

**CAS 2024/A/10831 Antani Ivanov v. Anti-Doping Centre of the Republic of Bulgaria (ADC)**

**ARBITRAL AWARD**

rendered by the

**COURT OF ARBITRATION FOR SPORT**

sitting in the following composition:

Sole Arbitrator: Mr James Drake, KC, Barrister, London, United Kingdom

**in the arbitration between**

**Antani Ivanov, Bulgaria**

Represented by Mr Georgi Gradev and Mr Márton Kiss, SILA International Lawyers, Sofia, Bulgaria

**Appellant**

**and**

**Anti-Doping Centre of the Republic of Bulgaria (ADC), Bulgaria**

Represented by Ms Violeta Zarkova, Executive Director

**Respondent**

## **I. THE PARTIES**

1. The Appellant is Mr Antani Ivanov (the “Athlete” or the “Appellant”), a swimmer of Bulgarian nationality, born in 1999. He is an experienced competitor and has competed at the national and international levels since 2019. Amongst other successes, he won a bronze medal in the 200m butterfly at the 2021 European Championships and a gold medal in the 4x100m relay at the 2021 Bulgarian Open Championships.
2. The Respondent is the Anti-Doping Centre of the Republic of Bulgaria (ADC) (“ADC” or the “Respondent”), and, pursuant to Article 3(2) of the Bulgarian Regulations on Anti-Doping Activities (the “RADA”), is the National Anti-Doping Organization for Bulgaria and “*has an exclusive competence with respect to the anti-doping activities within the territory of the Republic of Bulgaria and is independent in its operative decisions and activities*”. The RADA are based on the model rules for national anti-doping organisations developed by the World Anti-Doping Agency (“WADA”) in compliance with the World Anti-Doping Code 2021 (the “WADC”).
3. In his Statement of Appeal, the Appellant also named the Bulgarian Olympic Committee (“BOC”) as respondent. The BOC was founded in 1923 and has been recognised by the International Olympic Committee since 1924. Pursuant to Article 32(1) of the RADA, the BOC Disciplinary Committee (the “BOC DC”) makes decisions on issues related to anti-doping rule violations (“ADRV”) and determines and imposes the type and duration of sanctions for such ADRVs. The Appellant subsequently withdrew his appeal against the BOC (see below paras 30 and 91 ff).
4. The parties shall be referred to collectively as the “Parties”.

## **II. OUTLINE OF THE APPEAL**

5. This is the Athlete’s appeal to the Court of Arbitration for Sport (“CAS”) pursuant to the Code of Sports-related Arbitration (2023 edition) (the “CAS Code”) against a decision issued on 12 August 2024 by the BOC DC by which the BOC DC found that the Athlete had committed an ADRV under Article 51(1) of the RADA and imposed a period of ineligibility of two years commencing 8 June 2025 (the “Appealed Decision”).

## **III. FACTUAL BACKGROUND**

6. Set out below is a summary of the relevant facts based on the Parties’ written submissions, pleadings and evidence adduced in these proceedings and from matters of public knowledge. While the Sole Arbitrator has considered all matters put forward by the Parties, reference is made in this Award only to those matters necessary to explain the Sole Arbitrator’s decision and reasoning.
7. The Athlete was at all material times an International-Level Athlete as that term is defined in the RADA. On 2 December 2021, what was then known as the Fédération Internationale de Natation and is now known as World Aquatics, the international

federation for aquatic sports, notified the Athlete that he was included in its Registered Testing Pool starting from 2022.

**A. The Prior Proceedings**

8. On 10 October 2022, the BOC DC issued a decision by which it determined that the Athlete had committed an ADRV in breach of Article 6.1.4 of the RADA (a combination of three missed tests and/or filing failures within a period of 12 months) and imposed a two-year period of ineligibility on the Athlete (the “BOC DC 2022 Decision”). The BOC DC set *“the start date of the sanction as 10.10.22, with a period of provisional suspension from 05.05.2022 to 19.05.2022 to be deducted from this period”*. The period of ineligibility imposed by the BOC DC, with credit allowed to the time on provisional suspension, thus expired on 26 September 2024.
9. On 13 October 2022, the Athlete appealed against the BOC DC 2022 Decision to CAS, and proceedings were opened under CAS 2022/A/9198.
10. On 17 October 2022, the Athlete filed an urgent request for a stay of the BOC DC 2022 Decision and on 18 October both the ADC and the BOC indicated that they had no objection to a stay.
11. On 20 October 2022, the Deputy President of the Appeals Arbitration Division (the “Deputy Division President”) granted the request for a stay. The period of ineligibility imposed by the BOC DC 2022 Decision was therefore stayed and the Athlete was free to compete pending the determination of his appeal in CAS 2022/A/9198.
12. On 26 June 2023, the sole arbitrator in CAS 2022/A/9198 (the “Arbitrator”) issued the operative part of his award by which he dismissed the Athlete’s appeal and confirmed the BOC DC 2022 Decision. The reasoned award was issued on 15 August 2023 (the “9198 Award”). By the 9198 Award, the Arbitrator: (a) saw no reason to reduce the two-year period of ineligibility imposed by the BOC DC; and (b) saw no reason to back-date the starting date of the period of ineligibility beyond the date of the BOC DC 2022 Decision, namely 10 October 2022. The Arbitrator also gave credit for the period of provisional suspension served by the Athlete from 5-19 May 2022 (i.e., 14 days). The period of ineligibility therefore expired on 26 September 2024.
13. On 11 September 2023, WADA submitted a Request for Interpretation of the 9198 Award, which was granted by the Deputy Division President on 5 October 2023. WADA sought clarification of two matters, the first of which is not important for present purposes and the second of which concerned the fact that the Arbitrator did not address, when considering the period of ineligibility to be served by the Athlete, the fact that a stay had been granted on 20 October 2022 by which the period of ineligibility imposed by the BOC DC 2022 Decision was stayed pending the determination of his appeal. WADA sought clarification in these terms:

*“Second, the Award does not specifically recall that the period after the 20 October 2022, when the stay was ordered, until the Award was rendered should not count for the purposes of the calculation of the sanction against the Athlete. It goes without saying*

*that, given the period of Ineligibility was suspended during that period, the period of Ineligibility, which was stayed in the interim, resumed with the issuance of the dispositive Award on 26 June 2023 (subject to further stays ordered subsequently by the Federal Tribunal). Any other outcome would mean in practice that the Athlete received a credit for a period where he was eligible to compete, which would be nonsensical.”*

14. On 5 November 2023, the Arbitrator provided clarification of the 9198 Award. As to the second matter raised by WADA, he said this:

*“As regard the second element, it is my opinion that the period after 20 October 2022, when the stay of the Appealed Decision was ordered, until the operative part of the Award was rendered (26 June 2023) shall not count for the purposes of the calculation of the two-year period of ineligibility. Any other interpretation would be illogical in so far as it would give the Athlete a credit for a period where he was eligible to compete.*

*However, I respectfully note that this issue (i.e., whether the period during which the Appealed Decision was stayed should/ should not count for [sic] purpose of the calculation of the period of Ineligibility) has never been raised or discussed by the Parties during the proceedings. Accordingly, I imagine that the Parties could put forward different legal arguments in one sense and the other. In other words, it is my view that the requested interpretation involves a question of law not discussed by the Parties during the proceedings and on which I was not asked to make a decision.”*

15. On 28 June 2023, the Athlete appealed against the 9198 Award to the Swiss Federal Tribunal (“SFT”). There was no appeal or cross-appeal by WADA. In the context of that appeal, on the application of the Athlete the SFT ordered two stays of the sanction, from 29 June to 2 July 2023 and from 18 to 20 August 2023, adding up to a further seven days.
16. On 1 March 2024, the SFT dismissed the Athlete’s appeal.

## **B. The Lion Heart Triathlon**

17. On 2 September 2023, during the period of ineligibility imposed by dint of the prior proceedings, the Athlete participated in an ultra-cross triathlon in Primorsko, Bulgaria (the “Lion Heart Triathlon”), organised by the Bulgarian triathlon club, the Lion Heart Sports Club (the “Lion Heart Sports Club”), which club is a member of the Bulgarian Triathlon Association (“BTA”) which, in turn, is a member of World Triathlon (“World Triathlon”), which is a signatory to the WADC. The Athlete posted information about his participation on social media on the same and following days.
18. On 4 September 2023, Ms Galeva, the ADC’s Chief Expert of the Anti-Doping Programs, opened an investigation into the Athlete’s participation in the Lion Heart Triathlon with a view to determining whether or not the Athlete had violated Article 51(1) of the RADA. Pursuant to that investigation, the ADC sought information from the Lion Heart Sports Club and the BTA.

19. On 6 September 2023, the Lion Heart Sports Club informed the ADC as follows: (a) it was a sports club and a member of the BTA; (b) the events of the Lion Heart Sports Club are financed by participation fees and the support of sponsors and partners and it receives no state funding; the prizes *“for the winners are entirely material and in the form of vouchers provided by our sponsors and partners”*; (c) its *“competitions are amateur events. Any athlete who is 18 years old has the right to participate after registering and paying the entry fee”*; and (d) its competitions are amateur, not listed in the official competition calendar of the BTA, and they do not award points for rankings either nationally or internationally.
20. On 8 September 2023, the BTA replied to the ADC with the following: (a) the competition organized by the Lion Heart Sports Club is an amateur cross-triathlon event and is not part of the BTA calendar; (b) the event *“is entirely focused on mass participation – an open sports event for every Bulgarian citizen over the age of 18”*; and (c) the results of the competition are not recognized by any institution and are not part of the national or international ranking lists, and the competition does not have a points system.
21. Also on 8 September 2023, the ADC wrote to WADA asking its *“opinion”* with respect to a *“potential violation”* of the prohibition against participation by the Athlete in the Lion Heart Triathlon. The letter was in these terms:

*“We would like kindly to ask for your opinion on a matter for a potential violation under Code Art. 10.14.1, especially because the matter involves [the Athlete].*

*After a post in the social media networks, we started an investigation of a potential violation of the Prohibition against participation during a period of Ineligibility of the athlete by participation in the competition ‘Lion Heart’. Please, find enclosed a report on the matter, as well as correspondences with [the BTA] and the [Lion Heart Sports Club].*

*According to the information received by both organizations, the competition ‘Lion Heart’ in which [the Athlete] had taken part is an amateur one, not financed by the government and not included in a competition calendar, but organized by a sport club [...] member of the [BTA]. Any Bulgarian citizen over 18 years-old is eligible to participate in it without any need to be registered in a sport club or organization, only by paying entry fee.*

*According to you, in the abovementioned circumstances is there a violation of the Art. 10.14.1 or not. We would be grateful to receive your opinion on the matter.”*

22. On 15 September 2023, WADA responded as follows:

*“[...] We have reviewed your request below and based on the information available to us (see attached), the Athlete seems to have violated the prohibition against participation during ineligibility described in Code article 10 14.3, by participating in an activity (a triathlon event called ‘Lion Heart’) organized by a member organization*

*[the Lion Heart Sports Club] of a Signatory's member organization [the BTA] which apparently fall under your jurisdiction.*

*If this is the case, the [ADC] would be required, under Code article 10.14.3, to initiate disciplinary proceedings against the athlete, notifying him of the alleged violation of the prohibition described in Code article 10.14.1, reviewing any explanations he may submit and, ultimately taking a reasoned decision (see the combination of ISRM articles 11 and 5). [...]"*

23. On 14 November 2023, the ADC sent to the Athlete a notification of a potential ADRV by reason of his participation in the Lion Heart Triathlon.

