Arbitration CAS 2022/ADD/49 International Weightlifting Federation (IWF) v. Yunder Beytula, award of 7 November 2023

Panel: Mr Ken Lalo (Israel), Sole Arbitrator

Weightlifting
Doping (tampering with the doping control process, refusal to submit to sample collection, human growth hormone)
Burden and standard of proof
Establishment of tampering with the doping control process
Establishment of refusal to submit to sample collection
Establishment of presence of a prohibited substance
Determination of the period of ineligibility

1. **Article 3.1 of both the 2019 IWF Anti-Doping Rules (ADR) and the 2021 IWF ADR, provides that the burden of proof is on the IWF to establish, to the comfortable satisfaction of the adjudicating body, that an anti-doping rule violation (ADRV) has occurred. Article 3.1 of the IWF ADR defines the comfortable satisfaction standard as greater than a mere balance of probability but less than proof beyond a reasonable doubt. Facts related to anti-doping rule violations may be established by any reliable means, including admissions. Once an ADRV has been established, the burden of proof then shifts to the athlete to prove either that the ADRV should not be considered as such, or that the ADRV was unintentional or that the applicable period of ineligibility should be reduced, suspended or eliminated on the grounds provided for in the IWF ADR. The athlete's evidentiary threshold is the balance of probability standard.**

2. **The process of Doping Control is defined in the 2019 IWF ADR and includes the false or erroneous Whereabouts notifications. A broad range of behaviours may qualify as "tampering" with the doping control process. Whether a certain behaviour qualifies as tampering must be asserted in the individual context.**

3. **Refusing to submit to sample collection is presumed to have been committed intentionally and the burden of proving the lack of intention lies with the athlete. The defence of compelling justification of a refusal to submit to sample collection is to be interpreted restrictively. In this respect, an athlete that apparently recognized the Doping Control Officer (DCO) and the Doping Control Assistant (DCA) from prior anti-doping controls and understood that he was subject to an out-of-competition (OOC) testing and that did not provide the sample, retreating into his apartment and closing the door, under circumstances which cannot be considered as compellingly justifiable, refused or, at the very least, failed, to submit to sample collection.**

4. **The presence of a prohibited substance is established where it is found in the athlete's A Sample where the athlete waives analysis of the B Sample and the B Sample is not**

analyzed; or, where the athlete's B Sample is analyzed and the analysis of the athlete's B Sample confirms the presence of the prohibited substance in the athlete's A Sample. The Comment to Article 2.1.1 indicates that an anti-doping rule violation is committed under this article without regard to an athlete's fault, thus making it a "Strict Liability" offense, with the athlete's fault being taken into consideration only in determining the consequences of the anti-doping rule violation.

5. **According to Article 10.3.1 of the 2019 IWF ADR, the period of ineligibility imposed for the violation of Article 2.3 (refusal to submit to doping control) or Article 2.5 (tampering with the doping control process) shall be four years unless the athlete establishes that the ADRV was not intentional. If the violation constitutes a second ADRV, the applicable period of ineligibility is double the period under Article 10.3.1 of the 2019 IWF ADR, thus making it a period of eight years. The period of ineligibility imposed for a third violation of Article 2.1 of the 2021 IWF ADR (presence of a prohibited substance) shall be a lifetime period of ineligibility which shall run consecutively to the period of ineligibility imposed for the second ADRV.**

I. Parties

1. The International Weightlifting Federation (the "IWF" or "Claimant") is the International Federation governing the sport of weightlifting, having its registered seat in Lausanne, Switzerland. The IWF is recognised by the International Olympic Committee. The IWF is a signatory of the World Anti-Doping Code ("WADC") and has enacted the IWF Anti-Doping Rules (the "2019 IWF ADR" or the "2021 IWF ADR", as the case may be, or generally "IWF ADR").

2. The IWF has delegated the implementation of its anti-doping programme to the International Testing Agency ("ITA"). Such delegation includes, amongst others, the Results Management and subsequent prosecution of potential Anti-Doping Rule Violations ("ADRV") under the IWF's jurisdiction. By virtue of such delegation, the ITA has filed this case, on behalf of the IWF, to the Anti-Doping Division of the Court of Arbitration for Sport (the "CAS ADD") for adjudication.

3. Mr Yunder Beytula (Mr Beytula, the "Athlete" or the "Respondent") is a Bulgarian weightlifter. The Athlete was born in 1992. The Athlete is an International Level Athlete for the purposes of the IWF ADR and has been competing in international events since 2011.

4. The Claimant and the Respondents are hereinafter referred to as the "Parties".

II. FACTUAL BACKGROUND

5. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced in this procedure. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he only refers to the submissions and evidence he considers necessary to explain his reasoning.

6. The case concerns alleged (i) tampering with the doping control process by purposely providing false Whereabouts information to the IWF in order to obtain advance notice of forthcoming anti-doping controls, (ii) refusal to submit to sample collection, and (iii) after being notified and provisionally suspended, testing positive for human growth hormone ("hGH"), a prohibited performance-enhancing substance revealed during an out-of-competition ("OOC") test.

7. It is thus alleged that the Athlete has committed several ADRVs pursuant to Articles 2.1, 2.3 and 2.5 of the IWF ADR.

8. By way of background, which is not the subject of these proceedings, on 21 January 2014, the Athlete was sanctioned by the IWF with a period of Ineligibility of two years in connection with an Adverse Analytical Finding ("AAF") for stanozolol and dehydrochloromethyl testosterone, i.e. two anabolic steroids revealed in a urine sample collected from the Athlete on 25 September 2013 during the 2013 European Junior IWF championships. The Athlete served such period of Ineligibility until 11 October 2015.

9. On 7 October 2019, Mr Vladimir Sekulic ("Mr Sekulic"), a Doping Control Officer ("DCO"), tried to collect an OOC sample from the Athlete. According to his ADAMS Whereabouts, the Athlete was living at his parents' house, in the village of Feldfebel Denkovo, a small village in the region of the city of Dobrich, Bulgaria. When Mr Sekulic arrived at the Athlete's registered address in Feldfebel Denkovo, the Athlete's father explained that Mr Beytula was not living in the village anymore but had moved to the city of Dobrich. The Athlete's father called the Athlete who arrived from Dobrich approximately 45 minutes later to provide the sample.

10. On 1 November 2019, Mr Sekulic arrived to collect an OOC sample from the Athlete at his registered address in Feldfebel Denkovo, where the Athlete was living according to his ADAMS Whereabouts. The Athlete's father advised that the Athlete was living in Dobrich. The Athlete's father called the Athlete who arrived from Dobrich approximately 45 minutes later to provide the sample. The Athlete was expressly instructed by Mr Sekulic to update his ADAMS Whereabouts address to his Dobrich home.

11. On 25 November 2019, Mr Sekulic arrived to collect an OOC sample from the Athlete at his registered address in Feldfebel Denkovo. The Athlete's mother advised that the Athlete was living in Dobrich. The Athlete's mother called the Athlete who requested her to send Mr Sekulic to his Dobrich home address located at Dunav 18, floor 7, apartment 19. Mr Sekulic then drove to the Athlete's Dobrich apartment and was able to collect a sample from the Athlete who was

accompanied by his coach. Again, the Athlete was expressly instructed by Mr Sekulic to update his ADAMS Whereabouts address to his Dobrich home.

