

INTERNATIONAL WEIGHTLIFTING FEDERATION ("IWF")

DECISION OF THE INDEPENDENT MONITORING
GROUP IN THE MATTER INVOLVING THE FEDERATIA
ROMANA DE HALTERE

Case 2021-2

- I. Proceedings before the Independent Member Federations Sanctions Panel
 1. On 15 June 2021, the Independent Member Federations Sanctioning Panel ("IMFSP") issued a decision (the "IMFSP Decision") against the *Federatia Romana de Haltere* (Romanian Weightlifting Federation, "FRH") with the following (partial) operative part:
 2. *The Federatia Romana de Haltere is suspended from participating in any activities for a period of one (1) year, starting on the date of the present decision (i.e. 15 June 2021).*
 3. *The present decision shall be conditionally lifted eight (8) months after it was issued (i.e. on 15 February 2022), provided that the criteria set out under paragraph 143 are met and as long as they are met.*

The IMFSP included the following conditional reinstatement conditions (§ 143)¹:

The Panel considers that in light of all of the circumstances of the present case, in particular the FRH's collaborative approach and agreement to the IWF's criteria, the FRH should benefit from the partial conditional reinstatement of its suspended rights, provided that the criteria put forward by the IWF are met, namely:

1. *FRH ensures that FRH Athlete Support Personnel, such as coaches, and Officials of the FRH in contact with Athletes have never committed anti-doping rule violations or acts that would amount to anti-doping rule violations but were not sanctioned for some reason; ergo, FRH to remove from their FRH functions any Athlete Support Personnel who have trained more than three Athletes who have committed anti-doping rule violations in the past 10 years;*

In this respect, the IWF Panel trusts that Romanian law provides for a system allowing the FRH to dismiss any person that would not meet the above requirement based on "just cause", as is inter alia the case under Swiss law.

2. *No FRH Athletes, Athlete Support Personnel or Officials receive notice of an Adverse Analytical Finding for a Prohibited Method or a Prohibited Substance that is neither a Specified Substance nor a Substance of Abuse or notice regarding Articles 2.2, 2.3, 2.5, 2.6, 2.7, 2.8, 2.9 2.10 or 2.11 of the IWF ADR from now on and until the end of the sanction imposed by the Panel;*

In this respect, the IWF Panel agrees with the FRH that this criterion should comprise only the ADRVs that would be committed after the

¹ The numbering of the conditions is added by the IMG for ease of reference.

present Decision and not ADRVs committed prior to same but that would be notified only after the issuance of the Decision.

Indeed, the IWF Panel considers that the purpose of the sanction imposed against the FRH is for the FRH to implement effective measures to fight against doping for the future. Thus, the rationale of the sanction would be distorted if the partial reinstatement of the suspended rights were cancelled based on ADRVs that occurred prior to such sanction being imposed.

3. *FRH ensure that its Registered Testing Pool Athletes – not the FRH on their behalf – submit accurate, complete and timely whereabouts filings including accurate phone number and individualized email addresses for each Athlete in ADAMS;*
4. *FRH ensures that it shares the dates and locations of training camps of the National Team's Athletes with the ITA on a timely basis;*
5. *FRH makes its Athletes and Athlete Support Personnel available for an interview with the ITA, upon ITA's simple request;*
6. *FRH makes its Athletes and Athlete Support Personnel aware of the ITA's Reveal confidential reporting platform, the FRH posts a link on its website to the ITA's Reveal platform, and the FRH Athletes and Athlete Support Personnel download the ITA's Reveal reporting app (once available);*
7. *FRH ensures that its Athletes and Athlete Support Personnel attend one anti-doping education session hosted by the ITA (in Romanian) within the next six months and to bear the ITA's related costs and the costs of ensuring that the Athletes and Athlete Support Personnel are available, if any;*
8. *FRH to pay a 50'000 USD to the IWF by 1 October 2021 as a contribution to the IWF's enhanced anti-doping activities, in accordance with a payment plan to be discussed and agreed upon between the Parties;*

In view of the Parties' agreement in this respect, the IWF Panel confirms that the deadline to pay the relevant amount is 1 October 2021 and that a payment plan should be discussed between the Parties.