24. On 24 November 2023, the Athlete (via counsel) responded. A number of points were made to the effect that the ADC was biased and incompetent and as to the merits said this:

*"Lastly, I wish to state clearly and emphasize that Antani Ivanov is disqualified from competing by virtue of the decision of the CAS. Pursuant to Article 69 para. 5, 'The athlete shall compete only on behalf of the club wherewith he/she has been registered.' Antani Ivanov is not registered with the BAT, has not competed on behalf of the club you name, and, therefore, has not breached the prohibition on exercising competition rights. His participation was purely amateur, for pleasure and good health, without incurring any competition rights, and therefore not subject to the scrutiny of the ADC and the rules of WADA. The burden is on the ADC to prove that Antani Ivanov participated as a registered competitor with competition rights in the said event. It is the act of registration that creates competition rights for the athlete under the Physical Education and Sports Act. Such did not arise in this case! Everyone has the right to play sports for their health without being registered with a sports federation. Please contact BAT and check if Antani Ivanov has an official registration with them for the specific event. Once you have established that Antani does not have a registration with BAT and, therefore, no competitive rights have accrued to him in the event in question, i.e., he has not breached the ban on exercising competitive rights, I urge you to end this witch hunt immediately."*

25. On 28 March 2024, the ADC issued to the Athlete a "Notice of Charge under the Regulations on Anti-Doping Activities and the Result Management Procedure of the Antidoping Center" (the "Notice of Charge") stating, *inter alia*, that the ADC was of the opinion that:

- a. the Athlete had *"committed an ADRV by violating the prohibition under Art. 51, para. 1 of the RADA for participation in competition during a period of ineligibility"*; and
- b. the Athlete was offering *"sports-pedagogical services, including for professional athletes, which violates the ineligibility period imposed on you according to Article 51 of the RADA and Article 10.14.1 of the Code"*.

26. On 17 April 2024, the Athlete (via counsel) responded to the Notice of Charge with his “Objection”. In relevant part, the stated grounds for objection were as follows:
- a. As to the Lion Heart Triathlon: The Athlete is not a registered athlete with the BTA, and therefore, he did not possess competitive rights during his participation in the Lion Heart Triathlon. The Lion Heart Triathlon *“is open to participation by all citizens who wish to take part by completing the registration form and the necessary documents. For this reason, professional athletes, ordinary sports enthusiasts, and those interested in a healthy lifestyle can participate in this event. This is exactly what my client did, participating in the event purely for enjoyment and maintaining his sports fitness.”*
  - b. As to the provision of sports-pedagogical services: *“The reference to a website (which does not currently exist and cannot be verified for the exact services offered) is not valid evidence for holding my client responsible. The notification of charges sent to us does not specify how a violation of Article 51 of the ADR is established, nor is any evidence provided for the alleged violation. It is a well-known fact that various services, lessons, or advice can be offered on the mentioned website. My client has every right to offer any services on the site, which could include guidance on a healthy lifestyle, nutritional planning, graphic design, or even translation services. Simply pointing to a link from a non-existent profile does not prove a violation of the imposed ban, and the ADC has not sufficiently proven the alleged violation of Article 51 of the ADR.”*
27. On 15 May 2024, the ADC referred the matter to the BOC DC stating, amongst other things, that the ADC had determined that the Athlete’s *“participation in the ‘Lion Heart’ competition on September 2, 2022, organized and conducted by ‘Lion Heart’ Ltd, constitutes a violation of the prohibition under Article 51 paragraph 1 of the RADA and Article 10.14.1 of the [WADA] Code”*.
28. On 12 August 2024, the BOC DC issued its decision No. 2/2024 in case No. 2/114/2024 by which it found that the Athlete had committed a violation pursuant to Article 51 (1) of the RADA *“having participated in a sports competition on 02.09.2023, organized by SC ‘Lion Heart’, a member of the Bulgarian Triathlon Association, an official member of the World Triathlon”* and imposed on the Athlete a *“deprivation of rights for a period of two (2) years”*. This is the Appealed Decision. In the Appealed Decision, the BOC DC took the view that the Athlete had violated Article 51(1) of the RADA by participating in the Lion Heart Triathlon, which was a competition and an activity pursuant to the language of that article. The BOC DC did not address the charge against the Athlete by reason of his offering sports-pedagogical services.

#### **IV. PROCEEDINGS BEFORE THE CAS**

29. On 29 August 2024, in accordance with Articles R47 and R48 of the CAS Code, the Athlete filed his Statement of Appeal against the Appealed Decision with the CAS Court Office against both the ADC and the BOC. In his Statement of Appeal, the Athlete

requested the CAS Court Office to accelerate the procedure and to appoint a sole arbitrator capable of rendering a final award by 8 June 2025.

30. On 9 September 2024, the Athlete informed the CAS Court Office that he “*wishes unilaterally to withdraw the appeal against BOC. Given the stage of the proceedings, BOC’s consent is NOT required (art 65. CPC)*”.
31. On 12 September 2024 (in letters to the CAS Court Office):
  - a. The ADC stated that it considered that there was no reason to exclude the BOC from the procedure and that “*the subject of the appeal is precisely the decision of the DC with BOC, and a procedure without the presence of the body that issued it would be extremely incomplete*” and would deprive the BOC “*of the opportunity to protect the document they created*”.
  - b. The BOC formally objected to the withdrawal of the appeal against it. It said, amongst other things, that “*the BOC is a mandatory respondent. It is the decision of the BOC Disciplinary Committee that is being appealed so the BOC has a direct interest in upholding the decision of the Committee*”.
32. On 13 September 2024, the CAS Court Office informed the Parties that it would be for the Sole Arbitrator, once constituted, to rule on the withdrawal of the Athlete’s appeal against the BOC.
33. On 4 October 2024, in accordance with Article R51 of the CAS Code, the Athlete filed his Appeal Brief against (only) the ADC with the CAS Court Office. The Athlete reiterated that he had withdrawn the appeal against the BOC.
34. On 7 October 2024:
  - a. The CAS Court Office acknowledged receipt of the Appeal Brief and informed the ADC and the BOC that it was available on the CAS e-Filing platform.
  - b. The Athlete requested the CAS Court Office to retract its message to the BOC on the basis that the appeal had been withdrawn against it and that it should not therefore have access to the Appeal Brief.
  - c. The CAS Court Office advised the Athlete that the BOC was a party to the proceedings and was therefore entitled to receive all correspondence and submissions, and that it will be a matter for the Sole Arbitrator, once constituted, to rule on the withdrawal of the Athlete’s appeal against the BOC.
35. On 6 November 2024, in accordance with Article R55 of the CAS Code, the ADC filed its Answer and the BOC filed its Answer.
36. On 16 January 2025, the CAS Court Office informed the Parties of the appointment of James Drake KC as the Sole Arbitrator in this appeal.



37. On 30 January 2025, the Sole Arbitrator held a case management conference (“CMC”) in order to discuss the manner and timing of the hearing. At the CMC, the Athlete sought a direction that the question of the efficacy of the withdrawal of the appeal against the BOC should be bifurcated. The Sole Arbitrator expressed the concern that if that were to happen there was a risk that the final Award would not be available prior to 5 June 2025, that being the date by which the Athlete required the Award. In those circumstances, it was agreed by the Parties, the Athlete included, that the question of the withdrawal would be dealt with at the final hearing on the merits and addressed in the Award.
38. On 18 February 2025, the Appellant signed and returned the Order of Procedure.
39. On 24 and 25 February 2025, the BOC and the ADC (respectively) signed and returned the Order of Procedure.
40. On 3 April 2025, an oral hearing took place (remotely) in which hearing the following people participated:
  - a. The Sole Arbitrator
  - b. For the Athlete:
    - i. Mr Georgi Gradev, Counsel
    - ii. Mr Márton Kiss, Counsel
    - iii. Mr Yavor Petkov, Trainee Counsel
    - iv. Mr Kaloyan Stefanov, Trainee Counsel
    - v. Ms Desislava Gegovska, Trainee Counsel
    - vi. Mr Antani Ivanov, the Athlete
  - c. For the ADC:
    - i. Ms Sylvia Mindova, Secretary General
    - ii. Ms Lyuba Bitrakova, Chief Expert
  - d. For the BOC:
    - i. Mr Ivan Yankov, Counsel
    - ii. Ms Radina Vakrilova, Counsel
  - e. For the CAS:
    - i. Ms Delphine Deschenaux-Rochat, CAS Counsel

41. At the outset of the hearing, the Parties confirmed that they had no objection to the jurisdiction of CAS in this appeal and no objection to the Sole Arbitrator.
42. At the close of the hearing, the Parties confirmed that they had a full and fair opportunity to present their respective cases before the Sole Arbitrator.

## **V. THE SUBMISSIONS OF THE PARTIES**

43. The Sole Arbitrator has carefully considered the Parties' submissions and sets out below the essential nature of the principal submissions advanced by the Parties. By reason of the decision below as to the effective withdrawal of the appeal against the BOC, the submissions made by the BOC are left out of this account.

### **A. The Athlete's Submissions**

#### *a. Jurisdiction*

44. The CAS has jurisdiction to hear this appeal pursuant to Article 40.4 of the RADA which provides that "*In cases arising from participation in an International Event or in cases involving International-Level Athletes, the decision may be appealed exclusively to CAS*".

45. The Athlete is an International-Level Athlete and as such is entitled to bring this appeal to CAS.

#### *b. Admissibility*

46. The time limit to file the appeal is governed by Article 40.8.2 of the RADA which sets a time limit of 21 days from the date of the receipt of the decision to appeal to CAS. The Athlete received the Appealed Decision on 27 August 2024 and filed his Statement of Appeal on 29 August 2024, in time.

#### *c. Applicable Law*

47. Pursuant to Article R58 of the CAS Code, the Sole Arbitrator "*shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties*".
48. The "*applicable regulations*" are the RADA because the appeal "*is directed against a decision issued by the BOC DC in their application thereof*". Further, the World Anti-Doping Program is formed of three levels: (i) the WADC, (ii) the WADA International Standards (including in particular the International Standard for Testing and Investigations ("ISTI") and the International Standard for Results Management ("ISRM"), and (iii) the WADA Guidelines.
49. The Sole Arbitrator should therefore adjudicate this dispute applying the RADA primarily and the WADC, the ISRM, the ISTI, the WADA Guidelines subsidiarily, and to the extent that there are any gaps to Bulgarian law.

*d. The ADC is Biased Against the Athlete*

50. By way of context, the ADC is biased against the Athlete and the ADC representatives “*were not independent and qualified to conduct the proceedings*” by reason of the following matters:
- a. The Athlete (and his counsel) are in “*deep and constant conflict*” with the ADC “*which we deem heavily biased and totally incompetent*”. The ADC representatives were asked to recuse themselves but declined; this “*speaks for itself*”.
  - b. The ADC representatives are “*abusing their right to test the Appellant by subjecting him to unnecessary doping tests*”; and on the occasion of the Athlete’s whereabouts failures, they “*wrongly determined*” the charge as a missed test.
  - c. The ADC representatives wrote to WADA asking for its opinion on the alleged violation saying “*especially because the matter involves the athlete Antani Ivanov*”.
  - d. The Athlete is the victim of a witch hunt.