12. On 16 November 2020, Mr Sekulic was tasked with the collection of an OOC sample from the Athlete. The Athlete has still not updated his Whereabouts information. This time Mr Sekulic went directly to the Athlete's Dobrich address rather than to Feldfebel Denkovo, the Athlete's ADAMS Whereabouts address. The DCO was able to successfully collect a sample from the Athlete. Again, Mr Sekulic advised the Athlete to change his ADAMS Whereabouts location to his Dobrich address.

13. On 29 December 2020, having been instructed to collect samples from the Athlete, Mr Sekulic, acting as a DCO, and Mr Nikolay Kostadinov ("Mr Kostadinov"), acting as the Doping Control Assistant ("DCA"), presented themselves at Mr Beytula's home address in Dobrich, Bulgaria, knowing from prior experiences that the Athlete was residing there rather than at his ADAMS Whereabouts location.

14. The DCO and the DCA rang the doorbell of the apartment at approximately 9:15 AM and the Athlete opened the door. Mr Sekulic notified the Athlete of the doping control. According to Mr Sekulic, the Athlete *"appeared very agitated and angry"* and told the DCO and DCA *"no no you don't understand it's not the right moment because you will wake up the baby. Come back in one hour or in the evening"*.

15. Mr Sekulic explained to the Athlete that he had to provide a sample as he had already been notified of the control, suggested to conduct the sample collection elsewhere and attempted to warn the Athlete of the consequences of his refusal but before finishing to do so the Athlete closed the door to the apartment and did not provide the sample.

16. Mr Sekulic and the DCA returned to the apartment one hour later, rang the doorbell, but the door remained closed. According to Mr Sekulic, *"we heard noises from inside of the apartment (water being flushed and a vacuum cleaner). When the vacuum cleaner noise stopped, we tried ringing the doorbell three more times but the door remained closed. At this point, I tried to call Mr Beytula using the mobile number he had indicated in his prior DCF but he did not pick up"*.

17. On 10 June 2021, the ITA notified the Athlete of the ADRVs for Tampering with the Doping Control and Refusing or Failing to Submit to Sample Collection.

18. On 30 June 2021, the Athlete replied to the notice of charge and explained that he had only moved to the Dobrich apartment in December 2020 and had not purposely provided wrong Whereabouts information to the IWF.

19. The Athlete also explained that on the morning of 29 December 2020 he was alone with his sleeping child in his apartment and that his child had been sick during the night of 28 to 29 December 2020. The Athlete further explained that he asked the DCO and DCA to come back an hour later or in the evening but that they had never returned to the apartment and never called him.

20. The Athlete informed the ITA that he, therefore, challenged the ADRVs and requested that the case be referred for adjudication to the CAS ADD.

21. On 1 July 2021, the Athlete was subject to an OOC doping control conducted on behalf of the IWF at his Dobrich apartment where urine and blood samples were collected from him.

22. On 19 July 2021, the WADA-accredited Laboratory in Cologne, Germany (the "Laboratory") reported an AAF for hGH in the Athlete's blood sample.

23. On 13 August 2021, the ITA notified the Athlete of the AAF.

24. On 20 August 2021, the Athlete informed the ITA that he requested the analysis of the B-sample.

25. On 29 September 2021, the Laboratory opened and analyzed the B-sample in the presence of an independent witness, due to the fact that neither the Athlete nor his representative could be present.

26. On 30 September 2021, the Laboratory reported an AAF for hGH in the B-sample, thus confirming the A-sample analysis.

27. On 18 October 2021, the ITA notified the Athlete that it asserted a further ADRV against him for the presence of hGH in the blood sample taken from him.

28. On 15 November 2021, the Athlete informed the ITA that he challenged the ADRV and that he did not know how hGH was detected in his sample and alleged *"that this might be due to some defect in the testing procedure or the analysis of the test or somehow it must have been produced naturally in my body without the use of any prohibited substances"*.

29. The ITA then referred this case to the CAS ADD for the determination on the ADRVs and the consequences to be applied.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

30. On 17 June 2022, the Claimant filed a Request for Arbitration with the ADD in accordance with Article A13 of the Arbitration Rules of the CAS ADD (the "ADD Rules").

31. The Request for Arbitration was sent to the Athlete at his lawyer's address. On 27 June 2022, the lawyer informed the CAS ADD that he was not representing the Athlete any longer and provided the Athlete's email address, as also provided by ITA. All communication from that point onwards was provided to the Athlete at his email address.

32. In its Request for Arbitration, and in accordance with Article A16 of the ADD Rules, the Claimant requested that this procedure be referred to a Sole Arbitrator appointed by the President of the CAS ADD.

33. On 1 July 2022, the CAS ADD on behalf of the President of the CAS ADD, confirmed the appointment of Mr Ken Lalo as Sole Arbitrator in accordance with Article A16 of the ADD Rules.

34. The Athlete failed to file his Answer to the Request for Arbitration, in accordance with Article A14 of the ADD Rules, within the prescribed time limit or at any time.

35. On 14 July 2022, the Parties were requested to advise whether they request a hearing in this matter. On 15 July 2022, the ITA responded on behalf of the Claimant that it does not request a hearing in this matter.

36. The Athlete has not responded to the request to advise if he deems a hearing necessary, and on 11 August 2022, the CAS ADD issued an additional request to advise whether the Athlete requests a hearing in this matter. The Athlete has not responded to such additional request either. The Sole Arbitrator having deemed himself sufficiently well informed and pursuant to Article A19.3 of the ADD Rules, confirmed that no hearing shall be held in this matter.

37. On 23 September 2022, the CAS ADD circulated an Order of Procedure which was signed on behalf of the Claimant and returned to the CAS ADD on the same day. The Order of Procedure acknowledged, *inter alia*, that:

> *"By signature of the present Order, the Parties confirm their agreement that the Sole Arbitrator may decide this matter based on the Parties' written submissions. The Parties confirm that their right to be heard has been respected. Pursuant to Article A19.3 of the Rules, the Sole Arbitrator considers himself to be sufficiently well informed to decide this matter without the need to hold a hearing".*

38. The Athlete failed to sign and return the Order of Procedure.

39. Despite having sent all pleadings and letters to the Athlete at his lawyer's address until 27 June 2022 and from then onwards to the Athlete's email address, the CAS ADD office has couriered all such pleadings again to the Athlete's home address on 21 September 2022. On 4 October 2022, the CAS ADD informed the Parties that the Athlete received on 26 September 2022 the Order of Procedure, the Request for Arbitration, its Annexures and the Parties' correspondence, as confirmed by a DHL delivery report.

40. The Athlete has failed to respond to any of the pleadings and requests also following their additional delivery.

IV. SUBMISSIONS OF THE PARTIES

41. The Claimant's submissions, in essence, may be summarised as follows:

- From October 2019 until December 2020, Mr Beytula knowingly provided demonstrably erroneous Whereabouts information to the IWF thereby obtaining advance notice of forthcoming anti-doping testing. Moreover, Mr Beytula deliberately

failed to correct his Whereabouts information even after being prompted to do so by the DCO.

- This allowed the Athlete to obtain advance notice of several anti-doping controls, notably on 7 October, on 1 November and on 25 November 2019. More precisely, Mr Beytula was systematically notified of the forthcoming doping control by his parents and only appeared approximately 45 minutes later to provide a sample.

