Arbitration CAS 2022/ADD/45 International Weightlifting Federation (IWF) v. Irakli Turmanidze, award of 3 January 2023

Panel: Prof. Matthew Mitten (USA), Sole Arbitrator

Weightlifting
Doping (stanozolol)
Statute of limitation
Fairness exception

1. **The 2015 IWF Anti-Doping Regulations (ADR) and the corresponding 2021 IWF ADR, which extended the 8-year statute of limitation in the 2009 IWF ADR for re-analysis of samples in long-term storage to 10 years with retroactive application, are consistent with Swiss law and the European Convention on Human Rights. Indeed, the statute of limitations is a procedural rule and in general, the principle of non-retroactivity of rules does not apply to procedural law, which is normally governed by the rule *tempus regit actum*. The same applies, with some exceptions, to the principle of *lex mitior*. This principle applies to the norms defining the offences and the penalties for them, but not to the provisions regulating the procedure to be followed in prosecuting and judging the offences.**

2. **The *"fairness exception"* should not apply if its application under the particular circumstances prevents the achievement of Article 10.8 of the 2009 IWF ADR primary objective of maintaining the integrity of international and Olympic sports by deterring doping and enabling clean athletes to receive the intangible and economic benefits from retroactive re-rankings and re-allocation of medals. Therefore, the athlete should have the burden of proving by a balance of probability that "fairness" precludes retroactive invalidation of all his competition results since the date of his ADRV pursuant to Article 10.8 of the 2009 IWF ADR (i.e., Article 10.10 of the 2021 IWF ADR and WADC) because application of its general rule imposes a sanction extending beyond the period of time reasonably necessary to achieve its objectives. CAS panels have broad discretion in adjusting the disqualification period to the circumstances of the case.**

I. PARTIES

1. The International Weightlifting Federation ("IWF" or "Claimant") is the world governing body for the sport of Weightlifting, headquartered in Lausanne, Switzerland.

2. As a Signatory of the World Anti-Doping Code (the "WADC"), the IWF has enacted the IWF Anti-Doping Rules ("IWF ADR") as amended from time to time, which were in effect during the time period relevant to this proceeding.

3. The IWF has delegated the implementation of its anti-doping programme to the International Testing Agency ("ITA"), a non-profit foundation tasked by International Federations and Major Event Organizers to provide independent anti-doping programme, including the Results Management and prosecution of Anti-Doping Rule Violations ("ADRVs") under the jurisdiction of the IWF. Pursuant to this delegation, the ITA, on behalf of the IWF, filed this Request for Disciplinary Proceedings with the Court of Arbitration for Sport Anti-Doping Division ("CAS ADD").

4. Mr. Irakli Turmanidze (the "Athlete") is a weightlifter from Georgia.

5. The Claimant and Athlete are hereinafter referred to as the "Parties".

II. FACTUAL BACKGROUND

6. 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.

7. The Athlete, who competed in several international-level weightlifting events as a member of the Weightlifting Federation of Georgia ("WFG") from 15 April 2012 (when he committed the ADRV that is the subject of this disciplinary proceeding) until he was notified of his first ADRV and provisionally suspended on 17 November 2021, is bound by the applicable provisions of the IWF ADR (as periodically amended during this time period).

8. On 15 April 2012, while participating as a member of the Georgia weightlifting team in the 2012 IWF European Championships in Antalya, Turkey (the "Competition") during which he won a bronze medal in the +105 kg category, the Athlete provided an in-competition urine sample. His sample was divided into an A sample and B sample (no. 2685820). On his Doping Control Form ("DCF"), which he signed, the Athlete confirmed that his *"sample collection was conducted in accordance with the relevant procedure"* (i.e., WADA International Standards).

9. The Athlete's 15 April 2012 A and B urine samples were sent to the WADA-accredited laboratory in Cologne, Germany ("Cologne Laboratory"), for analysis. The Cologne Laboratory's 30 April 2012 analysis of the Athlete's A sample, which used then-available methods to detect the presence of substances on the World Anti-doping Agency ("WADA")'s 2012 Prohibited List, did not result in an Adverse Analytical Finding ("AAF").

10. During the 2012 London Olympic Games, which were held from 27 July to 12 August 2012, the Athlete placed 4th in the +105 kg category for weightlifting.

11. There is no record evidence of whether the Athlete was subjected to any doping controls after 15 April 2012 (including before or during the 2012 London Olympic Games) through 17 April 2015.

12. During the 10-18 April 2015 European Weightlifting Championships in Tbilisi, Georgia, the Athlete won a gold medal in the +105 kg category. On 18 April 2015, a sample of the Athlete's urine was collected, which tested negative for any Prohibited Substances.

13. During the 2016 Rio Olympic Games, which were held from 5-21 August 2016, the Athlete won a bronze medal in the +105 kg category for weightlifting. Samples of the Athlete's urine were collected on 16 June 2016, 14 July 2016, and 16 August 2016, which all tested negative for any Prohibited Substances.

14. From 18 April 2015 through 11 April 2021, the Athlete was subjected to 27 doping controls, which were all negative for the presence of any substances on WADA's Prohibited List during this time period.

15. In mid-2019, the IWF delegated responsibility for its entire anti-doping programme to the ITA, including sample re-analysis decisions and policy, results management, and the prosecution of ADRVs under the IWF's jurisdiction.

16. On 31 January 2020, the IWF Executive Board appointed Professor Richard H. McLaren to investigate allegations of mismanagement of the IWF anti-doping programme from 2009 to2018, which culminated in his 4 June 2020 report identifying more than 40 ADRVs that were not correctly investigated and pursued by the IWF (i.e., Independent Investigator Report to the Oversight and Integrity Commission of International Weightlifting Federation or the "McLaren Report").

17. Pursuant to its delegated authority from the IWF, the ITA investigated the McLaren Report's findings that numerous ADRVs during 2009–2018 were not properly managed by the IWF and decided to request re-analysis of athlete samples kept in long-term storage ("LTS"), including those collected during the 2012 European Weightlifting Championships.

18. On 3 May 2021, in accordance with Article 5.3.3.2 of the 2021 WADA-International Standard for Laboratories ("2021 ISL"), the ITA informed the Athlete in an email that his 15 April 2012 B sample (no. 2685820), which was in LTS at the Cologne Laboratory since 19 April 2012, would be subject to analysis, and that he or his appointed representative had the right to be present during the opening of his B sample, its splitting into B1 and B2 samples, and the resealing of his B2 sample in a separate bottle by the laboratory as part of this procedure.

19. On 11 May 2021, the WFG, on behalf of the Athlete, responded to the ITA's 3 May 2021 email with an email stating that the Athlete did not desire to attend the foregoing B-sample process.

20. The Athlete's B sample from his 15 April 2012 doping control was kept in LTS at the Cologne Laboratory until 19 May 2021, when it was opened and split into B1 and B2 samples (with the later resealed in a separate bottle) in the presence of an independent witness pursuant to the requirements of Article 5.3.3.2 of the 2021 ISL. There is no available documentation regarding the IWF requested that the Athlete's B sample be kept in LTS from 30 April 2012 to19 May 2021, and if so, any reasons for its LTS during this time period.

21. The Cologne Laboratory's June 2021 re-analysis of athlete B samples from the 2012 IWF European Championships kept in LTS resulted in 15 AAFs, including the Athlete's B sample, which tested positive for *stanozolol metabolite 3'- hydroxystanozolol glucuronide* whose usage is prohibited at all times and classified by the WADA Prohibited List as S1.1 – Anabolic Androgenic Steroids ("AAS").

22. After receiving the 15 June 2021 written notice from the Cologne Laboratory of the Athlete's AAF, the ITA conducted an Initial Review of this positive result under Article 7.2 of the 2021 IWF ADR and Article 5.1.1 of the International Standards for Results Management ("ISRM") and found that, according to available IWF and ITA records, (a) no applicable Therapeutic Use Exemption ("TUE") had been granted to the Athlete; (b) there was no apparent departure from the International Standard for Testing and Investigations ("ISTI") or the International Standard for Laboratories ("ISL") that could undermine the validity of the Athlete's AAF; and (c) his AAF was not caused by the ingestion of the Prohibited Substance through a permitted method because anabolic steroids are prohibited regardless of their method of administration.

23. On 17 November 2021, the ITA notified the Athlete by letter ("AAF Notification") via the WFG that his B1 sample tested positive for an AAF, provided the related documents, and imposed a Provisional Suspension on him with immediate effect pending final resolution of this matter. The AAF Notification informed the Athlete as follows: (i) the potential Consequences of his AAF; (ii) his procedural rights, including the right to request analysis of his B2 sample, a hearing regarding his Provisional Suspension, or an expedited final hearing; and (iii) his right to admit to the ADRV and/or provide Substantial Assistance, which could mitigate its consequences to him. The ITA also invited the Athlete to provide an explanation regarding the circumstances that led to the Presence of the Prohibited Substance in his 15 April 2012 B sample collected at the 2012 IWF European Championships.

