CAS 2024/A/11048 Aleksa Ukropina v. World Aquatics

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President:	Dr Despina Mavromati, Attorney-at-law in Lausanne, Switzerland
Arbitrators:	Mr Jeffrey G. Benz, Attorney-at-law and Barrister in London, United Kingdom
	Mr Romano F. Subiotto KC, Solicitor-Advocate in London, United Kingdom

in the arbitration between

Aleksa Ukropina, Herceg Novi, Montenegro

Represented by Ms Ivana Bojović and Ms Tijana Živković, Attorneys-at-law in Novi Sad, Montenegro

Appellant

and

World Aquatics, Switzerland

Represented by Mr Nicolò Juglair and Mr Justin Lessard, Lausanne, Switzerland

Respondent

I. PARTIES

1. Aleksa Ukropina ("the Athlete" or "the Appellant") is a water polo athlete from Montenegro and a member of the Montenegro Swimming Federation.

2. World Aquatics ("WA" or "the Respondent") is the international governing body for aquatic sports and is responsible for administering international competitions in aquatic sports worldwide. Together with the Athlete they are jointly referred to as "the Parties".

II. FACTUAL BACKGROUND

A. Background Facts

3. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

4. WA has enacted the WA Doping Control Rules effective 1 January 2023 ("WA ADR") and has delegated the implementation of its anti-doping programme, including the results management and prosecution of anti-doping rule violations ("ADRV") to the International Testing Agency ("ITA") and the Aquatics Integrity Unit.

5. The Athlete is an International Athlete-Level Athlete within the meaning of the WA ADR.

6. On 21 January 2024, the Doping Control Officer ("DCO") and the Doping Control Assistant ("DCA") in Hercog Novi, Montenegro and the Athlete underwent an Out-of-Competition doping control test providing urine sample A and B-7205833 (the "Sample").

7. The Athlete declared on his Doping Control Form ("DCF") associated with the Sample that he had taken "Vit-Suplement" in the seven days preceding the doping control. In signing the DCF he also confirmed that the sample collection was undertaken in accordance with the relevant World Anti-Doping Agency ("WADA") International Standards.

8. On 12 February 2024, the WADA-accredited Laboratory in Seibersdorf, Austria reported an Adverse Analytical Finding ("AAF") for Fenoterol in the A Sample. The estimated concentration of Fenoterol in the Sample was approximately 0.3 ng/mL, as confirmed by the Laboratory on 2 February 2024.

9. Fenoterol is a Specified Substance under "S3. Beta-2 Agonists" of the 2024 WADA Prohibited List ("WADA Prohibited List"), is prohibited at all times and is not a threshold substance.

10. On 13 February 2024, the ITA notified the Athlete of the AAF. After conducting the Initial Review under Article 7 of the WA ADR and Article 5.1.1 of the International Standard for Results Management ("ISRM"), it found that the Athlete had no Therapeutic Use Exemption ("TUE") and that there was no International Standard for Laboratories violation that could undermine the AAF.

11. On 14 February 2024, the Athlete informed the ITA that he waived his right to request the B Sample analysis and accepted a voluntary Provision Suspension with immediate effect.

12. On 29 February 2024, the Athlete provided his preliminary explanation regarding the AAF and a photograph of the Berodual drops medication ("Berodual").

13. On 16 May 2024, the ITA informed the Athlete that, since he had expressly waived his right to the opening and analysis of his B Sample, it was undisputed that he had committed an ADRV and issued a Notice of Charge. He was offered the opportunity to accept the default period of ineligibility of two years or to have the matter referred to the CAS Anti-Doping Division ("CAS ADD").

14. On 30 May 2024, the Athlete gave further explanations ("Second Explanation") and additional information sought by ITA.

15. On 17 June 2024, the ITA, on behalf of WA, notified the Athlete he was charged with an AAF pursuant to Article 2.1 and/or Article 2.2. of the WA ADR for the Presence and/or Use of a Prohibited Substance and confirmed the voluntary Provisional Suspension in accordance with Article 7.4.4 of the WA ADR as of 14 February 2024.

16. On 30 June 2024, the Athlete denied the charge and sought the matter to be referred to the CAS ADD. He also indicated his wish for expedited proceedings before the CAS ADD.

