CAS 2024/A/10866 Maja Radenkovic v. Anti-Doping Sweden

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Ms Annett Rombach, Attorney-at-law, Frankfurt am Main, Germany

in the arbitration between

Maja Radenkovic, Malmø, Sweden

Represented by Mr Howard L. Jacobs and Ms Leah Bernhard of the Law Offices of Howard L. Jacobs, Westlake Village, California, United States of America

Appellant

and

Anti-Doping Sweden, Stockholm, Sweden

Represented by Mr Joakim Edvinsson, Anti-Doping Sweden, Stockholm, Sweden

Respondent

I. THE PARTIES

1. Ms Maja Radenkovic (the "**Athlete**" or the "**Appellant**") is a tennis player residing in Sweden.

2. Anti-Doping Sweden ("**Anti-Doping Sweden**" or the "**Respondent**") is the National Anti-Doping Organisation for the country of Sweden, recognised as such by WADA. Its registered seat is in Stockholm, Sweden.

3. The Appellant and the Respondent are collectively referred to as the "**Parties**".

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced during these proceedings. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, the present Award only refers to the submissions and evidence considered necessary to explain its reasoning.

5. The present dispute concerns an anti-doping rule violation ("**ADRV**") of the Athlete under Article 2.1 of the Anti-Doping Regulations (the "**Swedish ADR**") read in conjunction with Chapter 13, Section 2 of the Swedish Sports Confederation's Statutes. It is undisputed that the Athlete returned a positive sample on the occasion of an in-competition doping control. What is disputed in these CAS appeals proceedings is whether the Athlete is entitled to a reduction of her period of ineligibility under the concept of "No Significant Fault or Negligence" enshrined in Article 10.6.1 of the Swedish ADR.

6. On 2 July 2023, the Athlete was subjected to an in-competition doping control at Beddingestrands Tennisklub ("**Doping Control**"). The analysis of the Athlete's A Sample revealed the presence of a metabolite of Arimistane, an aromatase inhibitor listed under the category "S4 Hormone and Metabolic Modulators" of the WADA Prohibited List (2023 version). It is stated to be a "Specified Substance" and prohibited at all times.

7. By e-mail of 3 July 2023, 12:54 am, the Athlete contacted the Respondent. The free translation of the relevant parts of the e-mail reads as follows:

> *"I was notified to do a doping test after the final in Beddingestrand. This was my first time ever doing it and I am very new to the doping list etc. Done some more research now and I forgot to mention that I have an allergy to grass, pollen and birch. For that I need to take asthma medicine and have it prescribed by the doctor. I also saw that dietary supplements could pose a risk on the doping list, and over the last seven days, I have taken dietary supplements to help lose a bit more weight. I was unaware of and didn't consider this to be a form of doping and therefore I*

think it's best to inform you about this".

8. On 4 July 2023, the Respondent replied to the Athlete. The free translation of the relevant parts of the e-mail reads as follows:

> *"Have you stated what medicines/supplements you have used in your doping control form? There you shall state what you have used in the last 7 days.*
>
> *If you test positive for something, we will contact you, I don't know if you compete/train at a high level in your sport, you can check that here: antidoping.se/dispens-laekemedelssoek/medicinsk dispens/idrottsnivaa-foer-medicinsk-dispens/*
>
> *Depending on the level, you must either apply for a TUE in advance or retroactively. You can check the Red-green list to determine if your medicines are classified as doping: antidoping.se/dispens laekemedelssoek/roed-groena-listan/".*

9. On 4 July 2023, the Athlete replied that she did not remember whether she had disclosed her medicines and supplements on the Doping Control form and inquired whether she could still do so.

10. By e-mail of 5 July 2023, the Respondent sent a copy of the Doping Control form to the Athlete and informed her as follows:

> *"You should have received a copy on your doping control form to your mail, you could check there if you stated what you took? Otherwise, you can complete it to me.*
>
> *For the application of TUE, when it comes to medicine, you must be selected for the national team to be counted as high/national level. Otherwise, you can apply for a TUE retroactively, i.e. afterwards if you test positive.*
>
> *Have you checked the supplement to see if it contains anything classified as doping?*
>
> *You can check here, but may have to enter their English name: Global DRO – Home".*

11. The Respondent received no answer to its e-mail from the Athlete.

12. On 7 August 2023, the Athlete received a "Notification of Suspected Doping Violation" from the Respondent informing that the prohibited substance Arimistane had been detected in her sample.

13. Shortly thereafter, the Athlete asked the Respondent whether the medications she was taking to treat a medical condition that had been detected a few weeks earlier (Polycystic ovary syndrome, "**PCOS**") could have caused her positive test. The Respondent asked the Athlete to send her the relevant documentation related to the medication. The Athlete sent the requested documents to the Respondent, but was informed that none of the medications identified by her were listed on the WADA Prohibited List.

14. On 3 September 2023, the Athlete submitted a statement to the Respondent outlining her

belief that the medications ingested by her to treat her PCOS was the cause of the Adverse Analytical Finding.

15. On 5 October 2023, the Athlete submitted a further statement, in which she objected the Respondent's proposal to sanction her with a 2-year period of ineligibility. The Appellant, for the first time, introduced the theory of a contaminated nutritional supplement (named "FBN Energizer", and used for losing weight) accidentally ingested through her mother's tea during the weather delay in the final match of the tennis tournament at Beddingestrands Tennisklub on 2 July 2023 was the cause for the Adverse Analytical Finding. Her statement provides as follows:

> *"On July 2, I played the final in the Beddingespelen. The weather was anything but pleasant summer weather; on the contrary, it was a cold and rainy day. The match was prolonged due to many long rain breaks, which is common when playing outdoors on clay courts, as playing on a wet clay court is harmful and can damage the courts, leading to expensive repairs. Therefore, we are careful to interrupt play. As there was nowhere for me to sit and warm up, I became colder with each interruption. During the last break, we were hit by a downpour, and the interruption lasted between 45-60 minutes. Together with my opponent, I went into the changing room, but because many people were moving in and out of the room, I couldn't warm up. Each time the door opened, a gust of cold air came in, and I became colder as my clothes were wet. The only thing I had to warm myself with was a towel. I tried to warm myself with it, but it was not enough. My mother, who was sitting with my sister at the time, had both my hoodie and my headphones in her bag. Therefore, I decided to wrap the towel around my shoulders and run through...*
>
> *I ran to my mom, about 2-3 meters away, and located her in the clubhouse, which was crowded with people in the small area, about 20 square meters. As my mom was engaged in a conversation, I took my things from her bag and noticed that she also had her tea thermos in the bag. Since I was cold, I took that as well, thinking it would help me warm up. I drank quite a bit of her tea before one of the officials offered me a seat in the storage room, where they kept drinks and chips, so I could focus and mentally prepare myself by adjusting my mindset for the match to resume. I accepted the offer, put my mom's thermos back in her bag, and stayed there in the storage room for the rest of the time, with a towel around my legs, in my hoodie, watching tennis on YouTube.*
>
> *The reason we did not mention this in our previous statement is that I did not see this tea as a possible reason for the detection of the prohibited substances. However, as we have now gone through the day step by step, with the help of the lawyer recommended by our club, I realized that I had no knowledge that my mother had started training with a personal trainer and had received weight-loss tablets as a recommendation. I have been away at tournaments and training for a very long time, and therefore I have not seen these tablets or talked to my mother about her training.*
>
> *When we went back and reviewed the day and the week before step by step, my mom panicked when she realized that I had drunk her tea. She had no idea I drank it because I usually do not drink tea, and since she did not see me drink it and found*

her thermos in the bag where she had left it, there was no reason for her to suspect that I had consumed it. We have now gone through the tablets and their origin and found that they are likely manufactured in a factory where other dietary supplements are also produced, including the substances found in my urine, and thus the tablets have been contaminated".

