finds no reason to consider the B sample analysis invalidated and, therefore, to be disregarded.
171. As already found above, the Panel rules that the Athlete committed an ADRV in the form of a presence-violation under Article 2.1 IOC ADR.

## **X. CONSEQUENCES**

172. Pursuant to Article 9 IOC ADR, the results the Athlete has obtained in the Men's 69kg Weightlifting competition on 9 August 2016 are disqualified with all resulting consequences, including but not limited to the forfeiture of the Bronze medal, points and prizes.
173. All other results obtained by the Athlete at the Rio Games, if any, are disqualified with all consequences including forfeiture of any medals, points, and prizes as provided for by virtue of Article 10.1 IOC ADR.
174. According to Article 10.2.1 IOC ADR, the Athlete was to have been declared ineligible to compete in further competitions at the Rio Games in which he had not yet participated. This consequence has been correctly implemented by the CAS ADD in determining that the Athlete was excluded from the Rio Games and his accreditation withdrawn as provided for in Rule 59.2.1 of the Olympic Charter. This particular power was delegated by the IOC Executive Board to the CAS ADD as provided for in Rule 59.2.4 of the Olympic Charter and as stated in the Preamble of the AR ADD.
175. Article 10. 2. 2 IOC ADR provides and, hence, the Panel rules that the responsibility for the results management and further sanction beyond the Rio Games are referred to the International Weightlifting Federation.

## **XI. CONCLUSION**

176. Having thoroughly considered the submissions of the Parties and the written and oral testimonies as well as the explanations provided by the Athlete at the hearing, the Panel finds that the Respondent has established to the comfortable satisfaction of the Panel that the Athlete committed an ADRV in the form of the presence of a prohibited substance under

Article 2.1 IOC ADR. The valid B sample analysis which revealed the presence of strychnine in the Athlete's body has confirmed the results of the A sample analysis. Strychnine is a prohibited substance listed under S6 of the 2016 WADA Prohibited List. Therefore, according to Article 2.1.2 IOC ADR the IOC has sufficiently established the ADRV.

177. Therefore, the Panel comes to the conclusion that the Athlete committed an ADRV on 9 August 2016 at the Rio Games and the award of the CAS Anti-Doping Division rendered on 18 August 2016 is upheld.

## ON THESE GROUNDS

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

1. CAS has no jurisdiction to hear the claim for damages of Mr. Izzat Artykov against the International Olympic Committee.
2. CAS has no jurisdiction to decide on any claims by Mr. Izzat Artykov against the National Olympic Committee of the Kyrgyz Republic.
3. The appeal filed by Mr. Izzat Artykov on 29 August 2016 against the award of the CAS Anti-Doping Division on 18 August 2016 is dismissed.
4. The award of the CAS Anti-Doping Division rendered on 18 August 2016 is upheld.
5. (...).
6. (...).
7. All other motions or prayers for relief are dismissed.