B. Proceedings before the CAS ADD

17. On 4 July 2024, WA filed a Request for Arbitration ("RFA") to the CAS ADD in accordance with Article 8 of the WA ADR and the Arbitration Rules applicable to the CAS ADD ("CAS ADD Rules"), requesting the appointment of a Single Judge and an expedited procedure.

18. On 11 July 2024, the CAS ADD Single Judge issued the operative part of the Award as follows:

1. The Request for Arbitration filed on 4 July 2024 by World Aquatics against Aleksa Ukropina is upheld.

2. Aleksa Ukropina is found guilty of an anti-doping rule violation pursuant to Article 2.1 of the World Aquatics Doping Control Rules.

3. Aleksa Ukropina is sanctioned with a period of Ineligibility of two years starting from the date of the voluntary Provisional Suspension on 14 February 2024.

4. All competitive results obtained by Aleksa Ukropina from 21 January 2024 until 14 February 2024 are disqualified, with all resulting consequences (including forfeiture of medals, points and prizes).

5. The costs of the procedure are to be determined and served upon the Parties in accordance with Article A24 of ADD Rules, if necessary.

6. Each party shall bear their own legal costs and other expenses incurred in connection with this arbitration.

19. The full award with grounds was issued on 11 November 2024 ("the Appealed Decision").

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

20. On 3 December 2024, the CAS Court Office acknowledged receipt of the Athlete's Statement of Appeal serving as Appeal Brief ("the Appeal") dated 2 December 2024 against the decision rendered by the CAS Anti-Doping Division ("CAS ADD") on 11 November 2024. By the same letter, it invited the Athlete to indicate the name and full address of the Respondent as well as a copy of the proof of payment of the CAS Court Office fee within three days, failing which the CAS Court Office would not proceed.

21. On 5 December 2024, the CAS Court Office acknowledged receipt of the Athlete's email dated 4 December 2024 and noted that the Athlete had indicated his own postal address as opposed to the address of the Respondent, granting him a final deadline to provide such address by 6 December 2024. In the same letter, it drew the Athlete's attention to Article R31 para. 3 of the CAS Code of Sports-related Arbitration ("CAS Code") and invited him to provide proof of filing of the Statement of Appeal by courier or upload on the CAS e-filing platform within three days from receipt of the CAS letter by email.

22. On 13 December 2024, the CAS Court Office acknowledged receipt of the Statement of Appeal serving as an Appeal Brief. By the same letter, it invited the Respondent to file its Answer within twenty days and appoint an arbitrator.

23. On 18 December 2024, the Respondent requested an extension of the time limit to nominate an arbitrator until 10 January 2025 and to file its Answer until 31 January 2025, upon agreement with the Athlete. In its letter sent the same day to the Parties, the CAS Court Office acknowledged receipt of such letter, suspended the time limit and invited the Athlete, for the sake of good order, to confirm his agreement with said extension.

24. On 23 December 2024, the CAS Court Office informed the Parties that it received no response to the Respondent's request for extension, and on behalf of the Deputy President of the Appeals Arbitration Division, granted the request for extension filed by the Respondent.

25. On 9 January 2025, the Respondent appointed Mr Romano Subiotto KC as arbitrator.

26. On 31 January 2025, the Respondent filed its Answer to the Appeal.

27. On 7 February 2025, the Respondent informed the CAS Court Office that it had no preference regarding the holding of an oral hearing, that it did not deem a case management conference necessary and that, in case the Panel decided to hold a hearing, the Respondent would liaise with the Appellant to agree on a joint hearing schedule and inform the CAS accordingly.

28. On 18 February 2025, the CAS Court Office informed the Parties of the confirmation of the Panel as follows:

    President: Dr Despina Mavromati, Attorney-at-Law in Lausanne, Switzerland

    Arbitrators: Mr Jeffrey G. Benz, Attorney-at-law and Barrister in London, United Kingdom

    Mr Romano F. Subiotto KC, Solicitor-Advocate in London, United Kingdom

29. On 25 February 2025, the CAS Court Office informed the Parties that the Panel had decided to hold a hearing by videoconference pursuant to Article R57 of the CAS Code and invited the Parties to indicate whether they would be available on 24 and 25 April 2025.