- The underlying principle of no advance notice testing is to prevent Athletes from carrying acts which would hinder the detection of banned substances or prohibited methods, such as, passing urine, drinking water/alcohol, saline infusion, etc. It is noteworthy that the distance between the two locations provided for sufficient time for the Athlete to potentially tamper with his bodily fluids.

- By refusing to update his Whereabouts location to his new domicile, Mr Beytula provided knowingly false information to the IWF which interfered, obstructed and rendered impossible the IWF's attempt to conduct no advance notice testing on him.

- For the sake of clarity, and despite the fact that the Athlete received advanced notice, it was appropriate for the DCO to collect samples on those three occasions. This is clearly allowed by International Standard for Testing and Investigation ("ISTI"). Moreover, it was also correct for the DCO not to file an unsuccessful attempt report with the ITA for the purpose of pursuing Whereabouts Failures. That said, as confirmed in the ISTI, Mr Beytula's pattern of behaviour can constitute an ADRV for Tampering.

- The ITA, on behalf of the IWF, has discharged its burden of establishing to the Sole Arbitrator's comfortable satisfaction that Mr Beytula Tampered with the Doping Control Process and thus committed an ADRV pursuant to Article 2.5 of the 2019 IWF ADR which prohibits Tampering and Attempted Tampering.

- On 29 December 2020, Mr Beytula Refused, or at the very least Failed, to submit to Sample Collection.

- More precisely, on that day, a DCO and a DCA presented themselves at Mr Beytula's Dobrich apartment. After being notified that he was required to provide a sample, Mr Beytula appeared very agitated and angry and informed the DCO and the DCA that they should come back *"in one hour or in the evening"*.

- The DCO and the DCA informed the Athlete that this was not possible as he had already been notified of the doping control and that he was to provide a sample. The DCO further attempted to remind the Athlete of the consequences that a refusal would entail and also tried suggesting conducting the sample collection elsewhere. However, Mr Beytula closed the door and retreated into his apartment.

- Attempting to nevertheless collect a sample from Mr Beytula, the DCO and the DCA returned to the apartment one hour later. Despite ringing the doorbell several times, and hearing noises coming from inside the apartment, as well as calling the Athlete on his mobile phone, Mr Beytula did not open the door.

- Article 2.3 of the 2019 IWF ADR prohibits Evading, Refusing or Failing to Submit to Sample Collection.

- CAS jurisprudence confirms that refusing to submit to sample collection is presumed to have been committed intentionally.

- Such refusal cannot be considered to having occurred due to circumstances which can constitute "compelling justifications" justifying a Refusal pursuant to Article 2.3 of the 2019 IWF ADR. It was *"physically, hygienically and morally possible"* for the sample to be provided.

- In this case, Mr Beytula denied having refused to submit to sample collection. More precisely, the Athlete explained that his child had fallen ill during the night from 28 to 29 December 2020, that in the morning of 29 December 2020 his wife had gone to the pharmacy to purchase medicine for their child and that he was alone in his Dobrich apartment, and that his child had just fallen asleep.

- Mr Beytula acknowledged having opened the door, recognizing the doping control officers which he *"knew both of them from previous doping tests"*. The Athlete does not challenge having been notified of the doping control. Mr Beytula then simply explained that he asked the DCO and DCA to come back one hour later or in the evening, but that they did not return. Mr Beytula also denied having received any calls from the DCO.

- Both the DCO and the DCA explained that Mr Beytula initially appeared very agitated and angry and refused to provide a sample. When being told that he had to provide a sample as he had already been notified of the doping control, Mr Beytula closed the door on the officers.

- Contrary to Mr Beytula's account of the events, the DCO and the DCA returned to the apartment one hour later, rang the doorbell several times and heard noises from inside of the apartment. The DCO and DCA also attempted to call the Athlete at the mobile number that Mr Beytula had indicated as his contact details on a previous Doping Control Form.

- In other words, and in light of the foregoing, Mr Beytula, a very experienced, elite international weightlifter accustomed to the anti-doping control process, undoubtedly refused to submit to sample collection on 29 December 2020. More precisely, Mr Beytula:

  - Admitted recognizing the DCO and the DCA from prior anti-doping controls and

was therefore aware of the nature of their visit and of the related procedure;

- o Unilaterally decided to interrupt the sample collection process prior to providing a sample by closing the door of his apartment on the DCO and the DCA;
- o Did not answer the door and/or his phone when the DCO and the DCA returned to the apartment in a last attempt to collect a sample;
- o Was later tested positive for a prohibited substance, as will be further discussed below, thus further giving motive to his refusal to undergo sample collection on 29 December 2020.

- The ITA, on behalf of the IWF, has discharged its burden of establishing, to the comfortable satisfaction of the Sole Arbitrator, that Mr Beytula Refused, or at the very least Failed, to submit to Sample Collection on 29 December 2020, and thus committed an ADRV pursuant to Article 2.3 of the 2019 IWF ADR.
- On 1 July 2021, whilst being provisionally suspended for the Tampering and Refusal ADRVs, Mr Beytula was subject to an OOC doping control conducted on behalf of IWF where urine and blood samples were collected from him.
- On 19 July 2021, the Laboratory reported an AAF for hGH in the Athlete's blood sample.
- The Prohibited Substance, an hGH, was detected in the Athlete's A-Sample. hGH is classified as a "Non-Specified Substance" under S2.2 (Peptide Hormones and their releasing factors) of the 2021 WADA Prohibited List. The use of hGH as a performance-enhancing anabolic agent began in the early 1980s and is particularly efficient to accelerate soft-tissue recovery, for example after training or an injury, and is a substance widely used and abused by weightlifters to increase strength capacity, particularly when combined with other steroids.
- On 30 September 2021, the B-Sample confirmed the finding of hGH.
- Pursuant to Article 3.2.2 of the 2021 IWF ADR, the Laboratory is presumed to have conducted the analysis in compliance with the International Standard for Laboratories ("ISL"). Moreover, *"and out of an abundance of caution"*, the ITA has asked Dr. Martin Bidlingmaier, Head of the Endocrine Laboratories and Research Group leader, Neuroendocrine Unit at the Medizinische Klinik und Poliklinik IV, Klinikum der LMU, Munich, to review the Laboratory document packages of the A- and B-Samples. Dr. Bidlingmaier confirmed the reliability of the AAF and analytical work.
- Considering the reliability of the analytical data and in light of the strict liability enshrined in Article 2.1.1 of the 2021 IWF ADR, it is unequivocal that the Athlete has committed an ADRV pursuant to Article 2.1 of the 2021 IWF ADR.

- The Athlete did not have a Therapeutic Use Exemption justifying the use of the prohibited substance.

- The Athlete has never provided any explanation for the presence of hGH in his bodily specimen save for arguing that *"this might be due to some defect in the testing procedure or the analysis of the test or somehow it must have been produced naturally in my body without the use of any prohibited substances"*. Whilst the Athlete has not provided any corroborative evidence supporting this claim, the ITA can offer Dr. Bidlingmaier's preliminary opinion according to which these claims are scientifically unsound. The robustness of the AAF unrefutably establishes the exogenous origin of the hGH.

- The ITA submits that the IWF has discharged its burden of proof to establish the ADRV for the presence of a prohibited substance as per Article 2.1 of the 2021 IWF ADR to the comfortable satisfaction of the Sole Arbitrator, bearing in mind the seriousness of the claim.