*e. The Violation of Article 51(1) of the RADA*

51. At the heart of this matter is what conduct is prohibited by Article 51(1) of the RADA and whether the Athlete has violated the terms of his ineligibility under the BOC DC 2022 Decision and confirmed in the 9198 Award.
52. Article 37(1) of the RADA imposes the burden of proving an ADRV on the ADC to the comfortable satisfaction standard. The ADC must therefore prove, to the Sole Arbitrator’s comfortable satisfaction, that there has been a violation of Article 51(1) of the RADA.
53. Article 51(1) contains two separate prohibitions: one in relation to competitions, the other in relation to activities. The Lion Heart Triathlon is not a “competition” under Article 51(1) of the RADA, for the following reasons:
- a. The ADC did not seek to and the BOC DC did not disqualify the results of the Athlete’s participation in the Lion Heart Triathlon because there were no results to be disqualified.
  - b. The Athlete did not use the Lion Heart Sports Club’s facilities for his participation in the Lion Heart Triathlon.
  - c. There is a carve out from the broad and unspecified language of Article 51(1) of the RADA which allows the Athlete to swim in an amateur event, open for participation by every Bulgarian citizen over 18 years of age without a prior registration with a sports club or federation by paying an entry fee, not financed by the government and not included in an official competition calendar of a

national or international sports federation, not awarding points for rankings either nationally or internationally, not registering any official results, where the sole goal of the participants was not trying to win a prize but mass participation and charity.

54. The ADC has never charged the Athlete for violating the prohibition in Article 51(1) of the RADA for participating in an activity and although the BOC DC in the Appealed Decision considered that the Athlete had violated the prohibition against participating in an activity, the issue of whether or not the Lion Heart Triathlon amounts to an activity is outside the scope of the present appeal and cannot be reviewed by the Sole Arbitrator.
55. Notwithstanding that, the Lion Heart Triathlon is not an activity under Article 51(1) of the RADA. The Lion Heart Triathlon was not a training camp, exhibition, or practice. The Athlete did not perform any administrative activities. The Athlete was not coaching, training, working with, treating, or assisting Persons, Athletes or Athlete Support Personnel to participate in or prepare for the Lion Heart Triathlon.
56. Given that the ADC has failed to establish that the Lion Heart Triathlon qualifies as a “competition”, the charge is unproven and the ADC failed to discharge its burden to the required standard.

*f. Consequences*

57. In the event that the Sole Arbitrator finds “*that an ADRV has been proven*” then the consequences are set forth in Article 53(1) of the RADA.
58. According to CAS 2013/A/3327, 3335, in a case with a period of ineligibility of 0-24 months, the panel calibrated significant fault as follows: significant – 16-24 months; normal – 8-16 months; light – 0-8 months.
59. In this case, the Lion Heart Triathlon is focussed on mass participation and some of the money raised goes to charity. The Athlete’s participation was therefore not related to training, practice, or competing in order to somehow circumvent the period of ineligibility previously imposed on him. The sanction should be reduced from two years to 0-4 months on the basis that the Athlete’s degree of fault “*is at the low end of the spectrum*”.
60. The other circumstances of the case also require a significant reduction of the sanction “*on the grounds of fairness*”.
  - a. The ADC withheld its report of 4 September 2023 and its correspondence with the Lion Heart Sports Club and BTA.
  - b. The ADC did not charge the Athlete for almost two months after receiving WADA’s 15 September 2023 reply, waiting until 13 November 2023 to notify the Athlete.

- c. The ADC did not respond to the Athlete's counsel's letter dated 23 November 2023 asking the ADC to contact BTA to see if the Athlete had "*an official registration with them for the specific event*".
  - d. Only on 15 May 2024 did the ADC file its report with the BOC DC against the Athlete alleging that the Athlete's participation in the Lion Heart' Triathlon constituted a violation of the prohibition under Article 51(1) of the RADA, an inexplicable delay of six months.
61. As to the date on which the ineligibility period should start, Article 50(1) states that "*Where an Athlete is already serving a period of Ineligibility for an anti-doping rule violation, any new period of Ineligibility shall commence on the first day after the current period of Ineligibility has been served. [...]*". This is a mandatory rule.
62. The BOC DC 2022 Decision set the start date at 10 October 2022 with credit for the period of provisional suspension from 5 May 2022 to 19 May 2022, which was confirmed by the Arbitrator in the 9198 Award. The Appealed Decision erroneously says that the penalty imposed on the Athlete in the BOC DC 2022 Decision "*has an expiry date*" of 8 June 2025.
63. Hence, the Athlete served a two-year period of ineligibility from 10 October 2022 with a period of provisional suspension from 5 May 2022 to 19 May 2022 to be deducted from this period, which period expired on 26 September 2024. It makes no sense to impose a new period of ineligibility nearly nine months after the previous one has expired, and that would be contrary to Article 50(1) of the RADA in any event. Consequently, the new period of ineligibility should commence on 27 September 2024.
- g. *Relief*
64. The Athlete, by his Appeal Brief, sought the following relief:
- "118. On these grounds, the Appellant hereby requests that the Sole Arbitrator:*
- Primarily**
- a. *Annul the Appealed Decision.*
  - b. *Determine that the Appellant did not violate Article 51.1 of the RADA.*
- Subsidiarily, only if the above is rejected**
- c. *Revise the Appealed Decision so that the period of ineligibility is replaced with a reprimand.*
- More subsidiarily, only if the above is rejected**
- d. *Revise the Appealed Decision so that the period of ineligibility is reduced between zero and eight months (preferably up to four months), and the commencing date is amended to September 27, 2024.*

**In any event**

- e. *Order the Respondent to bear all costs incurred with the present procedure.*
- f. *Order the Respondent to bear all the costs of the proceeding before CAS.*
- g. *Order the Respondent to pay the Appellant a contribution towards his legal and other costs in an amount to be determined at the Sole Arbitrator's discretion."*

**B. The ADC's Submissions**

a. *Jurisdiction*

65. The ADC does not challenge jurisdiction.

b. *Admissibility*

66. The ADC does not challenge admissibility.

c. *Applicable Law*

67. The ADC considers that the WADC "*should be applied therewithal RADA*" and that, should there be any incompleteness or translation errors in the RADA, the WADC should be consulted in accordance with Article 2 of the RADA.

d. *The Violation of Article 51(1) of the RADA*

68. The Athlete's separation of Article 51(1) of the RADA into two separate prohibitions, one for a competition and the other for an activity, is baseless. Article 51(1) is clear and explicit and it lists the necessary elements of the violation.

69. The ADC has established that there has been an ADRV. A thorough investigation was conducted, and the ADC had no hesitation in classifying the Lion Heart Triathlon as a competition or activity under Article 51(1) of the RADA. This is supported by the description of the Lion Heart Triathlon on the Lion Heart Sports Club's website as follows:

*"LION HEART is a competition setting out to look for the unlimited human potential through the natural wealth of Strandzha and the cultural heritage of Primorsko. This exceptional challenge provokes us to believe in our super powers and to overcome our own limits. Inspired by the great tales of Strandzha's heroes and the epic past of this sacred region we invite everyone who is ready to join us against 3 km swimming in the sea, 96 km mountain biking and 21 km trail running. Embrace the competition to see if you shall find your lion heart too."*

70. The text of Article 51(1) of the RADA is unconditional and states that athletes are not allowed to participate in any initiative under the described conditions and it is unclear why the Athlete decided that he was allowed to participate in an amateur competition.

There is no lack of clarity or specificity. The provisions of Article 51(1) have existed for a long time and should be well known to the Athlete.

71. The ADC has proved beyond doubt that the Athlete has violated the prohibition under Article 51(1) of the RADA.

*e. Consequences*

72. There are no grounds to reduce the sanction.

73. The provisions relating to No (Significant) Fault do not apply in this case. In circumstances where the Athlete has challenged the underlying decision at every stage, and would have had the consequences made clear to him, it is unrealistic for the Athlete to seek a reduction of the additional punishment due to be imposed for breaking the rules while serving the original sanction. Of what was he ignorant – that he was serving a sanction?; that there is an additional sanction in the RADA for violating the existing sanction?

74. The Athlete deliberately participated in the Lion Heart Triathlon with the knowledge that he had been sanctioned and was ineligible to compete. The fact that he considered the situation in advance and decided that he could compete because he was not listed to the club shows in itself that his participation was deliberate and calculated. The Athlete also participated in the relay race, thereby creating a prerequisite for punishing other athletes. That shows that the Athlete does not care whether his conduct will cause harm to others.

75. It is to be noted that a condition for participating in the Lion Heart Triathlon is the signing of a template contract which states that “*Upon signing this Agreement, the Participant expressly acknowledges that the Anti Doping provisions of the World Triathlon Corporation (WTC), in their respectively valid version are binding on him*”. These rules reproduce verbatim Articles 51(1) and 51(3) of the RADA (and Articles 10.14.1 and 10.14.3 of the WADC). In order to participate in the Lion Heart Triathlon, the Athlete was aware that the contract, under WTC rules, restrained him from participating.

76. In the information posted by the Athlete after the Lion Heart Triathlon, he said: “*How was it? I went to bed, slept, came and beat them; History will repeat itself for a long time; thanks to the organizers for the great competition, they organized. I will be back to participate again!*”. This shows that he has made sure that he told everyone that he won and that he himself called the Lion Heart Triathlon a competition.

77. In all, there are no grounds to reduce the sanction; in this particular case even the longest period of ineligibility is not sufficient for what the Athlete did.

*f. Relief*

78. The ADC, by its Answer, sought the following relief:

*“On these grounds, the ADC hereby respectfully requests that:*

- (a) *The Appellant presents Lion Heart's Participation Contract and Waiver of Liability signed by the Appellant.*
- (b) *ADC be awarded all costs incurred by the AC in this proceeding (if any).*
- (c) *The CAS to rule explicitly on the issue of the end and start date of the new period of ineligibility.*

*ADC considers decision 2/2024 issued on 12.08.2024 by the DC with BOC to be correct, lawful and made after taking into account all the evidence presented to the Commission by the parties. There are no grounds for its complete or partial annulment."*

## **VI. JURISDICTION**

79. Article R47.1 of the CAS Code provides as follows:

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

80. In this case, Article 40.4 of the RADA provides as follows: *"In cases arising from participation in an International Event or in cases involving International-Level Athletes, the decision may be appealed exclusively to CAS"*. It is common ground that the Athlete is an International-Level Athlete.
81. The ADC does not dispute the jurisdiction of the CAS and confirmed it by signing the Order of Procedure.
82. It follows that the CAS has jurisdiction to decide the appeal, and the Sole Arbitrator so confirms.

## **VII. ADMISSIBILITY**

83. Article R49 of the CAS Code provides as follows:

*"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document."*

84. According to Article 40.8.2 of the RADA, *"the deadline for appeal before CAS shall be 21 days from the date of receipt of the decision by the appealing party"*.



- 85. The Athlete received the Appealed Decision on 27 August 2024, such that the 21-day appeal period expired on 17 September 2024. The Athlete submitted his Statement of Appeal on 29 August 2024, within the 21-day period.
- 86. The ADC takes no issue with respect to the admissibility of the appeal.
- 87. In the circumstances, the Sole Arbitrator confirms that the appeal is admissible.