16. On 21 May 2024, the Doping Panel found the Athlete to have committed an ADRV, and imposed a sanction of a two-year period of ineligibility (the "**First Instance Decision**"). In its relevant parts, the English language translation of the First Instance Decision reads as follows:

> *"Based on the investigation presented by Anti-Doping Sweden, the Doping Panel considers it proven that Maja Radenkovic had a metabolite of the prohibited substance Arimistane in her system during the competition on July 2, 2023. She has thus committed an anti-doping rule violation.*
>
> *The starting point for this type of anti-doping rule violation – involving a specified substance – is that for a first offense, which applies to Maja Radenkovic, the sanction should be set at four years if Anti-Doping Sweden can show that the violation was committed intentionally (Article 10.2.1.2 of the ADR).*
>
> *However, Anti-Doping Sweden has accepted that the violation was not committed intentionally, and therefore, the baseline suspension period is two years (Article 10.2.2 of the ADR).*
>
> […]
>
> *The Doping Panel notes that during the investigation with Anti-Doping Sweden, Maja Radenkovic has provided different explanations for the positive test result. She has retracted her initial claim, made to Anti-Doping Sweden, that she ingested the prohibited substance by drinking her mother's tea. During the initial proceedings before the panel, she claimed that the prohibited substance found in her body could either be a natural result of her PCOS or originate from the medication Inofolic Combi, which was prescribed by a doctor in Serbia. During the oral hearing, Maja Radenkovic further explained that she had also been prescribed the medications Arimidex and Corectia M by doctors in Serbia. According to Maja Radenkovic, there is significant reason to believe that the intake of Arimidex, in particular, caused the positive test result.*
>
> *The medical investigation report submitted by Maja Radenkovic shows that she was diagnosed with PCOS and was recommended treatment with the birth control pill Slinda. In a statement by Biljana Antonic, senior scientist at Poly Peptide Group, further details are provided regarding, among other things, Maja Radenkovic's medications and the implications of PCOS. The statement indicates, as relevant here, that androstenedione is a steroid hormone naturally produced in, among other places, the ovaries, and that the medication Inofolic Combi contains the substance inositol. Maja Radenkovic has also referred to email correspondence with professors Elisabet Stener-Victorin and Michael W. O'Reilly, as well as a certificate from the Euromedik Health Center in Belgrade.*
>
> *It is up to Maja Radenkovic to establish a reasonable likelihood of how she ingested*

the prohibited substance. To meet his burden of proof, she must present concrete evidence supporting her account (see CAS 2014/A/3820). As stated above, Maja Radenkovic has repeatedly changed her explanation regarding how she ingested the prohibited substance, and she presented new information about the medications she took at a late stage in the proceedings before the Doping Panel. While the certificate from the health center in Belgrade does indicate that she was prescribed treatment with Arimidex, the certificate is not dated, making it impossible to draw firm conclusions about when the medication was taken. In assessing Maja Radenkovic's account, it is also of particular importance that during the doping control, she did not report having taken any medications.

Even if Maja Radenkovic's account of the medications she took is accepted, the Doping Panel finds that, based on the medical investigation, it cannot be concluded that the positive doping test was caused by her PCOS or the medications in question. In this regard, the Doping Panel places particular weight on the medical opinions provided by Angelica Lindén Hirschberg, submitted by Anti-Doping Sweden. These statements clarify, inter alia, that Arimistane is a synthetic steroid that is not produced by the body and should not be confused with androstenedione, which is a naturally occurring steroid that can be elevated in cases of PCOS. It further states that there is no scientific evidence to support that inositol can be converted into Arimistane and that the synthetic steroid Arimistane cannot originate from the inositol supplement or be explained by endogenous production. Regarding Maja Radenkovic's claim of taking Arimidex, which contains the substance anastrozole, it is indicated that this substance cannot be metabolized into Arimistane or its metabolite, as they belong to entirely different chemical groups.

On this basis, the Doping Panel concludes that Maja Radenkovic has not established a reasonable likelihood of how the prohibited substance entered her body. In this assessment, none of the reduction rules in Articles 10.5 and 10.6.1.1 of the ADR are applicable. Therefore, the suspension period shall be set at two years".

17. The First Instance Decision contained the following information on the Appellant's appeal rights:

> *"This decision may be appealed within three weeks, by June 11, 2024, at the latest, to the Swedish Supreme Sports Tribunal, Idrottens Hus, Box 11016, 100 61 Stockholm* […]".

18. The Appellant appealed the First Instance Decision to the Swedish Supreme Sports Tribunal (the "**SST**"), which on 22 August 2024 dismissed the Appellant's appeal (the "**Appealed Decision**"). The English language translation of the relevant parts of the Appealed Decision reads as follows:

> *"Maja Radenkovic has appealed the Doping Panel's decision to the SST,* ***see Appendices 2-4****. In support of her appeal, she mainly argued that she may have never had Arimistane in her system and that the positive doping test was due to the testing method used.*
>
> […]

The analysis of Maja Radenkovic's doping sample was conducted at the Doping Control Laboratory at Karolinksa University Hospital in Huddinge, which is accredited by the World Anti-Doping Agency (WADA). When a doping sample has been analyzed by such a laboratory, the analysis is presumed to be accurate. To rebut this presumption, a clear investigation is required, demonstrating that there has been a deviation from WADA's International Standard for Laboratories, and that this deviation reasonably caused the positive result (see, inter alia, RIN 966/15-14 and 330/20-14). Maja Radenkovic has not presented such an investigation. Therefore, the appeal must be dismissed".

19. With respect to the Appellant's appeal rights, the Appealed Decision informed as follows:

"The SST's decisions regarding doping offenses may, in certain cases, be appealed. Information on who can appeal, etc., is outlined in the extract from the Anti-Doping Regulations (IDR), which is attached as Appendix 5".

III. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

20. On 12 September 2024, the Appellant filed her Statement of Appeal with the Court of Arbitration for Sport ("**CAS**") against the Appealed Decision, pursuant to Articles R47 *et seq.* of the CAS Code of Sports-related Arbitration (the "**CAS Code**") (the "**Appeal**"). The Appellant requested a 30-day extension of the time limit to file her Appeal Brief.

21. On 18 September 2024, the CAS Court Office informed the Parties about the Appeal and requested the Appellant to file her Appeal Brief in accordance with Article R51 of the CAS Code. The CAS Court Office granted a ten-day extension of the time limit for the Appellant to file her Appeal Brief and invited the Respondent to comment on the Appellant's request for a further 20-day extension. The CAS Court Office noted the Appellant's choice to proceed with its Appeal in the English language. In addition, the CAS Court Office requested the Appellant to clarify whether she was requesting the appointment of a sole arbitrator.

22. On the same day, the Appellant filed an application for legal aid. The Athlete's Commission of the International Council of Arbitration for Sport subsequently ordered the following:

"1. The Applicant's request for assistance for CAS arbitration costs in the procedure CAS 2024/A/10866 Maja Radenkovic v. Anti-Doping Sweden is granted.

2. The Applicant's request for assistance for the Applicant's own travel and accommodation costs in connection with any CAS Hearing, as well as the travel and accommodation costs of any witnesses/experts authorised by the CAS Panel, as well as interpreters, as applicable, in the procedure CAS 2024/A/10866 Maja Radenkovic v. Anti-Doping Sweden is denied".

23. On 20 September 2024, following the Respondent's agreement to the Appellant's request for an extension, the CAS Court Office granted a further 20-day extension for the submission of the Appeal Brief.

24. On 24 September 2024, the Appellant confirmed its request for the appointment of a sole arbitrator. The Respondent was invited to inform the CAS Court Office whether it agreed to the appointment of a sole arbitrator.

25. On 30 September 2024, the Respondent informed the CAS Court Office of its agreement to the appointment of a sole arbitrator.

26. On 7 October 2024, the Appellant informed the CAS Court Office that the Parties jointly proposed the appointment of either Ms Annett Rombach or Mr Jacques Radoux as the sole arbitrator.

27. On the same day, the CAS Court Office informed the Parties that the Deputy President of the CAS Appeals Arbitration Division has decided to appoint Ms Annett Rombach as sole arbitrator.

28. On 24 October 2024, following the Appellant's request for an extension and the Respondent's respective agreement to the request, the CAS Court Office confirmed that the deadline for the Appellant's filing of the Appeal Brief was extended until 28 October 2024.

29. On 28 October 2024, the Appellant filed her Appeal Brief in accordance with Article R51 of the CAS Code.

30. On 29 October 2024, the CAS Court Office acknowledged receipt of the Appeal Brief and invited the Respondent to submit its Answer within twenty (20) days, pursuant to Article R55 of the CAS Code.

31. Furthermore, pursuant to Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to decide the present matter was constituted as follows:

    Sole Arbitrator: Ms Annett Rombach, Attorney-at-law, Frankfurt am Main, Germany.

32. On 13 December 2024, within the extended time limit, the Respondent submitted its Answer which included an objection to the jurisdiction of the CAS and a request to decide on the jurisdictional issue before proceeding to the merits of the case. On 16 December 2024, the Respondent clarified that it did not consider a hearing necessary concerning the issue of CAS jurisdiction. However, if CAS jurisdiction were to be recognized, the Respondent expressed its preference to hold a hearing on the merits of the case. Additionally, the Respondent requested that a case management conference ("**CMC**") be held to address the preparation of the hearing.

33. On 20 December 2024, the Appellant submitted her response to the Respondent's objection to CAS' jurisdiction and further informed the CAS Court Office of the following:

    > *"2. Appellant does not oppose the Respondent's bifurcation request, so long as (i) the hearing on the merits is not delayed (i.e., the jurisdiction issue is decided relatively quickly); and (ii) the date for the hearing on the merits is scheduled while the jurisdiction issue is being considered.*

3. *Appellant requests that a short hearing be scheduled for the parties to make oral submissions regarding jurisdiction. Appellant also requests that a separate hearing be scheduled for the hearing on the merits.*

4. *Appellant requests that a Case Management Conference be scheduled shortly after the holidays, for the purpose of scheduling both (i) a date for the parties to make oral submissions regarding jurisdiction; and (ii) a date for the hearing on the merits".*

34. On 8 January 2025, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a CMC by videoconference, in which the Parties would be granted the additional opportunity to make pleadings on the jurisdictional issue.