24. On 22 November 2021, the WFG notified the ITA that it had received the AAF Notification and that the Athlete had been informed of it.

25. On 24 November 2021, the Athlete acknowledged his receipt of the AAF Notification and stated:

> *"I trust the results of the labaratory's* [sic] *analysis and do not request opening of the B2 sample.*
>
> *First of all, I would like to express my sorrow over the current situation and apologize to the family of the weightlifters.*

As you know, due to the conditions in those years, I had to train and eat arbitrarily, unfortunately, due to the scarcity of information about the risks, today I find myself in this situation, which I am very sorry about".

26. On 21 December 2021, the ITA provided the Athlete with a "Notice of Charge + Agreement on Consequences" informing the Athlete he committed an ADRV pursuant to Article 2.1.2 of the 2009 IWF ADR because his B1 sample tested positive for a Prohibited Substance and he did not request the opening and analysis of his B2 sample. The ITA also stated that because the Athlete's 24 November 2021 correspondence *"merely speculated on the source of the prohibited substance"* without any supporting evidence, he did not satisfy his burden of proving by a balance of probability how it entered his system. It considered that the applicable Consequences for his ADRV is a Period of Ineligibility of two years from 17 November 2021 until 16 November 2023 and disqualification of all his competitive results from 15 April 2012 including forfeiture of medals, points and prizes (but without any financial consequences imposed).

27. On 18 February 2022, in response to the 5 January 2022 request of the Athlete's counsel, the ITA provided the Athlete with the Cologne Laboratory's test report regarding the negative analysis of his 15 April 2012 A sample for any Prohibited Substances and the Laboratory Documentation Package ("LDP") for the positive analysis of his B1 sample, which the ITA confirmed had been kept in LTS (pursuant to Article 5.3.11.1.(a) of the 2021 IS permitting samples to be stored for a period of 10 years for possible re-testing) and that it had requested its analysis by the Cologne Laboratory pursuant to its delegated authority from the IWF.

28. On 7 March 2022, through his counsel, the Athlete informed that ITA of his position that a positive test of his B1 sample (which occurred in May or June 2021) cannot establish an ADRV because Article 5.2.2.6 of the 2012 WADA ISL (which was in effect when his 15 April 2012 sample was collected) permitted storage of samples for a period from *"three (3) months to eight (8) years"*. The Athlete also informed the ITA he did not consent to its proposed consequences for his ADRV, specifically objecting that disqualification of all his sporting results after 15 April 2012 would be *"entirely unjust"*.

29. On 1 April 2022, the ITA informed the Athlete that the WADA ISL is a purely procedural document and that its 2021 version (which was in effect when his B1 sample was analyzed) permitted LTS for up to 10 years from the date of his 15 April 2012 sample collection for re-testing (which occurred before its expiration). The ITA also informed the Athlete it would refer this matter to the CAS ADD for adjudication because he refused to accept its proposed Consequences for his ADRV.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

30. On 12 April 2022, pursuant to Article 8.1.1 of the 2021 IWF ADR and Article A13 of the CAS ADD Arbitration Rules ("ADD Rules"), the ITA filed a Request for a Disciplinary Proceeding on behalf of the IWF against the Athlete before the CAS ADD for a determination of whether he committed an ADRV during the 2012 IWF European Championships, and if so, the applicable and appropriate Consequences. The ITA requested that the President of the

CAS ADD appoint a Sole Arbitrator to adjudicate these issues and that English be the language of this proceeding.

31. On 29 April 2022, the CAS ADD granted the Athlete's request for an extension of time to file his Answer until 9 May 2022.

32. On 2 May 2022, the CAS ADD, on behalf of the President of the CAS ADD, confirmed the appointment of Prof. Matthew J. Mitten as Sole Arbitrator in accordance with Articles A16 and A17 of the ADD Rules.

33. On 9 May 2022, the Athlete filed his Answer.

34. In his Answer (specifically, §67), pursuant to Article A19.4 of the ADD Rules, the Athlete requested that the Sole Arbitrator require the ITA to provide the following information and documents:

    1) *who made the decision to store the Athlete's Samples on a long-term basis and when - in this regard, the Claimant shall provide evidence of the decision and the date it was issued, as well as any correspondence between the proper results management authority and the Laboratory (in regard to arranging storage of the Samples);*

    2) *documents supporting where and how the Laboratory stored the Athlete's Samples on a long- term basis, including the Laboratory's policy/guidelines for samples stored on a long-term basis, Samples custody system documents, and others concerning the stored Samples throughout their long-term storage period;*

    3) *whether, between the decision to store the Athlete's Samples on a long-term basis and 3 May 2021 (the date Athlete was informed of the further analysis of the Samples), the proper results management authority made any decisions regarding the Samples - if so, Claimant shall provide such decisions and/or correspondence between the proper results management authority and the Laboratory;*

    4) *who and when made any decision regarding further analysis of the Samples - if so, Claimant shall provide such decision and/or correspondence between the proper results management authority and the Laboratory;*

    5) *how many doping controls the Athlete was subjected to between 2012 and 2021 and results of such controls.*

35. By 17 May 2022, as requested by the CAS ADD, both the ITA and the Athlete provided notification of their respective requests for a hearing regarding the issues raised in this proceeding.

36. On 2 June 2022, the ITA responded to the Athlete's foregoing first and second requests for information and documents pursuant to Article A19.4 of the ADD Rules, which is summarized in relevant part as follows:

    1) Neither the IWF ADR nor the WADA regulations require the IWF to provide a reason for storing the Athlete's 15 April 2012 B sample longer than the required minimum time or

for requesting its subsequent analysis, which was requested by the ITA under its delegated authority from the IWF. This information *"has no bearing on the fact that the re-analysis of [the Athlete's B sample] has returned an [AAF] for [a] potent anabolic steroid"*. Moreover, *"at no point during the present proceeding has the Athlete questioned the analytical finding of the Cologne Laboratory or has even tried to explain the circumstances that led to the prohibited substance in his sample"*.

2) On 18 February 2022, the ITA provided the Athlete with the LDP for the re-analysis of his B1 sample, which contains all relevant information that WADA Technical Document ("TD2022LDOC") requires a laboratory to provide, including the chain of custody of the sample and information regarding where and how it was stored in the laboratory. *"As stated in TD2022LDOC, a laboratory simply cannot provide any information not specifically required by the TD2022LDOC including the requested Laboratory internal guidelines and policies. Therefore, by providing the B1-sample LDP to the Athlete, the ITA had already provided all requisite documents to the Athlete"*.

37. On 15 June 2022, on behalf of the Sole Arbitrator, the CAS ADD requested that the ITA respond by 22 June 2022 to the Athlete's foregoing third, fourth, and fifth requests for information and documents pursuant to Article A19.4 of the ADD Rules.

38. On 22 June 2022, the ITA responded to the Athlete's third and fourth requests for information and documents by referencing its 12 April 2022 request for a disciplinary proceeding (§35 (ii)) and its above 2 June 2022 response and stating *"the information requested by the Athlete is wholly irrelevant to the present matter"*. However, it confirmed: *"Apart from the decision to keep the sample in Long Term Storage, and thereafter the decision to split and re-analyse the sample (which was communicate[d] to the Athlete on 3 May 2021), no other decision was made in regard to the sample provided by the Athlete)"*.

39. Regarding the Athlete's fifth request, the ITA stated that *"the testing history of the Athlete as well as the analysis results, were always available to him on his personal ADAMS profile (TUIRMA31176)" and confirmed "as per the information on ADAMS, the Athlete was subject to 27 doping controls between 18 April 2015 and 11 April 2021, all of which returned a negative result"*. It also stated: *"The ITA (and the IWF) do not have access to the test results prior to 18 April 2015 (if any), due to the data retention policy detailed in the WADA International Standard for Protection of Privacy and Personal Information according to which, Test Results can be stored on ADAMS for a maximum of 10 years"*.