9. *The FRH leadership accept public responsibility to change the culture of doping in Romanian weightlifting.*

2. An appeal of the IMFSP Decision by FRH is pending before the Court of Arbitration for Sport ("CAS").

3. The facts underlying the IMFSP Decision will be referred to if and when they are relevant to the adjudication of this case.

II. Proceedings before the Independent Monitoring Group

4. On 19 November 2021, the International Testing Agency ("ITA"), acting on behalf of the IWF, sent a Notice for Referral to the Independent Monitoring Group ("IMG") and requested the IMG to adjudicate the case.

5. Following Directions n°1 and n°2 issued by the Panel constituted for this case (the "Panel"), both FRH (on 3 December 2021, 14, 28 January and 4 and 10 February 2022) and the IWF (4 and 10 February 2022) presented their prayers and arguments

and provided additional documents requested by the Panel. No parties raised objection to the constitution of the Panel, nor to its jurisdiction.

III. Parties' Prayers for Relief

6. FRH sought to benefit from the partial conditional reinstatement of its suspended rights.
7. IWF made no specific prayers for relief.
8. The Parties' arguments have been fully considered and will be referred to more specifically if and when they are relevant to the adjudication of this case.

IV. Preliminary Matters

i. Applicable Law and Regulation

9. The applicable rules are the IMFSP Decision, the IMG Terms of Reference ("IMG-ToR"), the 2021 IWF ADR ("IWF ADR"), the IWF Constitution and Swiss law on a subsidiary basis.

ii. Jurisdiction

10. The Parties raised no objection to the IMG's jurisdiction. The IMG has jurisdiction to hear and adjudicate this case based on Art. 12.6.2 IWF ADR and Art. 7.1 IMG-ToR.
11. The scope of this Panel's review is to consider whether all 9 conditions set out at § 143 of the IMFSP Decision are cumulatively fulfilled and, if such, lift FRH's suspension ordered by the IMFSP Decision as from 15 February 2022.

iii. Admissibility

12. The case has been referred to the IMG by the IWF Secretariat according Art. 7.1 IMG-ToR, and is, hence, admissible.

iv. Burden and Standard of Proof

13. According to the IMFSP Decision, the burden of proof lies with FRH. The FRH must prove its case to the satisfaction of the Panel (Art. 12.6.1 IWF ADR).
14. The Panel is not bound by the prayers for relief made by the Parties.

V. Merits

15. As a result of the Parties' requests and submissions, there are 9 conditions that need to be addressed by this Panel:

i. Condition 1:

16. According to the IMFSP Decision, the Panel must review whether FRH Athlete Support Personnel, such as coaches, and Officials of the FRH in contact with Athletes have never committed anti-doping rule violations ("ADRV's") or acts that would amount to anti-doping rule violations but were not sanctioned for some reason; ergo, the Panel must review whether FRH has removed from their FRH functions any Athlete Support Personnel who have trained more than three Athletes who have committed anti-doping rule violations in the past 10 years.
17. Upon request of this Panel, Parties provided information related to anti-doping records of Athletes and Athlete Support Personnel ("ASP") so as to enable the IMG to review this condition. The IWF provided a list of all FRH Athletes and ASP who

have committed ADRV's and were sanctioned in the period 2012-2022. Based on the IMFSP Decision, it is for the IMG to determine (1) if more than three Athletes on this list were trained by one single ASP, (2) if any ASP has committed an ADRV and (3) if such ASP has been removed following the IMFSP Decision on 15 June 2021.