35. On 23 January 2025, at 15:30 CET, the CMC was held via videoconference. In addition to the Sole Arbitrator, and Mr Björn Hessert, CAS Counsel, the Parties' representatives participated in the CMC and made oral pleadings on the Respondent's jurisdictional challenge. With respect to the organization of the hearing on the merits, while the Respondent insisted that the hearing be conducted in person at the CAS headquarters in Lausanne, the Appellant requested that the hearing takes place via videoconference.

36. On the same day, both Parties submitted additional documents requested by the Sole Arbitrator during the CMC.

37. On 27 January 2025, the CAS Court Office informed the Parties of the Sole Arbitrator's decision that the CAS has jurisdiction to entertain the Appeal, and that the reasons for the decision would be provided in this Final Award. The CAS Court Office further informed the Parties that the Sole Arbitrator had decided to hold a hearing by video-conference.

38. On 29 January 2025, the Respondent provided the available English translation of the Swedish ADR, noting the following:

> *"This translation of the Swedish ADR to English was conducted in connection with the Code revision in 2021. Since then, the following changes have been made in the Swedish ADR, which are* ***not*** *included in the attached translation:*
>
> *Article 8.2.11 (disqualification of the DoN/RIN)*
>
> *Article 10.8.1 (minor linguistic adjustment)*
>
> *Article 10.14.1 (minor linguistic adjustment)*
>
> *Article 10.14.2 (writing regarding recreational level athlete is amended)*
>
> *Appendix 1 Definitions regarding Recreational level athlete, National Event and National Level Athlete is updated.*
>
> *Anti-Doping Sweden´s conclusion is that the above stated changes are not relevant in this case and the translation has therefore not been amended accordingly.*
>
> *Further, Anti-Doping Sweden wants to point out that the attached translation of the Swedish ADR is not an adopted document. The translation has been done to the best of our ability".*

39. On 3 February 2025, the CAS Court Office delivered the Order of Procedure to the Parties for their signature.

40. On 8 February 2025, the Appellant requested leave to introduce new evidence, more specifically a supplemental expert report from Prof. Kintz ("**Kintz Supplemental Report**"), based on Article R56 CAS Code. The Respondent objected to the admission of the Kintz Supplemental Report to the case file, arguing a lack of "exceptional circumstances" justifying the late submission.

41. On 13 February 2025, the Respondent returned a duly signed copy of the Order of Procedure, in which it struck the following part

> *"~~The Parties agree that videoconferencing is an acceptable means of communication, permitted by Articles R57 para. 3 and R44.2 of the Code, to conduct the hearing. As such, they have agreed to the use of videoconferencing as a means of conducting the hearing and the fact that the hearing is conducted virtually will not be used as a ground in and by itself to challenge and seek the annulment of the award~~"*

and added a (handwritten) comment as follows:

> *"The Sole Arbitrator has decided that the hearing shall be conducted virtually by videoconference according to Articles R57 and R44.2 of the Code".*

42. On 14 February 2025, the Parties submitted a joint hearing schedule with their respective comments. Additionally, the Appellant returned a duly signed copy of the Order of Procedure.

43. On 18 February 2025, the CAS Court Office informed the Parties that the Sole Arbitrator had decided as follows:

> *"a) The hearing shall start at 15:30 CET (6:30 California time);*
>
> *b) Both Parties will be given 45 minutes for their closing statements; and*
>
> *c) The Appellant shall testify before the witnesses (noting that the order of testimony is at the discretion of the Sole Arbitrator)".*

44. On 25 February 2025, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to admit the Kintz Supplement Report to the record and that the Respondent would be given the opportunity to examine Prof. Kintz on the newly admitted evidence during the oral hearing.

45. On 3 March 2025, a hearing was held by video-conference. In addition to the Sole Arbitrator, Mr Björn Hessert, CAS Counsel, and Ms Gabriella Érdi, Law Clerk, the following persons attended the hearing:

For the Appellant:	Ms Maja Radenkovic, Appellant Mr Howard Jacobs, Counsel Ms Leah Bernhard, Counsel Ms Nastashia Tingco, Legal Intern
	Mrs Marija Radenkovic, Witness Mr Slavisa Radenkovic, Witness

Mr Pascal Kintz, Expert

For the Respondent: Mr Joakim Edvinsson, Counsel
Ms Emilia Bang, Counsel
Ms Jenny Schulze, Assistant to Counsels

Ms Jessica Wissman, Witness
Ms Linda Singdén, Witness.

46. The hearing began at 3:30 pm (CET) and ended at 11:20 pm (CET) without any technical interruption or difficulty. At the outset of the hearing, both Parties confirmed that they had no objection to the constitution of the panel. The Parties were given the opportunity to present their cases, to make their submissions and arguments and to answer questions posed by the Sole Arbitrator. After the Parties' final and closing submissions, the hearing was closed and the Sole Arbitrator reserved her detailed decision for this written award.

47. Before the hearing was concluded, both Parties expressly stated that they had no objections to the procedure adopted by the Sole Arbitrator and that their respective rights to be heard, including by videoconference, and to be treated equally had been respected.

48. In reaching the present decision, the Sole Arbitrator has carefully taken into account all the evidence and the arguments presented by the Parties, even if they have not been summarised in the present Award.

IV. THE POSITIONS OF THE PARTIES

49. The following outline of the Parties' positions is illustrative only and does not necessarily comprise every submission advanced by the Parties. The Sole Arbitrator confirms, however, that she has carefully considered all the submissions made by the Parties, whether or not there is specific reference to them in the following summary.

A. The Appellant's Position and Request for Relief

50. The Appellant submits the following in substance:

On the issue of jurisdiction:

- The Respondent's jurisdictional challenge should be rejected. The Appellant is an international athlete as defined in the WADA Code and therefore had a right to appeal the Appealed Decision, which she had received on 23 August 2024, to CAS within twenty-one (21) days of receipt.

- The Respondent participated in the appellate process for over six months without raising any jurisdictional objections and only then claimed – for the first time – that CAS lacks jurisdiction because the Appellant should have appealed the First Instance Decision to CAS instead of the SST.

- The Appellant precisely followed the appeal track indicated in the First Instance Decision and the Appealed Decision and lodged timely appeals to the SST and the CAS.

- The Appellant received the Appealed Decision, affirming the First Instance Decision, on 23 August 2024. She filed her Appeal on 12 September 2024 (20 days after receiving the Appealed Decision).

- The doctrine of *"estoppel by representation"* precludes the Respondent from contesting jurisdiction in the present circumstances. The Respondent's failure to raise a jurisdictional objection earlier allowed the Appellant's appeal to the SST to proceed to completion, and thus the Respondent is estopped from contesting that process now.

- It is well settled in the *lex sportive* that rule inconsistencies must be resolved against the federation (as the drafting party).

On the merits of the case:

- The Doping Control was the first time the Athlete ever submitted a sample. The Athlete had received little anti-doping education since beginning her professional tennis career in 2018.

- Medical testing revealed that the Athlete suffered from PCOS, and she was prescribed various medications as part of her treatment, including Arimidex, Corectia M, and Insofolic Combi.

- Since first receiving news of her positive test, the Athlete has truthfully maintained that she never intended to take any prohibited substance, and that the cause of the Adverse Analytical Finding was the inadvertent ingestion of a substance, either from her medication or the FBN Energizer supplement in her mother's tea.

- The Athlete appealed the Adverse Analytical Finding despite not identifying the specific source of the contaminated substance based on her significant inexperience with scientific testing and her inability to find a laboratory that could properly test the FBN Energizer supplement for Arimistane.

- The Athlete's appeals were unsuccessful due to the fact that she was unable to prove the source of the prohibited substance and did not understand the legal standard necessary to receive a reduction to her 2-year suspension based on the No Significant Fault or Negligence standard in Article 10.6.1 of the Swedish ADR.

- The Athlete's positive test was more likely than not caused by her inadvertent ingestion of Arimistane through contamination of a supplement that was in her mother's tea.

- In the morning of 2 July 2023, the Athlete's mother had dissolved the powder from four (4) capsules of her FBN Energizer supplement in her 16oz (473.176 mL) tea thermos. The Athlete did not see or know that her mother had dissolved the capsules in her tea on 2 July 2023. Nor was the Athlete aware that her mother was taking FBN Energizer.

- The Athlete had no reason to believe that the tea in the thermos was not safe to drink because it was her mother's and she never believed her mother would take any harmful or banned substances.

- The testing of the FBN Energizer supplement which was in the tea the Athlete drank hours before the Doping Control confirmed that the supplement was contaminated with Arimistane. That substance, however, is not a listed ingredient of the product. The only reason that the Athlete did not further her argument regarding the FBN supplements at the first instance tribunal was because she was unaware of any laboratory that would test the supplement for her for Arimistane.

- As to the likelihood that the Athlete was taking Arimistane from another source in addition to the contaminated FBN supplement, it is noted that at the time of the Doping Control, the Athlete was suffering from PCOS and was prescribed various medications as part of her treatment. The Athlete was already using the aromatase inhibitor medication "Arimidex" under the care and monitoring of her doctor. It would be nonsensical to believe that she would at the same time take the dangerous and unapproved aromatase inhibitor Arimistane.

