**Arbitration CAS 2021/ADD/38 International Weightlifting Federation (IWF) v. Hasan Akkus, award of 3 January 2023**

Panel: Mr Murray Rosen KC (United Kingdom), Sole Arbitrator

*Weightlifting*
*Doping (tampering with the result management process)*
*Application of the IF's Anti-Doping Rules to its senior officials*
*Independence of the CAS ADD*
*Statute of limitation*
*Assessment of the tampering offence*

1. **A sports association like the IWF, whilst a legally separate entity from its senior officers, acts principally through them. Senior officers are necessarily responsible for compliance with its anti-doping and other rules. For senior officers to deny that they are subject to their rules, in contrast with an ordinary "participant" in their events, and thus further to seek to refute and undermine their anti-doping policy and efforts from the very top, is utterly wrong, and indeed disreputable.**

2. **The attacks on the independence of the CAS ADD and its sole arbitrators are entirely misconceived having regard in particular to the European Court of Human Right judgement in Mutu and Pechstein v. Switzerland and the particular features of the CAS ADD, namely (a) CAS is an independent, expert and experienced arbitral body with councils, officers and counsel of high quality; (b) it selects and appoints arbitrators to its ADD list and individual cases who are proven, specialised professionals; (c) the absence of party nominations for sole arbitrators is consistent with dispute resolution institutions worldwide; and (d) it is solely for CAS to decide how large a list is necessary and how much information to provide regarding the backgrounds of its arbitrators, provided they are qualified, independent and conflict free, as they must individually declare as regards the particular dispute.**

3. **The extension under the IWF Anti-Doping Rules (ADR) from 8 years to 10 years in 2015 was procedural, not substantive, and since the limitation period of 8 years had not expired prior to the change, there was no invalid retroactivity and there is no basis for applying the principles of *nulla poene sine lege* and *lex mitior*.**

4. **Whether a certain behaviour qualifies as tampering must be asserted in the individual context. The fact for a federation's senior official to betray the trust of the International Federation in and under which he has held various senior positions by subverting the anti-doping results management process in order to limit and/or reduce the available sanctions for the adverse analytical findings (AAFs) concerned, in conspiracy with other senior officers, constitutes tampering with the anti-doping results management**

**process. Further concealing the interference by a senior officer with the results management process arising from athletes AAFs at national level is aggravation of the anti-doping rule violation and not a separate further violation.**

## I. PARTIES

1. The Claimant "IWF" is the world governing body for the sport of weightlifting. As a signatory of the World Anti-Doping Code (the "WADA Code") the IWF has enacted the IWF Anti-Doping Rules (the "IWF ADR") as amended from time to time; and it has delegated the implementation of its anti-doping programme to the International Testing Agency (the "ITA") including its results management and prosecution of potential anti-doping rule violations ("ADRVs").

2. The Respondent Mr Hasan Akkus has held various senior position in and under the umbrella of the IWF, including (a) President of the Turkish Weightlifting Federation (the "TWF") between 2004 and 2013, (b) IWF Vice-President from 2009 to 2013, (c) Secretary General of the European Weightlifting Federation (the "EWF) between 2013 and 2021 and (d) President of the EWF since 1 April 2021.

## II. FACTUAL BACKGROUND

3. The IWF has charged Mr Akkus with alleged ADRVs by tampering with the results management process in respect of the positive sample doping-tests collected from 21 young Turkish weightlifters between 10 November and 9 December 2012 (a) in early 2013, contrary to the 2012 IWF ADR and (b) further in September 2021, contrary to the 2021 IWF ADR, as referred to further below.

4. The IWF"s central allegation is that Mr Akkus, in conspiracy with the then IWF President Mr Tamas Aján and legal counsel Ms Monika Ungar, falsely backdated a letter dated 5 November 2012 in order to seek to validate and justify the transfer of results management for 26 Adverse Analytical Findings ("AAFs") tested and reported after that date in respect of the 21 athletes from the IWF to TWF and to ensure lesser sanctions than might have been for the Athletes and no sanctions at all against the TWF itself; and many years later also adduced false internal metadata properties in an attempt to authenticate that backdated letter.

5. The IWF complains that treating these AAFs as "national cases" managed by the TWF within the meaning of Article 7.4 of the 2012 IWF ADR rather than as "international cases", managed by the IWF, which they were, meant (a) at least in theory that the 21 athletes concerned remained free to compete in in weightlifting competitions outside of Turkey unless their sanctions were recognised in the host country, and in non-weightlifting sports; and (b) perhaps more significantly, that the TWF itself, and TWF officials as well as athletes, avoided any sanctions for such multiple ADRVs under Article 12.3 of the 2012 ADR by way of bans against participating in IWF events or holding IWF office, and a fine of up to USD 500,000.

6. The Respondent Mr Akkus denies the applicability of the IWF ADR and the jurisdiction of the CAS ADD, and without prejudice thereto disputes that he backdated the latter dated 5 November 2012 or that it affected the sanctioning of the 21 athletes or that he acted by "tampering" or in any other way against the IWF ADR (if applicable, which he denies) especially since the testing was conducted, and/or then the President and the legal counsel of the IWF agreed that the results management including sanctioning should be conducted, by or on behalf of the TWF.

7. The following summary of the factual background is derived from the Parties" submissions and the Claimant's documents, without substantive unchallenge by the Respondent. It is not intended to be comprehensive and further facts may be referred to later in this Award as necessary.

**(a) The tests in late 2012**

8. On 30 October 2012, an IWF employee Ms Magdolna Trombitas sent an e-mail to then IWF Legal Counsel, Ms Monica Ungar, requesting assistance with regard to forthcoming Out of Competition ("OOC") doping controls in several countries including Bulgaria, Turkey, Romania, Ukraine and Belgium, prior to the IWF Under-23 and Junior European Championships to be held between 29 November and 9 December 2012 in Eilat, Israel.

9. Ms Ungar responded with instructions for Ms Trombitas to do a whereabouts report for each country where testing was required, targeting training camps and local competitions, and to contact the IWF's main Sample Collection Authority ("SCA") the Hungarian Anti-Doping Organization ("HUNADO") to conduct the testing missions required.

10. On 31 October 2012, as instructed, Ms Trombitas contacted Ms Agnes Tiszeker of HUNADO and informed her that it was likely that the IWF would request five testing missions in Bulgaria, Turkey, Romania, Ukraine and Belgium, in respect of athletes eligible for participation in the Eilat Championships, between 4 and 13 November 2012.

11. On 2 November 2012, the IWF sent to HUNADO a Mission Order to conduct OOC tests in the five countries including Turkey and in particularly to collect 20 OOC urine samples on 10 November 2012. The name of the ordering institution in that Order was stated as the IWF.

12. On 5 November 2012, Ms Ungar emailed Ms Tiszeker further instructions for the required OOC tests, enclosing lists of athletes from the five countries who were scheduled to particulate in the Eilat Championships, saying that these athletes should be the primary targets of the mission and asking that HUNADO conduct the tests before 13 November so that the laboratory could have the samples by 19 November at the latest, as the Eilat Championships were to start on 29 November 2012.

13. On 10 and 17 November 2012 respectively, Turkish athletes were tested at training camps at Ovacik and at Corum in Turkey. The SCA for these tests was HUNADO and the IWF was the Testing Authority ("TA") and Results Management Authority ("RMA") and its Doping Control Forms ("DCFs") were used for the samples collected.

14. The Ovacik testing was invoiced to and paid by the IWF and in emails on 28 and 29 November 2012, in response to a query from WADA related to Turkish athletes, Ms Ungar of the IWF stated *"Please note that we had an OOC mission in Turkey on the 10th November, tested 20 male athletes who were preparing to the upcoming European event… We don't have the lab… reports yet from our TUR mission, the Cologne lab informed us that they need to do further analysis on the samples and will report only thereafter"*; and then sent to WADA a *"list of athletes tested on the 10th November by the IWF"*.