### VIII. APPLICABLE LAW

- 88. Article R58 of the CAS Code provides as follows:

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

- 89. It is common ground that the applicable regulations in these appeals are the RADA. It is also to be noted that the RADA provides that in the event of any conflict between the RADA and the WADC then the latter is to prevail, and that the WADC is to be interpreted according to the following rules:

*“§ 2. At incompleteness or discrepancy of the Regulations with the World Anti-doping Code, the provisions of the World Anti-doping Code prevail, observing the following rules for its interpretation:*

- 1. In the event of any conflict between the English and French versions, in which the Code is published, the English version shall prevail.*
- 2. The comments annotating various provisions of the Code shall be used to interpret the Code.*
- 3. The Code shall be interpreted as an independent and autonomous text and not by reference to the existing law or statutes of the Signatories or governments.*
- 4. The headings of the Parts and the Articles of the Code shall not be deemed part of the substance of the Code provisions.*

*[...]*

- 7. The Purpose, Scope and Organization of the World Anti-Doping Program, the Code and Appendix 1, the definitions, shall be considered integral parts of the Code.” (RADA Additional provisions, § 2)*

90. The Sole Arbitrator will therefore adjudge the merits of the present dispute primarily according to the RADA as informed and supplemented by the WADC, and subsidiarily to the laws of Bulgaria, that being the country in which the ADC is domiciled.

#### **IX. THE WITHDRAWAL OF THE APPEAL**

91. As noted above, a preliminary question arises relating to the withdrawal by the Athlete of his appeal against the BOC. The question is a procedural question within the meaning of Article 182 of Swiss Private International Law Act (“PILA”), see CAS 2018/A/5560 & CAS 2018/A/5650 at para. 134.
92. By way of reminder, the Athlete commenced his appeal by filing his Statement of Appeal with the CAS Court Office on 29 August 2024 naming the ADC as the First Respondent and the BOC as the Second Respondent and then, on 9 September 2024, the Athlete informed the CAS Court Office that he wished unilaterally to withdraw the appeal against BOC and that, given the stage of the proceedings, the BOC’s consent was not required, as to which the Athlete invoked Article 65 of the Swiss Civil Procedure Code (the “Swiss CPC”).
93. Also by way of reminder, on 12 September 2024 both the ADC and the BOC objected to the unilateral withdrawal of the appeal against the BOC.
- a. The ADC stated that it considered that there was no reason to exclude the BOC from the procedure and that *“the subject of the appeal is precisely the decision of the DC with BOC, and a procedure without the presence of the body that issued it would be extremely incomplete”* and would deprive the BOC *“of the opportunity to protect the document they created”*.
  - b. The BOC formally objected to the withdrawal of the appeal against it. It said, amongst other things, that *“the BOC is a mandatory respondent. It is the decision of the BOC Disciplinary Committee that is being appealed so the BOC has a direct interest in upholding the decision of the Committee”*.
94. The CAS Court Office directed that this issue was to be determined by the Sole Arbitrator and at CMC hearing it was agreed by the Parties and directed by the Sole Arbitrator that the issue would be considered at the hearing on the merits and considered and determined in the final Award. The Parties therefore made submissions in this respect at the hearing, which may be summarised as set forth below.
95. The Athlete contends that he has effectively withdrawn his appeal against the BOC, and that he does not need the consent of the BOC to do so. The BOC (and the ADC for that matter) argue that the Athlete is not free to withdraw his appeal against the BOC in the absence of the BOC’s consent, which it does not give. It is said further that the BOC has standing to be sued and is a proper respondent to these proceedings.
96. As to the latter issue, standing, the Sole Arbitrator disagrees. For all the reasons expressed in CAS 2022/A/9241, the BOC (in fact the BOC DC) is merely the decision

maker at first instance according to the Bulgarian anti-doping structure and its decisions are attributable to the ADC – and ADC is the proper respondent with standing to be sued.

97. As to the former issue, the CAS Code does not address the particular situation of the withdrawal of an appeal before CAS but clearly indicates until when an appeal may be amended or withdrawn. It therefore falls, pursuant to Article 182 of the PILA, to the Sole Arbitrator to determine and apply appropriate arbitral procedures ensuring, of course, that the parties are treated equally and their rights to be heard are respected. This is what was said by the panel in CAS 2020/A/7252:

*“84. In this regard, the Panel considers the question under which condition an appeal may be withdrawn before CAS is a procedural question within the meaning of Article 182 of Switzerland’s Private International Law Act (the “PILA”), which provides as follows:*

- ‘1. The parties may, directly or by reference to rules of arbitration, determine the arbitral procedure; they may also submit the arbitral procedure to a procedural law of their choice.*
- 2. If the parties have not determined the procedure, the arbitral tribunal shall determine it to the extent necessary, either directly or by reference to a statute or to rules of arbitration.*
- 3. Regardless of the procedure chosen, the arbitral tribunal shall ensure equal treatment of the parties and the right of the parties to be heard in adversarial proceedings.’*

*85. The CAS Code does not contain any provision on the withdrawal of an appeal or a claim before CAS. Accordingly, in line with Article 182(2) PILA, the Panel shall apply the appropriate provisions and principles either directly or by reference to a law or rules of arbitration.*

*86. If and to what extent a respondent must consent to a withdrawal of a matter in dispute by the appellant is disputed. Daugavpils relies on Swiss legal literature which, in principle, draws an important distinction when it comes to the withdrawal of a claim before an arbitral tribunal. According thereto a unilateral withdrawal of a claim in arbitration is only possible until the claimant has filed its full statement of claim with the arbitral tribunal (BERGER/KELLERHALS, International and Domestic Arbitration in Switzerland, 3rd ed., 2015, no. 1559). Thereafter, a withdrawal of the claim is only possible with the consent of the opposing party (WIRTH/MAGLIANA in: GROLIMUND/LOACKER/SCHNYDER (Eds.), Basler Kommentar – Internationales Privatrecht, 4th ed. 2020, Art 189, no. 62).”*

98. The Swiss CPC provides in relevant part as follows:

*“Title 4, Pendency and Effects of Withdrawal of Action.*

*Art. 62 Start of pendency*

1. *A case becomes pending when an application for conciliation, an action, an application, or a joint request for divorce is filed.*
2. *Confirmation of receipt of such submissions shall be issued to the parties.*

*[...]*

*Art. 64 Effects of pendency*

1. *The pendency of an action has in particular the following effects:*
  - a. *the subject matter of the dispute may not be made pending elsewhere between the same parties; and*
  - b. *the territorial jurisdiction of the court is maintained.*

*[...]*

*Art. 65 Effects of withdrawal*

*Any person who withdraws an action before the competent court may not bring proceedings again against the same party on the same subject matter if the court has already served the statement of claim on the defendant and the defendant does not consent to its withdrawal.”*

99. It follows that, where party A has initiated (by filing) a claim against party B, and A withdraws the claim, then:
  - a. if the claim has not been served on B, A may bring a second action on the same subject matter against B; and
  - b. if the claim has been served on B, A may bring a second action on the same subject matter against B if B consents to the withdrawal of the first claim.
100. That is the purport and effect of Article 65 of the Swiss CPC: see CAS 2019/A/6144 & CAS 2019/A/6145 at para.130: “*The plain text of the aforementioned CPC provision indicates that, in order, for a claim [...] to be withdrawn without prejudice, either (a) the withdrawal is exercised before the claim is served [...] or (b) after the claim is served to the other party the latter should consent to the withdrawal [...].*”.
101. There is a nice question as to whether, in this context, a claim for the purposes of an appeal to CAS is to be regarded as the Statement of Appeal or the Appeal Brief. The CAS jurisprudence appears to favour the latter: see the reference to “*full statement of claim*” in CAS 2018/A/5560 & CAS 2018/A/5650 at para. 134; and, more clearly, the reference to “*appeal brief*” in CAS 2015/A/3959 at para. 111:

*“Whether there is a waiver or a simple withdrawal does not depend upon how the decision in question is named (award, termination order, etc.). Instead, the effects depend on the applicable arbitration rules. If the latter provide that no unilateral withdrawal is possible without renouncing to the matter in dispute altogether, the decision that puts an end to the proceeding also finally disposes of the claim and, thus, has res judicata effect. In the case at hand the CAS Code does not provide for any specific rules in that respect. However, it is constant practice with CAS (and most other arbitral institutions, see BSK-IPRG/WIRTH, 3rd ed. 2013, Article 189 No. 55; COURVOISIER, in ARROYO (Ed), Arbitration in Switzerland, Biggleswade 2013, Article 34 Swiss Rules No. 22) that a claimant/appellant can unilaterally withdraw his appeal/request for arbitration before an appeal brief / statement of claim has been filed without renouncing his claim altogether. [...]”*

102. There is much to be said in favour of proceeding on the basis that the Appeal Brief is the relevant ‘claim’ for these purposes (in the context of CAS appeals) because it is then and only then that an appellant articulates their claim against the respondent(s) in full. This is supported by: (a) Article R56(1) of the CAS Code which provides that an appellant’s prayers for relief set forth in the Statement of Appeal may be amended in the Appeal Brief (i.e. no later than the deadline for the filing of the Appeal Brief); and (b) Article R51 of the CAS Code which provides that an appeal is deemed withdrawn if an appellant fails to file an Appeal Brief, which means *a fortiori* that the possibility to withdraw an appeal exists until the time limit for the filing of the Appeal Brief has elapsed. In any event, the Athlete, as confirmed to the Sole Arbitrator at the oral hearing, has withdrawn his appeal against the BOC with prejudice. That is, he is not seeking to reserve to himself the right to bring a second appeal on the same subject matter against the BOC. Accordingly, Article 65 of the CPC is not engaged and the Athlete was free to withdraw his appeal against the BOC when he did, with or without the consent of the BOC (still less the ADC). The Athlete withdrew his appeal on 7 September 2024 (in an email to the CAS Court Office), filed his Appeal Brief against the ADC on 4 October 2024, and did not file an Appeal Brief against the BOC. In the circumstances, the Sole Arbitrator concludes that the Athlete validly withdrew his appeal against the BOC and that the BOC is therefore no longer a respondent in the present procedure.

## **X. THE MERITS**

103. The Panel turns to the merits. There are two issues to be determined on the merits: (a) did the Athlete breach Article 51(1) of the RADA; and (b) if yes, what consequences should follow? It is to be noted, at the outset, that while the Notice of Charge referred to two matters as constituting a violation of Article 51(1) of the RADA, namely the participation by the Athlete in the Lion Heart Triathlon and the provision of “*sports-pedagogical services*”, the BOC DC did not consider the latter and that alleged violation forms no part of the Appealed Decision or this appeal.

### **A. The Legal Framework**

104. The Athlete has been charged with the violation of Article 51 of the RADA. It provides as follows:

“Article 51.