40. On 24 June 2022, in a letter from the CAS ADD, the Sole Arbitrator ruled as follows regarding the ITA's responses to the information and documents requested in §67 of his Answer:

- *"§67 (1): although it is correct to state that neither the IWF Anti-Doping Rules nor WADA regulations require any justification for either keeping a sample longer than the minimum required time or retesting it and that the Athlete has not questioned the 2022 analytical finding of the Cologne Laboratory that his sample tested positive for a Prohibited Substance, the information and documents requested by the Athlete are relevant to one of his defences in this case. Therefore, the Sole Arbitrator orders the ITA to provide this information and to produce all supporting documents[.]*

- *§67 (2): in its submission of 2 June 2022, ITA states that, in accordance with WADA Technical Document ("TD2022LDOC"), the ITA previously provided to the Athlete all required documentation regarding the Cologne Laboratory's 2022 re-analysis in the Laboratory Documentation Package supporting its finding that the Athlete's sample tested positive for a Prohibited Substance (Exhibit C-11). The Sole Arbitrator finds the ITA's response is adequate and determines that any additional documents requested by the Athlete are not relevant to any of the issues in this case because he does not challenge the result of the laboratory's re-analysis of his sample. Such request is therefore denied.*

- *§67 (3): in its submission of 22 June 2022, ITA states that although "the information requested by the Athlete is wholly irrelevant to the present matter", "the ITA confirms the following: Apart from the decision to keep the sample in Long Term Storage, and thereafter the decision to split and re-analyse the sample (which was communicate[d] to the Athlete on 3 May 2021), no other decision was made in regard to the sample provided by the Athlete". The Sole Arbitrator finds the ITA's response is adequate and the Athlete's request is denied.*

- *§67 (4): in its submission of 22 June 2022, ITA states that although "the information requested by the Athlete is wholly irrelevant to the present matter", "[t]he ITA confirms the decision for further analysis on the sample was requested under the Testing Authority of the IWF". The Sole Arbitrator finds the ITA's response is adequate and the Athlete's request is therefore denied.*

- *§67 (5): in its submission of 22 June 2022, ITA states that "as per the information on ADAMS, the Athlete was subject to 27 doping controls between 18 April 2015 and 11 April 2021, all of which returned a negative result (screenshot below)" and that the "ITA (and the IWF) do not have access to the test results prior to 18 April 2015 (if any), due to the data retention policy detailed in the WADA International Standard for Protection of Privacy and Personal Information according to which, Test Results can be stored on ADAMS for a maximum of 10 years". The Sole Arbitrator finds the ITA's response is adequate regarding the doping controls the Athlete was subject to between 18 April 2015 and 11 April 2021, while ordering the ITA to explain why the ITA (and the IWF) do not have access to the Athlete's test results from 22 June 2012 to 17 April 2015, which is within the 10-year maximum period of time that Test Results can be stored on ADAMS. Such request is therefore denied".*

41. On 8 July 2022, the ITA responded to the Sole Arbitrator's foregoing rulings regarding the information and documents requested by the Athlete in §67 (1) and §67 (5) of his Answer, in relevant part, as follows:

"[D]ue to change in staff at the IWF from 2012 to the present, the IWF has been unable to find records of the documents/correspondence pertaining to the IWF's request to keep samples collected at the 2012 IWF European Championships in Antalya, Turkey in Long Term Storage (including sample no. 2685820 provided by the Athlete).

In this regard, the ITA respectfully maintains and reiterates that documentary evidence as to a decision to keep a sample in Long Term Storage is immaterial to a matter where the re-analysis of a sample has resulted in an Adverse Analytical Finding ("AAF") for a potent prohibited anabolic steroid (i.e. stanozolol metabolite)

which has long-term and lasting effects and is highly relevant for performance-enhancing purposes in a sport like weightlifting.

Re-analysis programs have been crucial and extremely successful in maintaining the integrity of competition. The 2008 Beijing Olympics re-analysis campaign by the IOC resulted in 65 AAFs being detected and athletes being sanctioned while the 2012 London Olympics programme returned 76 AAFs. In these 141 cases (including at least 21 cases before CAS), not once did the disciplinary body, be it the IOC Disciplinary Committee, CAS Anti-Doping Division and/or a CAS Appeal Panel, consider that providing the decision of an Anti-Doping Organization to keep the samples in Long Term Storage was a material requirement or a requirement which would have any impact on the merits of the case. In light of the aforesaid, the ITA respectfully submits that the unavailability of the information requested by the Athlete should have no bearing whatsoever on the regularity of the procedure and the fact that the Athlete has committed an Anti-Doping Rule Violation needs to be sanctioned accordingly.

Lastly, in relation to the Sole Arbitrator asking the "ITA to explain why the ITA (and the IWF) do not have access to the Athlete's test results from 22 June 2012 to 17 April 2015, which is within the 10-year maximum period of time that Test Results can be stored on ADAMS", out of abundance of caution, the ITA requested the World Anti-Doping Agency ("WADA") to check and confirm if there were any results of the Athlete available on ADAMS, during this period which was not visible to the ITA.

In a 6 July 2022 email to the ITA, WADA stated: "based on the information entered into ADAMS by the applicable Testing Authorities, it appears that no tests were conducted on this athlete prior to 18 April 2015".

42. On 8 August 2022, although neither the Sole Arbitrator nor the CAS ADD invited or requested that he do so, the Athlete responded to the ITA's 22 June 2022 and 8 July 2022 letters regarding the information and documents he requested in §67 of his Answer, *inter alia*, as follows:

"Regarding the statistics and reanalysis cases presented by Claimant, in Athlete's opinion they have no relevance and direct application to the present case. Claimant, in presenting the statistics and citing these cases, has not shown that the CAS recognized the allegation made in the present case, i.e. the Testing Authority's failure to issue a decision on the long-term storage of the sample and nevertheless conduct a reanalysis. Thus, it is likely that in the cases cited by Claimant there was unambiguous evidence in the case file confirming the qualification of the sample for long-term storage, which, however, is not the situation in the present case, which makes it impossible to cite all cases related to reanalysis by analogy (as it is necessary to assess the circumstances of the facts in each individual case and verify the correctness of the actions not only of the athletes, but also of the anti-doping organizations)".

43. On 1 September 2022, the Parties signed and returned the Order of Procedure.

44. On 19 October 2022, a videoconference hearing was held via Webex, which was organized by the CAS ADD. The Sole Arbitrator was assisted by Mr Fabien Cagneux, Managing Counsel of the ADD.

45. The following persons participated in the hearing:

For the Claimant:

- Ms Ayesha Talpade
- Mr Damien Clivaz

For the Athlete:

- Mr Lukasz Klimcztyk
- Mr Irakli Turmanidze
- Mr Davit Kipshidze (interpreter)

46. At the conclusion of the hearing, both Parties confirmed that each was given a full and fair opportunity to be heard.

IV. SUBMISSIONS OF THE PARTIES

A. The Claimant

47. In its request for a disciplinary proceeding against the Athlete, the ITA, on behalf of the IWF, requests that the CAS ADD render a decision providing the following relief:

1. The ITA's Request is admissible.

2. Mr Irakli Turmanidze is found to have committed an Anti-Doping Rule Violation for Presence of a Prohibited Substance under Article 2.1 of the IWF ADR.

3. Mr Irakli Turmanidze is sanctioned with a period of Ineligibility of 2 years starting on the date on which the CAS ADD award enters into force. Any period of Provisional Suspension effectively served by the Athlete before the entry into force of the CAS ADD award is to be credited against the total period of Ineligibility to be served.

4. The competitive results of Mr Irakli Turmanidze at the 2012 European Championships, Antalya Turkey are disqualified, including forfeiture of medals points and prizes.

5. All competitive results of Mr Irakli Turmanidze from 15 April 2012 until 17 November 2021 are also disqualified with all resulting Consequences, including forfeiture of any medals, points and prizes.

6. The costs of the proceedings, if any, shall be borne by Mr Irakli Turmanidze.

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

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

48. The ITA's submissions, in essence, may be summarised as follows:

- As a member of the WFG from 15 April 2012 (when he committed the ADRV that is the subject of this disciplinary proceeding) who competed in several international-level weightlifting events until he was notified of his ADRV and provisionally suspended by the ITA on 17 November 2021, the Athlete, is bound by the provisions of the 2009, 2015, and 2021 IWF ADR.

- The 2009 IWF ADR governs the merits of this case.

- Pursuant to Article 6.5 of the 2009 IWF ADR, the ITA (on behalf of the IWF) had *"the absolute discretion to conduct further analysis on samples in its jurisdiction 'at any time', [so] [i]t logically follows that 'any time' is determined by the applicable statute of limitation"*.

- Pursuant to the principle of *tempus regit actum*, as the version of the IWF ADR currently in effect, the 2021 IWF ADR governs the procedural aspects of this case, including the results management and prosecution of ADRVs under the jurisdiction of the IWF, which it delegated to the ITA in mid-2019.

- Pursuant to the 2021 IWF ADR, the applicable statute of limitations, which is a procedural rule, for purposes of the ITA's results management and prosecution of the Athlete's 15 April 2012 ADRV is 10 years (i.e., until 14 April 2022).