15. On 7 December 2012, the Cologne Laboratory reported to the then President of the IWF Mr Tamas Ajáin, 21 AAFs from the OOC tests, all for a prohibited exogenous anabolic steroid (i.e. stanozolol – a potent 3'-hydroxystanozolol glucuronide) - 16 from the 20 samples collected at Ovacik and a further five from samples collected at Corum.

16. Mr Akkus was not merely a figurehead as President of the TWF and Vice-President of the IWF but had a history in various active roles (including chair of the IWF's Medical Committee) and personally and practically advanced the interests generally of weightlifters.

17. In 2012, pursuant to the IWF ADR then in force, National Federations, such as the TWF, had the power to carry out doping controls on Turkish athletes and the management of any resulting AAF and some such tests were conducted on behalf of the TWF by the National Olympic Committee of Turkey ("NOC–Turkey").

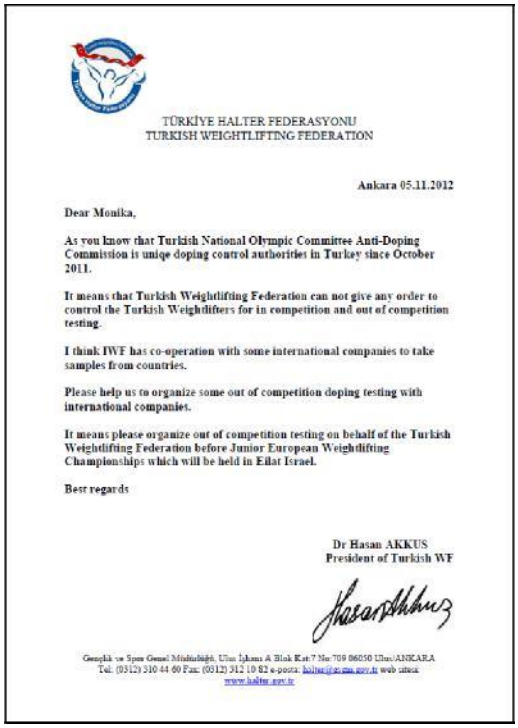
18. For example, on 12 November 2012, Mr Akkus sent Ms Ungar the files relating to 2 Turkish athletes tested on 26 September 2012 by NOC–Turkey and informed her that the TWF had started the procedures and he would inform her of the results later.

19. On the same day (that is, two days after HUNADO's collecting samples at Ovacik), Mr Akkus sent Ms Ungar another e-mail acknowledging difficulties for the TWF as NOC-Turkey conducted any OOC tests and reserved limited quotas for testing weightlifters; and that TWF could not currently order OOC testing but would look into engaging a private sample collection agency, International Doping Tests & Management ("IDTM").

20. At the Eilat Championships, In-Competition ("IC") samples were collected as initiated and directed by the IWF acting as the TA and RMA, and on 10 January 2013, the Cologne Laboratory reported to the IWF five further AAFs for the same prohibited anabolic steroids in samples from Turkish athletes who had already tested positive during the OOC missions.

**(b) The letter dated 5 November 2012 and the TWF"s results management**

21. A week later, on 17 January 2013 – having in the meantime travelled from Istanbul to Budapest to meet with the IWF"s President Tamas Ajáin on 14 January 2013 - Mr Akkus sent an e-mail to Ms Ungar, enclosing a draft letter dated 5 November 2012, of which a PDF capture is inserted here:



TÜRKİYE HALTER FEDERASYONU
TURKISH WEIGHTLIFTING FEDERATION

Ankara 05.11.2012

Dear Monika,

As you know that Turkish National Olympic Committee Anti-Doping Commission is uniqe doping control authorities in Turkey since October 2011.

It means that Turkish Weightlifting Federation can not give any order to control the Turkish Weightlifters for in competition and out of competition testing.

I think IWF has co-operation with some international companies to take samples from countries.

Please help us to organize some out of competition doping testing with international companies.

It means please organize out of competition testing on behalf of the Turkish Weightlifting Federation before Junior European Weightlifting Championships which will be held in Eilat Israel.

Best regards

Dr Hasan AKKUS
President of Turkish WF

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www.halter.gov.tr

22. Mr Akkus' covering email of 17 January 2013 read (including the various linguistic and typographical mistakes):

*Dear Monika,*
*I tried to talk with Mrs Nese but condition was not good for talking private.*
*Then I prepared the enclosed letter dated 05.11.2012.*
*It means, out of competition tests were organized by Turkish WF with helping IWF on 10.11.2012 and 17.11.2012.*
*So Turkish Weightlifting Federation gives penalty to the althletes their testing reults are pozitif after out of competition tests which were organized on 10.11.2012 and 17.11.2012.*
*Dear Monika, Last stiation is very heavy and bad for my federation and my self. Please ask to Mr Ajan to help me.*
*Please he doesnt publish WADA control results on the IWF web page. Of course WADA pozitif athletes are suspended and Mr Ajan gives information to the WADA about their names and penalties.*
*Please send us the documents electronicaly for pozitif cases then we start procedure here.*
*I hope mr Ajan and you can understand me help me.*
*Please delete this e-mail after reading.*
*Regards*
*Dr Hasan AKKUS*
*President of Turkish WF*

23. On the same day 17 January 2013 Mr Ajáń emailed Mr Akkus:

*Dear Hasan,*
*I understand the letter you've attached today however due to some lingual problems I propose a different draft that I kindly ask you to consider.*
*On our personal meeting I expressed my willingness to assist you in all possible ways but my opportunities are also limited. I truly hope that no one will ever take advantage of me or abuse the favors I try to make, this would be the case I would have to publish the information I am possessing on different matters.*
*Please make sure that no information is leaked to the press or other parties since it would endanger you and your federations position.*
*I will inform you on the further steps very shortly.*
*Best regards, Tamas*
*Dr. Tamas AJAN*
*IWF President*

24. On 23 January 2013, Ms Ungar emailed Mr Akkus:

*Dear Hasan,*
*Please find attached a slightly reworded letter that I kindly ask you to put on the TUR WF letterhead and return it to the IWF…*
*Kind regards, Monika.*

Attached was an unformatted WORD document, capture inserted below, with Ms Ungar's revisions highlighted in yellow alongside its internal metadata properties, showing its date of creation by Ms Ungar as 22 January 2013.

**International Weightlifting Federation** **Dated: 5th November 2012**

**President**

**Copy: Anti-doping Department**

**Dear President Ajan,**

As you know the Turkish National Olympic Committee Anti-Doping Commission is the unique doping control authority in Turkey since October 2011.

It means that Turkish Weightlifting Federation cannot give any order to control the Turkish Weightlifters for In-competition and Out-of-Competition testing.

I think IWF has co-operation with some international companies to take samples from countries.

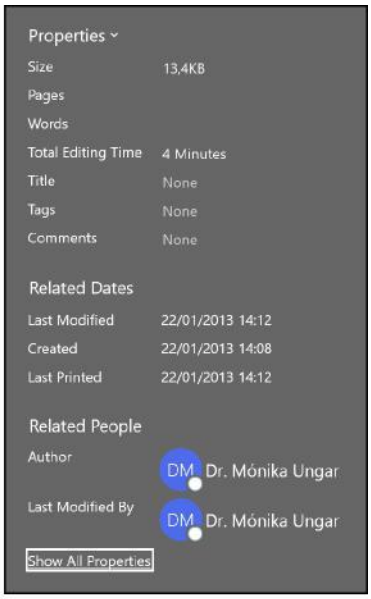
Please help us to organize some Out-of-Competition doping testing with international companies on the Turkish team athletes and our federation will share the cost of this.

It means please organize Out-of-Competition testing on behalf of the Turkish Weightlifting Federation before December 2012, the Junior European Weightlifting Championships which will be held in Eilat Israel.

Thank you in advance.