30. Following the unavailability of the Respondent on the suggested dates, the CAS Court Office confirmed on 11 March 2025 the availability of both Parties for a hearing on 30 April 2025 and informed the Parties that the hearing would take place by video conference. In the same letter, it invited the Parties to indicate the names of persons that would attend the hearing before 11 April 2025.

31. On 20 March 2025, the CAS Court Office acknowledged receipt of the Parties' signed Orders of Procedure dated 19 and 20 March 2025, respectively.

32. On 3 April 2025, the CAS Court Office acknowledged receipt of the joint hearing schedule submitted by the Parties dated 2 April 2025.

33. On 7 April 2025, the CAS Court Office informed the Parties that the Panel agreed with the proposed hearing schedule, whereas on 9 April 2025, the CAS Court Office acknowledged receipt of the Appellant's agreement with said hearing schedule.

34. On 11 April and on 16 April 2025, respectively, the CAS Court Office acknowledged receipt of the Respondent's and the Appellant's email indicating their respective attendees to the hearing.

35. On 30 April 2025 at 9:30 CET, the hearing took place by video conference. The following persons were present at the hearing:

- Dr Despina Mavromati, President of the Panel
- Mr Romano Subiotto KC, Arbitrator
- Mr Jeff Benz, Arbitrator
- Ms Andrea Sherpa- Zimmermann, Counsel to the CAS
- Ms Carolin Fischer, Counsel to the CAS
- Mr Aleksa Ukropina, Appellant
- Ms Ivana Bojović, Counsel for the Appellant
- Ms Tijana Živković, Counsel for the Appellant
- Mr Nicolò Juglair, Counsel for the Respondent
- Mr Justin Lessard, Counsel for the Respondent
- Ms Ljiljana Grubač, Interpreter

36. Apart from the Appellant, the following persons were heard during the evidentiary proceedings:

- Ms Slavika Ukropina, Mother of the Athlete, Witness called by the Appellant
- Mr Senad Ljuka, DCO, Witness called by the Respondent ("DCO")

37. At the end of the hearing, the Parties confirmed that they were satisfied with the constitution of the Panel and the conduct of the proceedings and that they did not have any procedural objections.

38. After the hearing on 30 April 2025, the CAS Court Office sent a letter to the Parties reminding the Appellant to provide it with a copy of the patient leaflet of Berodual by 7 May 2025.

39. On 12 May 2025, the CAS Court Office acknowledged receipt of the Appellant's email dated 7 May 2025, including a copy of the patient leaflet of Berodual.

40. On 19 May 2025, the CAS Court Office invited the Appellant to provide an English translation of the patient leaflet of Berodual pursuant to Article R29 of the CAS Code and short observations regarding such leaflet by 21 May 2025.

41. On 28 May 2025, the CAS Court Office informed the Parties that it had not yet heard back from the Appellant and invited the Respondent to comment on the leaflet by 3 June 2025.

42. On 3 June 2025, the CAS Court Office acknowledged receipt of the Appellant's email and enclosure dated 2 June 2025 and the Respondent's email dated 3 June 2025.

IV. SUBMISSIONS OF THE PARTIES

A. Submissions of the Athlete

43. The Athlete's submissions, in essence, may be summarized as follows:

- Strict liability principles in the WADA Code and the WA ADR are not absolute but should comply with the principle of proportionality. The Athlete could demonstrate that he bears No Significant Fault or Negligence and, considering the specific and unique circumstances of the case, his fault should be minimal and his sanction at the lowest end of the 0-24-month spectrum.

- More specifically, the Athlete established how the prohibited substance entered his system, i.e. through the medically prescribed Berodual drops.

- The Athlete's ADRV was inadvertent as he was unaware that Berodual contained a prohibited substance.

- Regarding his level of fault, the Athlete demonstrated that he used the drops in a medical emergency, prioritizing his ability to breathe over procedural precautions. The drops were used exclusively to manage his severe breathing difficulties while he was ill and out of competition, with no performance-enhancing effect.

- The Athlete trusted his prescribing physician, who was informed of his status as a professional athlete and made him believe that the medication was safe. The omission of any indication that the Athlete is a professional athlete in the medical reports is irrelevant to the prescription itself. Furthermore, his refusal to provide a statement cannot be held against the Athlete, as the doctor is not obligated to do so.