- The ITA's 3 May 2021 decision to have the Athlete's B sample (no. 2685820) that was collected on 15 April 2012 re-analysed; the Cologne Laboratory's May 2021 opening and splitting of his B sample into B1 and B2 samples and resealing of the B2 sample; the laboratory's June 2021 re-analysis of his sample and its 15 June 2021 reporting that it tested positive for the presence of stanozolol metabolite, a Prohibited Substance on the WADA Prohibited List (in all versions from 2009 to the present); the ITA's 17 November 2021 notification of the Athlete that his B1 sample tested positive for an AAF; and the ITA's 12 April 2022 filing of a request for a disciplinary proceeding on behalf of the IWF against the Athlete before the CAS ADD occurred before the expiration of the applicable 10-year statute of limitations on 14 April 2022.

- As permitted by Articles 5.3.11.1(a) and 5.3.11.3 of the 2021 International Standard for Laboratories ("ISL"), which permits LTS of a sample for up to 10 years from the date of its collection for possible re-analysis during this period of time (without requiring any reasons for LTS by the IWF or ITA), the Athlete's B sample was kept in LTS at the Cologne Laboratory in compliance with LTS requirements from 19 April 2012 until its 19 May 2021 opening and splitting into B1 and B2 samples.

- In accordance with Articles 2.1.2 and 3.1 of the 2009 IWF ADR, the ITA has satisfied its burden of proving that the Athlete committed an ADRV to the comfortable satisfaction of the CAS ADD because his B1 sample tested positive for the presence of

stanozolol metabolite 3'- hydroxystanozolol glucuronide, a Prohibited Substance, in his system and he waived his right to have his B2 sample tested for an AAF.

- Pursuant to Article 10.2 of the 2009 IWF ADR, the Athlete is subject to a two-year Period of Ineligibility, which is not subject to any reduction under Article 10.5 because the Athlete did not prove the source of the Prohibited Substance detected in his system by re-analysis of his B1 sample by a balance of probability.

- Pursuant to Article 10.13 of the 2021 IWF ADR, the Athlete's two-year Period of Ineligibility will start on the date of the CAS ADD award providing for his ineligibility, with the period of his Provisional Suspension effectively served by the Athlete before the date of the CAS ADD award credited against his Period of Ineligibility.

- Pursuant to Article 9 of the 2009 IWF ADR, because his 15 April 2012 in-competition urine sample resulted in an ADRV, the Athlete's competition results during the 2012 IWF European Championships in Antalya, Turkey (the "Competition") are automatically disqualified, including the forfeiture of any medals, prizes, and points.

- Pursuant to Article 10.8 of the 2009 IWF ADR (and its equivalent provision Article 10.10 of the 2021 IWF ADR), all of the Athlete's competitive results from the date of his 15 April 2012 sample collection resulting in his ADRV until his 17 November 2021 Provisional Suspension should be disqualified, including forfeiture of medals, points and prizes, *"unless fairness requires otherwise",* which exception is inapplicable in this case because of the severity of his ADRV and there are no factors supporting the maintenance of his competition results after 15 April 2012.

- If the Sole Arbitrator determines that *"the 'fairness exception' is applicable in the present case, at the very least, the ITA states that the period of disqualification of the results should be of the same duration as the period of Ineligibility to be imposed on the Athlete, i.e. two years"*.

B. The Athlete

49. In his Answer, the Athlete requests that the CAS ADD render a decision providing, *"[i]n principle,"* the following relief:

> *1. the Request submitted by ITA on behalf of the IWF is dismissed;*
>
> *2. the costs of proceedings (if any), shall be borne entirely by Claimant;*
>
> *3. the Athlete is granted a significant contribution to his legal and other costs related to these proceedings.*

50. Alternatively, *"[s]olely out of an abundance of caution, in the event the CAS ADD considers that the Request submitted by ITA on behalf of the IWF merits to be upheld",* the Athlete requests the following relief:

1. *to impose the lowest possible penalty of Ineligibility with credit for the period of provisional suspension from 17 November 2021;*

2. *not to disqualify any competitive results obtained by Mr. Irakli Turminadze from 16 April 2012 until the date on which the CAS ADD award enters into force;*

- or alternatively -

3. *only disqualify competitive results obtained by Mr. Irakli Turmiandze from 16 April 2012 until 15 April 2014;*

4. *not to charge the Athlete with any arbitration costs of these proceedings;*

5. *that the costs of the Parties (including legal and other costs in connection with these proceedings) shall be mutually waived.*

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

- The ITA's request for disciplinary action against the Athlete for an alleged ADRV based solely on the Cologne Laboratory's June 2021 re-analysis of his B sample (no. 2685820) and its 15 June 2021 reporting of the B sample's positive test for *stanozolol metabolite 3'-hydroxystanozolol glucuronide* should be dismissed because its LTS after 30 July 2012 and June 2021 re-analysis by the laboratory were invalid for 1) non-compliance with provisions of the 2009 IWF ADR, 2012 ISL, and 2021 ISL requiring that any LTS of samples must be pursuant to a documented request from the Testing Authority or WADA and/or 2) occurred outside of the maximum time period for LTS and re-analysis of the Athlete's B sample.

- Article 6.5 of the 2009 IWF ADR, which is applicable because the Athlete's Sample (no. 2685820) was collected on 15 April 2012, requires that the "circumstances and conditions for retesting Samples shall conform with the requirements of the International Standard for Laboratories.

- Pursuant to Article 5.2.2.6 of the 2012 ISL, the Cologne Laboratory was required to dispose of the Athlete's B sample after 30 July 2012 because it reported his A sample (no. 2685820) negative for any Prohibited Substances on 30 April 2012 and there is no evidence that the IWF arranged for LTS of his B sample for any permissible period of time (i.e., *"a period from three (3) months to eight (8) years"*) after 30 July 2012, the date the required minimum 3-month time period for laboratory storage of an A sample without an AAF expired.

- Even if the IWF had requested LTS storage of the Athlete's B sample after 30 July 2012, Article 5.2.2.6 of the 2012 ISL permitted his sample to be stored for a maximum of 8 years thereafter (i.e., no later than 30 July 2020) and his sample was kept in LTS thereafter until the process of its re-analysis was conducted by the Cologne Laboratory in May and June 2021.

- Article 5.3.11.1(a) of the 2021 ISL, which provides for LTS storage of a sample for a maximum of ten (10) years after its collection date, is inapplicable because the ITA has not provided any evidence of the required written request by the IWF or the ITA (pursuant to its delegated authority for the IWF's anti-doping programme) for LTS of the Athlete's B sample for the maximum permissible 10-year period of time (i.e., until 14 April 2022 based on the 15 April 2012 date of collection of the Athlete's sample (no. 2685820)).

- If it is determined that LTS of the Athlete's B sample complied with ISL requirements, its re-analysis occurred within the applicable maximum time period, and the Athlete committed a 15 April 2012 in-competition ADRV because it tested positive in June 2021 for a Prohibited Substance, only his 2012 IWF European Championships competition results should be retroactively disqualified because of this ADRV in accordance with Article 9 of the 2009 IWF ADR.

- Strict application of Article 10.8 of the 2009 IWF ADR to disqualify the Athlete's competition results from 16 April 2012 through the 17 November 2021 date of his Provisional Suspension with all resulting consequences including forfeiture of any medals, points and prizes *"would extend the retroactive effect of the disqualification to a longer period of time during which the athletes concerned in fact were not prevented from competing"* and *"together with the period of ineligibility, leads to a sanction which de facto is extended considerably and that is why in such cases sport results before re-testing should not be disqualified"*.

- The *"unless fairness requires otherwise"* provision of Article 10.8 of the 2009 IWF ADR should be broadly applied to reject the ITA's requested disqualification of all the Athlete's competition results from 16 April 2012 through the 17 November 2021 date of his Provisional Suspension.

- None of the doping controls to which the Athlete was subjected from 16 April 2012 through 17 November 2021 detected the presence of any Prohibited Substances in his system; therefore, his 15 April 2012 in-competition ADRV *"had no impact on his competitive results"* during this time period.

- The ITA's May 2021 *"late decision"* not to have the Athlete's 15 April 2012 sample re-tested until June 2021 should not cause the Athlete to be *"additionally/unduly punished by the disqualification of his competitive results [from 16 April 2012 through 17 November 2021] (all the more so given the fact that the positive result of his 2012 doping control had no impact on his competitive results)"*.

- *"There is no doubt that the disqualification of competitive results from almost 10 (ten) years will result in huge negative consequences (not only of a sporting nature, but also of a financial nature)"*.

- Alternatively, *"fairness"* under Article 10.8 requires that retroactive disqualification of the Athlete's competition results *"should be limited to a maximum period of two years from the date of the positive doping control"* (i.e., from 16 April 2012 until 15 April 2014) as a consequence of his 15 April 2012 ADRV.