Dr Hasan AKKUS

President of Turkish WF



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Related Dates

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| Created | 22/01/2013 14:08 |
| Last Printed | 22/01/2013 14:12 |

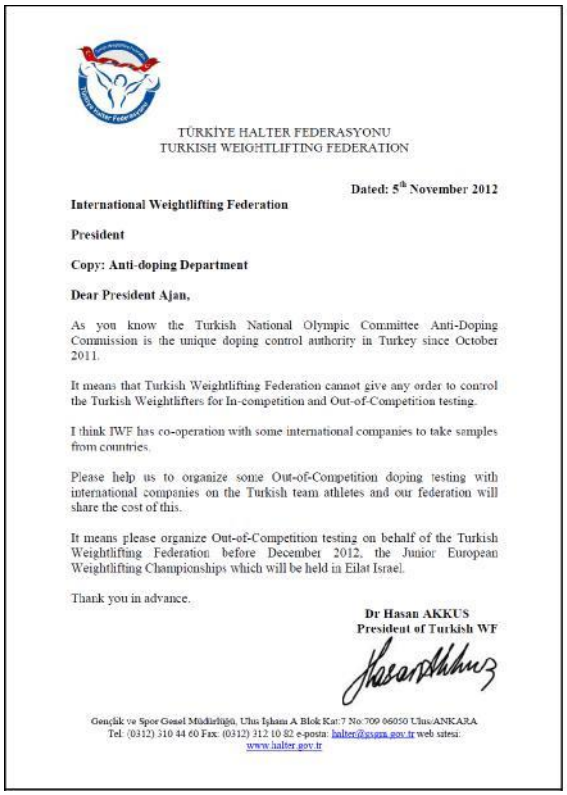
Related People

Author: DM Dr. Mónika Ungar

Last Modified By: DM Dr. Mónika Ungar

Show All Properties

25. Also, on 23 January 2013, Mr Akkus, in accordance with Ms Ungar's request, sent back to the IWF by email a final version of the letter dated 5 November 2012, on the TWF letterhead and incorporating Ms Ungar's revisions, capture inserted below alongside its internal metadata properties showing its date of creation as 23 January 2013.



TÜRKİYE HALTER FEDERASYONU
TURKISH WEIGHTLIFTING FEDERATION

**Dated: 5th November 2012**

**International Weightlifting Federation**

**President**

**Copy: Anti-doping Department**

**Dear President Ajan,**

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It means please organize Out-of-Competition testing on behalf of the Turkish Weightlifting Federation before December 2012, the Junior European Weightlifting Championships which will be held in Eilat Israel.

Thank you in advance.

**Dr Hasan AKKUS**
**President of Turkish WF**

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Tel: (0312) 310 44 60 Fax: (0312) 312 10 82 e-posta: halter@sygm.gov.tr web sitesi:
www.halter.gov.tr

Document Properties

Description | Security | Fonts | Initial View | Custom | Advanced

Description

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26. Again, on 23 January 2013, Ms Ungar sent an e-mail to Mr Akkus enclosing a draft press release to be issued by both the IWF and TWF, stating that:

*"… in cooperation and with the assistance of the Turkish Weightlifting Federation (TWF) a large scale doping conspiracy was discovered in Turkey in the past month … TWF cooperated with the IWF in every aspect of the testing, analysis and sharing of intelligence … the applicable sanctions are being assessed by both the TWF and the IWF, whereas the IWF has pre-registered a large number of Adverse Analytical Findings among Turkish athletes whose cases are still in process … such initiative from a National Federation is highly appreciated and most welcomed by the IWF".*

Mr Akkus made some comments and amendments to the draft press release (in red) and a revised version (at https://iwf.sport/2013/01/25/iwf-post-olympic-testing/) was issued by the IWF on 25 January 2013.

27. Also, on 23 January 2013, Mr Akkus emailed Ms Ungar as follows:

*Dear Monika,*
*Tomorrow evening we will have EB meeting in Ankara.*
*I will explain situation of cases to EB members.*
*May be we need to restore trust for public.*
*And i will make spech to media on Friday afternoon.*
*I will announce 5 pozitif cases of Eilat (ISR) competition to the media on Friday afternoon.*
*I will not say any about pozitif cases of OOC testing.*

*Then I will start the procedure for 5 pozitif cases (IC testing) then*
*I will start procedure OOC testing which was held before Eilat.*
*That is we should release news on Fridat late afternoon.*
*Regards*
*Hakkus*

28. Ms Ungar replied, still on 23 January 2013, stating that as the IWF press release spoke of a *"large scale controversy"*, disclosing information about just five positives cases would *"be a bigger problem at the end"*.

29. Within a few days, Mr Akkus resigned his offices in the IWF and TWF and took up office in the EWF, initially as Secretary General. He continued to be involved in relation to the results management of the 26 AAFs, including as follows.

30. On 5 February 2013, Ms Ungar sent an e-mail to Mr Akkus saying in part:

*Dear Hasan,*
*Following the several press releases, I wish to inform you as follows:*
*1. The IWF transfers the result management of the out-of-competition cases to the Turkish Federation.*
*- This means that all athletes shall receive the two years ban as a national doping offence.*
*- Further all controls were carried out by IDTM, international testing agency;*
*- a detailed report on the investigation of all cases shall be submitted to the IWF without delay;*
*- not only the athletes but also all coaches and support personnel shall be suspended. Their names shall be given to the IWF.*
*2. The athlete files will be transferred to you as soon as we receive confirmation on the above…*
*Looking forward to hear from you.*
*Kind regards,*
*Monika*

31. In various emails dated 15 February 2013, Ms Ungar transferred the case files of the 26 AAFs to Mr Akkus for the athletes to be sanctioned by the TWF and notified the five IC cases to the respective athletes through the TWF. She continued however to liaise regarding the B-samples analyses with the Cologne Laboratory which reported on 12 April 2013 to the effect that they confirmed the A-samples analyses for all 26 AAFs.

32. A few months later, on 26 June 2013, Ms Ungar inquired with Mr Akkus as to what was the *"final agreement regarding the positive athletes"* and how many cases should the IWF publish *"for 2012 as international"*. Mr Akkus reply stated that seven cases would be considered as IWF International Cases, namely the five IC-tested at the Eilat Championships and 2 other cases from samples collected by the IWF on 7 July 2012 which were already on the IWF website; and that the other 21 AAFs (from the OOC testing) would be sanctioned by the TWF and not published on the IWF website.

33. Eventually, by decisions dated 2 August 2013, all 21 young Turkish athletes were sanctioned by the TWF with periods of ineligibility of two years from the date of sample collection. There

were no sanctions by the IWF and no information about the AAFs and their sanctions was released on the IWF website until 2021, following investigations as below.

**(c) The investigations and charges**

34. In 2019, in order to strengthen its anti-doping program, the IWF delegated its conduct to the International Testing Agency ("ITA") including results management and follow-up investigations and charges. The ITA, was and is mandated to follow the WADA Code obligation to *"vigorously pursue all potential ADRVs"* within the jurisdiction of the IWF on its behalf.

35. On 31 January 2020, the IWF Executive Board appointed Professor Richard McLaren to investigate allegations of mishandling of the IWF anti-doping program between 2009 to 2014.

36. On 4 June 2020, Prof McLaren reported among other things that more than 40 ADRVs had not been properly pursued by the IWF, including 21 ADRVs from 2010 to 2012 relating to Turkish athletes.

37. Pursuant to the delegation by the IWF, the ITA investigated allegations arising from the McLaren report of impropriety by officials of the IWF and its member federations between 2009 and 2019; and on 23 June 2021, the ITA notified Mr Akkus that it was pursuing an alleged ADRV committed by him under Article 2.5 of the 2012 IWF ADR for an alleged scheme in 2013 for the retrospective transfer of the RMA of 26 AAFs perpetrated by 21 Turkish athletes, in order to avoid or reduce potential sanctions.

38. On 7 July 2021, through his appointed counsel, Mr Akkus informed the ITA that he was disputing this "First Charge" and requested from the IWF any *"correspondence sent by the Turkish federation to IWF in November 2012 asking to conduct testing on behalf of the Turkish Federation, including notably a correspondence sent on or about 5 November 2012",* allegedly by fax.

39. On 18 August 2021, the ITA informed Mr Akkus that out of procedural good faith it was *"taking steps to ascertain whether or not the documents exists and can be obtained"*. In the event it did not ascertain that such documents, in particular any letter sent on or about 5 November 2012, existed.