- (1) *[...] No Athlete [...] who has been declared Ineligible [...] may, during a period of Ineligibility or Provisional Suspension, participate in any capacity in a Competition or activity (other than authorized anti-doping Education or rehabilitation programs) authorized or organized by any Signatory, Signatory's member organization, or a club or other member organization of a Signatory's member organization, or in Competitions authorized or organized by any professional league or any international- or national-level Event organization or any elite or national-level sporting activity, funded by a governmental agency.*
- (2) *An Athlete or other Person subject to a period of Ineligibility longer than four (4) years may, after completing four (4) years of the period of Ineligibility, participate as an Athlete in local sport events not sanctioned or otherwise under the authority of a Code Signatory or member of a Code Signatory, but only so long as the local sport event is not at a level that could otherwise qualify such Athlete or other Person directly or indirectly to compete in (or accumulate points toward) a national championship or International Event, and does not involve the Athlete or other Person working in any capacity with Protected Persons.*
- (3) *An Athlete or other Person subject to a period of Ineligibility shall remain subject to Testing and any requirement by the Antidoping Centre to provide whereabouts information.”*

105. The relevant defined terms are as follows:

- a. “Athlete” is “*any Person who competes in sport at the international level (as defined by each International Federation), or the national level (as defined by each National Anti-Doping Organization).*”
- b. “Code” is the World Anti-Doping Code.
- c. “Competition” is “*a single race, game, match or singular sport contest. For the stage races or other sport contests where the prizes are awarded on a daily or other interim basis, the distinction between a Competition and an Event is determined according to the rules of the applicable International Federation.*”
- d. “Signatory/ Signatories” “*are the entities accepting the Code and agreeing to implement the Code, as provided in Article 23 of the Code.*”

106. Article 51(1) of the RADA is, of course, based on Article 10.14.1 of the WADC which in relevant part provides as follows:

*“10.14 Status during Ineligibility or Provisional Suspension*

*Prohibition against Participation during Ineligibility or Provisional Suspension*

*No Athlete or other Person who has been declared Ineligible or is subject to a Provisional Suspension may, during a period of Ineligibility or Provisional Suspension,*

*participate in any capacity in a Competition or activity (other than authorized anti-doping Education or rehabilitation programs) authorized or organized by any Signatory, Signatory's member organization, or a club or other member organization of a Signatory's member organization, or in Competitions authorized or organized by any professional league or any international- or national-level Event organization or any elite or national-level sporting activity funded by a governmental agency."*

107. In the WADC, the definition is slightly different to that in the RADA. It provides as follows, with the added sentence emphasised:

*"Competition: A single race, match, game or singular sport contest. **For example, a basketball game or the finals of the Olympic 100-meter race in athletics.** For stage races and other sport contests where prizes are awarded on a daily or other interim basis the distinction between a Competition and an Event will be as provided in the rules of the applicable International Federation."*

108. Article 10.14.1 of the WADC is supplemented by Comment 77, which says as follows:

*"Comment to Article 10.14.1: For example, subject to Article 10.14.2 below, Ineligible Athletes cannot participate in a training camp, exhibition or practice organized by their National Federation or a club which is a member of that National Federation or which is funded by a governmental agency. Further, an Ineligible Athlete may not compete in a non-Signatory professional league (e.g., the National Hockey League, the National Basketball Association, etc.), Events organized by a non-Signatory International Event organization or a non-Signatory national-level Event organization without triggering the Consequences set forth in Article 10.14.3. The term "activity" also includes, for example, administrative activities, such as serving as an official, director, officer, employee, or volunteer of the organization described in this Article.*

*Ineligibility imposed in one sport shall also be recognized by other sports (see Article 15.1, Automatic Binding Effect of Decisions). An Athlete or other Person serving a period of Ineligibility is prohibited from coaching or serving as an Athlete Support Person in any other capacity at any time during the period of Ineligibility, and doing so could also result in a violation of 2.10 by another Athlete. Any performance standard accomplished during a period of Ineligibility shall not be recognized by a Signatory or its National Federations for any purpose."*

109. The consequences of a violation of Article 51 of the RADA are set forth in Articles 50(1) and 53 of the RADA, which provide as follows:

*"Article 50. (1) Where an Athlete is already serving a period of Ineligibility for an anti-doping rule violation, any new period of Ineligibility shall commence on the first day after the current period of Ineligibility has been served. Otherwise, and except the cases referred to in this Article, the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date Ineligibility is accepted or otherwise imposed.*

*Article 53. (1) Where an Athlete or other Person who has been declared Ineligible violates the prohibition against participation during Ineligibility described in Article 51, the results of such participation shall be disqualified and a new period of Ineligibility, equal in length to the original period of Ineligibility, shall be added to the end of the original period of Ineligibility. The new period of Ineligibility, including a reprimand and no period of Ineligibility, may be adjusted based on the Athlete or the relevant other Person's degree of Fault and other circumstances of the case. The determination of whether an Athlete or other Person has violated the prohibition against participation, and whether an adjustment is appropriate, shall be made by the Anti-Doping Organization whose Results Management led to the imposition of the initial period of Ineligibility. This decision may be appealed under Article 40 and Article 41.*

*(2) An Athlete or other Person who violates the prohibition against participation during a Provisional Suspension described in Article 51, shall receive no credit for any period of Provisional Suspension served and the results of such participation shall be disqualified.*

*(3) Where an Athlete Support Person or other Person assists a Person in violating the prohibition against participation during Ineligibility or a Provisional Suspension, the Disciplinary Committee shall impose sanctions for a violation of Article 6.1.9 for such assistance."*

110. It is accepted by the Parties that the ADC bears the burden of proof of showing that there has been a violation of Article 51 of the RADA, and that the relevant standard of proof is to the comfortable satisfaction of the hearing Sole Arbitrator. (This is so despite the fact that, strictly speaking, a violation of Article 51 of the RADA does not fall within the definition of an ADRV in Chapter Two of the RADA and is not therefore directly caught by the provisions of Article 37 of the RADA as to the burden and standard of proof.) It is therefore for the ADC to prove the necessary elements of the alleged violation and to do so to the comfortable satisfaction of the Sole Arbitrator.
111. Did the Athlete breach Article 51(1) of the RADA?
112. There is no question that the Athlete took part in the Lion Heart Triathlon on 2 September 2023. This he freely admits. The question is: by doing so, did he violate the prohibition on participation set forth in Article 51(1) of the RADA?
113. The starting point, of course, is the language of Article 51 of the RADA (set out in full above). It follows from the language of Article 51(1) that each of the following elements must be established in order to sustain a violation thereunder (see CAS 2023/A/9926 at para.108ff):
  - a. The Athlete is an Athlete as defined therein.
  - b. The Athlete must have been declared ineligible (and is serving a period of ineligibility).



- c. The Athlete must have, during the period of ineligibility, participated in a Competition or activity (other than authorized anti-doping education or rehabilitation programs).
  - d. The Competition or activity must have been authorised or organised by a Signatory (to the WADC) or member organisation of a Signatory, or a club or other member organisation of a Signatory's member organisation, or the Competition must have been authorised or organised by any professional league or any international- or national-level event organisation or any elite or national-level sporting activity, funded by a governmental agency.
114. It is to be noted as well that there is no intent or knowledge requirement for an athlete to be found in violation of the suspension – all that is required is that an athlete participates in a Competition (or activity) during his or period of ineligibility: see CAS 2023/A/9926 at para.116.
115. In this case, the elements at (a), (b) and (d) above are common ground. The Athlete is an Athlete as defined in the RADA, the Athlete had been declared ineligible by the BOC DC 2022 Decision as confirmed in the 9198 Award, and the Lion Heart Triathlon was authorised by a club or other member organisation of a Signatory's member organisation, namely the Lion Heart Sports Club, which club is a member of the BTA, which is a member of World Triathlon, which is a signatory to the WADC. It is also common ground that the Athlete has not been charged with participating in an activity, only with participating in a Competition.
116. Accordingly, the debate is solely concerned with whether or not the Lion Heart Triathlon is to be regarded as a Competition pursuant to Article 51(1) of the RADA. That resolves itself as a matter of construction of the RADA.
117. There is an array of jurisprudence in relation to the principles of construction (or interpretation) which, of course, apply equally to the RADA (and the WADC). The Sole Arbitrator gratefully adopts the following passage from CAS 2020/A/6986:
- “89. The Sole Arbitrator recalls that under Swiss law, “the starting point for interpreting a legal provision is its literal interpretation”. As consistently held by the Swiss Federal Tribunal, there is no reason to depart from the plain text, unless there are objective reasons to think that it does not reflect the core meaning of the provision under review. If the provision under review is clear and unambiguous, an authority applying the provision is bound to follow its literal meaning, provided it expresses its true meaning. Only if a text is not clear and if several interpretations are possible, one must determine the true scope of the provision by analysing its relation with other provisions (systematic interpretation), its legislative history (historic interpretation) and the spirit and intent of provision (teleological interpretation).*
- 90. According to the well-established CAS jurisprudence, the Sole Arbitrator notes that the interpretation of a rule should indeed begin first and foremost with the text. Moreover, it is not for the Sole Arbitrator, nor the CAS more generally, to question the policy or intent of antidoping rule makers, in particular given that the WADA Code*

*emphasises that “when reviewing the facts and the law of a given case, all courts, arbitral hearing panels and other adjudicating bodies should be aware of and respect the distinct nature of the anti-doping rules in the Code and the fact that those rules represent the consensus of a broad spectrum of stakeholders around the world with an interest in fair sport” (emphasis added). The Sole Arbitrator therefore must exercise caution when engaging in interpretation of rules that, upon the face of the text, leave little doubt as to their meaning.”*

118. The starting point is always the text and the question to be asked is: what is the ordinary meaning of the words within their context.
119. There has been little consideration of the language of Article 10.14.1 of the WADC and its equivalent in national ADRs. In SRCC DT 12-0177 (Russell), this was said (by an experienced CAS arbitrator) (emphasis added):

*“58. Under [the relevant ADR] a person sanctioned by the policy is ineligible to participate in any role whatsoever in any (a) Competition or (b) Activity when either (a) or (b) has been organised, convened, held or sanctioned by a Canadian NSGB, PSGB or affiliate [...]. **Each of the words of the ban carries their ordinary English language meaning** [...].”*

120. In CAS 2017/A/4937, the panel was concerned to construe Article 10.12.1 of the NZ Sports Anti-Doping Rules (the “SADR”, the equivalent of Article 10.14.1 of the WADC). The panel rejected the view that there needed to be a temporal connection between the participation and the competition or activity, saying as follows:

*“59 [...] The Panel rejects the view expressed in Russell that the provision requires the identification of a temporal connection to a competition (maybe days) between the ineligible person’s coaching and the organised event in which the eligible the ineligible person is held... to be a participant. An interpretation of the purpose and ambit of SADR 10.12.1 must be consistent with the practical realities of sport. [...] The panel is of the view that the provision does not require an arbitrary determination as to whether the provision of assistance to an athlete by a support person requires a finding that the assistance had a temporal or physical connection to a particular event or competition. The provision has a broader reach. The ineligible person cannot participate “in any capacity” in an event or activity authorised or organised by a signatory during the full period of ineligibility. [...] An athlete serving a period of ineligibility is therefore prevented from having any involvement with sport which involvement impacts on clean athletes who are members of a signatory organisation.*

*[...]*

*61 The Panel is satisfied given the ordinary meaning of the words of SADR 10.12.1, it is the intention of the SADR to ensure all athletes can compete in a drug-free environment and not be exposed to the taint of doping during either their preparation for or participation in an organised event or the sport’s organised activities. We are comforted in this analysis by the words of SADR 10.2 (see similar provisions 2016 WADCA Code Article 10.2) under which an athlete, once they are given notice, is*

*prohibited from associating with any person who is serving a period of ineligibility. The commentary to this rule states ‘athletes ... must not work with ineligible persons (on account of an anti-doping rule violation)’ [...].”*