42. In regard to the consequences of the ADRVs the Claimant's submissions, in essence, may be summarised as follows:

- Regarding the Period of Ineligibility, the Claimant highlights that on 21 January 2014, Mr Beytula received a two-year sanction for the presence of an Anabolic steroid in an In-Competition sample collected from him on 24 September 2013 during the European Junior U23 Championships in Tallin, Estonia, being the Athlete's first ADRV.

- The IWF has met its burden and standard of proof in regard to both ADRVs under Articles 2.3 and 2.5 of the 2019 IWF ADR for the Athlete's Tampering pertaining to his 2019 Whereabouts filing and his 2020 Refusal to Submit to Sample Collection.

- The Athlete was notified of both such charges simultaneously and accordingly, they shall be considered together as one single violation. Such violation constitutes Mr Beytula's second ADRV, for which any imposed period of ineligibility shall be doubled pursuant to Article 10.7.1(c) of the 2019 IWF ADR.

- According to Article 10.3.1 of the 2019 IWF ADR, the period of Ineligibility imposed for the violation of Article 2.3 and/or 2.5 shall be four years unless the athlete establishes that the ADRV was not intentional.

- The Athlete knew of his obligations to submit to sample collection and to provide a sample, but purposefully refused to comply, and no mitigation can be applied and, therefore, a period of Ineligibility of eight years should be imposed on the Athlete.

- After being notified of and provisionally suspended for such second ADRVs, Mr Beytula committed a violation of Articles 2.1 of the 2021 IWF ADR for the Presence of a Prohibited Substance. Pursuant to Article 10.9.3 of the 2021 IWF ADR, this constitutes Mr Beytula's third ADRV.

- Under Article 10.2 of the IWF ADR, the period of Ineligibility imposed for a violation of Article 2.1 when the ADRV does not involve a Specified Substance is four years, *"unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional"*.

- The notion of "intentional" is defined in Article 10.2.3 of the 2021 IWF ADR.

- The Athlete did not adduce any evidence which would establish that his ADRV was unintentional.

- One should also take into account that Mr. Beytula was already caught for doping in 2013, that he made efforts to avoid testing positive, as well as the seriousness and relevance of hGH for the sport of weightlifting. These also confirm that the Presence of the banned substance in the Athlete's sample was intentional.

- Pursuant to Article 10.9.1.2 of the 2021 IWF ADR, a third ADRV will always result in a lifetime period of Ineligibility, except if the third violation fulfils the condition for elimination or reduction of the period of Ineligibility under Articles 10.5 or 10.6 IWF ADR or involve a violation of Article 2.4 IWF ADR, all of which do not apply in this case.

- Pursuant to Article 10.9.3.4 of the 2021 IWF ADR, *"[i]f IWF establishes that a Person has committed a second or third anti- doping rule violation during a period of Ineligibility, the periods of Ineligibility for the multiple violations shall run consecutively, rather than concurrently"*.

- Therefore, the applicable period of Ineligibility for the third ADRV should be a lifetime period of Ineligibility which shall run consecutively to the period of Ineligibility imposed for the second ADRVs.

- According to Article 10.13 of the 2021 IWF ADR, the period of Ineligibility starts on the day of issuance of this Award.

- The Athlete has been provisionally suspended since 10 June 2021 and has been respecting the terms of his temporary ban. According to Article 10.13.2 of the IWF ADR, the Athlete should receive a credit for the period of Provisional Suspension, which has commenced on 10 June 2021, against any period of Ineligibility imposed.

- Articles 10.8 of the 2019 IWF ADR and Article 10.10 of the 2021 IWF ADR are applicable to the disqualification results subsequent to the commission of ADRVs and thus *"all competitive results of the Athlete obtained from the date of the ADRV through the commencement of the provisional suspension"* should be disqualified. Fairness does not require otherwise in the present case.

- Therefore, all competitive results of the Athlete as of the date of the first evidence the second ADRVs, i.e. 7 October 2019, until the date of provisional suspension, i.e. until

10 June 2021, should be disqualified including forfeiture of any medals, prizes and points.

- Pursuant to Article 10.12 of the 2021 ADR and Articles A24 and A25 of the ADD Rules, the ITA seeks to impose upon the Athlete the costs associated with these proceedings, to be determined by the Sole Arbitrator, as well as a fine of USD 5,000.

43. In its Request for Arbitration, the Claimant requested the following relief:

"The ITA, on behalf of International Weightlifting Federation, hereby respectfully requests the Panel to issue a decision holding that:

1. The ITA's request is admissible.

2. Mr Yunder Beytula is found to have committed one or multiple anti-doping rule violations pursuant to Article 2.3 and / or 2.5 of the 2019 IWF Anti-Doping Rules.

3. Mr Yunder Beytula is found to have committed an anti-doping rule violation pursuant to Article 2.1 of the 2021 IWF Anti-Doping Rules.

4. Mr Yunder Beytula is sanctioned with a period of Ineligibility of 8 years for the 2019 ADRVs and with a lifetime period of Ineligibility for the 2021 ADRV.

5. The periods of ineligibility shall be served consecutively and shall start on the date on which the CAS award enters into force. Any period of provisional suspension or ineligibility effectively served by Mr Yunder Beytula before the entry into force of the CAS award shall be credited against the total period of ineligibility to be served.

6. All competitive results of Mr Yunder Beytula from and including 7 October 2019 are disqualified with all resulting Consequences, including forfeiture of any medals, points and prizes.

7. The costs of the proceedings, if any, shall be borne by Mr Yunder Beytula.

8. The ITA is granted an award for its legal and other costs and Mr Yunder Beytula is fined an amount of 5'000.00 USD pursuant to Article 10.12.1 of the 2021 IWF Anti-Doping Rules.

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

44. The Athlete has not filed any submissions in this case.

V. JURISDICTION

45. Article A2 of the ADD Rules provides that the ADD has jurisdiction to rule as a first-instance authority on behalf of any sports entity which has formally delegated its powers to the ADD to conduct anti-doping proceedings and impose applicable sanctions, stating as follows:

"CAS ADD shall be the first-instance authority to conduct proceedings and issue decisions when an alleged anti-doping rule violation has been filed with it and for imposition of any sanctions resulting from a finding that an anti-doping rule violation has occurred. CAS ADD has jurisdiction to rule as a first-instance authority on behalf of any WADC signatory which has formally delegated its powers to CAS ADD to conduct anti-doping proceedings and impose applicable sanctions. These Rules apply whenever a case is filed with CAS ADD. Such filing may arise by reason of an arbitration clause in the Anti-Doping Rules of a WADC signatory, by contract or by specific agreement. These procedural rules apply only to the resolution by first-instance arbitration of alleged anti-doping rule violations filed with CAS ADD. They neither apply with respect to appeals against any other decision rendered by an entity referred to in this Article nor against any decision rendered by CAS ADD. Decisions rendered by CAS ADD shall be applied and recognized in accordance with the WADC".

46. The Scope sections of both the 2019 IWF ADR and the 2021 IWF ADR clarify that the IWF ADR are applicable to *"all Athletes […] who are members of IWF, or of any Member Federation, or of any member or affiliate organization of any Member Federation (including any clubs, teams, associations, or leagues)"*. Accordingly, anyone who is a member of an IWF Member Federation or participates in an IWF event is required to respect the IWF constitution and regulations, including the IWF ADR.

47. Article 8.1.1 of the 2021 IWF ADR provides that CAS ADD has jurisdiction to adjudicate matters concerning the assertion of ADRVs under the 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".