40. However, on 25 September 2021, Mr Akkus' counsel stated that he had located a document, both in PDF and WORD, purportedly sent to the then President of the IWF Mr Ajáan on 5 November 2012, and continued:

> *"I instructed the independent expert Andrew Sheldon to analyse such electronic files to identify the date and time of such documents, and possible information supporting a manipulation of the date. His expert report* [dated 24 September 2021] – *attached – could not be clearer. Both documents were created on 5 November 2012. The date is truthful. The documents have not been modified afterward … I would appreciate your urgent feedback by this Wednesday 29.09.2021. I am available for a meeting on that date. The purpose of the meeting shall be the closure of the case against Mr Akkus, as well as ITA's proposed measures to correct its mistake, restore Dr Akkus' reputation, and fully indemnify him …".*

41. The ITA requested another expert Mr Manuel Rundt to forensically examine the alleged 5 November 2012 Letter and the e-mail exchanges between Ms Ungar and Mr Akkus between 17 January and 5 February 2013, and his report dated 7 October 2021 concluded that:

*"… the letter that was assessed by Mr. Sheldon and by us (as produced by the Defendant) was most probably backdated, possibly by simply setting back the computer clock to November 5, 2012. This conclusion is also supported by the history of the email conversation between Dr. Monika Ungar and Dr. Hassan Akkus between 17 and 23 January 2012 and more-so the rephrasing of the letter that took place on January 22/23, 2013…. Therefore, the authenticity and the creation date of the two documents presented to Mr. Sheldon and to us cannot be established by simply looking at the internal metadata. The context in which this letter was created and sent back and forth leads to the conclusion that it was backdated and therefore Mr. Sheldon's assumption on the creation date of the letter is misleading …".*

42. On 1 October 2021, the ITA informed Mr Akkus that it was pursuing a second charge under Article 2.5 of the 2021 IWF ADR by deliberately using false documents as exculpatory evidence against the charge initiated on 23 June 2021, and thus seeking to tamper a Results Management process.

43. On 6 October 2021, Mr Akkus' counsel informed the ITA that he denied the charges against him, saying that Mr Akkus had merely provided to the ITA a copy of the alleged 5 November 2012 letter as sent to Prof McLaren by the TWF with other documents on 16 September 2020 to correct factual mistakes in the McLaren report, and requested the ITA to provide several documents including all emails exchanged between TWF and/or Dr Akkus and Ms Ungar between 1 February 2012 and 31 January 2013.

44. On 12 October 2021, the ITA informed Mr Akkus that it would be referring the First and Second Charges to the Court of Arbitration for Sport Anti-Doping Division ("CAS ADD") for adjudication and indicated that any disclosure requests should be addressed to the Panel appointed the adjudicate the matter.

### (d) The IWF ADR

45. Some relevant provisions of the IWF's rules regarding eight points are set out for convenience in this section; these may be repeated and others may be referred to in subsequent sections with regard to specific submissions made.

46. First, under the *"Scope"* provisions of the Anti-Doping Policy of the IWF of September 2012 ("2012 IWF ADR"):

*"These Anti-Doping Rules shall apply to IWF, each National Federation of IWF and each Participant in the activities of IWF or any of its National Federations by virtue of the Participant's membership, accreditation or participation in IWF, its National Federations, or their activities and events …".*

47. *"Participant"* is defined as *"Athlete or Athlete Support Personnel",* the latter of which is itself defined as including *"any … person working with, treating or assisting an Athlete participating in or preparing for Sports Competition …".*

48. *"National Federation"* is defined as *"a national or regional entity which is a member of or recognised by IWF as the entity governing the IWF's sport in that nation or region"*.

49. Under the "Scope" provisions of the IWF's Anti-Doping Rules entering into effect from January 2021 and repealing previous versions ("the 2021 IWF ADR"):

*"These Anti-Doping Rules shall apply to: (a) IWF, including its board members, directors, officers and Under the of Doping Control; (b) each of its Member Federations, including their board members, directors, officers and specified employees, and Delegated Third Parties and their employees, who are involved in any aspect of Doping Control (c) any (i) Athletes and Athlete Support Personnel who are members of IWF or any Member Federation or …any member of affiliate organisation of any Member Federation … (ii) any other Athlete and Athlete Support Personnel or other Person who by virtue of any accreditation … or other contractual arrangement or otherwise, is subject to the authority of IWF or of any Member Federation or of any member of affiliate organisation of any Member Federation"*.

*"Member Federation"* is defined as *"a national or regional entity which is a member of or recognised by IWF as the entity governing weightlifting in that nation or region"*.

50. Secondly, Article 2.5 of the 2012 and 2021 IWF ADR prohibit Tampering or Attempted Tampering with any part of Doping Control. The Comment in the 2012 IWF ADR states that:

*"This Article prohibits conduct which subverts the Doping Control process but which would not otherwise be included in the definition of Prohibited Methods. For example, altering identification numbers on a Doping Control form during Testing, breaking the B Bottle at the time of B Sample analysis or providing fraudulent information to an Anti-Doping Organization …"*.

51. *"Tampering"* is defined in the 2012 IWF ADR as *"Altering for an improper purpose or in an improper way; bringing improper influence to bear; interfering improperly; obstructing, misleading or engaging in any fraudulent conduct to alter results or prevent normal procedures from occurring or providing fraudulent information to an Anti-Doping Organization"*.

52. *"Doping Control"* is defined in the 2012 IWF ADR as *"All steps and processes from test distribution planning through to ultimate disposition of any appeal including all steps and processes in between such as provision of whereabouts information, Sample collection and handling, laboratory analysis, TUEs, results management and hearings"*.

53. *"Tampering"* is defined in the 2021 IWF ADR as meaning *"Intentional conduct which subverts the Doping Control process but which would not otherwise be included in the definition of Prohibited Methods. Tampering shall include, without limitation, offering or accepting a bribe to perform or fail to perform an act, preventing the collection of a Sample, affecting or making impossible the analysis of a Sample, falsifying documents submitted to an Anti-Doping Organization or TUE committee or hearing panel, procuring false testimony from witnesses, committing any other fraudulent act upon the Anti-Doping Organization or hearing body to affect Results Management or the imposition of Consequences, and any other similar intentional interference or Attempted interference with any aspect of Doping Control"*.

54. *"Doping Control* is defined in the 2021 IWF ADR as *"All steps and processes from test distribution planning through to ultimate disposition of any appeal including all steps and processes in between such as provision of whereabouts information, Sample collection and handling, laboratory analysis, TUEs, results management and hearings"*.

55. The Comment in the 2021 IWF ADR states that: *"For example, this Article would prohibit altering identification numbers on a Doping Control form during Testing, breaking the B bottle at the time of B Sample analysis, altering a Sample by the addition of a foreign substance, or intimidating or attempting to intimidate a potential witness or a witness who has provided testimony or information in the Doping Control process. Tampering includes misconduct which occurs during the Results Management process … However, actions taken as part of a Person's legitimate defense to an anti-doping rule violation charge shall not be considered Tampering …"*.

56. Third, with regard to the IC testing at the Eilat Championships, under Art 5.4.1 of the 2012 IWF ADR *"… except as otherwise provided below, only a single organization should be responsible for initiating and directing Testing during the Event Period. At International Events, the collection of Doping Control Samples shall be initiated and directed by the international organization which is the ruling body for the Event (e.g., the International Olympic Committee for the Olympic Games, IWF for a World Championship, and Pan-American Sports Organisation for the Pan American Games) …"*.

57. Fourth, pursuant to Article 3.1 of the 2012 and 2021 IWF ADR, *"IWF shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether IWF has established an antidoping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules place the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, except as provided in Articles 3.2.2 and 3.2.3, the standard of proof shall be by a balance of probability …"*.

58. Fifth, under Article 8.1.1 of the 2021 IWF ADR:

> *"IWF has delegated its Article 8 responsibilities (first instance hearings, waiver of hearings and decisions) to the CAS ADD as an appropriate independent arbitration forum. The procedural rules of the arbitration shall be governed by the rules of the CAS ADD. CAS ADD will always ensure that the Athlete or other Person is provided with a fair hearing within a reasonable time by a fair, impartial and Operationally Independent hearing panel in compliance with the Code and the International Standard for Results Management"*.