121. This decision is instructive in that it demonstrates that the prohibition on participation set forth in Article 10.14.1 of the WADC is to have a broad reach and that an athlete who is under a ban is precluded from participating in any capacity in any event or activity authorised or organised by a signatory. The purpose of the broad reach is so that a banned athlete is precluded from having any involvement with sport, which involvement impacts on clean athletes who are members of a signatory organisation, and that all other athletes can compete in a drug-free environment and not be exposed to the taint of doping during either their preparation for or participation in an organised event or activity. This is of a piece with what was said in SR/345/2022 that *“the broad interpretation of these terms is consistent with the rationale of anti-doping provisions and the policy of preventing banned individuals from having any involvement in sport and with ‘clean’ athletes”*.
122. In this case, the task is to construe the word “Competition” and decide whether the Lion Heart Triathlon falls within the meaning of that term. The RADA provide essential assistance in this exercise because “Competition” is a defined term in the RADA (see above). It is defined as *“a single race, game, match or singular sport contest”*. The definition adds that *“[f]or the stage races or other sport contests where the prizes are awarded on a daily or other interim basis, the distinction between a Competition and an Event is determined according to the rules of the applicable International Federation.”* The Athlete pointed to other dictionary definitions of the word ‘competition’ but where, as here, the parties have agreed upon a definition, there is no need to resort to anything but the agreed definition.
123. The definition of Competition refers in turn to other terms which are not defined in the RADA. As was said in SRCC DT 12-0177, each of these words carries its ordinary English language meaning so that it is helpful to refer to the (relevant) dictionary definitions of these terms (references are to the Shorter Oxford English Dictionary):
  - a. A race is defined as *“a contest of speed between runners, horses, vehicles etc”*; *“a contest or competition between individuals, groups, etc., to (be first to) achieve some objective, esp. superiority”*.
  - b. A game is defined in as *“a competitive sport or pastimes”*; *“a (form of) contest played according to rules and decided by skill, strength, luck (as opp, sport esp. one in which opponents actively engage to defeat each other) physical or mental competition conducted according to rules with the participants in direct opposition to each other”*.
  - c. A match is defined as *“a contest a matching of adversaries against each other”*; *“a contest or competitive trial of skill in some sport, exercise or operation, in which two or more people or teams compete against each other”*.

- d. A contest is defined as “*a struggle for victory, for an objective etc. conflict, strife*” and “*a competition; amicable contention for a prize etc*”.

124. Is the Lion Heart Triathlon any one of these things? Whether or not the Lion Heart Triathlon is to be regarded as a race or a game or a match or a contest is to be assessed according to the characteristics of the event itself. (The use of the word ‘event’ is intended to be an entirely neutral epithet.)
125. The Lion Heart Triathlon is an annual event. It was (as always) held over three stages: a 3km swim, a 96km cycle, and a 21km run. Individuals may participate as individuals or as members of two- or three-person teams. The Athlete was a member of a three-man team and he took part in the 3km swim, the other members of his team completing the remaining stages.
126. The Lion Heart Sports Club describes the Lion Heart Triathlon as follows (where Strandzha is a mountain massif in southeastern Bulgaria and Primorsko is a town and seaside resort in southeastern Bulgaria):

*“LION HEART a competition setting out to look for the unlimited human potential through the natural wealth of Strandzha and the cultural heritage of Primorsko. This exceptional challenge provokes us to believe in our super powers and to overcome our own limits. Inspired by the great tales of Strandzha’s heroes and the epic past of this historic region we invite everyone who is ready to join us against 3 km swimming in the sea, 96 km mountain biking and 21 km trail running. Embrace the competition to see if you shall find your lion heart too.”*

127. It is apparent from this excerpt that the Lion Heart Sports Club describes the Lion Heart Triathlon as a “competition” which, although it cannot be determinative of the question whether it amounts to a Competition as defined in the RADA, is nevertheless informative.
128. The Lion Heart Sports Club requires participants to sign a “Participation Contract and Waiver of Liability” (the “Participation Contract”). This was signed, according to the Athlete, not by him but by the leader of his team on behalf of the team. In relevant part it provides as follows:

*“[...] READ THIS DOCUMENT CAREFULLY BEFORE SIGNING, THIS DOCUMENT HAS LEGAL CONSEQUENCES AND WILL AFFECT YOUR LEGAL RIGHTS, AND WILL LIMIT OR ELIMINATE YOUR ABILITY TO BRING FUTURE LEGAL ACTIONS.*

*In consideration of being permitted by the Lion Heart Sports Club NGO (hereinafter referred to as the “Organizer”) to participate in the cross triathlon race “Lion Heart Ultra” or “Lion Heart Utopia” (hereinafter referred to as the “Event”), I, the Participant, understand and acknowledge that by signing below I am legally agreeing to the terms and statements included in the following Event Registration, Release and Waiver of Liability, and Assumption of Risk and Indemnity Agreement (hereinafter referred to as the “Agreement”) and that these statements are being freely and*

*voluntarily accepted by the parties who acknowledge each other enough legal capacity to execute this document in accordance with the following:*

***I. Organizational Measures:***

- 1) The Participant must follow the Rules for Participation in “Lion Heart Ultra” or “Lion Heart Utopia” and any other regulations of the Organizer as may be applicable, in addition to the race regulations, the official race program/race information.*
- 2) In case of non-compliance, the Organizer has the right to exclude the Participant from the Event and/or announce the disqualification as he deems convenient, should the order of the Event or the safety of other Participants of the Event be endangered.*
- 3) In case of according medical indications the medical staff is authorized to exclude a Participant from the race for his own safety and/or to deny him further participation in the Event.*
- 4) If the condition of the Participant apparently does not allow his safe continuation in any way, at the discretion of the organizers and field medical personnel, the participant may be excluded from participation in the event or from the official ranking (disqualified);*
- 5) If the bib is altered in any manner whatsoever, especially if the promotional logo has been made invisible or unrecognisable, then the Participant may be excluded from participation in the Event, in any case he will be excluded from the results (disqualification);*
- 6) If the participant does not respect the control times for passing through the different stages and points of the competition, the organizer has the right to exclude him/her from participation for his and everyone’s safety.*

***II. Waiver of liability:***

- 1) The organizer may in its sole discretion, delay, modify, or cancel the Event if it believes the conditions on the race day are unsafe. [...]*

*[...]*

- 8) The Participant states that he is aware of the inherent dangers of the race, in particular, those that may appear on the course route such as vehicle or pedestrian traffic and therefore he takes all the risks related to the sports of running, biking and swimming which constitute the Event and the sport of triathlon.*

*[...]*

- 12) Should medical treatment of the Participant be necessary during the Event, the Participant declares in advance his consent with these measures. Medical treatment*

*outside the race track is not included in the entry fee and the Participant will directly be charged according to the applicable medical rates at the medical venue.*

- 13) *It is in the responsibility of the Participant to ensure adequate insurance coverage for medical treatments. The Organizer is not obliged to do so, but has the right to refuse the participation in the competition in case of an absent of the last.*

[...]

## **V. Doping**

*Upon signing this Agreement, the Participant expressly acknowledges that the Anti Doping provisions of the World Triathlon Corporation (WTC), in their respectively valid version are binding on him. Furthermore blood thresholds – if to the extent that Anti-doping code of the national Federation (in the country the Event takes place) defines so – are binding. If in a blood control these thresholds values are exceeded, the Organizer is entitled to pronounce a suspension from the race.*

*The Participant may be excluded from the event if there are pending doping proceedings, no matter before which court of law or arbitrator, and also in case of concrete reasons for a doping suspicion. In this case, claims in respect of appearance fee, prize money or other claims as well as possible subsequent claims (damages) are excluded.”*

129. Once again, it is apparent that the Lion Heart Sports Club describes its own event as, variously, a “race”, a “competition”, and an “event” which, again, is informative but not determinative. What it does demonstrate, however, is that the Lion Heart Triathlon certainly regarded itself as a competition or a race; it also shows that the event is a serious event, with formal rules of participation, with a formal contract for participation, which contract, amongst other things, applies (and warns the participants that it is so applying) the anti-doping provisions of the Word Triathlon Corporation.
130. It can be seen that the Participation Contract cross-refers and incorporates the “Rules for Participation”. The Athlete gave evidence that he signed a document on the day of the event that set forth such details as his name and identification number, a certification that he was eligible to compete and that he had no problem with his heart, as well the “basic” rules of the Lion Heart Triathlon. It is a reasonable inference that he was referring to these Rules for Participation. These rules provide in relevant part as follows:

*“RULES FOR PARTICIPATION IN LION HEART ULTRA CROSS TRIATHLON  
(hereinafter referred to as the “Competition”)*

*The intention of these rules is to create conditions for equality and fair play, to guide participants in their preparation, to encourage sportsmanship and to punish those participants who gain or attempt to gain an unfair advantage.*

*1. Competition format*

*1.1 'Lion Heart' Ultra Cross Triathlon is an adventure, mountain race [...] organized by the NGO Lion Heart [...];*

*1.2 Lion Heart is an autonomous competition. Each participant must start and finish with the mandatory equipment [...]. Assistance in any form other than that provided by the Organizers [...] is prohibited within the competition;*

*1.3 The winner is the participant who goes through the three stages of the course in the shortest time, counted from the official start until the last passes on a timing bracelet through the final arch;*

*[...]*

*6.16 Before the start of the competition, participants must meet the following requirements:*

*6.16.1 To have completed the registration form and paid the participation fee;*

*6.16.2 To have filled out a participation contract y hand and submitted it for registration;*

*6.16.3 To be equipped with the mandatory equipment according to the regulations of the Competition – subject to inspection before the start and during the competition;*

*6.16.4 To wear the mandatory numbers and designations of the competition related to the specific stage;*

*6.16.5 To provide the following documents: medical note for fitness to participate, participation contract [...].”*

131. The Rules for Participation plainly characterise the Lion Heart Triathlon as a competition (that word appears some 26 times throughout, with “competitor” appearing 14 times) or a race (that word appears 16 times). Again, that is not determinative of the issue whether the Lion Heart Triathlon is a Competition as defined in the RADA, but it certainly provides an indication as to how the organisers viewed the event.

132. The Rules for Participation also demonstrate that the Lion Heart Triathlon bears many of the hallmarks of a competitive event, for example:

- a. The stated intention of the rules includes the encouragement of sportsmanship and the punishment of those participants “*who gain or seek to gain an unfair advantage*”. If the event were not a competitive event it would be of no concern whether or not someone gained some sort of unfair advantage.

- b. There is a “winner”, the person who completes the three stages in the shortest time. If the event was not competitive, there would be no recognition, or indeed suggestion, of a winner.
- 133. The Lion Heart Sports Club published (on its website) the results of the Lion Heart Triathlon in 2023. Those results, titled “LION HEART 2023 OFFICIAL RANKINGS”, show the rankings for a number of different categories including the women, the men, the relay (both for the teams of two and the teams of three), the half marathon for women, and the half marathon for men. Under the ‘relay – team of three’, the team of which the Athlete was a member, called “Atilla”, was recorded as comprising the Athlete, Bogdan Stoychev, and Ivaylo Georgiev. The team finishing second overall in the time of 6:58:29, with a “diff” of 0:23:40 behind the team who finished first. The times were recorded for the team and for the individual for each stage. The results recorded that the Athlete’s time for the swimming stage was 0:43:10, that being (unsurprisingly) the fastest time recorded on the day for that stage. This explains the Athlete’s Instagram post saying that: *“How was it? I went to bed, slept, came and beat them; History will repeat itself for a long time; thanks to the organizers for the great competition, they organized. I will be back to participate again!”*
- 134. In the Sole Arbitrator’s view, taking all of these matters into account, it is obvious that, whatever the parameters of the definition of Competition, the Lion Heart Triathlon is indeed a single race or singular sport contest. It is less clear whether the Lion Heart Triathlon may also be described as a game or a match in circumstances where there is no direct opposition between the participants, but there is little doubt that the ordinary meanings of ‘race’ and ‘contest’ accurately describe the Lion Heart Triathlon. The Lion Heart Triathlon is a competitive trial of speed in running, swimming, and cycling and/or an event in which people compete for supremacy in an athletic contest. According therefore to the plain meaning of those words – race and contest – the Lion Heart Triathlon is indeed a Competition. In light of the structure of the event, its official description, and the fact that it is organised by a recognised sporting club, the Lion Heart Triathlon is, in the Sole Arbitrator’s view, within the definition of Competition as it appears in the RADA (and in the WADC).
- 135. The Athlete argues otherwise but none of the matters relied upon is persuasive.
- 136. The principal submission was that because the language of Article 51(1) of the RADA was “*broad and unspecified*”, there was what was said to be a “*carve out*” which allowed the Athlete to swim in an amateur event by reason of these four things:
  - a. The event was not included in the BTA’s official calendar.
  - b. The event was open to any adult over 18 years of age, requiring no club membership, just the payment of a participation fee.
  - c. The event was focussed on mass participation without offering any national or international ranking points.