18. In order to review whether more than three Athletes on the list provided by IWF were trained by one single ASP, the IMG requested a list of ASP active within FRH from 15 June 2021, which has been provided by FRH. The IMG also requested a list of ASP who have trained more than 3 Athletes (with the names of these Athletes) who have committed an ADRV in the past 10 years. The FRH provided a list of 13 ASP who were active from 2011-2021. Based on data provided by FRH, the IMG found that 12 ASP active during this period were not active anymore. Constantin Urdas, who had been active during the period 2011-2021, remained coach of the Senior National Team until end July 2021 and the IMG assumes he has also been the coach of at least three Athletes who committed an ADRV in the period 2011-2021. The FRH does not provide for any explanation for why Constantin Urdas has not been removed from his functions on 15 June 2021 already, upon receipt of the IMFSP Decision. The IMFSP Decision clarified that it was assumed that Romanian law provides for a system allowing the FRH to dismiss any person that would not meet the requirement based on "just cause", as is *inter alia* the case under Swiss law. FRH made no specific comment thereon. It is hence assumed that FRH has the legal authority to dismiss Constantin Urda. Nevertheless, the IMFSP did not require an immediate removal and the IMG will not consider the fact that Constantin Urda remained in function during six weeks after receipt of the IMFSP Decision as a breach.
 19. The IMG requested from FRH to provide for information related to possible ADRV committed by ASP (before or after 15 June 2021). FRH did not provide any. The IWF provided information in this regard, even if not explicitly requested. The IWF acted correctly when providing this information spontaneously, as this information is relevant for the IMG to adjudicate the case. It appears from this information that three cases appear to be ongoing under the Results Management Authority of the Romanian National Anti-Doping Organisation ("NADO"). Two of these cases relate to two coaches that do not appear in the list of ASP active after the IMFSP Decision. However, one case relates to the Secretary General of FRH. Considering that the IMFSP Decision states clearly that it should be considered either ADRV's that were committed or acts that would amount to ADRV's but were not sanctioned for some reason, this Panel finds that it is irrelevant that the case is ongoing and not final. It is obvious from the evidence produced by the FRH (e.g. email between the Secretary General and Athlete Mihaela Ilie dated 28 July 2021) that the Secretary General is "in contact with the Athletes" according to the wording of the IMFSP Decision. He is also obviously an Official. Hence, FRH should have removed the Secretary General from his functions in order to satisfy this condition.
 20. Consequently, the Panel finds that the first condition is not met.
- ii. Condition 2:
21. According to the IMFSP Decision, the Panel must review whether no FRH Athletes, Athlete Support Personnel or Officials received notice of an Adverse Analytical Finding for a Prohibited Method or a Prohibited Substance that is neither a Specified Substance nor a Substance of Abuse or notice regarding Articles 2.2, 2.3, 2.5, 2.6, 2.7, 2.8, 2.9 2.10 or 2.11 of the IWF ADR between 15 June 2021 and the date of this decision.

22. IWF confirmed that no FRH Athletes, ASP or Officials received notice from IWF/ITA of any of the type of Anti-Doping Rule Violations within the scope of this period.
 23. Consequently, the Panel finds that the second condition is met.
- iii. Condition 3:
24. According to the IMFSP Decision, the Panel must review whether FRH ensured that its Registered Testing Pool Athletes - not the FRH on their behalf - submit accurate, complete and timely whereabouts filings including accurate phone number and individualized email addresses for each Athlete in ADAMS.
 25. IWF informed the IMG of 1 recorded Potential Whereabouts Failure and 3 ongoing Potential Whereabouts Failures.
 26. FRH contested that it ensured that all Athletes are informed and warned of the importance of the Whereabouts filings. FRH also submits that the two Athletes who have failed to file Whereabouts details would not have any activity with FRH due to a suspension or other reason.
 27. This Panel finds that these are not valid reasons. According to Art. 5.5.1 IWF ADR, Athletes who have been included in the Registered Testing Pool shall provide whereabouts information. FRH does not submit that these two Athletes would have been retrieved from the Registered Testing Pool. This Panel will not further review the criteria for inclusion of Athletes in the IWF Registered Testing Pool but notes that the fact that an Athlete serves a period of ineligibility shall be one criterion for inclusion in the Registered Testing Pool, according to Art. 4.8.6.1.g of the International Standard for Testing and Investigation that applies according to Art. 5.5.1 IWF ADR.
 28. The condition defined by the IMFSP Decision sets a strict liability on FRH for any Whereabouts failure by an Athlete and is not a "best effort" clause. There is hence no room to review whether FRH is at fault or not. This Panel is prepared to accept that FRH did its best to inform and warn the Athletes but this would be irrelevant to discharge its responsibility.
 29. In view of the above, the third condition is not met.
- iv. Condition 4:
30. According to the IMFSP Decision, the Panel must review whether FRH ensures that it shares the dates and locations of training camps of the National Team's Athletes with the ITA on a timely basis.
 31. FRH submits that it answered one request from ITA on 23 December 2021 related to training camps. Upon request of this Panel, FRH provided a list of 52 training camps for the National Teams of various categories, many of those for the junior teams. Two camps at least were organised for the Senior Team and no information thereon was provided to ITA.
 32. Contrary to FRH's statement, the question is not whether FRH responded to ITA's request in due time to questions regarding training camps. The condition set by the IMFSP Decision imposes on FRH a duty to provide spontaneous information to ITA. FRH has failed to provide this information.
 33. Consequently, the Panel finds that the fourth condition is not met.