- Disqualification of any of the Athlete's competition results after 16 April 2014, which would impose a sanction longer than the 2-year period of ineligibility the ITA requests the CAS ADD to impose for his first ADRV would be *"unfair and disproportionate"*.

V. JURISDICTION

52. Pursuant to its delegated authority regarding the IWF's entire anti-doping programme, the ITA, on behalf of the IWF, filed this Request for Disciplinary Proceedings with the CAS ADD pursuant to Article 8.1.1 of the 2021 IWF ADR and Article 13A of the ADD Rules.

53. Article 8.1.1 of the 2021 IWF ADR provides as follows:

"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".

54. Article A13 of the ADD Rules, in relevant part, provides as follows:

"A request for arbitration in respect on an alleged anti-doping rule violation shall be filed with CAS ADD by or on behalf of the WADC signatory … alleging the occurrence of an anti-doping rule violation, by way of a written request for arbitration …".

55. The Parties confirmed that the CAS ADD has jurisdiction over the present matter by signing the Order of Procedure.

56. Therefore, considering the provisions of Article 8.1.1 of the 2021 IWF ADR, Articles A2 and A13 of the ADD Rules, and the Order of Procedure, the Sole Arbitrator determines that the CAS ADD has jurisdiction of the to resolve this ADRV disciplinary proceeding.

VI. APPLICABLE LAW

57. Article A20 ("Law Applicable to the Merits") of the ADD Rules provides as follows:

"The Panel shall decide the dispute in accordance with the WADC and with the applicable ADR 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".

58. The Parties also agreed that Article A20 of the ADD Rules is applicable by signing the Order of Procedure. Both Parties relied on and expressly referenced the provisions of the IWF ADR and WADC in their respective written submissions and oral arguments. The Parties did not agree (or submit) that the law of any particular country governs resolution of the merits of their dispute.

59. Therefore, the Sole Arbitrator determines that the relevant provisions of the applicable version(s) of the IWF ADR and WADC as well as Swiss law, subsidiarily, govern resolution of the merits of this case.

VII. MERITS

60. It is undisputed that the 2009 IWF ADR, which was in effect when the Athlete's Sample (no. 2685820) was collected by the IWF on 15 April 2012 during the 2012 IWF European Championships in Antalya, Turkey, generally governs the resolution of the merits of this case. Some provisions of the 2015 and 2021 IWF ADR (which was in effect when the Athlete's Sample tested positive for a Prohibited Substance) as well as Swiss law also are applicable and relevant to the resolution of the merits of certain issues in this case.

61. It also is undisputed that the Athlete, as a member of the WFG from 15 April 2012 (when he committed the ADRV that is the subject of this disciplinary proceeding) who competed in several international-level weightlifting events until he was notified of his ADRV and provisionally suspended by the ITA on 17 November 2021, is bound by the provisions of the 2009, 2015, and 2021 IWF ADR.

A. Validity of Re-analysis of the Athlete's 15 April 2012 Sample and ADRV

62. Under Article 3.1 of the 2009 IWF ADR, the ITA has the burden of establishing *"to the comfortable satisfaction"* of the Sole Arbitrator that the Athlete committed an ADRV. This *"standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt"*.

63. Under Article 3.2.1 of the 2009 IWF ADR *"WADA-accredited laboratories are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for Laboratories"*. The Athlete can rebut this presumption *"by establishing that a departure from the International Standard for Laboratories ["ISL"] occurred which could reasonably have caused the Adverse Analytical Finding"*.

64. The Cologne Laboratory's June 2021 re-analysis of the Athlete's 15 April 2012 B Sample (no. 2685820), which it had maintained in LTS since 19 April 2012, resulted in an AAF for *stanozolol metabolite*, an anabolic adrogenic steroid whose usage is prohibited at all times, which is listed on the 2009-2021 WADA Prohibited List.

65. The Cologne Laboratory is a WADA-accredited laboratory, and the Athlete did not assert, much less establish, its departure from any ISL in connection with its LTS, May 2021 opening and splitting of his 15 April 2012 B Sample into B1 and B2 Sample or June 2021 re-analysis of his B1 Sample, which could reasonably have caused the foregoing AAF.

66. According to Article 2.1.1 of the 2009 IWF ADR, *"[i]t is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. 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".

67. Pursuant to Article 2.1.2 of 2009 IWF ADR, *"[s]ufficient proof of an anti-doping rule violation under Article 2.1 is established where the presence of a Prohibited Substance or its Metabolites [is found] in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analyzed".*

68. It is undisputed that a Prohibited Substance was found in the Athlete's B1 Sample, and he waived the analysis of his B2 Sample after being notified that his B1 Sample tested positive for a Prohibited Substance.

69. Therefore, the ITA established to the comfortable satisfaction of the Sole Arbitrator that the Athlete committed an ADRV pursuant to Articles 2.1.1 and 2.1.2 of the 2009 IWF ADR.

70. Nevertheless, the Athlete asserts that his ADRV should be negated and this disciplinary proceeding dismissed because the LTS of his 15 April 2012 B Sample after 30 July 2012 and its June 2021 re-analysis by the laboratory were invalid for 1) non-compliance with the relevant provisions of the 2009 IWF ADR, 2012 ISL, and 2021 ISL requiring that any LTS of samples must be pursuant to a documented request from the Testing Authority or WADA and/or 2) occurred outside of the maximum time period for LTS and re-analysis of the Athlete's B sample.

71. Specifically, the Athlete asserts as follows:

- Article 6.5 of the 2009 IWF ADR, which is applicable because the Athlete's Sample (no. 2685820) was collected on 15 April 2012, requires that the *"circumstances and conditions for retesting Samples shall conform with the requirements of the [ISL]".*

- Pursuant to Article 5.2.2.6 of the 2012 ISL, the Cologne Laboratory was required to dispose of the Athlete's B sample after 30 July 2012 because it reported his A sample negative for any Prohibited Substances on 30 April 2012 and there is no evidence that the IWF arranged for LTS of his B sample for any permissible period of time (i.e., *"a period from three (3) months to eight (8) years"*) after 30 July 2012, the date the required minimum 3-month time period for laboratory storage of an A sample without an AAF expired.

- Even if the IWF had requested LTS storage of the Athlete's B sample after 30 July 2012, Article 5.2.2.6 of the 2012 ISL permitted his sample to be stored for a maximum of 8 years thereafter (i.e., no later than 30 July 2020) and his sample was kept in LTS thereafter until the process of its re-analysis was conducted by the Cologne Laboratory in May and June 2021.

- Article 5.3.11.1(a) of the 2021 ISL, which provides for LTS storage of a sample for a maximum of ten (10) years after its collection date, is inapplicable because the ITA has not provided any evidence of the required written request by the IWF or the ITA (pursuant to its delegated authority for the IWF's anti-doping programme) for LTS of

the Athlete's B sample for the maximum permissible 10-year period of time (i.e., until 14 April 2022 based on the 15 April 2012 date of collection of the Athlete's sample (no. 2685820)).

72. The ITA responded as follows:

- Regarding the Athlete's request pursuant to Article A19.4 of the ADD Rules that the ITA identify *"who made the decision to store the Athlete's Samples on a long-term basis and when",* which the Sole Arbitrator ordered it to answer and to provide supporting documents, the ITA stated:

  - *"[D]ue to change in staff at the IWF from 2012 to the present, the IWF has been unable to find records of the documents/correspondence pertaining to the IWF's request to keep samples collected at the 2012 IWF European Championships in Antalya, Turkey in Long Term Storage (including sample no. 2685820 provided by the Athlete).*

  - *In this regard, the ITA respectfully maintains and reiterates that documentary evidence as to a decision to keep a sample in Long Term Storage is immaterial to a matter where the re-analysis of a sample has resulted in an Adverse Analytical Finding ("AAF") for a potent prohibited anabolic steroid (i.e. stanozolol metabolite) which has long-term and lasting effects and is highly relevant for performance-enhancing purposes in a sport like weightlifting.*

  - *Re-analysis programs have been crucial and extremely successful in maintaining the integrity of competition. The 2008 Beijing Olympics re-analysis campaign by the IOC resulted in 65 AAFs being detected and athletes being sanctioned while the 2012 London Olympics programme returned 76 AAFs. In these 141 cases (including at least 21 cases before CAS), not once did the disciplinary body, be it the IOC Disciplinary Committee, CAS Anti-Doping Division and/or a CAS Appeal Panel, consider that providing the decision of an Anti-Doping Organization to keep the samples in Long Term Storage was a material requirement or a requirement which would have any impact on the merits of the case. In light of the aforesaid, the ITA respectfully submits that the unavailability of the information requested by the Athlete should have no bearing whatsoever on the regularity of the procedure and the fact that the Athlete has committed an Anti-Doping Rule Violation needs to be sanctioned accordingly".*

- Pursuant to Article 6.5 of the 2009 IWF ADR, the ITA (on behalf of the IWF) had *"the absolute discretion to conduct further analysis on samples in its jurisdiction 'at any time',* [so] *[i]t logically follows that 'any time' is determined by the applicable statute of limitation".*

- Pursuant to the principle of *tempus regit actum*, as the version of the IWF ADR currently in effect, the 2021 IWF ADR governs the procedural aspects of this case, including the results management and prosecution of ADRVs under the jurisdiction of the IWF, which it delegated to the ITA in mid-2019.