- d. The event produced internal results that were entirely unofficial, unrecognised by any sporting institution and irrelevant to any ranking.

137. Each of these matters is accurate and each was confirmed in correspondence from the BTA as follows:

*“Regarding the cross triathlon competition ‘Lion Heart’ held on Primorsko on September 8, 2023 [sic] organized by the ‘Lion Heart’ Sports Club [...]*

*1. The competition organized by the ‘Lion Heart’ Sports Club is an amateur cross-triathlon event and is not part of the calendar of the [BTA]. The event has been held for the 7<sup>th</sup> year and is entirely focused on mass participation – an open sports event for every Bulgarian citizen over the age of 18.*

*2. The results of the competition are not recognized by any institution and are not part of the national or international ranking lists. The competition does not have a points system. [...].”*

138. But while these four features may be present in a competition, they are not essential requirements of a Competition as defined in the RADA. Indeed, there is no mention of any of these argued-for elements within the definition and no proper basis on which to imply them into the definition. By way of example, the fact that the Lion Heart Triathlon is not on the official BTA calendar is neither here nor there with respect to the consideration of whether or not the Lion Heart Triathlon is a Competition. The same is equally true of the absence of ranking points and of the fact that the event was open to any adult over 18 years of age, requiring no club membership, just the payment of a participation fee. That may be the position with any ‘open’ even such as The (British) Open in golf, which is open to professionals and amateurs alike, without the need for club affiliation, albeit via qualification rounds. No one would suggest that The Open was therefore not to be regarded as a competition or a contest.

139. This view is reinforced by the very broad language of the WADC Article 10.14.1 (and Article 51(1) of the RADA).

- a. First, the prohibition extends to participation “*in any capacity*”. That is plainly intended to keep the banned athlete away from sport generally for the duration of the period of ineligibility.
- b. Second, the word “activity”, though not defined, is explained in the WADC comment so as to make it clear that a banned athlete (i) shall not participate in “*a training camp, exhibition or practice*” organised by their national federation or club, (ii) shall not compete in non-signatory professional leagues, and (iii) precludes, by way of example, “*serving as an official , director, officer, employee or volunteer*”.
- c. Third, the comment also provides that any ineligibility imposed in one sport is to be recognised by all sports, thus effectively taking the banned athlete out of all sport for the duration of the period of ineligibility.

140. This language illustrates that the prohibition on participation is very broad indeed, and tells against implying language that narrows the ban on participation in the manner argued for by the Athlete. In the Sole Arbitrator's view, as the definition of Competition stands, which is what must be construed, the matters advanced by the Athlete have no bearing on the question of whether or not the Lion Heart Triathlon falls within the definition, and there is no proper basis, and none articulated by the Athlete, for the implication of these limiting requirements into the terms of the RADA. It is safe to say that, had the drafters of the WADC (and in turn the RADA) taken the view that these four matters were essential ingredients to the definition of Competition, they would and could have said so.
141. The Athlete also submitted that Lion Heart Triathlon was not a Competition because the ADC did not seek to and the BOC DC did not disqualify the results of the Athlete's participation in the Lion Heart Triathlon because there were no results to be disqualified. It is true that the ADC and BOC did not seek to disqualify the results but that cannot inform the proper construction of the wording of Article 51(1) of the RADA. And it is not true that there were no results, for the evidence was in fact that the Lion Heart Sports Club did monitor and issue official results and that the Athlete and his team finished second (see above).
142. It was said further that the Athlete did not use the Lion Heart Sports Club's facilities for his participation in the Lion Heart Triathlon. It is not understood how this could bear on the question of whether the Lion Heart Triathlon was a Competition or not for the purposes of Article 51(1) of the RADA, the proper construction of which cannot possibly turn on whether or not a particular athlete chooses to use the club's facilities.
143. It was next submitted that there were no prizes. As a matter of fact, prizes were awarded by the Lion Heart Sports Club for the event. According to the Athlete, there was an awards ceremony on the day after the event (at which either medals or vouchers or both were awarded). In any event, the presence or absence of prizes does not, in the Sole Arbitrator's view, determine whether a particular event is a competition – there is certainly no indication of such a thing in the definition of Competition adopted by the RADA. The reference to prizes in the definition of Competition is not to be understood as meaning that a prize is an essential element of a Competition; to the contrary, it speaks to the difference between a single Competition and an Event, a question that does not arise here.
144. It was said that the "*competitive aim*" was missing in this case. But that is plainly not right. The Lion Heart Triathlon records times and results and keeps account of official rankings as described above. There is clearly a competitive aim to the event; it may not be the sole aim but it is certainly one of them.
145. Finally, the Athlete argued that, even WADA did not consider that there had been participation in a competition and even then WADA was unsure whether the Athlete's participation amounted to a violation of the ban on participating in an activity because WADA used the word "seems". But that is to overstate things. Properly understood, what WADA were saying was that it appeared to them, on the facts provided to them, that there had been a violation of the prohibition on participation by the Athlete, and

that the ADC should investigate it in the usual way in accordance with the ISRM. WADA did not address one way or the other whether the Lion Heart Triathlon amounted to a Competition, let-alone, as was submitted, take the view that the it was not a Competition.

146. In all, the Sole Arbitrator's view, the Lion Heart Triathlon is plainly a race or contest. The Lion Heart Triathlon is a competitive trial of speed in swimming, running, and cycling in which the participants compete against each other in a race to complete the course in the lowest time possible. It is also a contest in that the participants compete for supremacy and participants are ranked according to their results, the winner being the individual or team that finishes the course in the shortest time, with the other participants ranked in finishing order. It matters not at all that these rankings are what the Athlete described as "internal"; they are official rankings nonetheless.
147. In the result, the Sole Arbitrator is of the clear view that the Lion Heart Triathlon is a Competition for the purposes of the RADA and that, by participating therein, the Athlete violated the ban on participation that is set forth in Article 51(1) of the RADA.

## **B. The Consequences**

148. What consequences follow?
149. The consequences of a violation of Article 51(1) of the RADA are set forth in Articles 50(1) and 53 of the RADA, which are set forth above (see para. 109). It follows from what has been said above and from the plain language of Article 53 that:
- a. The Athlete has violated the prohibition against participation during his period of ineligibility by participating in the Lion Heart Triathlon.
  - b. The results of his participation in the Lion Heart Triathlon are therefore to be disqualified.
  - c. A new period of ineligibility is to be imposed against the Athlete equal to in length to the original period of ineligibility, that being the two-year period imposed by the BOC DC and confirmed by the Panel in the 9198 Award.
  - d. This period of further ineligibility may be adjusted based on the Athlete's degree of fault "*and other circumstances of the case*".
150. The Athlete submits that the Sole Arbitrator should indeed adjust the period of ineligibility to reflect what is said to be fault on the part of the Athlete "*at the low end of the spectrum*" and the circumstances surrounding the event in which he participated. The Athlete submits that the sanction should therefore be reduced from 2 years to 0-4 months.
151. The Sole Arbitrator is therefore required to form an assessment of the Athlete's degree of Fault. Fault and No Significant Fault are defined in the RADA as follows:

*“7. “Fault” is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete or other Person’s degree of Fault include, for example, the Athlete’s or the other Person’s experience, whether the Athlete or other Person is a Protected Person, special considerations such as impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In assessing the Athlete’s or the other Person’s degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete’s or other Person’s departure from the expected standard of behavior. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Athlete only has a short time left in his/her career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 44.6.*

*“26. “No Significant Fault or Negligence” designates the case the Athlete or other Person establishes that any Fault or negligence (when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence) was not significant in relation to the anti-doping rule violation. [...]”*

152. At the outset, the Sole Arbitrator notes and respectfully adopts the following passage from the experienced panel in CAS 2016/A/4596 at para 126 (with emphasis added) which was concerned with a breach of a provisional suspension:

*“The Panel notes that there is no dispute that the Player participated in two matches during the period of his provisional suspension. A provisional suspension is a serious measure that must be respected by the individual concerned. The Panel does not consider that the Player’s explanation, which relies on his professed ignorance of the effect of the suspension, is an acceptable excuse for breaching the terms of the suspension on two separate occasions. **It was incumbent upon the Player, as the subject of a provisional suspension, to abide by the terms of the suspension and to exercise due care and responsibility in ascertaining what sporting activities and events fell within its scope. ... .”***

153. This accords with what was said in CAS 2023/A/9926:

- a. at para 111: *“It would have been incumbent upon him to make inquiries with USADA or with his legal counsel to determine if the recently imposed suspension would prevent him from taking part in an activity that he considered to be somewhat benign, but which could potentially fall under the ambit of Article 10.14.1 of the WADC”*; and
- b. at para.114: *“due diligence required him to take reasonable steps to satisfy himself that such an assumption was justified and would not bring him into contravention of his [...] suspension”*.

154. It follows therefore that the Athlete was under a duty to exercise due care and responsibility to ascertain what sporting events (or other activities) fell within the scope

of the earlier ban and to take reasonable steps to satisfy himself that any participation in such would not be in contravention of that earlier ban.

155. The Athlete asks the Sole Arbitrator to take into account the following matters as indicia of reduced fault:
- a. The Athlete's participation in the Lion Heart Triathlon was an isolated case; there is no suggestion that he put a scheme in place to breach the prior sanction.
  - b. The event is geared toward "*mass participation*" (according to BTA) with some of the funds raised going to charity.
  - c. The Athlete checked with the organisers of the Lion Heart Triathlon and they cleared him to participate.
  - d. The Athlete's participation was not related to training, practice, or competing in order to somehow circumvent the period of ineligibility previously imposed on him by the BOC DC and the CAS.
156. Those matters do bear on fault – but, in the Sole Arbitrator's view, they are altogether outweighed by the following matters which tell against any reduction in the period of ineligibility on the basis of fault:
- a. Article 21.1.1 of the WADC (and its equivalent at Article X of the RADA) imposes an obligation on the Athlete "*to be knowledgeable of and comply with all applicable anti-doping policies and rules*".
  - b. The Athlete is an experienced competitor and has competed at the national and international levels since 2019. He was therefore no stranger to the strictures of the RADA (and the WADC) and would have or should have taken his two-year period of ineligibility seriously.
  - c. In the same vein, he would have or should have well understood that, as a banned athlete, he was not free to participate in a Competition or activity for the duration of that ban. If therefore he wanted to take part in an event of some sort, whatever it may be, he was under a duty to ensure (or, put another way, a duty to take care) that he was permitted to do so and that such participation would not violate the ban on participation set forth in Article 51(1) of the RADA. In this respect, the Athlete submitted that he had "*learned his lesson from his previous mistakes in youth*" (a reference to his whereabouts failures) and is now "*doing his utmost to strictly comply with the whereabouts requirements of the RADA and the WADC*". This may well be true; but, given his situation, 'doing his utmost' required the Athlete to make sure that he did nothing at all that would violate the sanction for those whereabouts failures.
  - d. That means that, if there was any uncertainty about him participating in any event, he should have taken steps – well in advance of the event – to determine the correct position including but not limited to: (i) liaising with the event

organisers; (ii) liaising with the ADC; and (iii) taking legal advice. It is simply not enough to say, as the Athlete has said, that he had no uncertainty: if that were really so it means that he was prepared to form his own view on this question and take the attendant risks that he was wrong. It also means that if the uncertainty persisted he should not have participated.