v. Condition 5:

34. According to the IMFSP Decision, the Panel must review whether FRH made its Athletes and Athlete Support Personnel available for an interview with the ITA, upon ITA's simple request.
35. IWF submits that the ITA Intelligence & Investigation Department directly contacted seven FRH Athletes or Athlete Support Personnel for interviews since the IMFSP Decision date. Three individuals engaged in the process to varying degrees. Four individuals ignored ITA contact and/or refused to engage in the interview process. IWF asserts that these individuals were duly notified and informed.
36. FRH submits that no official request were sent directly to the FRH and that those Athletes that contacted the FRH after receiving such information from ITA were urged by FRH to cooperate. This Panel has no indication that this allegation would not be accurate.
37. The duty imposed on FRH by the IMFSP Decision is to "make available" the individuals contacted by ITA. Contrary to the third condition, the IMFSP did not impose upon the FRH a strict liability to ensure the participation of the Athletes and ASP to the interviews. There is no indication that FRH would have prevented anyone to attend these interviews, and the IWF does not allege it. It is also not certain whether the IMFSP Decision intended that ITA's simple request for interview should be sent to the Athletes and Athlete Support Personnel or to FRH also.
38. Consequently, the Panel finds that the fifth condition is met.

vi. Condition 6:

39. According to the IMFSP Decision, the Panel must review whether FRH makes its Athletes and Athlete Support Personnel aware of the ITA's Reveal confidential reporting platform, the FRH posts a link on its website to the ITA's Reveal platform, and the FRH Athletes and Athlete Support Personnel download the ITA's Reveal reporting app (once available).
40. IWF confirmed that the ITA Reveal Report App is still under development. This part of the condition does hence not apply.
41. FRH submits that it does not have a website but that all relevant information is provided on the Romanian NADO website. FRH submits that it made available to the Athletes and ASP all necessary information regarding ITA's Reveal reporting platform and that it urged them to participate in all educational activities. Requested by this Panel to provide evidence in this regard, FRH did not provide any document save the material prepared by ITA for a webinar organised in January 2022. This Panel does not envisage how an organisation would urge or make its Athletes aware of such good practices without any written evidence thereof (through a mailing list, flyers, brochures, webinar, facebook posts...). This Panel is not satisfied that any substantial, coordinated and elaborated effort has been put in place in order to enhance engagement of the Athletes and ASP with the ITA Reveal platform.
42. Consequently, the Panel finds that the sixth condition is not met.

vii. Condition 7:

43. According to the IMFSP Decision, the Panel must review whether FRH ensures that its Athletes and ASP attend one anti-doping education session hosted by the ITA (in Romanian) within the next six months and to bear the ITA's related costs and the

costs of ensuring that the Athletes and Athlete Support Personnel are available, if any.