- The Athlete maintains that his mother was present during the doping control and visibly showed the inspectors the inhalator and Berodual he had used shortly before the test. The Athlete reasonably expected that the DCOs, upon seeing Berodual, might have informed him of their prohibited status. The Athlete's omission to declare this on the DCF is due to his lack of awareness that the drops contained a prohibited substance, as he thought that he should focus on supplements that could enhance performance rather than prescribed medication.

- Moreover, Fenoterol is listed in the Berodual packaging without any explicit warning about its prohibited status in sports.

- On the subjective factors of fault, the Athlete admits having completed online ADEL International-Level Athletes Education Program (English) on 5 June 2022 with WADA, which was a pre-condition for his participation in the World Aquatic Championships in Fukuoka in 2023 and Doha 2024. However, the medication was consumed under emergency circumstances due to an immediate health risk that prevented him from doing "deliberate checks against anti-doping rules". The Athlete had not used Berodual drops prior to the critical event. The Athlete used Berodual drops for inhalation, due to a sudden choking episode that occurred immediately before the anti-doping control. In this situation, the Athlete did not have the time to check the medication.

- Furthermore, the Athlete relied on a medical professional (a prescribing pulmonologist), who was informed of the Athlete's professional status, creating a reasonable expectation that the prescribed medication would not contravene anti-doping regulations. CAS case law has acknowledged that athletes may rely on medical professionals in specific contexts, particularly for urgent health needs.

- These circumstances demonstrate that his fault was minimal and not significant.

- On the other hand, WA's arguments are inconsistent, as it relies on CAS case law showing the importance of an athlete's duty to conduct independent research and not only rely on doctors, dismissing case law filed by the Athlete, where athletes received reduced sanctions for using prohibited substances prescribed by their team doctors for asthma treatment. Accordingly, CAS case law recognizes that athletes using medication for legitimate therapeutic purposes—without intent to enhance performance—can be classified as bearing "light fault" and have imposed reduced sanctions of only 8 months.

- The Appealed Decision relied on the categories of fault established in CAS 2013/A/3327 & 3335 ("Čilić") but failed to adequately consider the actual emergency nature of the situation and apply proportionality to the assessment of fault. Also, the Appealed Decision insisted on the Athlete's failure to list Berodual on his DCF, even though his omissions were unintentional and he had verbally disclosed the use of the drops to the doping control officers, making it clear that there was no intent to conceal.

- Furthermore, the Appealed Decision failed to give proper weight to the Athlete's medical condition, the non-competitive context, and the fact that the use of Berodual was strictly for therapeutic purposes. These factors are central to determining the degree of fault and proportionality of the sanction.

- The two-year ineligibility period, as imposed by the Decision, is highly disproportionate and fails to meet the principle of proportionality enshrined in CAS jurisprudence, e.g. by assessing the impact on the Athlete's career. Specifically, the

sanction deprived the Athlete from the chance to compete in the Paris 2024 Olympics, irreparably damaging his career. CAS case law (e.g. CAS OG 18/004 and CAS 2016/A/4534) has favoured proportionality and a reduced sanction when there was no evidence of intent to enhance performance.

- The Athlete is a fair and honest athlete and has never used prohibited substances to enhance his performance throughout his career, as evidenced by numerous negative tests. This incident is "an isolated occurrence stemming from a genuine medical need".

- Punishing the Athlete with a two-year suspension for the use of Berodual drops that were necessary to restore his health and not to gain an unfair advantage would undermine the principles of fairness and proportionality of the anti-doping rules.

- the Athlete has already been serving a voluntary provisional suspension since 14 February 2024 and procedural delays have increased the punitive impact of the sanction.

- In summary, the Appealed Decision failed to adequately consider the therapeutic use, emergency context, and lack of significant fault in this case and requests the Panel to issue a just and equitable decision.

44. The Athlete filed the following requests for relief:

"*(A) Find Mr. Ukropina has established he bears No Significant Fault or Negligence;*

(B) Find his degree of fault is light and impose a warning;

(C) In the alternative, if any period of ineligibility is imposed, find that there were substantial delays in the hearing and results management process that are unattributable to Mr. Ukropina and backdate his sanction to make him eligible for the Olympics;

(D) Preserve Mr. Ukropina's results on 21 January 2024 under Article 10.10 of the ADR;

(E) Order any other relief for Mr. Ukropina that this Panel deems to be just and equitable;

(F) Each Party shall bear its own legal fees and other expenses incurred in connection with the present proceedings."