- The Athlete was badly served by the Respondent. In addition to the lack of anti-doping education from the Respondent, the Athlete received little support or guidance from the Respondent after she tested positive to help her navigate the process. While the Respondent may be adverse to the Athlete, it could have easily provided her with resources to help her navigate the complex process of challenging a doping charge.

- In the Notification of Suspected Doping Violation, the Respondent sent to the Athlete on 7 August 2023, there was no reference to an Athlete Ombuds or other independent individual who the Athlete could contact for support, and no additional resources were offered.

- As established by CAS jurisprudence, limitations in the testing methods used for testing both the urine sample and the supplement at issue – such as whether the tests were qualitative (as opposed to quantitative) and whether there was a significant difference between the concentration levels in the athlete's A Sample and B Sample – can significantly impact what an athlete can reasonably be required to show in order to meet her burden of proving how the prohibited substance entered her system. The sample testing for Arimistane (a non-threshold substance) is a qualitative, not a quantitative test.

- The Athlete does not contest the finding of her positive test, nor does she contest that the sample provided belonged to her. The Athlete does not contend that she bears no fault for her positive test, rather she is entitled to a reduction of any applicable sanction based upon her very limited degree of fault and negligence.

- The SST failed to follow the applicable rules and regulations; failed to accurately assess the evidence submitted in rendering the Appealed Decision and rendered a sanction that was inconsistent with the Swedish ADR.

- The Athlete submits that her sanction should be reduced to time served under Article 10.6.1.2 or Article 10.6.1.1 of the WADA Code (2021) because the source of Arimistane in her sample was more likely than not the result of ingesting the FBN Energizer supplement on 2 July 2023 which was contaminated with Arimistane; and because her degree of fault was very low. This case is clearly one of no significant fault or negligence, with the Athlete's degree of fault falling at the lower end of the spectrum.

- The Athlete submits that her objective fault is "light," warranting a sanction between 0-8 months: she was drinking tea from a thermos that she knew came from her mother, for which she had no reason to believe that it contained anything other than tea.

- Regarding the "subjective factors", the Athlete is a young athlete (22 years old) and had never been submitted to a doping test before. She also had inadequate anti-doping education. The Athlete was also under a lot of stress at the time while trying to manage her recent health issues.

- In the unlikely event that the Sole Arbitrator determines that the FBN Energizer supplement is not a contaminated product, then it is submitted that the analysis is exactly the same under Article 10.6.1.1 of the WADA Code (2021), applicable to a positive test for a Specified Substance where the athlete can establish No Significant Fault or Negligence.

- The sanction in this case should not exceed the length of the sanction that Appellant has already served.

51. The Appellant, in her Statement of Appeal, requests the following relief:

"7.1 Appellant Maja Radenkovic requests CAS to rule as follows:

7.1.1 That the appeal of Maja Radenkovic is admissible.

7.1.2 That the 22 August 2024 Appeal Decision issued by the National Sports Association (RIN) be set aside.

7.1.3 That Appellant Maja Radenkovic's sanction be eliminated, or in the alternative, reduced.

7.1.4 That Respondent shall bear all costs of the proceedings including a contribution toward Appellant's legal costs.

7.1.5 The Appellant reserves the right to amend or refine the prayers for relief in her Appeal Brief".

B. The Respondent's Position and Request for Relief

52. The Respondent submits the following in substance:

On the issue of jurisdiction:

- The Respondent contests CAS' jurisdiction to decide on the Appeal. The Athlete

has not appealed the First Instance Decision directly to CAS as she should have done, but instead appealed wrongfully to the SST and benefited from the Swedish national two-instance adjudicatory mechanism. As a consequence, the Athlete has lost her possibility to exercise the right to appeal to CAS.

- This interpretation is corroborated by the WADA Code which, according to Article 23.2 of the Swedish ADR, shall take precedence in the event of conflict with the provisions of the Swedish ADR. Article 13.2.1 of the WADA Code provides that "*the decision may be appealed exclusively to CAS*" in cases arising from participation in an International Event or in cases involving International-Level Athletes. Considering the wording of article 13.2.1 of the WADA Code, *i.e.* that national decisions involving International-Level Athletes may be appealed only to CAS and not to other national disciplinary bodies, the Athlete should have appealed the First Instance Decision directly to CAS and not, which was instead wrongfully done, to the SST.

- This is the first opportunity for Anti-Doping Sweden to raise jurisdictional objections in this case. Anti-Doping Sweden was not, at the time, informed that the First Instance Decision had been appealed by the Athlete to the SST instead of CAS. The Respondent was not given the possibility to take part in the process before the SST.

- The time limit for appeals requires athletes to file an appeal to CAS within twenty-one (21) days of receipt of the decision by the first instance. Therefore, the Statement of Appeal was not submitted within the applicable time limit and as a consequence the Athlete has lost her right to appeal to CAS.

- To allow the Athlete to have her case heard before CAS, and thereby extending the procedural rights for athletes set out in the Swedish ADR in this specific case, would be both unfair with regards to other athletes and unreasonable from a procedural cost efficiency perspective.

- The doctrine of *"estoppel by representation"* is neither applicable nor relevant in the present case.

- There is no inconsistency in the Swedish ADR that should be resolved against the Respondent.

- The Doping Panel indeed included a wrong appeal instruction in the First Instance Decision (referring the Athlete to the SST rather than to CAS). However, the SST has not included any specific instruction that the Appealed Decision can be appealed to CAS, merely a general statement that the SST's decisions can be appealed to CAS in certain cases.

- Neither the Doping Panel nor the SST have any obligation to forward and / or re-direct wrongfully directed appeals to the correct instance and / or guide the Athlete in the legal process in any other way.

On the merits of the case:

- The Athlete must be considered as both professional and experienced, regardless of her age. The Athlete participated in relevant anti-doping education. The Athlete has had extensive information and education accessible to her regarding anti-doping.

- The Respondent does not contest that the Athlete had been traveling or that she visited a hospital in Serbia on 17 May 2023. However, the Respondent cannot acknowledge any of the statements regarding the length of her travels, her health conditions, any hospitalization and / or the prescription of Arimidex. The Athlete participated in several tennis tournaments during May and June 2023 which indicated that she did not have any serious health problems.

- Several times during this legal process, the Athlete has introduced new and / or inconsistent statements regarding her health conditions and medications, which in high regard affects the Athlete's credibility.

- The Respondent strongly disputes the scenario of the Athlete's alleged ingestion of her mother's tea. The Athlete did not seem to be "extremely cold" and / or "soaked", and thus in need of hot tea, since she did not even change her competition clothes during the second break of the match.

- On 3 July 2023, *i.e.* only a few hours after the Doping Control, the Athlete informed the Respondent about her allergy to grass, pollen and birch and that she used prescribed asthma medication to combat the allergy. Further, the Athlete informed the Respondent that over the past seven days she had taken dietary supplements to help her lose weight. Later, she suddenly claimed that the dietary supplement was used by her mother.

- The alleged dosage is contradictory to both the product information and the recommendations from the personal trainer of the Athlete's mother.

- There is no support for the statements regarding the alleged communication with the producer of the FBN Energizer supplement and / or the Swedish Food Agency.

- Regarding the analysis of the FBN Energizer supplement, the Respondent submits that it is not clarified which bottle / batch was analysed and the test did not even involve analysis of the prohibited substance Arimistane, which was detected in the Athlete's urine sample. The analysis was also not conducted according to the WADA International Standard for Testing an Investigations or in a WADA accredited laboratory.

- Two capsules "containing a brown powder" without any labelling were allegedly sent via mail for analysis to Dr. Kintz. The Respondent disputes that these capsules were from the same bottle and / or batch as the capsules allegedly dissolved in the Athlete's mother's tea.

- There was no ombuds system in place for athletes in Sweden to which the Respondent could refer athletes to at the time of the Athlete's testing. WADA did

not announce the launch of the Anti-Doping Ombuds website until a month after the notification letter was sent. The Athlete was offered a conversation with the Respondent during which the Athlete would have been given the opportunity to ask questions.

- It is untrue that the Respondent recommended that the Athlete should forego the testing of the B Sample. Furthermore, the Athlete's right to get the B Sample tested is clearly set out in the notification letter. The Athlete was expressly informed about and offered to analyse the B Sample twice.
- The Athlete has not met the burden of proof with regard to the origin of the detected Prohibited Substance and therefore cannot benefit from any reduction of her period of ineligibility.
- The Athlete has not exercised a high level of caution. The Athlete's and / or the Athlete's family members' total lack of diligence means that this case cannot be considered so exceptional that it would qualify for a No Significant Fault or Negligence reduction.

53. The Respondent requests the following relief:

"12.1 Anti-Doping Sweden primarily requests that:

(i) CAS rejects the appeal by the Athlete cause of the lack of admissibility (jurisdiction) of CAS in this case,

(ii) the Athlete is ordered to bear the arbitration costs of these proceedings, and

(iii) the Athlete is ordered to contribute to Anti-Doping Sweden's legal and other costs.