44. IWF stated that an ITA education session took place on 28 January 2022 and it is undisputed that no other education session was organised. This session was organised beyond the six-months period prescribed by the IMFSP Decision. However, IWF stated that this should not be held against the FRH since the schedule was decided in consultation with the ITA and that considerations for the Covid pandemic restrictions came into play.
 45. The material available to this Panel shows no discussions between FRH and IWF or ITA prior to 7 December 2021 related to the organisation of an anti-doping seminar. While the Panel accepts that the Covid pandemic may have complicated this organisation, it fails to see why it would have deterred any attempts to organise at least a webinar. This Panel ignores whether discussions were held prior 7 December 2021 and what serious complications prevented from organising at least a webinar until that date. The Panel eventually decided to leave this an open question and is satisfied that both Parties did not manage to find a suitable date for the webinar earlier for logistical reasons.
 46. Consequently, the Panel finds that the seventh condition is deemed met.
- viii. Condition 8:
47. According to the IMFSP Decision, the Panel must review whether FRH paid USD 50'000 to the IWF by 1 October 2021 as a contribution to the IWF's enhanced anti-doping activities, in accordance with a payment plan to be discussed and agreed upon between the Parties.
 48. IWF stated that the lack of payment shall not be considered as a breach of the conditional lifting, as the Parties have not discussed a payment plan. The IWF made this statement on 15 October 2021 already in an email to FRH and confirmed it before the IMG. This Panel ignores the reason for which such payment plan could not be discussed.
 49. The IMFSP Decision (1) sets a condition related to this payment in order to lift the suspension, (2) sets a deadline on 1 October 2021 to pay the relevant amount and (3) allows the parties to discuss a payment plan. In the IMFSP's words, the payment shall be paid by 1 October 2021, "in accordance with a payment plan to be discussed and agreed upon between the Parties". Furthermore, the IMFSP Decision reads that "in its Answer, the FRH confirmed that it agreed with the criteria proposed by the IWF, but requested that the payment of USD 50'000.- as a contribution towards the IWF's enhanced anti-doping activities be payable in instalments and within a deadline of 1 October 2021 instead of 1 July 2021" (§ 142, emphasize made). In view of these considerations, the Panel finds (1) that the payment of the contribution is a *conditio sine qua non* for the lifting of the suspension and (2) that the payment plan could be discussed among the Parties before the 1 October 2021 which appears as the ultimate deadline. A payment after that date was beyond the free agreement of the Parties. At most, this Panel would have been prepared to accept that this condition be met if the payment had been made by 15 February 2022, with or without payment plan. To the contrary, this Panel cannot consider that the suspension be lifted without due payment of the contribution.
 50. Consequently, the Panel finds that the eighth condition is not met, but will consider it as met immediately upon receipt of a proof of integral payment of USD 50'000.— to IWF, irrespective of the agreement of a payment plan.

ix. Condition 9:

51. According to the IMFSP Decision, the Panel must review whether the FRH leadership accepts public responsibility to change the culture of doping in Romanian weightlifting.
52. A statement published in Romanian media on 18 June 2021 reads that the General Secretary of FRH declared that the FRH assumes the sanction with a one-year suspension, dictated by the international specialized forum as long as there are violations of the anti-doping regulations registered by Romanian weightlifters. The statement also informed that FRH intended to appeal the decision to CAS, which it eventually did.
53. In its 10 February 2022 submission, the IWF submits that said statement was geared towards the appeal to CAS more than acknowledging the issues and the need for a cultural change within the FRH. The Panel accepts that it is a perilous communication exercise for FRH to publicly state responsibility for a cultural change while exercising the legitimate right to appeal the decision. Even though these objectives are not antagonistic, the Panel will not consider the content of the press release as a breach of the condition.
54. However, the IMFSP Decision clearly stated it was for FRH "leadership" to accept "responsibility". Leadership and responsibility can only be endorsed by the highest officials of any organization (top-down approach), specifically when a cultural change is at stake. The IMFSP Decision did not recommend the FRH executive to publicly announce the enforcement of measures but recommended its leadership to endorse responsibility for a cultural change. Consequently, only the President of FRH himself, being its highest representative, could have fulfilled this condition.
55. Consequently, the Panel finds that the ninth condition is not met.

VI. Decision

In consideration of all facts and relevant regulations, the IMG decides:

1. The conditions to conditionally lift the suspension of Federatia Romana de Haltere are not met.
2. All other prayers are dismissed.

* * *

The Panel

Philippe Vladimir Boss, Chair

Francisco Lima

Sarah Shibusse

Joliva

Lausanne, 15 February 2022