48. Article 24.7.7 of the 2021 IWF ADR further clarifies 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".

49. The Athlete is a member of the Bulgarian Weightlifting Federation and participated in multiple IWF events and was part of the IWF's Registered Testing Pool and as such had agreed to be bound by the provisions of the IWF ADR.

50. The 2019 IWF ADR state, *inter alia*, that:

"These Anti-Doping Rules … also apply to the following Athletes, Athlete Support Personnel and other Persons, each of whom is deemed, as a condition of his/her membership, accreditation and/or participation in the sport, to have agreed to be bound by these Anti-Doping Rules, and to have submitted to the authority of IWF to enforce these Anti-Doping Rules and to the jurisdiction of the hearing panels specified in Article 8, Article 7.10 and Article 13 to hear and determine cases and appeals brought under these Anti-Doping Rules…".

51. The 2021 IWF ADR state, *inter alia*, that:

"Each of the above mentioned Persons [referring, inter alia, to Athletes, as defined] *is deemed, as a condition of his or her participation or involvement in the sport, to have agreed to and be bound by these Anti-Doping Rules, and to have submitted to the authority of IWF to enforce these Anti-Doping Rules, including any Consequences for the breach thereof, and to the jurisdiction of the hearing panels specified in Article 8 and Article 13 to hear and determine cases and appeals brought under these Anti-Doping Rules".*

52. The determination of the proper forum to hear a first instance dispute is procedural in nature and, therefore, governed by the 2021 IWF ADR. The IWF has appointed the CAS ADD to act as the IWF's first instance hearing panel as of 1 January 2021.

53. Therefore, the IWF ADR specifically grant jurisdiction to the CAS ADD to adjudicate this matter which is also consistent with Article A2 of the ADD Rules. The Athlete has accepted the IWF ADR and these, therefore, apply to the Athlete.

54. Therefore, pursuant to Article A2 of the ADD Rules and Article 8.1.1 of the IWF ADR, the ADD has jurisdiction to hear and determine the present proceedings relating to the ADRVs which IWF alleges against the Athlete.

55. In consideration of the foregoing, the Sole Arbitrator confirms the jurisdiction of the CAS ADD to decide this matter.

VI. APPLICABLE LAW

A. The Set of Rules which apply in this case

56. Article A20 of the ADD Rules provides as follows:

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

57. The asserted ADRVs occurred from 2019 to 2021 and shall therefore be governed by the IWF Rules in force at the time, being the 2019 IWF ADR and the 2021 IWF ADR.

58. Further, and as per the principle of *tempus regit actum*, the version of the IWF ADR currently in force and in force when the Athlete was notified of the charges, i.e. the 2021 IWF ADR, shall govern the procedural aspects of this matter, including the hearing process.

59. The IWF is seated in Switzerland and, therefore, Swiss law subsidiarily applies to the present dispute.

60. The Sole Arbitrator therefore confirms that the IWF ADR, in conjunction with the WADC, as provided for in the ADR, apply to this case, with Swiss law subsidiarily applying to the present dispute.

B. The Main IWF ADR Rules which apply in this case

61. Some of the main IWF Rules which apply in this case and are referred to in this Award are cited below. Other provisions apply and are sited throughout the Award.

i. As to the violations

62. Article 2.1 of the 2021 IWF ADR provides, in regard to the presence of a Prohibited Substance in an Athlete's sample, that:

"2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample

2.1.1 It is the Athletes' personal duty to ensure that no Prohibited Substance enters their bodies. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, Negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.

2.1.2 Sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analyzed; or, where the Athlete's B Sample is analyzed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample; or, where the Athlete's A or B Sample is split into two (2) parts and the analysis of the confirmation part of the split Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first part of the split Sample or the Athlete waives analysis of the confirmation part of the split Sample".

63. Pursuant to Article 2.3 of the 2019 IWF ADR, refusing or failing to submit to Sample collection constitutes an ADRV:

"2.3 Evading, Refusing or Failing to Submit to Sample Collection Evading Sample collection, or without compelling justification refusing or failing to submit to Sample collection after notification as authorized in these Anti- Doping Rules or other applicable anti-doping rules".

64. Article 2.5 of the 2019 IWF ADR defines what constitutes an ADRV for Tampering or Attempted Tampering with any part of the Doping Control:

"2.5 Tampering or Attempted Tampering with any part of Doping Control

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, intentionally interfering or attempting to interfere with a Doping Control official, providing fraudulent information to an Anti-Doping Organization, or intimidating or attempting to intimidate a potential witness".

65. Tampering is defined in the 2019 IWF ADR as follows:

"Tampering: 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".

ii. As to the sanctions and other consequences:

66. Pursuant to the relevant part of Article 10.2 of the 2021 IWF ADR:

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

10.2.1 The period of Ineligibility, subject to Article 10.2.4, shall be four (4) years where:

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

10.2.1.2 The anti-doping rule violation involves a Specified Substance or a Specified Method and IWF can establish that the anti-doping rule violation was intentional".

67. Pursuant to Article 10.3.1 of the 2019 IWF ADR:

"For violations of Article 2.3 or Article 2.5, the period of Ineligibility shall be four years unless, in the case of failing to submit to Sample collection, the Athlete can establish that the commission of the anti-doping rule violation was not intentional (as defined in Article 10.2.3), in which case the period of Ineligibility shall be two years".

68. Pursuant to Article 10.7.1(c) of the 2019 IWF ADR:

"For an Athlete or other Person's second anti-doping rule violation, the period of Ineligibility shall be the greater of:

a) six months;

b) one-half of the period of Ineligibility imposed for the first anti-doping rule violation without taking into account any reduction under Article 10.6; or

c) twice the period of Ineligibility otherwise applicable to the second anti-doping rule violation treated as if it were a first violation, without taking into account any reduction under Article 10.6".

69. Pursuant to Article 10.7.4 of the 2019 IWF ADR:

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

70. Pursuant to Article 10.9.1.2 of the 2021 IWF ADR:

"A third anti-doping rule violation will always result in a lifetime period of Ineligibility, except if the third violation fulfills the condition for elimination or reduction of the period of Ineligibility under Article 10.5 or 10.6, or involves a violation of Article 2.4. In these particular cases, the period of Ineligibility shall be from eight (8) years to lifetime Ineligibility".

71. Pursuant to Article 10.9.3.4 of the 2021 IWF ADR:

"If IWF establishes that a Person has committed a second or third anti- doping rule violation during a period of Ineligibility, the periods of Ineligibility for the multiple violations shall run consecutively, rather than concurrently".

72. Pursuant to Article 10.10 of the 2021 IWF ADR:

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

73. Pursuant to Article 10.10.3.1 of the 2021 IWF ADR:

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

74. Pursuant to Article 10.10 of the 2021 IWF ADR:

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

75. Pursuant to Article 10.12 of the 2021 ADR:

"10.12.1 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/or (b) fine the Athlete or other Person in an amount up to 5'000 U.S. Dollars, only in cases where the maximum period of Ineligibility otherwise applicable has already been imposed.

10.12.2 The imposition of a financial sanction or the IWF's recovery of costs shall not be considered a basis for reducing the Ineligibility or other sanction which would otherwise be applicable under these Anti-Doping Rules".