In Anti-Doping Sweden's view, CAS may decide on this preliminary issue of its own jurisdiction based on the parties' written submissions (and a specific hearing is not necessary). The witnesses and videos submitted as evidence is not relevant for the assessment of jurisdiction.

12.2 In case of positive recognition of admissibility (jurisdiction) of CAS, Anti Doping Sweden secondarily requests that:

(i) CAS dismisses the appeal by the Athlete and that the Appealed Decision thus is confirmed,

(ii) all the Athlete's requests for relief are rejected,

(iii) CAS rules that all competitive results obtained by the Athlete from and including July 2, 2023, until the date on which CAS' award in this case enters into force, are disqualified with all resulting consequences (including forfeiture of medals, points and prizes),

(iv) the Athlete is ordered to bear the arbitration costs of these proceedings, and

(v) the Athlete is ordered to contribute to Anti-Doping Sweden's legal and other costs".

V. JURISDICTION

54. Article R47 para. 1 of the CAS Code provides – in its pertinent parts –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".*

55. The "*statutes and regulations*" of the Respondent, being the relevant federation, is the Swedish ADR. Regarding appeals, Article 13.1 and 13.2 of the Swedish ADR provide (in their relevant parts) as follows:

> *"**13.1 Decisions subject to appeal***
>
> *Decisions may be appealed under these Regulations as outlined in Articles 13.2-13.6 below, or as otherwise stated in these Regulations, the Code, or International Standards.* […]
>
> ***13.2.1 Appeals regarding International-Level Athletes or International Events***
>
> *In cases involving participation in an International Event or concerning an International-Level Athlete, decisions may be appealed directly to CAS.*[65]
>
> ***13.2.2 Appeals where Article 13.2.1 is not applicable may be appealed as follows**.*
>
> *13.2.2.1 ADSE's decision may be appealed to the DoN* [Doping Panel].
>
> *13.2.2 The DoN's decisions may be appealed to the RIN.*
>
> *13.2.2.3 The RIN's decisions may, in cases specifically prescribed by this regulation, the Code, or other applicable anti-doping regulations, be appealed to CAS.* […]
>
> ***Article 13.2.3.2:***
>
> *In cases under Article 13.2.2, WADA, the International Olympic Committee, the International Paralympic Committee, and the relevant ISF also have the right to appeal the RIN's decision to CAS. A party appealing to CAS shall receive assistance from CAS to obtain all relevant information from the Anti-Doping Organization whose decision is being appealed. Such information must be provided upon request from CAS".*

56. The Parties agree that the Athlete is an International-Level Athlete, and that the provisions regarding appeals for International-Level Athletes in Article 13 of the Swedish ADR shall principally apply.

57. The Respondent's jurisdictional challenge is based on the argument that the Athlete, as an International-Level Athlete, should have appealed the First Instance Decision directly

– and in fact exclusively – to the CAS under Article 13.2.1 of the Swedish ADR and Article 13.2.1 of the WADA Code. Contrary to this appeal system, the Athlete chose to appeal the First Instance Decision to the SST, which – in turn – rendered the Appealed Decision. The Appealed Decision is, however, not subject to a CAS appeal, and the First Instance Decision can no longer be appealed to the CAS because of the expiry of the 21-day time limit.

58. The Sole Arbitrator does not agree with the Respondent's jurisdictional analysis, for the following reasons:

59. First, the wording of Article 13.2.1 of the Swedish ADR ("*In cases* […] *concerning an International-Level Athlete, decisions may be appealed directly to CAS*") supports a right of appeal to the CAS against the Appealed Decision rendered by the SST. The Appealed Decision qualifies as a "decision subject to appeal" within the meaning of Article 13.2 of the Swedish ADR, because it confirms a decision that an ADRV was committed and it further confirms the imposition of sanctions on the Athlete.

60. Second, the appellate track chosen by the Athlete conforms with the WADA Code, which prescribes a mandatory appeals system that the national anti-doping organizations (including the Respondent) must implement without substantive change (Article 23.2.2 WADA Code). Pursuant to Article 13.2.1 WADA Code, decisions involving International-Level Athletes "*may be appealed exclusively to CAS*". Pursuant to CAS jurisprudence (see recently Arbitral Award on Jurisdiction in CAS 2023/A/9681, paras 55 et seq.), the appeal right to CAS as the final instance is granted even when the Athlete already benefitted from an appeal instance on national level, *i.e.* even when the CAS acts as a second appeal instance and not as a first appeal instance. The history of the WADA Code illustrates that a multi-tier appeal system, with the CAS as the ultimate appeal instance, is appropriate for International-Level Athletes, and that an additional national appeal instance shall not deprive them of their right to seize the CAS as the final instance over a doping-related decision. Up until 2021, the WADA Code expressly foresaw the possibility of a review of a first-instance decision on the national level, and even insisted that such review rights be exhausted before appealing the decision ultimately to CAS. Article 13.1 of the 2015 WADA Code (in force until 2021) provided the following:

> *"Before an appeal is commenced, any post-decision review provided in the Anti-Doping Organization's rules must be exhausted, provided that such review respects the principles set forth in Article 13.2.2 below (except as provided in Article 13.1.3)".*

61. Hence, until 2021, the WADA Code, as per its express language, accepted a multi-tier appeal system below the CAS. The reference to the "*exclusive*" jurisdiction of the CAS was obviously meant to clarify that the CAS shall be the only forum to render the ultimate and final decision in doping-related matters, and that the CAS could not be replaced by any other national or international judicial body, for the obvious reason to ensure that a supreme forum exists as a final instance for the resolution of doping disputes affecting international sports. This system has also been confirmed by other CAS panels. For example, in CAS 2008/A/1586 (Süreyya Ayhan Kop v. IAAF & TAF, award of 10 November 2009), the panel stated (para. 20) that

"the purpose of article 13.2.1 of the World Anti-Doping Code (WADC) is not to exclude the possibility for anti-doping organizations to institute a review system below the CAS for decisions concerning international-level athletes. It is to ensure that CAS is the final body to which decisions concerning an international-level athletes may be appealed, thereby providing them with the same treatment under unified rules and practices that ultimately guarantee a more level playing field in international competitions, in the interest of fairness and equality of treatment".

62. These principles did not materially change as a result of the inception of the 2021 WADA Code. While the sentence quoted above at para. 60 was deleted from Article 13.1 of the 2021 WADC, no substantive deviation was intended in terms of an athlete's right to seize the CAS as the ultimate "*exclusive*" appeal instance. Likely, the deletion of the "exhaustion requirement" was to clarify that the National Anti-Doping Organizations could provide for the possibility of additional (national) review instances to be skipped, instead of them having to be exhausted. This is precisely the system enshrined in Article 13.2.1 of the Swedish ADR, which provides that an International-Level Athlete "*may*" (i.e.: does not have to) bring his or her appeal against a decision in the sense of Article 13.2 "*directly to CAS*", instead of having to exhaust national appeal opportunities.

63. Third, the Respondent's interpretation of its own appeal system not allowing an International-Level Athlete to seize CAS after the exhaustion of a national appeal instance (here: the SST) would endanger the purpose of establishing the CAS as the guardian of the correct and globally consistent application of the anti-doping rules in international cases. It is in the interest of the entire international sports community that – irrespective of the number of appeal instances existent on national level –, to ensure fairness and a level playing field, national decisions shall ultimately reach the CAS if one party finds that the decision is false. As a result, neither the WADA Code nor the Swedish ADR (which must be compliant with the WADA Code in terms of the appellate track) make International-Level Athletes forfeit their right to appeal "exclusively" to CAS a decision that passed through more than one instance nationally.

64. Fourth, the Respondent's further argument that the Athlete forfeited her right to appeal the SST Decision to the CAS because the SST was the wrong appeal instance under the Swedish ADR, is also without avail. In fact, the Athlete was misled by the Doping Panel itself into believing that she should appeal the First Instance Decision to the SST. It was the Doping Panel which advised her that the First Instance Decision "*may be appealed* […] *to the Swedish Supreme Sports Tribunal",* and which omitted to advise her of her right to appeal "*directly to the CAS*" under Article 13.2.1 of the Swedish ADR. It is not for an athlete to examine the legal accuracy of written information about her appeal rights rendered by a judicial authority such as the Doping Panel, which has experience with such matters. In fact, it is the very purpose of legal information on appeal rights to ensure that an athlete can effectively exercise his or her appeal rights in doping matters. In this context, it is also important to note that the Doping Panel operates under the auspices of the Respondent. Therefore, the incorrect information on the Appellant's appeal rights against the First Instance Decision is attributable to the Respondent itself. The Athlete cannot be deprived of her ultimate right to seize the CAS as the ultimate appeal instance for International-Level Athlete because of a mistake not made by her, but by a body operating under the auspices of the Respondent.

65. For all of these reasons, the Sole Arbitrator finds that she has jurisdiction over the present appeal under Article 13.2.1 of the Swedish ADR (in conjunction with Article 13.2.1 of the WADA Code).