- Pursuant to the 2021 IWF ADR, the applicable statute of limitations, which is a procedural rule, for purposes of the ITA's results management and prosecution of the Athlete's 15 April 2012 ADRV is 10 years (i.e., until 14 April 2022).

- The ITA's 3 May 2021 decision to have the Athlete's B sample (no. 2685820) that was collected on 15 April 2012 re-analysed; the Cologne Laboratory's May 2021 opening and splitting of his B sample into B1 and B2 samples and resealing of the B2 sample; the laboratory's June 2021 re-analysis of his sample and its 15 June 2021 reporting that it tested positive for the presence of stanozolol metabolite, a Prohibited Substance on the WADA Prohibited List (in all versions from 2009 to the present); the ITA's 17 November 2021 notification of the Athlete that his B1 sample tested positive for an AAF; and the ITA's 12 April 2022 filing of a request for a disciplinary proceeding on behalf of the IWF against the Athlete before the CAS ADD occurred before the expiration of the applicable 10-year statute of limitations on 14 April 2022.

- As permitted by Articles 5.3.11.1(a) and 5.3.11.3 of the 2021 International Standard for Laboratories ("ISL"), which permits LTS of a sample for up to 10 years from the date of its collection for possible re-analysis during this period of time (without requiring any reasons for LTS by the IWF or ITA), the Athlete's B sample was kept in LTS at the Cologne Laboratory in compliance with LTS requirements from 19 April 2012 until its 19 May 2021 opening and splitting into B1 and B2 samples.

73. The Sole Arbitrator notes that Article 6.5 of the 2009 IWF ADR requires that the *"circumstances and conditions for retesting Samples shall conform with the requirements of the* [ISL]*"* as well as that Article 5.2.2.6 of the 2012 ISL and Article 5.3.11.1(a) of the 2021 ISL requires documentation of the Testing Authority's arranging for or requesting LTS of a B sample beyond the 3-month minimum period the laboratory is required to retain it if no AAF was detected by analysis of the A sample.

74. Although it is unable to provide this documentation, the ITA submits:

"Re-analysis programs have been crucial and extremely successful in maintaining the integrity of competition. The 2008 Beijing Olympics re-analysis campaign by the IOC resulted in 65 AAFs being detected and athletes being sanctioned while the 2012 London Olympics programme returned 76 AAFs. In these 141 cases (including at least 21 cases before CAS), not once did the disciplinary body, be it the IOC Disciplinary Committee, CAS Anti-Doping Division and/or a CAS Appeal Panel, consider that providing the decision of an Anti-Doping Organization to keep the samples in Long Term Storage was a material requirement or a requirement which would have any impact on the merits of the case. In light of the aforesaid, the ITA respectfully submits that the unavailability of the information requested by the Athlete should have no bearing whatsoever on the regularity of the procedure and the fact that the Athlete has committed an Anti-Doping Rule Violation needs to be sanctioned accordingly".

75. The Athlete responded:

"Regarding the statistics and reanalysis cases presented by Claimant, in Athlete's opinion they have no relevance and direct application to the present case. Claimant, in presenting the statistics and citing these cases, has not shown that the CAS recognized the allegation made in the present case, i.e. the Testing Authority's failure to issue a decision on the long-term storage of the sample and nevertheless conduct a reanalysis. Thus, it is likely that in the cases cited by Claimant there was unambiguous evidence in the case file confirming the qualification of the sample for long-term storage, which, however, is not the situation in the present case, which makes it

impossible to cite all cases related to reanalysis by analogy (as it is necessary to assess the circumstances of the facts in each individual case and verify the correctness of the actions not only of the athletes, but also of the anti-doping organizations)".

76. The Athlete's assertion that the ITA has not shown that any of the generally referenced 141 cases regarding re-testing of athlete samples specifically address whether *"the Testing Authority's failure to issue a decision on the long-term storage of the sample and nevertheless conduct a reanalysis"* is *"a material requirement or a requirement which would have any impact on the merits of the case"* is well-taken. But the Sole Arbitrator recognizes and agrees with the ITA's credible public policy submission that *"Re-analysis programs have been crucial and extremely successful in maintaining the integrity of competition".*

77. Based on Article 3.2.1 of the 2009 IWF ADR and because the Athlete does not assert that the violation of any ISL documentation requirements in connection with the LTS of his 15 April 2012 B Sample *"could reasonably have caused"* its AAF for an anabolic adrogenic steroid when it was re-analysed in June 2021, the Sole Arbitrator rejects his assertion that his ADRV should be negated and that this disciplinary proceeding dismissed.

78. The Sole Arbitrator also rejects the Athlete's submission that, even if the IWF complied with the applicable ISL documentation requirements for LTS storage of his 15 April 2012 B sample after 30 July 2012, the applicable statute of limitation is Article 5.2.2.6 of the 2012 ISL, which permitted his sample to be stored for a maximum of 8 years thereafter (i.e., no later than 30 July 2020) and the ITA was not authorized to have it re-analysed thereafter.

79. The ITA correctly asserts that the applicable statute of limitation, a procedural requirement or rule, is Article 16 of the 2021 ISL, which permits it to bring this disciplinary proceeding against the Athlete because it notified him of his AAF on 17 November 2021, which is within ten-years of when his ADRV occurred on 15 April 2012.

80. The Parties do not dispute that in 2012, which was when the Athlete's B Sample was placed into LTS, the statute of limitation for LTS and re-analysis of samples was 8 years. Article 6.5 of the 2009 IWF ADR states: *"The circumstances and conditions for retesting Samples shall conform with the requirements of the [ISL]".* Article 5.2.2.6 of the 2012 ISL permitted LTS of the Athlete's B Sample for a maximum of 8 years. Article 16 of the 2009 IWF ADR provides that *"No action may be commenced under these Anti-Doping Rules against an Athlete … for a violation of an anti-doping rule contained in these Anti-Doping Rules unless such action is commenced within eight years from the date the violation occurred".*

81. The 2015 IWF ADR extended the statute of limitation, which it expressly characterized as *"procedural rules"*, for LTS and re-analysis of samples to 10 years, which *"should be applied retroactively"*:

Article 17 (*"Statute of Limitations"*) provides:

"No anti-doping rule violation proceeding may be commenced against an Athlete or other Person unless he or she has been notified of the anti-doping rule violation as provided in Article 7, or notification has been

reasonably attempted, within ten years from the date the violation is asserted to have occurred" (underlining added).

Article 20.7.2 provides:

"The retrospective periods in which prior violations can be considered for purposes of multiple violations under Article 10.7.5 and 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. Otherwise, with respect to any anti-doping rule violation case which is pending as of the Effective Date and any anti-doping rule violation case brought after the Effective Date based on an anti-doping rule violation which occurred prior to the Effective Date, the case shall be governed by the substantive anti- doping rules in effect at the time the alleged anti-doping rule violation occurred unless the panel hearing the case determines the principle of "lex mitior" appropriately applies under the circumstances of the case" (underlining added).

82. The corresponding 2021 IWF ADR provisions are substantially the same as the foregoing provisions of the 2015 IWF ADR:

Article 16 (*"Statute of Limitations"*) provides:

"No anti-doping rule violation proceeding may be commenced against an Athlete or other Person unless he or she has been notified of the anti-doping rule violation as provided in Article 7, or notification has been reasonably attempted, within ten years from the date the violation is asserted to have occurred" (underlining added).

Article 24.7.2 provides:

"… [T]he statute of limitations set forth in Article 16 are procedural rules, not substantive rules, and should be applied retroactively along with all of the other procedural rules in these Anti-doping Rules (provided, however, that Article 16 shall only be applied retroactively if the statute of limitations period has not already expired by the Effective Date)".

83. The foregoing provisions of the 2015 IWF ADR and 2021 IWF ADR, which extended the 8-year statute of limitation in the 2009 IWF ADR for re-analysis of samples in LTS to 10 years with retroactive application, are consistent with Swiss law, CAS jurisprudence, and the European Convention on Human Rights.