59. Article 24.7.7 of the 2021 IWF ADR provides that:

> *"The CAS ADD shall have jurisdiction over any case where the notice asserting an anti-doping rule violation has been served to an Athlete or other Person after the Effective Date, even if the asserted violation occurred before the Effective Date"* [defined by Article 24.6 as 1 January 2021].

60. Sixth, under Article 17 of the 2012 IWF ADR

*"… no action may be commenced against an Athlete or other Person for an* [ADRV] *contained in these Anti-Doping Rules unless such action is commenced within eight (8) years from the date the violation is asserted to have occurred …".*

61. This period of 8 years was extended to 10 years under the 2015 WADA Code and the 2015 IWF ADR effective as of 1 January 2015, from when, under Article 20.7.2 (as remains the position under the 2021 IWF ADR):

*"… the statute of limitations set forth in Article 17 are procedural rules and should be applied retroactively; provided, however, that Article 17 shall only be applied retroactively if the statute of limitations period has not already expired by the Effective Date …".*

62. Seventh, the period of Ineligibility imposed for a violation of Article 2.5 should be (a) two years with regard to the alleged 2013 ADRV, in accordance with Article 10.3.1 of the 2012 IWF ADR; and (b) four years with regard to the alleged 2021 ADRV, in accordance with Article 10.3.1 of the 2021 IWF ADR, unless the conditions for Aggravating Circumstances (a) pursuant to Article 10.6 of the 2012 IWF ADR and Article 10.4 of the 2021 IWF ADR respectively are met.

63. The Comment to Article 10.6 of the 2012 IWF ADR includes as non-exclusive examples of aggravating circumstances which may justify the imposition of a period of Ineligibility greater than the standard sanction, that the Athlete or other Person committed the anti-doping rule violation as part of a doping plan or scheme, either individually or involving a conspiracy or common enterprise to commit anti-doping rule violations; or engaged in deceptive or obstructing conduct to avoid the detection or adjudication of an anti- doping rule violation.

64. Eighth and last, under Articles 10.12 and 10.13 respectively of the 2021 IWF ADR, *"Where an Athlete or other Person commits an anti-doping rule violation, IWF may, in its discretion and subject to the principle of proportionality, elect to (a) recover from the Athlete or other Person costs associated with the anti-doping rule violation, regardless of the period of Ineligibility imposed …"*; and *"the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date Ineligibility is accepted or otherwise imposed".*

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

65. These proceedings took place under the rules of the Anti-Doping Division of the Court of Arbitration for Sport rules (the "ADD Rules"). The provisions of Chapter 12 of the Swiss Private International Law Statute ("PILS") applied to the exclusion of any other procedural law.

66. In accordance with Article A13 of the ADD Rules, the Claimant filed a Request for Arbitration on 21 October 2021.

67. On 1 November 2021, and in the absence of a joint nomination by the Parties, Mr Murray Rosen KC, Barrister in London, United Kingdom, was appointed as Sole Arbitrator by the Division President.

68. On 15 November 2021, in accordance with Article 14 (5) of the ADD Rules, the Respondent filed a Request for Bifurcation, requesting that the Request for Arbitration be declared inadmissible for lack of jurisdiction of the CAS ADD.

69. On 1 December 2021, the Claimant filed a Reply to the Request for Bifurcation in accordance with Article A14 (5) of the ADD Rules, and the Sole Arbitrator then declined the Respondent's Request for Bifurcation, considering that the bifurcation sought was unnecessary, unjust and unsuitable, especially given that an apparent overlap in issues in relation to jurisdiction and otherwise, and the overriding questions raised as to the applicability or not of the 2012 and 2021 IWF ADR.

70. On 23 December 2021, in accordance with Article A14 of the ADD Rules, the Respondent filed an Answer (on the merits) to the Request for Arbitration.

71. In accordance with A19.1 of the ADD Rules, the Sole Arbitrator then invited the Parties to file a second round of written submissions limited to issue of the statute of limitation. The Claimant filed such a Reply on 20 January 2022 and the Respondent filed a Rejoinder on 31 January 2022.

72. The Respondent sought documents from Prof. McLaren and in the absence of response the CAS ADD office was instructed by the Sole Arbitrator to follow up this request with Prof. McLaren, who replied on 7 March 2022 that he could not comply and added comments to the effect, it seems, that he had no evidence regarding sanctions imposed by the TWF (which he considered its responsibility) or the involvement or not of the Respondent in the results management.

73. On 8 and 9 March 2022 respectively, the Parties signed and returned the Order of Procedure.

74. On 17 March 2022, an online hearing was held commencing at 10.00 am Swiss time. At the hearing, the Sole Arbitrator was assisted by Mr Fabien Cagneux, Managing Counsel to the ADD, and was joined by Mr Damien Clivaz and Ms Dominique Leroux of the ITA on behalf of the Claimant, and by the Respondent and his counsel Mr Yvan Henzer of Libra Law and an interpreter Mr Taher Yilmaz if and insofar as needed on his behalf.

75. The Respondent chose to address the Tribunal and answer some questions in the course of the oral submissions and later as some final words.

76. At the outset and again at the end of the hearing both Parties confirmed that they had no complaints as regards the fairness and professionalism in the procedures followed.

77. Shortly after the hearing, at the invitation of the Sole Arbitrator, the Parties exchanged and submitted short notes of their respective positions on a matter which acquired significance by the end of the hearing, namely whether the Respondent, even if bound by the 2012 IWF ADR when he was an officer of the IWF and TWF in early 2013, was also bound by the 2021 IWF ADR, when he was no longer an officer of the IWF and/or TWF but was an officer of the EWF, which was not a member of the IWF under its then constitution.

## IV. SUBMISSIONS OF THE PARTIES

78. The six main questions raised between the Parties on liability, and their respective submissions, will be set out below in this order:

(1) Do the 2012 and 2021 IWF ADR apply to the Respondent?

(2) Depending on whether the 2021 IWF ADR apply, is there jurisdiction in the CAS ADD?

(3) If the 2012 and 2021 IWF ADR apply and there is jurisdiction in the CAS ADD, does it lack necessary protections for guaranteeing independence?

(4) If the Respondent committed a violation of the 2012 IWF ADR as alleged in January 2013, is the charge in June 2021 time-barred by reason of the expiry of 8 years or is that period validly extended "retrospectively" to 10 years under subsequent IWF ADR?

(5) Did the Respondent backdate or knowingly use a backdated letter purportedly dated 5 November 2012 in January 2013 in order to tamper with the results management process (for the 21 athletes who were subject to AAFs, for whom the RM including sanctioning was transferred to the TWF) contrary to the 2012 ADR Art 2.5?

(6) Did the Respondent, as a separate later violation, knowingly backdate or use backdated electronic metadata for that letter in September 2021 in order to tamper with the results management process, contrary to the 2021 IWF ADR Art 2.5?

79. This is not intended as a comprehensive summary; the Sole Arbitrator has considered all the Parties' submissions, written and oral, and further points of detail or emphasis may be referred to hereafter. As to sanctions in the event of a breach or breaches by Mr Akkus, the Claimant's submissions will also be summarised below; the Respondent made no submissions on sanctions, taking his stand on the absence of jurisdiction and/or liability.

### A. The Claimant

80. The IWF submitted on the first issue, the applicability of the 2012 and 2021 IWF ADRs to the Respondent, that Mr Akkus was subject to both under their "scope" provisions because as a senior officer (a) he should be treated as representing the IWF and its subordinate federations the (national) TWF and then the (regional) EWF, which were expressly bound, and/or (b) he was personally involved in doping control and was also a "participant" who assisted athletes competing in their competitions.