VI. ADMISSIBILITY

66. Article R49 of the Code provides – in its pertinent parts – 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".*

67. Article 13.6.1 of the Swedish ADR provides as follows:

> *"An appeal to CAS must be filed within twenty-one (21) days from the date the appealing party received the decision".*

68. The Appellant was notified of the Appealed Decision on 23 August 2024. Hence, the 21-day time limit to file the Appeal expired on 13 September 2024. The Appellant's Statement of Appeal submitted on 12 September 2024 was, therefore, filed in time.

69. The Statement of Appeal also complied with the requirements of Article R48 of the CAS Code. The Appeal is therefore admissible.

VII. OTHER PROCEDURAL ISSUES

A. The Sole Arbitrator's decision to conduct the hearing via videoconference

70. The Respondent requested that the oral hearing on the merits takes place in person at the CAS. The Appellant requested, based on Articles R57.3 and R44.2 of the CAS Code, that the hearing be held via videoconference.

71. Pursuant to Article R44.2 of the CAS Code (applicable in appeals proceedings through Article R57.3 of the CAS Code), the Sole Arbitrator "*may decide to conduct a hearing by video-conference*". The decision on the format of the hearing rests within the Sole Arbitrator's discretion, not to be exercised arbitrarily.

72. In the present case, the Sole Arbitrator's decision to hold the hearing via videoconference was guided by the financial restraints faced by the Appellant, who had been granted legal aid to be represented by legal counsel. The Sole Arbitrator also considered that the hearing would not last more than one day, that the Appellant's counsel would have to travel to Switzerland from California, U.S., and that all other participants would have to travel as well (from Sweden and Germany, respectively). Furthermore, the Sole Arbitrator considered that Anti-Doping Sweden's right to a fair hearing was not compromised by the fact that such hearing would be taking place remotely.

73. That the Respondent's right to a fair hearing was not affected in the present case is

demonstrated by the fact that the Respondent managed to uncover significant inconsistencies in the Athlete's testimony through its video cross examination, as will be explained below in the merits section (**X.**).

B. The Admissibility of the Kintz Supplemental Report

74. By correspondence of 7 February 2025, the Appellant requested the admission of the Kintz Supplemental Report, based on Article R56 CAS Code. The Arbitrator admitted the request for the following reasons:

75. The Kintz Supplemental Report directly addressed allegations made by the Respondent – for the first time – in the Answer, in respect of Prof. Kintz's testing of the capsules allegedly ingested by the Athlete through her mother's tea. The Appellant proved that she acted promptly to respond, through Prof. Kintz's Supplemental Report, to the Respondent's challenges, and submitted the new evidence as early as possible, and almost one month before the oral hearing. Depriving the Athlete of the opportunity to supplement the Kintz Report would have seriously impeded the Athlete's fundamental right to an effective defence against the accusations against her in this doping case.

76. The Respondent was not prejudiced by the new evidence, because it was able to question Prof. Kintz on both his initial and his supplemental report during the oral hearing, and in fact made extensive use of such right.

VIII. APPLICABLE LAW

77. For appeal proceedings, Article R58 of the CAS Code provides the following:

> *"The Panel 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 Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".*

78. The "*applicable regulations*" for the purposes of Article R58 of the CAS Code are those contained in the Swedish ADR because the Appeal is directed against a decision which was passed applying the Swedish ADR. Subsidiarily, the law of Sweden applies in case of a *lacuna* in the Swedish ADR, as the SST is domiciled in Sweden.

IX. SCOPE OF REVIEW

79. According to Article R57 of the CAS Code:

> "*The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. […]*".

80. The unlimited scope of review is also confirmed by Article 110 of the Swedish ADR which provides – in its pertinent parts – as follows:

"*(2) The scope of review on appeal includes all issues relevant to the matter and is expressly not limited to the issues or scope of review before the SST. Any party to the appeal may submit evidence, legal arguments and claims that were not raised in the first instance hearing so long as they arise from the same case of action or same general facts or circumstances raised or addressed before the SST".*

81. Against this background, the Sole Arbitrator finds that her power to review the facts and the law of the present case is not limited.

X. MERITS

82. In the present case, the Appellant accepts that her sample collected in-competition on 2 July 2023 contained Arimistane, an aromatase inhibitor listed under the category "S4 Hormone and Metabolic Modulators" of the WADA Prohibited List (2023 version), which is stated to be a "Specified Substance" and prohibited at all times. In other words, the Athlete accepts that she has committed an ADRV.

83. The Respondent accepts that the ADRV was not committed intentionally.

84. What remains in dispute between the Parties is the applicable sanction, more particularly whether the Athlete is entitled to benefit from a reduction of the standard 2-year period of ineligibility (Article 10.2.2 of the Swedish ADR) based on "No Significant Fault or negligence (Article 10.6 of the Swedish ADR).

A. The Applicable Legal Framework

85. The relevant provisions of the Swedish ADR addressing the issue of sanctions with are listed below:

> *"**10.2 Ineligibility for Presence, Use or Attempted Use or Possession of a Prohibited Substance or Prohibited Method***
>
> *The period of Ineligibility for a violation of Article 2.1, 2.2 or 2.6 shall be as follows, subject to potential elimination, reduction or suspension pursuant to Article 10.5, 10.6 or 10.7:*
>
> ***10.2.1** The period of Ineligibility for a violation of Article 2.1, 2.2 or 2.6 shall be as follows, subject to potential elimination, reduction or suspension pursuant to Article 10.5, 10.6 or 10.7:*
>
> ***10.2.1.1** The anti-doping rule violation does not involve a Specified Substance or a Specified Method, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.*
>
> ***10.2.1.2** The anti-doping rule violation involves a Specified Substance or a Specified Method and ADSE can establish that the anti-doping rule violation was intentional.*

10.2.2 *If Article 10.2.1 does not apply, subject to Article 10.2.4.1, the period of Ineligibility shall be two (2) years.*

10.5 Elimination of the Period of Ineligibility where there is No Fault or Negligence

If an Athlete or other Person establishes in an individual case that he or she bears No Fault or Negligence, then the otherwise applicable period of Ineligibility shall be eliminated.[46]

Fn. 46 [Comment to Article 10.5: This Article and Article 10.6.2 apply only to the imposition of sanctions; they are not applicable to the determination of whether an anti-doping rule violation has occurred. They will only apply in exceptional circumstances, for example, where an Athlete could prove that, despite all due care, he or she was sabotaged by a competitor. Conversely, No Fault or Negligence would not apply in the following circumstances: (a) a positive test resulting from a mislabeled or contaminated vitamin or nutritional supplement (Athletes are responsible for what they ingest (Article 2.1) and have been warned against the possibility of supplement contamination); (b) the Administration of a Prohibited Substance by the Athlete's personal physician or trainer without disclosure to the Athlete (Athletes are responsible for their choice of medical personnel and for advising medical personnel that they cannot be given any Prohibited Substance); and (c) sabotage of the Athlete's food or drink by a spouse, coach or other Person within the Athlete's circle of associates (Athletes are responsible for what they ingest and for the conduct of those Persons to whom they entrust access to their food and drink). However, depending on the unique facts of a particular case, any of the referenced illustrations could result in a reduced sanction under Article 10.6 based on No Significant Fault or Negligence.]

10.6 Reduction of the Period of Ineligibility based on No Significant Fault or Negligence

10.6.1 *Reduction of Sanctions in Particular Circumstances for Violations of Article 2.1, 2.2 or 2.6*

All reductions under Article 10.6.1 are mutually exclusive and not cumulative.

10.6.1.1 *Specified Substances or Specified Methods*

Where the anti-doping rule violation involves a Specified Substance (other than a Substance of Abuse) or Specified Method, and the Athlete or other Person can establish No Significant Fault or Negligence, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two (2) years of Ineligibility, depending on the Athlete's or other Person's degree of Fault.

10.6.1.2 *Contaminated Products*

In cases where the Athlete or other Person can establish both No Significant Fault or Negligence and that the detected Prohibited Substance (other than a Substance of Abuse) came from a Contaminated Product, then the period of Ineligibility shall be, at a

minimum, a reprimand and no period of Ineligibility, and at a maximum, two (2) years Ineligibility, depending on the Athlete or other Person's degree of Fault".

86. The Appendix 1 (Definitions) of the Swedish ADR defines a Contaminated Product as follows:

"Contaminated Product: A product that contains a Prohibited Substance that is not disclosed on the product label or in information available in a reasonable Internet search".

87. With respect to the standard and burden of proof, Article 3.1 of the Swedish ADR provides the following:

*"**3.1 Burdens and Standards of Proof***

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

B. The Disputed Issues

88. The Parties agree that the standard period of ineligibility for the Athlete's ADRV is two years, pursuant to Article 10.2.2 of the Swedish ADR. At the core of this appeal is the Appellant's allegation that she is entitled to a reduction of the standard period of eligibility pursuant to Articles 10.6.1.1 and/or 10.6.1.2 of the Swedish ADR, because the source of the Prohibited Substance was the FBN Energizer supplement contained in the tea she allegedly drank on the day of the match without knowing that her mother had dissolved capsules of the supplement in that tea. Due to her unconscious ingestion of the Prohibited Substance, the Athlete believes that she was not significantly at fault or negligent. The Respondent disputes that the Athlete's scenario of the contaminated tea was the way in which the Prohibited Substance entered her body.