VII. MERITS

A. The Anti-Doping Rule Violations

76. The IWF asserts in this case three separate ADRVs allegedly conducted by the Athlete:

    i. Tampering or Attempted Tampering with the Doping Control by repeatedly providing false Whereabouts information to the IWF pursuant to Article 2.5 of the 2019 IWF ADR.

    ii. Refusal or Failure to Submit to Sample Collection pursuant to Article 2.3 of the 2019 IWF ADR.

    iii. Presence of a Prohibited Substance in the Sample Collected from the Athlete pursuant to Article 2.1 of the 2021 IWF ADR.

1. Burden and Standard of proof

77. Article 3.1 of both the 2019 IWF ADR and the 2021 IWF ADR, provides that the burden of proof is on the IWF to establish, to the comfortable satisfaction of the Sole Arbitrator, that an ADRV has occurred. Article 3.1 of the IWF ADR defines the comfortable satisfaction standard as *"greater than a mere balance of probability but less than proof beyond a reasonable doubt"*. Article 3.1 states as follows:

    "3.1 Burdens and Standards of Proof

    IWF shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether IWF has established an 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".

78. With regard to means of proof, and as a general rule, Article 3.2 of the IWF ADR provides as follows:

    "Facts related to anti-doping rule violations may be established by any reliable means, including admissions".

79. Once an ADRV has been established, the burden of proof then shifts to the Athlete to prove either that the ADRV should not be considered as such, or that the ADRV was unintentional or that the applicable period of Ineligibility should be reduced, suspended or eliminated on the grounds provided for in the IWF ADR. The Athlete's evidentiary threshold is the balance of probability standard.

2. Anti-Doping Rule Violations

i. Tampering or Attempted Tampering with the Doping Control

80. The Athlete indicated to the IWF, through the filing of his Whereabouts information on the ADAMS platform, that he was residing at his parent's address in the village of Feldfebel Denkovo, in the region of the city of Dobrich, Bulgaria. However, visits by DCOs from 7 October 2019 onwards, in an effort to conduct No Advance Notice anti-doping controls and collect samples at the Athlete's declared address, evidence that the Athlete had in fact resided at the neighbouring city of Dobrich, contrary to the Athlete's declaration on the ADAMS platform. This is evidenced by the DCO's witness statement referring to information obtained from the Athlete's parents on numerous occasions.

81. No Advance Notice Testing is defined in the ISTI as: *"sample collection that takes place with no advance warning to the Athlete and where the Athlete is continuously chaperoned from the moment of notification through Sample provision"*. Pursuant to Article 4.6.2 of the ISTI *"save in exceptional and justifiable circumstances, all Testing shall be No Advance Notice Testing"*. Accordingly, 4.8.1 of the ISTI *"[w]hereabouts information is not an end in itself, but rather a means to an end, namely the efficient and effective conduct of No Advance Notice Testing"*. Thus, the controls on 7 October 2019, on 1 November 2019 and on 25 November 2019 were to be No Advance Notice controls, while in fact and due to the erroneous Whereabouts information provided by the Athlete ended up being controls which were known in advance by the Athlete.

82. The IWF asserts that by refusing to update his Whereabouts location to his new domicile, Mr Beytula knowingly provided false information to the IWF which interfered, obstructed and rendered impossible the IWF's attempt to conduct No Advance Notice Testing on him.

83. The underlying principle of No Advance Notice Testing is geared to prevent Athletes from carrying acts which would hinder the detection of banned substances or prohibited methods, such as, passing urine, drinking water, saline infusion, or otherwise tamper with the Athletes' bodily fluids.

84. The IWF argues that the Athlete ultimately tested positive for the presence of exogeneous hGH in a sample collected from him on 1 July 2021, noting that the detection of hGH abuse is particularly difficult due to the extremely short half-life of this substance which results in very short detection windows. The IWF thus hints that perhaps Mr Beytula's efforts to obtain advance notice of upcoming doping tests through an erroneous Whereabouts filing were intentional due to use of hGH substances which may have major impact on sporting results in the sport of weightlifting and are thus particularly susceptible for abuse in such context.

85. This has happened on three evidenced occasions, i.e. on 7 October 2019, on 1 November 2019 and on 25 November 2019. According to the IWF, this was done knowingly and intentionally. Regardless, this erroneous filing allowed the Athlete to obtain advance notice from his parents regarding the forthcoming doping controls and has provided the Athlete with a gap of approximately 45 minutes from the unannounced visit for the control until the actual sample collection upon the Athlete's arrival to his parents' house at Feldfebel Denkovo from his

Dobrich residence.

86. The Athlete has not provided any other explanation for his actions and omissions and for his failure to update his Whereabouts information despite the number of requests provided to him.

87. In its filing, the IWF clarifies that despite the fact that the Athlete received advance notices on such occasions, it was appropriate for the DCO to collect the Athlete's samples, as this was clearly allowed by the ISTI and that it was correct for the DCO not to file an unsuccessful attempt report with the ITA for the purpose of pursuing Whereabouts Failures. The IWF further highlights that, as confirmed in the ISTI, the Athlete's pattern of behaviour can constitute an ADRV for Tampering.

88. The Sole Arbitrator accepts that the filing of the erroneous Whereabouts information on the ADAMS system was done knowingly by the Athlete based on the evidence provided, including the DCO's witness statement, and due to the fact that this has happened on a number of consecutive occasions and despite advice given by the DCO to the Athlete to amend his ADAMS Whereabouts information.

89. Article 2.5 of the 2019 IWF ADR prohibits Tampering and Attempted Tampering which is defined as:

"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, intentionally interfering or attempting to interfere with a Doping Control official, providing fraudulent information to an Anti-Doping Organization, or intimidating or attempting to intimidate a potential witness".

90. The process of Doping Control is defined in the 2019 IWF ADR as being *"[a]ll 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"* and as such includes the false or erroneous Whereabouts notifications.

91. The 2019 IWF ADR further defines in regard to Tampering the type of conduct which is considered relevant to subvert the Doping Control process as *"[a]ltering 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".*

92. CAS, in case CAS 2016/A/4700, par. 54, confirmed that *"[a] broad range of behaviours may qualify as "tampering". […] whether a certain behaviour qualifies as tampering must be asserted in the individual context".*

93. The Sole Arbitrator accepts that the IWF has discharged its burden of establishing to the Sole Arbitrator's comfortable satisfaction that the Athlete Tampered with the Doping Control Process and thus committed an ADRV pursuant to Article 2.5 of the 2019 IWF ADR.

ii. Refusal or Failure to Submit to Sample Collection

94. On 29 December 2020, the DCO and the DCA presented themselves at the Athlete's Dobrich apartment. The Athlete indicated that he was taking care of his young child who was at his apartment and requested the DCO and the DCA to come back *"in one hour or in the evening"*.

95. The DCO and the DCA advised the Athlete that this was not possible as he had already been notified of the doping control and that he was to provide a sample, attempting to remind him of the consequences of a refusal to provide a sample, but the Athlete refused or failed to provide the sample, retreated into his apartment and closed the door not allowing the DCO and the DCA to enter.

96. Attempting to nevertheless collect a sample from the Athlete, the DCO and the DCA returned to the apartment one hour later, ringing the doorbell several times, calling the Athlete on his phone, but the door was not opened.

97. Article 2.3 of the 2019 IWF ADR prohibits Evading, Refusing or Failing to Submit to Sample Collection, stating that:

"Evading Sample collection, or without compelling justification refusing or failing to submit to Sample collection after notification as authorized in these Anti- Doping Rules or other applicable anti-doping rules".