81. As for the EWF (of which alone Mr Akkus was a senior official after 2013), the IWF's constitution does not identify it as a "member" but the Claimant emphasised parts of Article 16 as follows, by which the EWF and its officers and participants were allegedly bound as a matter of agreement and mutual recognition:

*16.1 The IWF recognises five (5) Continental Federations:*

*- African Weightlifting Federation*
*- Asian Weightlifting Federation*
***- European Weightlifting Federation***
*- Oceania Weightlifting Federation*
*- Pan-American Weightlifting Federation…*

*16.5* ***OBLIGATIONS OF CONTINENTAL FEDERATIONS***
*16.5.1* ***Confirm full compliance with, and implement on their respective level, the IWF:***
*- Constitution and By-Laws*
*- Technical and Competition Rules & Regulations*
***- Anti-Doping Policy***
*- Congress and Executive Board decisions ….*

82. On the third issue, independence, the Claimant (as far as the Sole Arbitrator understood it) did not concede that CAS as an arbitral institution or that its appointees as CAS ADD arbitrators, lacked independence in any way and maintained that appropriate guarantees were in place according to the relevant jurisprudence.

83. On the fourth issue, limitation, the IWF submitted that its "action" against the Respondent as regards the alleged 2013 violation, even if treated as commencing with the charge rather than its investigations, was within its applicable statute of limitations, as (a) principles of non-retroactivity and *lex mitior* do not apply to procedural rather than substantive changes of law, that is, norms defining offences and penalties for them (see the decision of the Swiss Supreme Court 4A_620/2009 of 7 May 2010, par. 4.2 *et seq*.); and (b) the 8 year period under the 2012 IWF ADR had not elapsed when the period was extended from 8 to 10 years as from the 2015 IWF ADR statutes of limitations being subject to the principle *tempus regit actum* (applying the ECHR decision in *Coëme and others v. Belgium* of 22 June 2000).

84. On the fifth issue, the alleged 2013 ADRV, the IWF submitted that a Doping Control process was defined in the 2012 IWF ADR as being *"all steps and processes from test distribution planning through to ultimate disposition of any appeal including all steps and processes in between"* and that Tampering with that process was defined as *"Altering for an improper purpose or in an improper way; bringing improper influence to bear; interfering improperly; obstructing, misleading or engaging in any fraudulent conduct to alter results or prevent normal procedures from occurring or providing fraudulent information to an Anti-Doping Organization"*. Thus Article 2.5 covered, so the IWF contended, a broad range of misconduct and *"… whether a certain behaviour qualifies as tampering must be asserted in the individual context"* (see CAS 2016/A/4700 para. 54).

85. On the sixth issue, the alleged 2021 ADRV, the Claimant submitted that the production and use of false metadata to support the claim that the 5 November 2012 letter was authentic and created and sent on that date, amounted to *"intentional conduct which subverts the Doping Control process"* that is *"all steps and processes from test distribution planning through to ultimate disposition of any*

*appeal including all steps and processes in between such as … results management and hearings"* under the 2021 IWF ADR.

86. Whilst the Comment to Article 2.5 of the 2021 IWF ADR makes it clear that actions taken as part of a Person's legitimate defense to an anti-doping rule violation charge shall not be considered Tampering, the IWF contends that the latter cannot extend to the commission of a criminal offence to influence proceedings, as it claims to have occurred here. As it was put in *CAS 2015/A/3979* at para. 161:

*"… The Panel holds that the threshold of legitimate defence is trespassed and, thus, a "further element of deception" is present where the administration of justice is put fundamentally in danger by the behaviour of the athlete. This is the case where a party to the proceedings commits a criminal offence designed to influence the proceedings in his or her favour …".*

87. As regards sanctions, the Claimant submitted that the Respondent should be declared ineligible for a total period of 10 years for the 2013 and 2021 ADRV, being 2 years and 4 years under the 2013 and 2021 IWF ADRs respectively, and a further 2 years in each case for the Aggravated Circumstances of his seniority, his tampering plan involving Mr Aján and Ms Ungar as co-conspirators, and his use of the falsely backdated letter of 5 November 2012 and then the false metadata to deceive and conceal the improper RM transfer from the IWF to the TWF.

88. The IWF relied upon Art 9.1.3.3 of the 2021 IWF ADR to contend that the 2013 and the 2021 ADRVs should be considered together to constitute a single violation for purposes of Art 10.9.1 but the period of Ineligibility imposed for the 2021 ADRV shall be served consecutively with the period of Ineligibility for the 2013 ADRV.

89. The ITA on behalf of the IWF requested by way of relief:

*(1) The ITA's request is admissible.*

*(2) Mr Hasan Akkus is found to have committed an ADRV for Tampering or Attempted Tampering in 2013 and a second ADRV for Tampering or Attempted Tampering in 2021 pursuant to Article 2.5 of the IWF Anti-Doping Rules.*

*(3) Mr Hasan Akkus is sanctioned with a period of* Ineligibility *of 10 years starting on the date on which the CAS ADD award enters into force.*

*(4) The costs of the proceedings, if any, shall be borne by Mr Hasan Akkus.*

*(5) The ITA is granted an award for its legal and other costs.*

*(6) Any other relief that the Hearing Panel deems fit in the facts and circumstances of the present case.*

## B. The Respondent

90. On the first issue, the applicability of the 2012 and 2021 IWF ADR, the Respondent denied that the 2012 and 2021 IWF ADR applied to him, since he was an individual and not identical or equivalent to the IWF or its national member the TWF; nor was he a "Participant" in their

activities within the meaning of the scope of the rules, to be construed in the event of ambiguity *contra preferentem* against the IWF. He contended that whereas a "Participant" in an event is deemed to accept the relevant anti-doping rules as a condition of participating, Mr Akkus never worked with any individual weightlifters nor was he ever employed by them as part of their "personnel", and never treated or assisted them personally in preparation for competitions. Instead, he generally managed their sports association and in any event his letter dated 5 November 2012 was written in that capacity as TWF President and not as involved in the preparation of individual athletes for sports events.

91. Mr Akkus submitted further that the EWF (of which alone he is now and was an officer after January 2013) was and is merely a regional affiliate and not a national member of the IWF. He referred to the IWF's constitution in support of his contention that the EWF was and is not a member of the IWF, and contended that as a result neither it nor any of its officers or representatives nor indeed any participant assisting athletes in the EWF's activities is bound as such by the IWF ADR, which he says would be unnecessary as its events would involve participants from national members bound separately.

92. On the second issue, jurisdiction, the Respondent challenges the CAS ADD's jurisdiction on the primary ground that he never agreed to it, since he was not bound by the 2021 IWF ADR including Article 8.1. Previously under Article 13 of the 2012 IWF ADR the arbitration agreement between the Parties in respect of any disciplinary charges provided for a tribunal internal to the IWF, the CAS ADD did not exist, and the IWF ADR cannot be treated for this purpose as amended retrospectively unless necessary for public policy under Swiss law (see Article 2 of the Final Title of the Swiss Civil Code) nor without the consent of both Parties, namely the IWF and himself (see *CAS 2010/A/2070*).

93. On the third issue, independence, Mr Akkus argued that his alleged first violation in early 2013 was time barred because under the 2012 IWF ADR more than eight years had elapsed before the IWF's "action" in charging him and the extension of this statute of limitations to 10 years in the 2015 (and then the 2021) IWF ADR cannot lawfully be applied because of the *"principle of law of non-retroactivity"* and the principle of *lex mitior*.

94. On the fourth issue, limitation, the Respondent claimed that the CAS ADD lacks independence because of its closed list of 24 sole arbitrators, outside of which it does not allow party nominations, and nor does it *"disclose the entities which drew the arbitrators to its attention"*. He claims that this renders the arbitration unlawful under ECHR and Swiss Federal law, citing ATF 118 II 359 consid. 3.b, ATF 119 II 271 consid. 3b, ATF 133 III 235 consid 4.3.2.2, ATF 140 III 404 consid. 4.4 and *Mutu/Pechstein v. Switzerland*. He also alleged that the availability of an appeal within CAS, the same arbitration body as is responsible for the CAS ADD at first instance, exacerbated the doubt as to the fairness and/or impartiality of the process.