89. The Athlete bears the burden of proof to demonstrate the circumstances permitting a reduction under Articles 10.6.1.1 and/or 10.6.1.2 of the Swedish ADR. The standard of proof applicable is balance of probabilities, *i.e.* the Athlete's scenario must be more likely than not (Article 3.1 of the Swedish ADR).

90. In addressing the disputed issues, the Sole Arbitrator will establish, in a first step, the legal requirements for obtaining a reduction under Articles 10.6.1.1 and/or 10.6.1.2 (below at **1.**), before she will, in a second step, analyse whether the Athlete proved, on a

balance of probabilities, how the Prohibited Substance entered her body (below at **2.**) and that she acted with "No Significant Fault or Negligence" (below at **3.**).

1. The applicable standard to demonstrate No Significant Fault or Negligence

91. Principally, both under Articles 10.6.1.1 and 10.6.1.2 there are two conditions an athlete must satisfy to obtain a reduction on his or her period of ineligibility (see, e.g., CAS 2009/A/1870, para. 113):

i. the athlete must establish how the Prohibited Substance entered his or her system;

ii. the athlete must establish that he or she bears No Significant Fault or Negligence.

92. Athletes who establish successfully how a banned substance entered their body must still demonstrate that they bore No Significant Fault or Negligence when they ingested the banned substance. The FBN Energizer which the Athlete claims was the source of the Arimistane found in her sample is a nutritional supplement used for fat burning. Elite athletes must apply utmost caution when using nutritional supplements, because they are expected to know that those products carry a degree of risk (CAS 2023/A/10025 & 10227, para. 234). The comment to Article 10.6.1.2 of the WADA Code instructively notes that

> *"*[i]*n order to receive the benefit of this Article, the Athlete or other Person must establish not only that the detected Prohibited Substance came from a Contaminated Product, but must also separately establish No Significant Fault or Negligence. It should be further noted* ***that Athletes are on notice that they take nutritional supplements at their own risk****. The sanction reduction based on No Significant Fault or Negligence has rarely been applied in Contaminated Product cases unless* ***the Athlete has exercised a high level of caution before taking the Contaminated Product****. In assessing whether the Athlete can establish the source of the Prohibited Substance, it would, for example, be significant for purposes of establishing whether the Athlete actually Used the Contaminated Product, whether the Athlete had declared the product which was subsequently determined to be contaminated on the Doping Control form".*
>
> [Emphasis added]

93. An abundance of CAS jurisprudence exists on the issue when an athlete's fault or negligence is "significant" (see, e.g., CAS 2023/A/10025 & 10227; CAS 2009/A/1870; CAS 2005/A/847; CAS 2008/A/1489; CAS 2006/A/1025; CAS 2005/A/830; CAS 2005/A/951; CAS 2004/A/690), with each award turning very closely to the specific facts of the respective case. Two general principles have been identified in assessing whether the use of a (contaminated) nutritional supplement allows for a reduction of the sanction (CAS 2009/A/1870, paras. 117, 118):

> *"a period of ineligibility can be reduced based on no significant fault or negligence only in cases* ***where the circumstances are truly exceptional and not in the vast majority of cases****; for instance, a reduced sanction based on "no significant fault*

or negligence" can be applied where the athlete establishes that the cause of the positive test was contamination in a common multiple vitamin purchased from a source with no connection to prohibited substances and the athlete exercised care in not taking other nutritional supplements (cf. Despres Award, at § 7.4, quoting from the official commentary of the WADC).

As a result, a point can be established: ***the fact that an adverse analytical finding is the result of the use of a contaminated nutritional supplement does not imply per se that the athlete's negligence was "significant"****; the requirements for the reduction of the sanction […] can be met also in such circumstances. It is in fact clear to this Panel that an athlete can avoid the risks associated with nutritional supplements by simply not taking them; but the use of a nutritional supplement "purchased from a source with no connection to prohibited substances, where the athlete exercised care in not taking other nutritional supplements" and the circumstances are "truly exceptional", can give rise to "ordinary" fault or negligence and do not raise to the level of "significant" fault or negligence".*

94. In the present case, the Athlete purports that she unknowingly ingested a contaminated supplement by drinking her mother's tea without knowing that her mother was using, at the time, the FBN Energizer supplement and had dissolved four capsules of this product into the bottle of tea from which the Athlete drank during the rain break. In previous cases involving accidental consumption of a contaminated product, CAS panels have reduced the period of ineligibility in similar circumstances (see, e.g., CAS 2017/A/5301).

95. The core question in this case is whether the Athlete successfully established, on the balance of probabilities, that the FBN Energizer was the source of the Prohibited Substance, and that she indeed ingested that substance accidentally by drinking her mother's tea.

2. Has the Athlete demonstrated how the Prohibited Substance entered her system?

96. The Athlete contends that the source of the Prohibited Substance found in her sample is the FBN Energizer supplement. In this respect, she maintains that her testing of that product by Prof. Kintz confirmed that the supplement was contaminated with Arimistane.

97. Anti-Doping Sweden challenges Prof. Kintz's Report. It argues that it is entirely unclear what Prof. Kintz tested, how he tested, and how he arrived at his conclusions. Furthermore, the Respondent submits that the analysis was not conducted in accordance with the WADA International Standard for Testing an Investigations and was not carried out by a WADA-accredited laboratory. Therefore, the discovery of Arimistane in the capsules tested by Prof. Kintz is not reliable.

98. It is undisputed between the Parties that the Appellant sent two capsules containing "brown powder" (Kintz Report, p. 2) to X-Pertise Consulting (Prof. Kintz's laboratory in France), a non-WADA accredited laboratory. One of these capsules was analysed using liquid chromatography coupled with high-resolution mass spectrometry on a Waters XEVO G2 QToF-MS, after solubilisation in methanol. The test results indicated that

Arimistane was identified in the "brown powder" that Prof. Kintz had received by mail from the Athlete.

99. After the Respondent had challenged that the two capsules of "brown powder" came from the same batch of FBN Energizer capsules allegedly used by the Athlete's mother, the Athlete's legal team sent to Prof. Kintz a sealed vial of the FBN Energizer product for subsequent testing. The testing of the capsules of that sealed container (labelled "FBN Energizer") revealed the presence of Arimistane at quantities (21.1 mg/g) similar to the quantities (17.7 mg/g) found in one of the two capsules sent by the Athlete earlier. Prof. Kintz explained that a deviation of +/- 20% is not unnormal when testing different capsules of the same product. When asked whether he could determine that the two capsules of "brown powder" received from the Athlete at first were indeed FBN Energizer capsules, he answered that the capsules from the two deliveries "looked the same" and both contained caffeine and Arimistane. This testimony remained unchallenged.

100. Based on Prof. Kintz's testimony, the Sole Arbitrator cannot be sure beyond reasonable doubt that the two capsules initially sent to Prof. Kintz by the Athlete were FBN Energy capsules. However, for good reasons, the applicable standard of proof is not "beyond reasonable doubt" (nor "comfortable satisfaction"), but the "balance of probabilities". Under this standard, the Sole Arbitrator is sufficiently certain that it is more likely than not that the capsules stemmed from an FBN energizer batch used in the household of the Athlete's parents. The two capsules were very similar (both in respect of how they looked and in respect of specific ingredients contained therein). It appears highly unlikely that a young and inexperienced athlete without any pharmacokinetic background would have the sophistication and (financial) means to look for a product containing the same Prohibited Substance that was found in her sample, without such substance being labelled on the product, and send it to a laboratory for testing, and that such laboratory, in turn, finds that the testing results match the Adverse Analytical Finding. In this context, the Sole Arbitrator also notes that Prof. Kintz appeared as a credible expert in the hearing, who provided plausible explanations without appearing biased in favour of the Athlete or against Anti-Doping Sweden.

101. Prof. Kintz's credibility was underscored when he explained the testing method used for identifying Arimistane in the capsules. He explained that his laboratory has an accreditation for routine toxicology, that it applies the same procedures, techniques, and approaches as a WADA-accredited laboratory, and that the testing in the Athlete's case was not difficult due to the high concentrations of Arimistane in the product (measured in milligrams rather than in micrograms). This testimony was plausible and remained unchallenged during the hearing. Anti-Doping Sweden did not submit any expert evidence countering Prof. Kintz's conclusions. Therefore, the Sole Arbitrator finds that it is irrelevant that the product was not tested in a WADA-accredited laboratory; any contrary requirement would simply overstretch the onus that is placed on an athlete required to demonstrate the source of a Prohibited Substance under the standard of the balance of probabilities (compare also CAS 2023/A/10025 & 10227, paras 140 et seq. and para 186).