98. CAS has confirmed that refusing to submit to sample collection is presumed to have been committed intentionally and that the burden of proving that the violation was not committed intentionally lies with the Athlete (see, CAS 2015/A/4063).

99. CAS has also considered that the defence of compelling justification of a refusal to submit to sample collection is to be interpreted restrictively (see, CAS 2013/A/3341 and CAS 2016/A/4631).

100. The Athlete did not file an Answer in the current proceedings, but in his earlier response to the Notice of Charge had denied having refused to submit to sample collection, explaining that his child had fallen ill during the night between the 28 to 29 December 2020 and that on the morning of 29 December 2020 he was alone at the apartment, with his child being asleep and his wife at the pharmacy purchasing medication for their child. The Athlete had thus argued that it was not possible for him to provide the sample.

101. The Athlete acknowledged having opened the door to the DCO and DCA, recognizing who they were and did not challenge having been notified of the doping control.

102. The Sole Arbitrator finds that the IWF has discharged its burden of establishing to the Sole Arbitrator's comfortable satisfaction that the Athlete Refused or, at the very least, Failed, to submit to Sample Collection on 29 December 2020. In reaching this conclusion, the Sole Arbitrator highlights that the Athlete apparently recognized the DCO and the DCA from prior anti-doping controls and understood that he was subject to an OOC testing and that the Athlete

did not provide the sample retreating into his apartment and closing the door, under circumstances which cannot be considered as compellingly justifiable since he could have allowed the DCO and DCA to enter the apartment despite a possible awakening of his child. The Sole Arbitrator further accepts the statements of the DCO and the DCA that they returned to the apartment about one-hour later in another attempt to collect a sample and that the door was not opened and that their phone calls were not answered, as detailed in the witness statements of Mr Sekulic, the DCO on the day, and Mr Kostadinov, the DCA on the day.

103. The Sole Arbitrator finds that the Athlete Refused or, at the very least, Failed, to submit to Sample Collection on 29 December 2020, and thus committed an ADRV pursuant to Article 2.3 of the 2019 IWF ADR.

iii. Presence of a Prohibited Substance

104. On 1 July 2021, whilst being provisionally suspended for the Tampering and Refusal ADRVs, the Athlete was subject to an OOC doping control conducted on behalf of the IWF where both urine and blood samples were collected from him.

105. On 19 July 2021, the Laboratory reported an AAF for hGH in the Athlete's blood sample.

106. Pursuant to Article 2.1 of the 2021 IWF ADR:

"2.1.1 It is the Athletes' personal duty to ensure that no Prohibited Substance enters their bodies. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, Negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.2

2.1.2 Sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analyzed; or, where the Athlete's B Sample is analyzed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample; or, where the Athlete's A or B Sample is split into two (2) parts and the analysis of the confirmation part of the split Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first part of the split Sample or the Athlete waives analysis of the confirmation part of the split Sample".

107. The Comment to Article 2.1.1 indicates that an anti-doping rule violation is committed under this Article without regard to an Athlete's Fault, thus making it a "Strict Liability" offense, with the Athlete's Fault being taken into consideration only in determining the Consequences of the anti-doping rule violation under this Article.

108. The Prohibited Substance, an hGH, was found in the Athlete's A-Sample. hGH is classified as a "Non-Specified Substance" under S2.2 (Peptide Hormones and their releasing factors) of the 2021 WADA Prohibited List. The use of hGH as a performance-enhancing anabolic agent is particularly efficient to accelerate soft-tissue recovery, for example after training or an injury,

and is a substance used and abused by weightlifters to increase strength capacity, sometimes in combination with other steroids.

109. On 30 September 2021, at the request of the Athlete, the B-Sample was opened and analysed by the Laboratory, confirming the finding of hGH.

110. The Laboratory is presumed to have conducted the analysis in compliance with the ISL, pursuant to Article 3.2.2 of the 2021 IWF ADR.

111. There is no indication that a Therapeutic Use Exemption justifying the Athlete's use of the prohibited substance, an hGH, has been granted or even requested at the time of sample collection.

112. The Athlete has never provided any explanation for the presence of hGH in his systems. After being notified of the AAF, the Athlete merely argued that *"this might be due to some defect in the testing procedure or the analysis of the test or somehow it must have been produced naturally in my body without the use of any prohibited substances"*. However, this has not been supported in any way.

113. Pursuant to Article 2.1.1 of the 2021 IWF ADR and the presumption under Article 3.2.2 of the 2021 IWF ADR, the Sole Arbitrator finds that the IWF has discharged its burden of proof to establish the ADRV for the presence of a prohibited substance in the Athlete's systems to the comfortable satisfaction of the Sole Arbitrator, and finds that the Athlete has committed an ADRV pursuant to Article 2.1 of the 2021 IWF ADR.

B. The Applicable Sanctions and Other Consequences

1. Period of Ineligibility

114. On 21 January 2014, the Athlete was sanctioned with a two-year period of Ineligibility for the presence of an Anabolic steroid in an In-Competition sample collected from him on 24 September 2013 during the European Junior U23 Championships in Tallin, Estonia. This constituted the Athlete's First ADRV.

115. The Sole Arbitrator concluded above that the Athlete was involved in Tampering or Attempted Tampering with the Doping Control by repeatedly providing false Whereabouts information to the IWF pursuant to Article 2.5 of the 2019 IWF ADR and a Refusal or Failure to Submit to Sample Collection pursuant to Article 2.3 of the 2019 IWF ADR. The Athlete was notified of both such charges simultaneously.

116. Pursuant to Article 10.7.4 of the 2019 IWF ADR (a similar principle is captured in Article 10.9.3.1 of the 2021 IWF ADR):

"10.7.4 Additional Rules for Certain Potential Multiple Violations

For purposes of imposing sanctions under Article 10.7, an anti-doping rule violation will only be considered a

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

117. Accordingly, the second ADRVs shall be considered together as one single violation but constitutes the Athlete's Second ADRV.

118. According to Article 10.3.1 of the 2019 IWF ADR, the period of Ineligibility imposed for the violation of Article 2.3 or Article 2.5 shall be four years unless the athlete establishes that the ADRV was not intentional:

> *"For violations of Article 2.3 or Article 2.5, the period of Ineligibility shall be four years unless, in the case of failing to submit to Sample collection, the Athlete can establish that the commission of the anti-doping rule violation was not intentional (as defined in Article 10.2.3), in which case the period of Ineligibility shall be two years".*

119. The applicable wording of this Article in the 2021 IWF ADR differs but is not more favourable to the Athlete. Therefore, arguing its possible application would not benefit the Athlete in this case and need not be considered.

120. The Athlete did not prove that the Article 2.3 ADRV or the Article 2.5 ADRV were not intentional.

121. Pursuant to Article 10.7.1 of the 2019 IWF ADR (a similar principle is embodied in Article 10.9.1.1 of the 2021 IWF ADR):

"For an Athlete or other Person's second anti-doping rule violation, the period of Ineligibility shall be the greater of:

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c) twice the period of Ineligibility otherwise applicable to the second anti-doping rule violation treated as if it were a first violation, without taking into account any reduction under Article 10.6".

122. Therefore, the applicable period of Ineligibility is double the period under Article 10.3.1 of the 2019 IWF ADR, thus making it a period of eight years.