84. Article 49 of the Final Chapter of the Swiss Civil Code, which is available at https://www.fedlex.admin.ch/eli/cc/24/233_245_233/en, provides as follows:

"Article 49 – Prescription

1. *Where the new law specifies a longer period than the previous law, the new law applies, provided prescription has not yet taken effect under the previous law.*

2. *Where the new law specifies a shorter period, the previous law applies.*

3. *The entry into force of the new law does not change the date on which an ongoing prescriptive period began, unless the law provides otherwise.*

4. *Otherwise, the new law governs prescription from the time it comes into force.*

85. In 4A_620/2009 (7 May 2010) at ¶ 4.2, the Swiss Supreme Court ruled:

The appellants complain that the CAS disregarded the principles of lex mitior and non-retroactivity of norms, which, in their view, constitute fundamental legal principles […]

In general, the principle of non-retroactivity of rules does not apply to procedural law, which is normally governed by the rule tempus regit actum. The same applies, with some exceptions, to the principle of lex mitior […]. This principle applies to the norms defining the offences and the penalties for them, but not to the provisions regulating the procedure to be followed in prosecuting and judging the offences.

86. In CAS 2017/A/5039 at §76, the Sole Arbitrator explained:

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.

87. In *Coëme v. Belgium* (ECHR 22 June 2000) at §§148-149, the European Court of Human Rights held:

The extension of the limitation period […] and the immediate application of that statute by the Court of Cassation did, admittedly, prolong the period of time during which prosecutions could be brought in respect of the offences concerned, and they therefore detrimentally affected the applicants' situation, in particular by frustrating their expectations. However, this does not entail an infringement of the rights guaranteed by Article 7, since that provision cannot be interpreted as prohibiting an extension of limitation periods through the immediate application of a procedural law where the relevant offences have never become subject to limitation.

88. The Sole Arbitrator determines that the ITA's prosecution of the Athlete's 15 April 2012 ADRV by filing a 12 April 2022 request on behalf of the IWF for disciplinary action against the Athlete in this CAS ADD proceeding complies with the foregoing requirements and 10-year statute of limitations of the 2015 IWF ADR and 2021 IWF ADR as well as Swiss law. Therefore, it is not time-barred.

B. Athlete's Period of Ineligibility

89. Relying on Article 10.2 of the 2009 WADC, the ITA requests that the Athlete be sanctioned with *"a period of two years' Ineligibility"* for the presence of a Prohibited Substance (i.e., stanozolol

metabolite, an AAS) in his system in violation of Article 2.1 of the 2009 IWF ADR, which is his first ADRV[1].

90. The ITA submits:

"This two-year period of Ineligibility may be reduced if conditions for Exceptional Circumstances pursuant [to] Article 10.5 of the 2009 IWF ADR are present. Further, the period of Ineligibility can be increased to a maximum of four years in the event that Aggravating Circumstances within the meaning of Article 10.6 of the 2009 IWF ADR exist.

In the present case, the Athlete has evidently not been able to discharge his burden of proof as to the source of the Prohibited Substance in his sample and therefore, the circumstances of the ADRV remain unknown. Based on the prevalence of AAFs for stanozolol in the sport of weightlifting and especially in 2012, it may even be presumed that the use of the bulking agent was intentional, but this is not for the IWF to establish. In any case, there are no grounds for reducing the applicable period of Ineligibility.

The applicable period of Ineligibility can be increased to a maximum of four years in the event that Aggravating Circumstances within the meaning of Article 10.6 of the 2009 IWF ADR exist. In the present case, at this stage, the ITA considers that Aggravating Circumstances is inapplicable, therefore the period of Ineligibility for Mr Turmanidze's ADRV is 2 years".

91. Relying on Article 10.13 of the 2021 IWF ADR, the ITA asserts that the Athlete's period of two years' Ineligibility should begin on the date of this CAS ADD award imposing it with the period of his Provisional Suspension served before its date credited against it.

92. In response, the Athlete requests imposition of *"the lowest possible penalty of Ineligibility with credit for the period of the provisional suspension from 17 November 2021".*

93. Based on the foregoing provisions of the 2009 WADC and IWF ADR as well as the Parties' respective submissions, the Sole Arbitrator determines that the Athlete is sanctioned with a period of Ineligibility of two (2) years beginning on the date of this award with credit for the period of time of his Provisional Suspension he has served since 17 November 2021.

C. Disqualification of Athlete's Competition Results

94. Because the Athlete committed an in-competition ADRV on 15 April 2012, it is undisputed that the Athlete's competition results at the 2012 European Championships in Antalya, Turkey, including forfeiture of any medals, prizes and points, are automatically disqualified pursuant to Article 9 of the 2009 IWF ADR.

[1] The Sole Arbitrator notes that Article 10.2 of the 2009 IWF ADR stipulates *"four (4) years' Ineligibility"* for a first violation of Article 2.1.

95. Article 10.8 (*"Disqualification* of Results in *Competitions* Subsequent to *Sample* Collection or Commission of an Anti-Doping Rule Violation") of the 2009 IWF ADR[2] provides:

In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9 (Automatic Disqualification of Individual Results), all other competitive results 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.

96. Pursuant to Article 10.8, the ITA asserts that all the Athlete's competition results from the date of his positive sample collection (i.e., 15 April 2012) until the date of his Provisional Suspension (i.e., 17 November 2021) shall be disqualified *"unless fairness requires otherwise",* which the Athlete has the burden of proving.

97. Relying on CAS 2013/A/3274 at §88., the ITA asserts that *"given the severity of the [Athlete's] ADRV [i.e., presence of an anabolic androgenic steroid in his system], there are no factors which tend to support that the exception of maintaining results would apply in the present case".*

98. Alternatively, relying on CAS 2019/O/6156 at §108, the ITA submits *"should the Panel consider that the 'fairness exception' is applicable in the present case, at the very least … the period of disqualification of the results should be of the same duration as the period of Ineligibility to be imposed on the Athlete, i.e. two years".*

99. The Athlete responds that *"fairness exception"* should be broadly applied to reject the ITA's requested disqualification of all the Athlete's competition results from 16 April 2012 through the 17 November 2021 date of his Provisional Suspension for the following reasons:

- None of the doping controls to which the Athlete was subjected from 16 April 2012 through 17 November 2021 detected the presence of any Prohibited Substances in his system; therefore, his 15 April 2012 in-competition ADRV *"had no impact on his competitive results"* during this time period.

- The ITA's May 2021 *"late decision"* not to have the Athlete's 15 April 2012 sample re-tested until June 2021 should not cause the Athlete to be *"additionally/unduly punished by the disqualification of his competitive results [from 16 April 2012 through 17 November 2021] (all the more so given the fact that the positive result of his 2012 doping control had no impact on his competitive results)".*

- *"There is no doubt that the disqualification of competitive results from almost 10 (ten) years will result in huge negative consequences (not only of a sporting nature, but also of a financial nature)".*

100. Relying on CAS 2017/O/5332, the Athlete submits that *"fairness"* under Article 10.8 requires that retroactive disqualification of the Athlete's competition results *"should be limited to a maximum*

[2] The corresponding provisions of Article 10.10 ("*Disqualification* of Results in *Competitions* Subsequent to *Sample* Collection or Commission of an Anti-Doping Rule Violation") of the 2021 IWF ADR are substantially identical.

period of two years from the date of the positive doping control" (i.e., from 16 April 2012 until 15 April 2014) as a consequence of his 15 April 2012 ADRV.

101. According to the Athlete, disqualification of any of his competition results after 16 April 2014, which would impose a sanction longer than the 2-year period of ineligibility the ITA requests the CAS ADD to impose for his first ADRV would be *"unfair and disproportionate"*. Doing so *"would extend the retroactive effect of the disqualification to a longer period of time during which the athletes concerned in fact were not prevented from competing"* and *"together with the period of ineligibility, leads to a sanction which de facto is extended considerably and that is why in such cases sport results before re-testing should not be disqualified"*.

102. Before considering whether, and if so, how Article 10.8's *"fairness exception"* should be applied in this case, the Sole Arbitrator notes the important objectives furthered by LTS and re-analysis of athlete samples along with its general rule requiring retroactive invalidation of an athlete's competitive results from the date his positive sample was collected through the commencement of his provisional suspension:

"Retroactive disqualification of competitive results is a vital part of a credible anti-doping regime for various reasons. It has a deterrent effect on doping, particularly when combined with increased use of Athlete Biological Passports ("ABP") and re-testing of samples. Moreover, from the clean athlete's point of view, retroactive re-rankings and re- allocation of medals may have intangible significance and considerable economic effects as successful Athletes are awarded substantial amounts of monetary compensation based on their results" (MANNINEN/NOWICKI, *"Unless Fairness Requires Otherwise": A Review of Exceptions to Retroactive Disqualification of Competitive Results for Doping Offenses*, CAS Bulletin 2/2017 at page 7).