95. On the fifth issue, the alleged 2013 ADRV, the Respondent denied that the 5 November 2012 letter was backdated, and submitted that the IWF had agreed that the OOC testing and/or results management processes should be and was carried out by and/or on behalf of the TWF; and submitted in any event that his conduct did not constitute a tampering with the results management process contrary to Article 2.5, and was not capable of doing so since the letter, and

the TWF's process regarding the 21 Turkish athletes' AAFs, had been agreed with Mr Aján and Ms Ungar.

96. Among other things, the Respondent:

(a) claimed that there was a handwritten note "for TUU" on the IWF's order to HUNADO supporting his contention that the IWF had conducted the OOC testing at the request of and on behalf of the TWF and the TWF and Ms Ungar had both so stated to the McLaren inquiry

(b) if the 5 November 2012 letter was backdated, that was merely to confirm a pre-existing oral agreement between the TWF and IWF that there should be OOC testing in November 2012, to be carried out initially on IWF's instructions but then managed by the TWF; and

(c) there was not and cannot have been any improper or corrupt motive for that agreement, as the 21 young athletes were sanctioned later by the TWF with two-year periods of Ineligibility and would have been liable if they had attempted to compete at weightlifting events internationally during that period.

97. In the course of his oral statement at the Hearing, the Respondent maintained that the letter dated 5 November 2012 had been faxed to the IWF then, and also volunteered, as I understood it (a) that a subsequent version was created in January 2013 to "remind" Mr Ajan of it and (b) he had met with Mr Ajan in mid-January 2013 to discuss Mr Ajan's assisting as regards the Turkish athletes, in the context of Mr Ajan's seeking Mr Akkus' help as regards IWF elections due to take place subsequently in Moscow.

98. On the sixth issue, the alleged 2021 ADRV, the Respondent contended that the production of evidence by him in 2021, namely the metadata for the 5 November 2012 letter as authenticated by Mr Sheldon's report, to contest the first charge regarding his conduct in early 2013, was incapable of validly founding a second, separate tampering charge, and amounted at worse to aggravating obstruction: it was intertwined with the first 2013 charge; the metadata had been previously produced to the IWF in 2020 (i.e. prior to the first charge and the 2021 IWF ADR); the Sheldon report itself was an authentic, not a forged document; and Mr Rundt's report did no more than disagree with its conclusion, on the basis of a hypothesis that the computer clock was changed in order to signify a false creation date.

99. Mr Akkus requested by way of relief that the Sole Arbitrator rule as follows:

*(i) The Request for arbitration filed by the ITA, on behalf of the IWF, is declared inadmissible due to the lack of jurisdiction of the CAS ADD.*

*(ii) The Request for arbitration filed by the ITA is dismissed.*

*(iii) Mr Akkus is granted an award for costs.*

## V. JURISDICTION

100. As referred to in the summary of submissions above (issues 1 and 2) the Claimant relies on Article 8.1.1 of the 2021 IWF ADR as conferring jurisdiction on the CAS ADD, whilst the Respondent challenges the jurisdiction of the CAS ADD. For the reasons set out below, the Sole Arbitrator finds that the CAS ADD has jurisdiction as contended by the Claimant. In accordance with Article A3 of the ADD Rules, the seat of the Sole Arbitrator is Lausanne, Switzerland.

101. It follows that the CAS ADD has jurisdiction under Article 8.1.1 of the 2021 IWF ADR. In a nutshell, Mr Akkus agreed to that jurisdiction by reason of his office in EWF. By continuing to participate in the management of a weightlifting federation affiliated to the IWF after he left IWF and TWF, he remained obliged to comply with the IWF ADR, including its delegation of anti-doping disputes to the CAS ADD instead of its previous internal disciplinary processes. His denial of this was as strikingly implausible as his denial of any liability, as President and Vice-President of these leading sports federations, for his own alleged non-compliance with their anti-doping policies under the WADA and IWF umbrellas.

## VI. APPLICABLE LAW

102. Under Article A20 of the ADD Rules, the Sole Arbitrator shall decide the dispute in accordance with the WADA Code and the applicable anti-doping rules or with the laws of a particular jurisdiction chosen by agreement of the Parties or, in the absence of such a choice, according to Swiss law. As set out in the summary of submissions above (issues 1 and 2), the Claimant contends and the Respondent disputes that the 2012 and 2021 IWF ADR are applicable. For the reasons set out below, the Sole Arbitrator finds that they are, as contended for by the Claimant. To the extend necessary as subsidiary, Swiss law also applies.

103. On such issue, the Respondent seeks to draw a sharp distinction between an official of a sports association who may be said to "assist" its athletes generally, and a member of "athlete's personnel who prepares specific athletes for specific events, the latter being bound by the association's anti-doping rules, but the former not. That seems to the Sole Arbitrator a false semantic difference, both illogical and contrary to common-sense. A sports association, whilst a legally separate entity from its senior officers, acts principally through them. They are necessarily responsible for compliance with its anti-doping and other rules. As the Respondent repeatedly emphasised, his TWF Presidential campaign slogan was *"There is no doping if we exist"*. If the President of the TWF and Chair of its Medical Committee was not bound by the 2012 IWF ADR, it would make a mockery of its existence.

104. As for the additional point regarding the position when Mr Akkus had left the IWF and TWF in 2013 and became a senior officer of the EWF, the Sole Arbitrator rejects also his submission that the EWF was not bound by the 2021 IWF ADR. The fact that its constitutions elided national members and regional affiliates did not necessarily make EWF a "member" of IWF, but it undoubtedly agreed to the IWF ADR. Article 16.5.1 of the 2021 EWF Constitution is explicit to that effect. When Mr Akkus took office in the EWF he agreed to be bound by the

2021 IWF ADR, just as he had been bound to the 2012 IWF ADR by his offices in the TWF and the IWF.

105. For someone in the Respondent's position of high authority in these bodies to deny that he is subject to their rules, in contrast with an ordinary "participant" in their events, and thus further to seek to refute and undermine their anti-doping policy and efforts from the very top, seems to the Sole Arbitrator utterly wrong, and indeed disreputable – a telling sign of real desperation.

## VII. MERITS

106. In this section the Sole Arbitrator sets out his decisions and reasoning on all the essential issues raised, as listed above, including first the questions of applicable rules and jurisdiction, and ending with sanctions.

### A. Independence

107. As for the third issue, the Respondent's attack on the independence of the CAS ADD and its sole arbitrators was also in the Sole Arbitrator's judgment entirely misconceived, having regard in particular to *Mutu/Pechstein v Switzerland* and the particular features of the CAS ADD.

108. Among other characteristics: (a) CAS is an independent, expert and experienced arbitral body with councils, officers and counsel of high quality; (b) it selects and appoints arbitrators to its ADD list and individual cases who are proven, specialised professionals; (c) the absence of party nominations for sole arbitrators is consistent with dispute resolution institutions worldwide; and (d) it is solely for CAS to decide how large a list is necessary and how much information to provide regarding the backgrounds of its arbitrators, provided they are qualified, independent and conflict free, as they must individually declare as regards the particular dispute.

109. Mr Akkus' disparagement of the availability for appeal within CAS seemed to the Sole Arbitrator to verge on the irrational. In particular the proposition which he advanced at the hearing to the effect that whenever an arbitration institution such as CAS appoints a first instance arbitrator and a (different) appeal tribunal, its processes lack necessary independence, seemed to the Sole Arbitrator manifestly erroneous. His reliance on ECHR and Swiss Federal law, and attempted comparisons with other state and arbitral systems, did nothing to gainsay the fact that, the case of the CAS ADD, appropriate guarantees of independence are in place.