102. Finally, the Sole Arbitrator finds that it is not relevant that Prof. Kintz was initially unable to determine the concentration of Arimistane in the first tested capsule due to the lack of

an available reference standard. A reference standard is only relevant for determining the quantity of the tested substance. Because Arimistane is a non-threshold substance, the urine sample testing for it is a qualitative, not a quantitative test. In any event, Prof Kintz's laboratory obtained the relevant reference standard after his first report, and Prof. Kintz was able to identify the quantity of the Prohibited Substance in both the first capsules (which he re-tested) and the new capsules delivered subsequently by the Athlete's legal team. He also confirmed that the detected concentrations aligned with the Athlete's positive sample, assuming that she drank approximately half of her mother's bottle of tea containing four dissolved capsules of FBN Energizer. This testimony remained unchallenged.

103. As a result, the Sole Arbitrator finds that the Athlete proved, on the balance of probabilities, that the FBN Energizer supplement was the source of the Prohibited Substance. Her ingestion of FBN Energizer made the Arimistane enter her body.

3. Has the Athlete acted with No Significant Fault or Negligence?

104. The Athlete's submission that she unconsciously ingested the FBN Energizer supplement by drinking her mother's tea without knowing that her mother took this supplement to lose weight could eliminate "significant" fault or negligence (as established in similar CAS jurisprudence cited above). However, Anti-Doping Sweden challenges this scenario by pointing to several (alleged) inconsistencies in the Athlete's and her mother's testimony.

105. The first time the Athlete explained the incident of her drinking her mother's tea during the rain break was in her written statement dated 5 October 2023. She stated that the reason why she did not mention this incident earlier (but only more than three months after the Doping Control) was that she did not know that the tea could have been the cause for her Adverse Analytical Finding. In that Statement, the Athlete confirmed that during the second rain break in the final match (which lasted between 45-60 minutes), when she was freezing due to the rainy weather, she went to the clubhouse to get her hoodie and her headphones from her mother's bag. On that occasion, she saw the thermos bottle with her mother's tea in the bag, took it and drank "quite a bit" of that tea before moving on into another room.

106. In her written witness statement submitted in the present proceedings, the Athlete described the incident as follows:

> *"6. I played in the final match, which was unfortunately delayed twice because of the rainy weather. The second time it was delayed, my clothes were soaked through, and I was very cold.*
>
> *7. I went to the clubhouse to warm up, which was where my mom and sister were waiting, along with other spectators. The clubhouse was very crowded, but **I was able to locate my mom's bag on a table, which had my hoodie and headphones**. My mom was in another area of the clubhouse talking with family friends who had come to watch the match.*

*8. **I retrieved my things from my mom's bag** and saw her tea thermos in the bag. Since I was cold, I drank about half of my mom's tea from her thermos to help me warm up. A short while later, the officials offered me a seat in the storage area where I could focus and prepare to play, so I put my mom's thermos back in her bag and left the clubhouse".*

[emphasis added]

107. The Athlete confirmed her written statement during direct examination at the hearing. She added that when she went to the locker room during the second rain break, she changed clothes (sports bra, top and socks), because she always carries a second set of everything, except her tennis skirt.

108. These statements were at the core of the Athlete's cross-examination by the Respondent during the oral hearing. During cross-examination (and subsequent questioning by the Sole Arbitrator), the Athlete confirmed that she went to her mother's bag to get her hoodie and headphones. She delivered the impression that she was not in possession of her headphones before she retrieved them from her mother's bag during the second rain break:

*"I went out of the courts and straight to the locker room. In the locker room I changed my sports bra, top and my socks, and then I put my hoodie on, again. **After that I said to myself that I needed to get my headphones, because it was noisy and it was just super crowded.** And in the locker room there were a lot of children, too. So, I went out, I went straight to the club house because I guessed that my mom would be there with our family friends. So, I went there to her bag, and she was standing, ordering some snacks and talking with family friends and I just went straight to her bag to take my other white hoodie and my headphones, Marshalls".*

109. The highlighted statement insinuates that the Athlete was not in possession of any headphones at the time. However, the full video of the final match (publicly available on YouTube, and submitted as evidence by the Respondent with its Answer) clearly shows that the Athlete had a pair of headphones with her from the very beginning of the match, and also after the first rain break and before the second rain break. Confronted with the video, the Athlete amended her explanations. She then claimed that the headphones she is wearing in the video were her sister's (black) headphones, and that her own (brown) headphones were in her mother's bag, and that she needed to exchange them because it was important for her sister to have her own headphones. However, it is inexplicable why the Athlete would not have stated from the beginning that she wanted to exchange the headphones because of her sister's needs, but instead testified that she "*needed to get*" her headphones "*because it was noisy and just super crowded*". Furthermore, no plausible explanation was given by either the Athlete or her mother as to why the Athlete's headphones would be stored in her mother's bag (and not in her own), when the Athlete confirmed that she was listening to music all the time and that "*you can always see me with headphones on tournaments*". Her mother testified that when she packed the bag in the morning, she put an extra sweater for her younger daughter. Asked whether she packed anything else, she replied: "*No, I didn't pack anything else*". It is unclear how the Athlete's headphones ended up in her bag then.

110. Furthermore, there is no evidence in the video that the Athlete, who wore a white hoodie on the court, got an additional hoodie (placed over her shoulders) after the second rain break. The Sole Arbitrator watched the video carefully and could simply not spot a second hoodie, even when she was zooming in.

111. Based on the inconsistencies and partial evasiveness of the Athlete's and her mother's testimony regarding the Athlete's motivation to look for her mother's bag, the Sole Arbitrator has significant doubts that the Athlete really went to the clubhouse and opened her mother's bag. Furthermore, there is no evidence (other than the mother's testimony) that the thermos bottle was in the bag, that it contained tea, and that the tea included four dissolved capsules of FBN Energizer. In fact, the Athlete's mother testified that the bag contained the things she needed for her younger daughter (books and toys). It does not appear very likely that a bottle with a nutritional fat burning supplement, which should be stored at a place inaccessible for younger children, would be stored in the same bag where a child would look for its books and toys.

112. At the end of the hearing, the Athlete's counsel submitted that it was still proven that the Athlete had ingested the FBN Supplement. However, as mentioned above, proof of the route of ingestion alone is not sufficient to establish No Significant Fault or Negligence. The threshold for proving "No Significant Fault or Negligence" is high, because athletes must be aware of the risks inherent in the use of nutritional supplements. They must present plausible explanations as to what they could not have avoided the Adverse Analytical Finding resulting from the intake of a nutritional supplement. What is clearly insufficient for elite athletes is to use nutritional supplements without investigating their ingredients and provenance. The *Halep*-Award (CAS 2023/A/10025 & 10227) has recently confirmed the strict investigation requirements imposed on athletes.

113. In the present case, the Sole Arbitrator finds compelling contemporaneous evidence indicating a different story than the one presented by the Athlete. Very early on 3 July 2023, literally hours after the Doping Control, the Athlete spontaneously contacted Anti-Doping Sweden and wrote the following:

> *"Done some more research now and I forgot to mention that I have an allergy to grass, pollen and birch. For that I need to take asthma medicine and have it prescribed by the doctor.* ***I also saw that dietary supplements could pose a risk on the doping list, and over the last seven days, I have taken dietary supplements to help lose a bit more weight.*** *I was unaware of and didn't consider this to be a form of doping and therefore I think it's best to inform you about this".*
>
> [emphasis added]

114. On her own account, the Athlete returned from her international travels on 26 June 2023, *i.e.* seven days before the Doping Control. The FBN Energizer helps to lose weight. Irrespective who bought the FBN Energizer – her mother or the Athlete herself – the above-quoted statement, given by the Athlete almost immediately after the Doping Control, strongly suggests that the Athlete was taking the weight-loss supplement deliberately, with the aim to lose weight. The statement also confirms that the Athlete must have been aware of the problems nutritional supplements could potentially cause,

but that she had apparently done nothing to check the safety of the product. Had she conducted an investigation about the product, this would have been the story to present. As demonstrated, *inter alia*, in the *Halep*-case, athletes can be successful in obtaining a reduction based on "No Significant Fault" if they demonstrate sufficient efforts to ensure the safety of the product.

115. Apparently, the Athlete got worried after the Doping Control, also considering that she had failed to list any of her medications and supplements on the doping control form.

116. Under these circumstances – presenting an incoherent story contradicted by her own contemporaneous statements – the athlete cannot benefit from a reduction of her period of ineligibility based on "No Significant Fault or Negligence".

117. As a result, her appeal must be dismissed.

XI. COSTS

(…)

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ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Court of Arbitration for Sport has jurisdiction to entertain the appeal filed on 12 September 2024 by Ms Maja Radenkovic against Anti-Doping Sweden with respect to the decision rendered on 22 August 2024 by the Swedish Supreme Sports Tribunal.

2. The appeal filed by Ms Maja Radenkovic on 12 September 2024 against Anti-Doping Sweden with respect to the decision rendered on 22 August 2024 by the Swedish Supreme Sports Tribunal is dismissed.

3. The decision rendered by the Swedish Supreme Sports Tribunal on 22 August 2024 is confirmed.

4. (…).

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

Seat of arbitration: Lausanne, Switzerland
Date: 2 July 2025

THE COURT OF ARBITRATION FOR SPORT

Annett Rombach
Sole Arbitrator