- e. He should have done these things well in advance of the event. In this respect, the Athlete was asked questions at the hearing about the steps he took to ensure that he was free to compete without violating his period of ineligibility. He said that he, himself, did not make any inquiries in advance of the event. He said that, on the day of the event, he arrived at 6:00am for a 7:00am start and at 6:50am, after he had been assessed as fit to compete by the event doctor, he found the principal organiser of the event and said: *“Listen, I’m that person. Is this an official competition or is it just an event that anyone can participate”*. The Athlete said that he was told that it was not an official competition and that it was fine for him to participate. *“So I signed and I participated. I had only about 30 minutes of participation, just the swimming part, which was first.”*
- f. This is something, to be sure, but in circumstances where the Athlete was under a duty to be careful to ensure that his participation would not violate his existing sanction, it was not enough. He should have made more and earlier enquiries, especially in circumstances where he was first approached, so he said, to take part in June 2023, many months before the event.

157. On balance, therefore, the Sole Arbitrator takes the view that, taking into account all of the subjective and objective matters that bear on fault, there is no reason to reduce the two-year period of ineligibility.

158. The Athlete also relies on “other circumstances” which are prayed in aid of a reduction of the period. These other circumstances relate to what is said to be ADC’s “*procedural conduct*” and the following things are complained of:

- a. The ADC withheld its report of 4 September 2023 and its correspondence with the Lion Heart Sports Club and BTA.
- b. The ADC did not charge the Athlete for almost two months after receiving WADA’s 15 September 2023 reply, waiting until 13 November 2023 to notify the Athlete.
- c. The ADC did not respond to the Athlete’s counsel’s letter dated 23 November 2023 asking the ADC to contact BTA to see if the Athlete had *“an official registration with them for the specific event”*.
- d. Only on 15 May 2024 did the ADC file its report with the BOC DC against the Athlete alleging that the Athlete’s participation in the Lion Heart’ Triathlon constituted a violation of the prohibition under Article 51(1) of the RADA, an inexplicable delay of six months.

159. If these matters did amount to procedural irregularities on the part of ADC (as to which the Sole Arbitrator forms no view), they do not, individually or collectively, give rise to any reason to reduce the two-year ineligibility period because (a) it is difficult to see why they have any bearing at all on the matters to be taken into account with respect to penalty and (b) they have been readily cured by this *de novo* appeal. Further, these matters certainly do not fall within Article 45 of the RADA which provides for the elimination, reduction, or suspension of a period of ineligibility or for reasons other than fault (mirroring Article 10.7 of the WADC); and the delays complained of are not said by the Athlete to be “*substantial delays*” under Article 50(2) of the RADA.
160. The second issue with respect to the period of ineligibility is that of the start date.
161. The timetable relating to the imposition of the earlier period of ineligibility has been limned above. By way of repetition:
- a. On 10 October 2022, the BOC DC issued the BOC DC 2022 Decision imposing a period of ineligibility of two years from 10 October 2022 but deducting the 14 day period of provisional suspension, so that it expired on 26 September 2024.
  - b. The Deputy Division President of CAS ordered a stay of the sanction on 20 October 2022 (on the Athlete’s application in CAS 2022/A/9198, and with the consent of the ADC and the BOC). The stay was effective from 20 October 2022 through to the date on which the Arbitrator issued the operative part of the 9198 Award on 26 June 2023.
  - c. By the 9198 Award (issued on 15 August 2023), the Arbitrator confirmed the BOC DC 2022 Decision. In particular, the Arbitrator imposed a period of ineligibility of two years, giving credit for the period of provisional suspension served by the Athlete from 5-19 May 2022 (i.e., 14 days). Once again, the period of ineligibility imposed on the Athlete expired on 26 September 2024.
  - d. On 11 September 2023, WADA submitted a Request for Interpretation of the 9198 Award noting (relevantly) that the award did not note that the period of ineligibility had been stayed from 20 October 2022 to 26 June 2023, and contending that such period should be excluded from the calculation of period of ineligibility imposed.
  - e. On 5 November 2023, the Arbitrator responded to WADA’s request. He said that, in his opinion, that period of stay should not count for the purposes of the calculation of period of ineligibility (“*any other interpretation would be illogical*”) but that it had not been argued before him and he was not asked to make a decision in that respect.
  - f. There was no further application to correct the 9198 Award and no appeal by WADA in this respect.

- g. The Athlete appealed against the 9198 Award to the SFT, which appeal was dismissed. The SFT granted two stays, from 29 June to 2 July 2023 and from 18 to 20 August 2023, for a total of seven days.
  - h. In the Appealed Decision, the BOC DC imposed a period of ineligibility of a further two years commencing on 8 June 2025. It did not articulate why it did so but it is apparent that it extended the prior period of ineligibility by the length of the stay of that period from 20 October 2022 to 26 June 2023.
162. In this appeal, the Athlete argues that the BOC DC was wrong to do so and that the prior period of ineligibility expired according to its terms on 26 September 2024 – and that any new period of ineligibility should begin on the day following that expiry, namely 27 September 2024. For its part, the ADC sought confirmation of the Appealed Decision, i.e., that any new period of ineligibility should commence on 8 June 2025.
163. In the first place, it appears that the BOC DC fell into error in this respect by giving credit for the period of the CAS stay from 20 October 2022 to 26 June 2023. That was the very thing advanced by WADA in its Request for Interpretation and yet, despite taking the view that it would be “illogical” not to deduct that period of stay from the period of ineligibility, the Arbitrator felt unable to do so because the matter had not been addressed by the parties in argument. Accordingly, in the absence of any appeal on this front by WADA, the 9198 Award must stand according to its terms, with the period of ineligibility coming to an end on 26 September 2024.
164. In the second place, the Sole Arbitrator notes that, since the 9198 Award, the SFT granted a stay (see above) for a total of seven days. It must follow therefore that the prior two-year period of ineligibility, as adjusted, expired on 3 October 2024.
165. In any event, the Athlete contends that any period of ineligibility imposed in respect of this appeal must follow from the last date of the prior period of ineligibility. The Athlete relies on Article 50(1) of the RADA and quotes the first sentence as follows: “*Where an Athlete is already serving a period of Ineligibility for an anti-doping rule violation, any new period of Ineligibility shall commence on the first day after the current period of Ineligibility has been served. [...]*”. He then says that the earlier period expired on 26 September 2024 and it “*makes no sense to impose a new period of ineligibility nearly nine months after the previous one has expired*” and to do so would be contrary to Article 50(1) of the RADA in any event. As a consequence, the Athlete submits that any new period of ineligibility should commence on 27 September 2024.
166. However, the Athlete ignores the second sentence of Article 50(1), repeated here for ease of reference (with added emphasis): “*Article 50. (1) Where an Athlete is already serving a period of Ineligibility for an anti-doping rule violation, any new period of Ineligibility shall commence on the first day after the current period of Ineligibility has been served. **Otherwise, and except the cases referred to in this Article, the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date Ineligibility is accepted or otherwise imposed.***”



167. The first sentence plainly contemplates that, where an athlete is currently serving a period of ineligibility, then the new and additional period of ineligibility is to be appended to the end of that current period, so that the two periods are served in series. The second sentence recognises, however, that where the athlete's first period of ineligibility has come to an end it makes little sense to 'back-date' the second period of ineligibility to meet the first because the athlete will have been free to compete upon the expiry of the prior ban. In those circumstances, the new period of ineligibility is to start on 4 June 2025, i.e. on the date of the initial award.
168. That is the position here. Here, the earlier period of ineligibility expired on 3 October 2024 (see para. 164 above). It would make little sense to have the new period of ineligibility commence on 4 October 2024 because the Athlete has been free to compete between that date and now and the sanction would be of no effect for that period. It follows that the "otherwise" that is provided for in the second sentence of Article 50(1) therefore applies, namely that the period of ineligibility is to start on the date of the final hearing decision, that being the decision set forth in the Award notified on 4 June 2025.
169. This is consistent with the terms of Article 53(1) of the RADA:
- "Article 53. (1) Where an Athlete or other Person who has been declared Ineligible violates the prohibition against participation during Ineligibility described in Article 51, the results of such participation shall be disqualified and a new period of Ineligibility, equal in length to the original period of Ineligibility, shall be added to the end of the original period of Ineligibility. [...]"*
170. True it is that that this article provides that the new period of ineligibility is to be added to the end of the original period of ineligibility such that in the ordinary course the two periods will be served in series (as per the first sentence of Article 50(1)). But that does not mean where, as here, the original period of ineligibility expired some time ago that the new period of ineligibility must commence the day after that expiration, and nor did the Athlete contend for such a meaning.
171. Accordingly, in the circumstances of this case, the correct approach is to follow the second sentence of Article 50(1) of the RADA and commence the new period of ineligibility as at the date when the initial Award was issued, namely 4 June 2025.

## **XI. CONCLUSION**

172. In all, therefore, the Sole Arbitrator concludes as follows:
- a. The Athlete properly withdrew his appeal against the BOC.
  - b. The Sole Arbitrator is comfortably satisfied that, having been declared ineligible for the prior ADRV (whereabouts failures) as set forth in the BOC DC 2022 Decision and confirmed in the 9198 Award, the Athlete violated the provisions of Article 51(1) of the RADA by participating in the Lion Heart

Triathlon on 2 September 2023, that event being a Competition within the said article.

- c. The Athlete shall therefore be sanctioned by a further period of ineligibility equal to two years, that being the length of his original period of ineligibility, which period is to commence on 4 June 2025.
- d. Considering that the BOC DC did not disqualify the results of the Athlete's participation in the Lion Heart Triathlon, and in accordance with the principle of *ne ultra petita*, the Sole Arbitrator finds that no such disqualification shall be imposed.

## **XII. COSTS**

(...)

## **ON THESE GROUNDS**

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

1. The Appeal filed by Antani Ivanov on 29 August 2024 against Anti-Doping Centre of the Republic of Bulgaria (ADC) from the decision issued by the BOC Disciplinary Committee dated 12 August 2024 is partially upheld.
2. The decision issued by the BOC Disciplinary Committee dated 12 August 2024 is confirmed save that the two-year period of ineligibility imposed upon Antani Ivanov shall commence not on 8 June 2025 but on 4 June 2025, *i.e.* on the date when the initial Award was issued.
3. (...).
4. (...).
5. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 4 August 2025

**THE COURT OF ARBITRATION FOR SPORT**

James Drake  
Sole Arbitrator