### B. Limitation

110. On the fourth issue, the arguments on limitation were in the end firmly against Mr Akkus. The extension under the IWF ADR from 8 years to 10 years in 2015 was procedural, not substantive, and since the limitation period of 8 years had not expired prior to the change, there was no invalid retroactivity and there is no basis for applying the principles of *nulla poene sine lege* and *lex mitior*. The Sole Arbitrator is fortified in his conclusion that the statute of

limitations applicable to the 2013 ADRV is ten years by a decision in an analogous case, *CAS 2017/O/5039*, in which

*"… the Sole Arbitrator observes that according to Rule 49.1 of the 2016-2017 IAAF Rules, the statute of limitations in Rule 47 is a procedural rule. Rule 49 explicitly regulates the intertemporal scope of application of the 10-year Limitation Period of the 2015 WADA Code. Accordingly, the 10-year limitation period may only be applied retroactively if the previously applicable statute of limitation has not already expired of 1 January 2015 ("Effective Date"), cf. CAS 2015/A/4304 at para 27(e). Since in the present case the limitation period according to the previous statute of limitation (laid down in the 2007 IAAF Rules) expired 31 August 2015 and the Effective Date being 1 January 2015, the new limitation period can be applied retroactively …".*

## C. The alleged 2012 ADRV

111. On the fifth issue, whilst the Claimant of course bears the burden of proof in this serious matter, the Sole Arbitrator is comfortably satisfied that the Respondent tampered with the results management for the 21 Turkish athletes' AAFs in and from January 2013, in breach of Art 2.5 of the IWF ADR. He did so in order to protect the TWF from sanctions by the IWF for multiple offending of the same nature by so many young Turkish athletes at the same time, and to ensure limited periods of ineligibility sanctions against the individual athletes without automatic enforcement and publicity internationally.

112. To assist in achieving this, he produced in January 2013, the letter to Mr Ajáin backdated to 5 November 2012 in order falsely to represent that the IWF had properly agreed to TWF's results management, prior to the discovery of the relevant AAFs. The Sole Arbitrator rejects his claim, or his reliance on what the TWF and Ms Ungar apparently told the McLaren inquiry, to the effect that this had been orally agreed and that the letter, if backdated, merely confirmed that; and in any event, such previous oral agreement would have been similarly improper in taking away from the IWF responsibility for the OOC testing and results management. Lack of means for the TWF to carry out testing was no excuse or even explanation for the subversive transfer of the RM to the TWF.

113. The letter dated 5 November 2012 was clearly not created nor sent then, but was drafted between the Respondent and Mr Ajáin and Ms Ungar on or about 23 January 2013, just a few days before the Respondent resigned from his senior positions at the TWF and IWF, when he was bound by the 2012 IWF ADR. Later, whilst he was Secretary General of the EWF, and still bound by the 2012 and then the 2021 IWF ADR, he falsely submitted and fabricated metadata to support the lie that the letter was created on 5 November 2012. The evidence, including Mr Rundts report - which went unchallenged by the Respondent - allows for no other realistic inference.

114. At the hearing, the Respondent orally stated, for the first time, that whilst the letter of 5 November 2012, so he alleged, was sent on the date, he subsequently created a new version in order to remind Mr Ajáin of it, which was the version he sent on 23 January 2012. That account is inconsistent with paragraph 27 of his Answer in these proceedings dated 23 December 2021 which stated among other things: *"should this letter be backdated, a fact that the Respondent does not remember to his best recollection, more than 8 years after the facts …"*. Perhaps even more damningly, it

is entirely contrary to the emails which clearly document how the letter was drafted between the Respondent, Mr Ján and Ms Ungar of the IWF. If the 5 November 2012 letter already existed, that drafting process, beginning with a version containing obvious grammatical and typographical errors, would never have taken place. The Respondent's oral statement at the hearing was a nonsense and the Sole Arbitrator considers this element to be a further fabrication to seek to conceal his 2013 violation.

115. The Respondent denied nonetheless that any backdating would amount to prohibited tampering with the process, because (a) the OOC testing was from the outset carried out by IWF and its HUNADO agent on behalf of TWF and/or (b) Mr Ján and Ms Ungar had agreed this and that TWF rather that IWF should carry out the results management and any sanctions. But the first part of this was false and it was in that respect that the later letter backdated to 5 November 2012 was and was intended to be deceptive. The arrangement between the Respondent, Mr Ján and Ms Ungar to backdate the letter was not a legitimate agreement by IWF which would vindicate what was otherwise a tampering with the process. On the contrary, the Respondent himself implied it was part of Mr Ján's effort to gain the Respondent's support for a forthcoming IWF election in Moscow. It was intended to suborn the IWF's proper purposes, not to advance them. Were it otherwise, and merely confirmation of legitimate agreement with IWF, there would have been no reason to backdate it.

## D. The alleged 2021 ADRV

116. As for the second alleged violation, the Sole Arbitrator is satisfied that the Respondent used false electronic metadata in 2021 when the electronic PDF and WORD versions were submitted on his behalf and Mr Sheldon's report obtained in order to support the alleged authenticity, and that this was intended to conceal the backdating of the 5 November 2012 letter. This perpetuated and aggravated the 2013 violation (although not argued as relevant to the alleged expiry of the limitation period for that first violation).

117. However, whilst further concealing the interference by the Respondent (and others) with the results management process arising from the 21 Turkish athletes' AAFs, falls itself inside the definition of tampering under ADR 2.5, the Sole Arbitrator does not regard it as a separate violation but part-and-parcel of the Respondent's 2013 offence, continuing and compounding it: once he had embarked on that road, further steps of concealment to justify the authenticity of the 5 November 2012 letter as necessary were in train. The hole which Mr Akkus had already dug was deep, and he later just dug it deeper.

118. The Sole Arbitrator therefore agrees with the Respondent's submission that this is (he would say, at worst) aggravation of the 2013 ADRV and not a separate further violation. In this context, Article 10.6 of the 2012 IWF ADR states in terms that a sanction can be aggravated when an Athlete or Person is *"engaged in deceptive or obstructing conduct to avoid the detection or adjudication of an antidoping rule violation"*.

119. In this regard the Sole Arbitrator may add that he does not consider that the Claimant's characterisation of Mr Akkus' counsel's letter of 25 September 2021 as a "strong-arm" tactic to be helpful in considering whether his conduct in relation to the false metadata amounted to

a separate second ADRV. Whilst the Respondent has taken every possible point (and some perhaps impossible) to defeat the charges against him, rather than face up to his 2013 violation and the damage it did to his sport, he was entitled to legal representation to defend himself. What he was not entitled to do was to seek a resolution of the first charge against him on the basis of false evidence, and that clearly aggravates his existing misconduct.

### E. Sanctions

120. In the light of the Sole Arbitrator's decision and reasoning as to liability above, the Respondent falls to be sanctioned under the 2012 of the IWF ADR by the imposition of a period of Ineligibility for the 2013 ADRV alone, but subject to the possible increase from two years to up to four years by reason of Aggravating Circumstances.

121. There are plainly Aggravating Circumstances of the worst kind in the present case. The Respondent betrayed the trust of the IWF and the TWF and their members by subverting the anti-doping results management process in order to limit and/or reduce the available sanctions for the AAFs concerned. He did so in conspiracy with other senior officers of the IWF, falsely producing the backdated 5 November 2012 letter to conceal the later "switch" from the IWF to the TWF and then submitting the false metadata fraudulently to influence proceedings.

122. Whether he did so earlier, perhaps in the course of the McLaren inquiry, is no mitigation – on the contrary, it may suggest that the extent and effect of the fraud and concealment was even greater. This was not to the benefit of the TWF or anyone else in the long run. On the contrary it was damaging to all, hypocritical and disgraceful and tending from the very top, to undermine anti-doping efforts in and throughout his sport. There is no alternative but to impose the additional two-year Inelegibility, bringing the total period to four years.

## VIII. COSTS

(…).

## IX. APPEAL

126. Pursuant to Article A21 of the ADD Rules, this award may be appealed to the CAS Appeals Arbitration Division within 21 days from receipt of the notification of the final award with reasons in accordance with Articles R47 *et seq*. of the CAS Code of Sports-Related Arbitration, applicable to appeals procedures.

## ON THESE GROUNDS

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

1. The request for arbitration filed on behalf of the Claimant the International Weightlifting Federation is partially upheld.

2. The Respondent Hasan Akkus is found to have committed an ADRV by Tampering or Attempted Tampering in contrary to Article 2.5 of the IWF ADR.

3. The Respondent is sanctioned with a period of Ineligibility of four (4) years starting on the date on which this CAS ADD award enters into force.

4. (…).

5. (…).

6. All other prayers for relief are dismissed.