123. The Sole Arbitrator also found that the Athlete committed and ADRV for Presence of a Prohibited Substance in the Sample Collected from the Athlete pursuant to Article 2.1 of the 2021 IWF ADR.

124. As per Article 10.2 of the 2021 IWF ADR, the period of Ineligibility imposed for a violation of Article 2.1 when the ADRV does not involve a Specified Substance shall be four years, *"unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional".*

125. Under Article 10.2.3 of the 2021 IWF ADR:

"As used in Article 10.2, the term "intentional" is meant to identify those Athletes or other Persons who engage in conduct which they knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk […]".

126. The Athlete did not adduce any evidence which would establish that his ADRV was not intentional.

127. After being notified of and provisionally suspended for the Second ADRV, the Athlete thus committed an additional ADRV for the Presence of a Prohibited Substance which constitutes the Athlete's Third ADRV pursuant to Article 10.9.3 of the 2021 IWF ADR.

128. Pursuant to Article 10.9.1.2 of the 2021 IWF ADR:

"A third anti-doping rule violation will always result in a lifetime period of Ineligibility, except if the third violation fulfills the condition for elimination or reduction of the period of Ineligibility under Article 10.5 or 10.6, or involves a violation of Article 2.4. In these particular cases, the period of Ineligibility shall be from eight (8) years to lifetime Ineligibility".

129. The provisions of Article 10.5 or Article 10.6 of the 2021 IWF ADR are not applicable to this case and there is no ground to otherwise reduce or suspend the applicable period of Ineligibility.

130. Pursuant to Article 10.9.3.4 of the 2021 IWF ADR:

"If IWF establishes that a Person has committed a second or third anti- doping rule violation during a period of Ineligibility, the periods of Ineligibility for the multiple violations shall run consecutively, rather than concurrently".

131. The Sole Arbitrator thus concludes that the period of Ineligibility for Presence pursuant to Article 2.1 of the 2021 IWF ADR, being the Athlete's Third ADRV, shall be a lifetime period of Ineligibility which shall run consecutively to the period of Ineligibility imposed for the Second ADRV.

2. Commencement of the Period of Ineligibility

132. Pursuant to Article 10.10 of the 2021 IWF ADR, the period of Ineligibility starts on the day of the final hearing decision, as follows:

"10.10 Commencement of Ineligibility Period

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

10.10.3 Credit for Provisional Suspension or Period of Ineligibility Served

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

133. Pursuant to Article 10.13.2 of the 2021 IWF ADR, the Athlete receives credit for the period of Provisional Suspension if such suspension was respected by the Athlete, reading as follows:

"10.13.2 Credit for Provisional Suspension or Period of Ineligibility Served

10.13.2.1 If a Provisional Suspension is respected by the Athlete or other Person, then the Athlete or other Person shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed. If the Athlete or other Person does not respect a Provisional Suspension, then the Athlete or other Person shall receive no credit for any period of Provisional Suspension served. If a period of Ineligibility is served pursuant to a decision that is subsequently appealed, then the Athlete or other Person shall receive a credit for such period of Ineligibility served against any period of Ineligibility which may ultimately be imposed on appeal".

134. The Sole Arbitrator, therefore, decides that, in accordance with the provisions of Articles 10.10 and 10.13.2 of the 2021 IWF ADR, the period of Ineligibility imposed on the Athlete shall commence on the date of this Award and, additionally and since the Athlete has been provisionally suspended since 10 June 2021 and according to the IWF has respected the terms of his temporary ban, the Athlete shall receive a credit for the period of Provisional Suspension against any period of Ineligibility imposed, i.e., the period from 10 June 2021 and until the date of this Award.

3. Disqualification of Results

135. Article 10.8 of the 2019 IWF ADR and Article 10.10 of the 2021 IWF ADR are applicable to the disqualification of results subsequent to the commission of ADRVs, with Article 10.10 of the 2021 IWF ADR reading as follows:

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

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

136. Pursuant to Article 10.10 of the 2021 IWF ADR, all competitive results of the Athlete obtained from the date of the ADRV through the commencement of the provisional suspension shall be disqualified unless the Athlete establishes that fairness requires otherwise.

137. The date of the first instance relating to the first of the ADRVs found in this case is 7 October 2019.

138. No evidence was presented establishing that fairness requires that the Athlete should not be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes as from the date of the incident establishing the first of the ADRVs decided in this case.

139. The Sole Arbitrator finds that, pursuant to Article 10.10 of the 2021 IWF ADR, all competitive results of the Athlete from 7 October 2019 and until the date of the provisional suspension, i.e., until 10 June 2021, shall be disqualified including forfeiture of any and all medals, prizes and points.

4. Financial Consequences

140. Article 10.12 of the 2021 ADR provides that the following financial consequences may be imposed for the commission of an ADRV:

"10.12.1 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/or (b) fine the Athlete or other Person in an amount up to 5'000 U.S. Dollars, only in cases where the maximum period of Ineligibility otherwise applicable has already been imposed.

10.12.2 The imposition of a financial sanction or the IWF's recovery of costs shall not be considered a basis for reducing the Ineligibility or other sanction which would otherwise be applicable under these Anti-Doping Rules".

141. The ITA requests to impose upon the Athlete the costs associated with these proceedings as well as a fine of USD 5,000, pursuant to Article 10.12 of the 2021 IWF ADR and Articles A24 and A25 of the ADD Rules. The ITA did not provide a specific reasoning for the request to impose a fine, other than the ability to do so under the IWF ADR.

142. Costs shall be dealt with in the following section of this Award. Regarding fine, the Sole Arbitrator notes that this is not mandated under the rules. In view of the imposition of a lifetime ban (on top of an eight years period of Ineligibility), the Sole Arbitrator does not consider that an additional fine in warranted.

VIII. COSTS

(…)

IX. APPEAL

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

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The request for arbitration filed by the International Weightlifting Federation on 17 June 2022 against Mr Yunder Beytula is upheld.

2. Mr Yunder Beytula is found to have committed one or multiple anti-doping rule violations for Tampering or Attempted Tampering with the doping control process pursuant to Article 2.5 of the 2019 IWF Anti-Doping Rules.

3. Mr Yunder Beytula is found to have committed an anti-doping rule violation for Refusal or Failure to Submit to sample collection pursuant to Article 2.3 of the 2019 IWF Anti-Doping Rules.

4. Mr Yunder Beytula is found to have committed an anti-doping rule violation for Presence of a Prohibited Substance in his systems pursuant to Article 2.1 of the 2021 IWF Anti-Doping Rules.

5. Mr Yunder Beytula is sanctioned with a period of ineligibility of eight (8) years for the anti-doping rule violations committee in 2019 pursuant to Articles 2.3 and 2.5 of the 2019 IWF Anti-Doping Rules, with effect from the date of this Award, with credit provided for the period of ineligibility served between 10 June 2021 and the date of this award.

6. Mr Yunder Beytula is sanctioned with a lifetime period of ineligibility for the anti-doping rule violation committee in 2021 pursuant to Article 2.1 of the 2021 IWF Anti-Doping Rules.

7. The periods of ineligibility shall be served consecutively.

8. All competitive results obtained by Mr Yunder Beytula from and including 7 October 2019 and the date of 10 June 2021 are disqualified with all resulting consequences, including forfeiture of any medals, points and prizes.

9. (…).

10. (…).

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