B. Submissions of World Aquatics

45. WA's submissions in essence, may be summarised as follows:

- The Athlete is charged with an ADRV for the presence of Fenoterol in his Sample pursuant to Article 2.1.1 and/or 2.1.2 of the WA ADR. The Athlete has accepted the

findings of the A Sample and waived the analysis of the B Sample. It is therefore undisputed that the Athlete has committed and ADRV under Article 2.1 of the WA ADR.

- WA considers that there is no substantive element on record which establishes that the ADRV was intentional, as such the consequences for the ADRV for a Specified Substance (like Fenoterol) in breach of Article 2.1 WA ADR shall be two years.

- WA accepts that the Athlete had discharged his burden of proof as to the source of Fenoterol in his Sample, namely though inhalation of Berodual.

- However, WA does not consider the Athlete is entitled to a fault-based reduction under Article 10.5 or Article 10.6 of WA ADR because his level of fault was at the very least significant and there are no grounds to reduce the applicable period of ineligibility of two years.

- More specifically, on the objective level of fault, the Athlete did not take sufficient care to ensure he did not ingest a Prohibited Substance by, among others, reviewing the ingredients of the medication, cross-checking the ingredients with the prohibited list, or making a serious internet search of the product. He did not consult appropriate experts in these matters and instruct them diligently before consuming the product.

- The Athlete has an ongoing obligation to personally manage any medication administered to him, as medications may contain a Prohibited Substance. He cannot rely on a doctor's advice, and he did not take even basic steps of review before taking the medication. He did not disclose Berodual on his DCF as he was required to do and failed to provide evidence that he had informed his doctor that he was a professional athlete and, in any event, he cannot rely on others to discharge his responsibility not to ingest a Prohibited Substance.

- On the subjective elements of the Athlete's level of fault, WA submitted that the Athlete has received very comprehensive anti-doping education; the summons of the 2023 and the 2024 World Aquatics Championships in Doha clearly warned athletes of the need to check any medication they used against the Prohibited List. He is an experienced, international-level athlete who has been competing at the highest level since 2016, including the 2017, 2023 and 2024 World Aquatics Championships and the 2020 Tokyo Olympic Games.

- There were no significant language or other problems that could have had an impact on the ADRV, given that the doctor was in his home country in Montenegro. As pointed out in the Appealed Decision, the Athlete showed a high degree of recklessness by taking the medication containing a prohibited substance without performing any reasonable checks in advance, which would have disclosed the presence of a prohibited substance in his sample. Furthermore, the Athlete used the Prohibited Substance two weeks before the 2024 World Aquatics Championships in

Doha, when he should have been even more conscious about his anti-doping obligations.

- In light of the above, WA concluded that the Athlete should not benefit from Articles 10.5 and 10.6 of the WA ADR and that there is no ground to reduce the applicable period of ineligibility of two years.

- On the start date of the period of ineligibility, WA submitted that it should start on the date of the operative part of the Appealed Decision, however the Athlete should receive a credit for the period of provisional suspension already served, i.e. since 14 February 2024, in line with Article 10.13.1 of the WA ADR.

- WA does not consider that there were any substantial delays in this case, and the burden lies with the Athlete to establish such delays. The results management of this case went very quickly, and the entire process from the sample collection until the request for arbitration lasted only five months and a half. The two months to formally charge the Athlete after his first explanations are "within the bounds of normality", as this time was necessary to conduct interviews with the DCO involved. In any case, even if there were substantial delays, backdating of the ineligibility period is an available but not a mandatory consequence. In the present case, there should be no backdating because the Athlete was provisionally suspended throughout the results management process, having received credit for any alleged delays which would have occurred since 14 February 2024, i.e. the date of the Athlete's voluntary Provisional Suspension.

- On the disqualification of Results, WA submits that, pursuant to Article 10.10 of the WA ADR, all competitive results from the Athlete's ADRV (i.e. on 21 January 2024) until the date on which he accepted the voluntary Provisional Suspension (i.e. on 14 February 2024) should be disqualified, with all associated consequences thereof.

46. In response to the arguments raised by the Athlete, WA submitted the following:

- With respect to the Athlete's argument on strict liability, WA submits that said principle only applies to determine whether an athlete committed an ADRV and does not apply in the assessment of the fault.