103. The term "fairness" is not defined in either the 2009 or 2021 versions of the IWF ADR or the WADC. Neither the WADC nor the IWF ADR provides any commentary or guidance regarding the relevant factors to consider in determining its appropriate application in a particular case.

104. In their 2017 CAS Bulletin article, MANNINEN/NOWICKI observed:

"Art. 10.8 of the WADC does not stipulate from whose standpoint "fairness" should be evaluated. This, of course, has great significance on the outcome of the consideration—both from a public perception and burden of proof perspective.

The provision refers to "fairness" at a general level and gives rise to different interpretations. But this issue has not been addressed in detail in the arbitral awards of the CAS. The implied starting point seems to be that fairness should be primarily assessed from the point of view of the athlete having committed the ADRV. This is a well-established approach. The athlete is a party to the disciplinary proceedings and it is his or her achievements that are primarily at stake.

The viewpoint shall not, however, be categorically restricted to the athlete in question. Indeed, as noted by the Sole arbitrator in Chernova, "not to disqualify results that have been achieved by using a prohibited substance or prohibited method cannot be considered as fair with regard to the other athletes" that competed against the sentenced athlete".

105. The Sole Arbitrator concludes that the *"fairness exception"* should not apply if its application under the particular circumstances prevents the achievement of Article 10.8's primary objective of maintaining the integrity of international and Olympic sports by deterring doping and enabling clean athletes to receive the intangible and economic benefits from retroactive re-rankings and re-allocation of medals.

106. Therefore, the Athlete should have the burden of proving by a balance of probability that "fairness" precludes retroactive invalidation of all his competition results since the date of his ADRV pursuant to Article 10.8 (i.e., Article 10.10 of the 2021 IWF ADR and WADC) because application of its general rule imposes a sanction extending beyond the period of time reasonably necessary to achieve its objectives.

107. The jurisprudence of the CAS establishes the following general principles regarding the objectives and appropriate application of the *"fairness exception"* in determining the length of the retroactive application of an athlete's competition results:

- *"[T]he main purpose of disqualification is not to punish the transgressor, but rather to correct any unfair advantage and remove any tainted performances from the record"* (CAS 2018/O/5712 at §274).

- *"Taking into regard that the sanction of disqualification of results embraces the forfeiture of any titles, awards, medals, points and prize and appearance money, the sanction of disqualification is to be held equal to a retroactive imposition of a period of ineligibility and, thus, is a severe sanction"* (CAS 2018/O/5712 at §273; CAS 2016/A/4469 at §176).

- *"[T]he length of the period of ineligibility to be imposed must be defined considering the disqualification of the Athlete's results, which come equal to the effects of a retro-active suspension"* (CAS 2018/O/5712 at §268; CAS 2016/A/4464 at §182).

- *"[T]he general principle of fairness must prevail in order to avoid disproportionate sentences"* (CAS 2017/O/5039 at §127). *"To find out, whether a sanction is excessive, a [Panel] must review the type and scope of the proved rule-violation, the individual circumstances of the case, and the overall effect of the sanction on the offender"* (CAS 2017/O/5039 at §127; CAS 2005/C/976 & 986 at §143).

- *"At one end of the range is the single positive finding where the [IF's] policy in retesting cases [is] to connect the disqualification period to the length of the ban on the basis that if the violation had been detected immediately, the athlete would not have been able to compete, and win, during that period (see e.g. CAS 2016/O/4463, CAS 2017/O/5330 and CAS 2017/O/5332).*

  Elsewhere on the range are cases where an athlete has engaged in doping practices for an extended period of time, over years, where the CAS panels have disqualif[ied] all the results of the athlete (see eg CAS/2014/3561 & 3565, CAS 2016/O/4464). On the other hand, CAS panels have not infrequently applied the fairness exception and let results remain partly in force, in particular when a) the disqualification period extends over many years and b) there is no evidence that the athlete had committed violations over the whole period from the first violation to the commencement of the provisional

suspension or ineligibility (see e.g. CAS 2016/O/4481, CAS 2017/O/4980, (see e.g. 5039, and CAS 2017/A5045).

CAS case law confirms that the panels have broad discretion in adjusting the disqualification period to the circumstances of the case. Some CAS Panels, in individual cases, have previously considered that it would be unfair to disqualify all results since the doping [was] found, even in the case of a doping scheme. Others have held that it was not appropriate to maintain results on the basis of fairness where the doping was severe, repeated and sophisticated" (CAS 2018/O/5713 at §§70-72).

108. Based on the foregoing principles of CAS jurisprudence, the Sole Arbitrator declines to adopt the ITA's submission that Article 10.8's general rule applies and its *"fairness exception"* is inapplicable solely because of *"the severity of the [Athlete's] ADRV"* (i.e., presence of an anabolic androgenic steroid); therefore, all his competition results from 15 April 2012—17 November 2021, a period of more than 9 ½ years, should be retroactively invalidated. Construing the *"fairness exception"* this narrowly would unfairly invalidate the Athlete's competition results in weightlifting events held more than three years after the date of his ADRV even though his in-competition sample in two major events (e.g., 10-18 April 2015 European Weightlifting Championships; 2016 Rio Olympic Games) and 25 other in-competition or out-of-competition samples tested negative for any Prohibited Substances.

109. The Athlete's ADRV is admittedly serious, but it is his first anti-doping rule offense rather than one of multiple ADRVs, which is part of a "severe, repeated and sophisticated" plan. The Athlete contends he always made himself available for doping controls and has not tested positive for any Prohibited Substances since 15 April 2012. The ITA acknowledged that the Athlete was subject to 27 doping controls from 18 April 2012 to 11 April 2021. The ITA was unable to provide the Athlete's test results from 22 June 2012 to 17 April 2015, (which is within the 10-year maximum period of time test results can be stored on ADAMS), and it does not contend nor is there any evidence he committed any ADRVs during this period of time.

110. Based on the particular facts of this case, the Sole Arbitrator determines that the period of retroactive invalidation of the Athlete's competition results after the 15 April 2012 date of his in-competition ADRV should be two (2) years. This period of time is equal to the length of his 2-year period of Ineligibility as well as consistent with CAS 2019/O/6156 (which the ITA cites as supporting retroactive disqualification of the Athlete's competition results for 2-years after his 15 April 2012 ADRV) and CAS 2017/O/5332 (which the Athlete cites as supporting retroactive disqualification of his competition results for *"a maximum period of two years from the date of the positive doping control"*). Moreover, during the hearing, the Athlete's counsel acknowledged this is a proportionate sanction.

111. Accordingly, the Sole Arbitrator determines that the Athlete's competition results from 16 April 2012 through 15 April 2014 (which includes his 4th place result in the +105kg category for the weightlifting competition during the 2012 London Olympic Games) are disqualified with all the resulting consequences, including forfeiture of any medals, prizes and points, under Article 10.8 of the 2009 IWF ADR.

VIII. COSTS

(…).

IX. APPEAL

118. Article 8.2 of the 2021 IWF ADR provides:

> *8.2.1 At the end of the hearing, or promptly thereafter, the CAS ADD shall issue a written decision that conforms with Article 9 of the International Standard for Results Management and which includes the full reasons for the decision, the period of Ineligibility imposed, the Disqualification of results under Article 10.10 and, if applicable, a justification for why the greatest potential Consequences were not imposed.*
>
> *8.2.2 The IWF shall notify the decision to the Athlete or other Person and to other Anti-Doping Organisations with a right to appeal under Article 13.2.3, and shall promptly report it into ADAMS. The decision may be appealed as provided in Article 13.*

119. Pursuant to Article A21 of the ADD Rules, the Sole Arbitrator's 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 Disciplinary Proceedings filed by the International Testing Agency on behalf on the International Weightlifting Federation on 12 April 2022 against Mr. Iraki Turmanidze is partially upheld.

2. Mr. Iraki Turmanidze committed an Anti-Doping Rule Violation of Article 2.1 of the 2009 International Weightlifting Federation Anti-Doping Rules.

3. Mr. Turmanidze is sanctioned with a two (2) year period of Ineligibility beginning on the date of this award with credit for the period of time of his Provisional Suspension he has served since 17 November 2021.

4. Mr. Turmanidze's competition results at the 2012 European Championships in Antalya, Turkey, are automatically disqualified with all the resulting consequences, including forfeiture of any medals, prizes and points.

5. Mr. Turmanidze's competition results from 16 April 2012 through 15 April 2014 are disqualified with all the resulting consequences, including forfeiture of any medals, prizes and points.

6. (…).

7. (…).

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