- Whether a violation was inadvertent is only relevant when assessing the intentional character of the ADRV. It is not relevant in the assessment of the level of fault of the Athlete. As confirmed in the Appealed Decision, what matters in the assessment of the level of fault is *"what standard of care could have been expected from a reasonable person in the athlete's situation"* and *"what could have been expected from that particular athlete, in light of his personal capacities"*.

- Furthermore, the fact that the Athlete took the Prohibited Substance for medical reasons and did not enhance his performance is considered in order to determine

whether the violation was intentional and if the starting point of the period of ineligibility should be 4 years or 2 years.

- The fact that the Prohibited Substance was prescribed by a doctor who allegedly knew that the Athlete was a professional is relevant but does not alter the Athlete's significant fault, as athletes are strictly liable for what they ingest. Furthermore, the Athlete did not establish that he informed the doctor about his obligation to comply with the Prohibited List, and he failed to provide supporting evidence to this effect.

- With respect to the Athlete's argument that his mother showed the DCO the Prohibited Substance during Sample Collection, WA submits that the interview report from the DCO establishes that he was never shown the medication containing the Prohibited Substance during the attempt. Even if this was established, the Appealed Decision correctly found that this would not have impacted his level of fault and that it did not excuse his failure to list the medication on the DCF. The fact that he disclosed "Vit-Suplement" and not Berodual is also hard to understand in view of the proximity of the Berodual consumption to the testing.

- Furthermore, WA considers that the Athlete's failed to establish that he was in a state of medical emergency when he used the Prohibited Substance on 21 January 2024, and this cannot justify his lack of taking steps to ensure the medication did not contain Prohibited Substances. The DCO confirmed in his statement that he did not notice anything unusual about the condition of the Athlete during the Sample Collection which took place less than one hour after the alleged medical emergency.

- World Aquatics also notes that the Athlete presented two different versions regarding when the medical emergency would have occurred. In the First Explanation, the Athlete claimed that it occurred after the DCO had arrived. However, in the Second Explanation, the Athlete stated that it occurred at approximately 17:20, i.e. 40 minutes before the DCO arrived at his house.

- Even if the Athlete had been in a medical emergency when he used the medication on 21 January 2024, he had more than enough time to ensure it did not contain any Prohibited Substance before the medical emergency. He had been in possession of this medication for 3 days and he had even used the medication on 18 January 2024.

- With respect to the label of the medication, WA submits that it is irrelevant that the packaging of Berodual did not contain an explicit warning that it contained a Prohibited Substance, as this is highly unusual and such a warning could have led to a finding of indirect intent and therefore a higher sanction.

- The Athlete's claim that an internet search showed Berodual was safe for infants is not credible, as even a basic Google search would have revealed that Berodual contains a Prohibited Substance and is banned in sport. Such a search would also show past doping sanctions involving Berodual. Moreover, the presence of the Prohibited Substance, Fenoterol, is clearly marked on the packaging and bottle,

whereas the fact that Berodural is safe for infants is not an indication that it is not prohibited in sport.

- Even though the Athlete consumed the Prohibited Substance out of competition, the Athlete was not on holidays or in off season and his anti-doping obligations had to be at the forefront of his mind during that period. He was in final preparation for the World Aquatics Championships which were only two weeks away. The Prohibited List is clear that certain substances are prohibited both in-competition and out-of-competition. Thus, Athletes must exercise caution not only during competitions but also outside of competitions.

- While CAS case law may classify legitimate medical use of a prohibited substance as "light fault", the cases cited by the Athlete are not relevant in the present case. In CAS ADD OG AD 18/004, which also involved Fenoterol, the panel did not state that medical use alone leads to light fault. Instead, it assessed the specific circumstances, including the team doctor administering the substance and wrongly assuring the athlete it was permitted within certain limits.

- WA does not dispute the therapeutic use of Berodual, however the Athlete remains obligated to verify whether the medication contains a Prohibited Substance and to request a TUE, if necessary, which he failed to do. This failure constitutes a significant level of fault and does not mitigate the level of negligence displayed.

- With respect to the proportionality of the sanction, WA submits that the cases cited by the Athlete do not refer to the proportionality of the sanction. Furthermore, it is well-established that the WADA Code *"has been found repeatedly to be proportional in its approach to sanctions*" and confirmed by the CAS.

- In summary, there is nothing exceptional about the case of the Athlete which would justify deviating from the WADA Code and the two-year period of ineligibility imposed by the Single Judge in the Appeal Decision is proportional.

- WA further requested the hearing of the DCO as a witness in this case.

47. Finally, the Respondent requested that the CAS Panel rules as follows:

I. The Appeal filed by the Appellant shall be dismissed and any and all requests submitted by the Appellant shall be rejected.

II. The Decision CAS 2024/ADD/105 World Aquatics v. Aleksa Ukropina shall be upheld.

III. Order the Appellant to pay all costs of the arbitration, including the costs of CAS and the Respondent's legal costs and expenses.

C. Hearing, Examination of Witnesses and Post-hearing Submission

48. During the hearing, the Parties reiterated their main arguments and the Panel heard testimonies from the Athlete, the Athlete's mother, and the DCO.

49. During his testimony, the Athlete was questioned about his visits to the pulmonologist, including the prescription of Berodual during the second visit in January 2024. He also explained the circumstances surrounding his use of Berodual shortly before the arrival of the DCO and DCA on 21 January 2024. Additionally, the Athlete responded to questions concerning his anti-doping education, the completion of the DCF, the purchase of Berodual from the pharmacy, and addressed inquiries from the Panel.

50. Ms Slavica Ukropina was asked about the Athlete's medical condition and the circumstances leading to the prescription of Berodual by the Athlete's doctor. She also described the doping control and the discussion she had with the DCO and the DCA.

51. The DCO confirmed his witness statement and answered questions about the surrounding circumstances of the doping control of 21 February 2025. He confirmed that he did not remember having been shown the inhalator or Berodual during the sample collection.

52. Following the Panel's request, the Appellant submitted the patient leaflet of Berodual along with its translation, noting that *"[t]he following disputed section has been clearly highlighted in yellow for ease of reference"*. That part read as follows *"Note for athletes: Use of Berodual solution for inhalation may result in a positive doping test"*.

53. In its comments submitted on 3 June 2025, the Respondent acknowledged receipt of the patient leaflet and noted that it explicitly warned that the use of this medication may lead to an ADRV. Moreover, the fact that the Athlete ignored such a clear and obvious red flag directly correlates to his level of fault, in line with CAS 2023/A/9482 (paras 138-145). According to the Respondent *"reading the label of a medication is one of the most basic precautions an athlete must take before using it. It is one of the key precautions that the Appellant had to take to satisfy his standard of care before using Berodual. If he had read the leaflet – as he had to do to satisfy his duty of care before taking a medication – he would have realized that Berodual contains a prohibited substance and the ADRV could have been avoided"*.

54. As a consequence, the Respondent maintained that the Athlete's level of fault was at least significant and that a period of ineligibility of two years would be appropriate.

V. JURISDICTION

55. Article R47 of the CAS Code provides as follows:

An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the

Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.

56. The jurisdiction of the CAS to hear this case in appeal is provided for in Article 13 of the WA ADR and Rule A21(5) of the Procedural Rules applicable to the CAS Anti-Doping Division and is explicitly confirmed by the Parties and their signing of the Order of Procedure, and full participation, without any reservations.

57. Accordingly, the Panel has jurisdiction in the present case.

VI. ADMISSIBILITY

58. 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 of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.

59. In the present case, the grounds of the Appealed Decision were notified to the Athlete on 11 November 2024. The Athlete filed his Statement of Appeal and Appeal Brief to the CAS on 2 December 2024.

60. It follows that the Appeal is admissible.

VII. APPLICABLE LAW

61. Article R58 of the CAS Code provides as follows:

The Panel shall decide the dispute according to the applicable regulations and 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 application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.

62. In the present case, the applicable ADR is the WA ADR which provides at Article 24.2 the WA ADR shall be interpreted as an independent and autonomous text and not by reference to any existing law or statutes. It incorporates the WADA Code and the International Standards which *"shall be considered integral parts of the Anti-Doping Rules and shall prevail in case of conflict"*.

VIII. MERITS

63. At the outset, the Panel notes that the scope of the present appeal is relatively limited to the extent that there are several issues that remain undisputed or accepted among the Parties. First, it is undisputed – and it is also correctly reflected in the Appealed Decision - that the Athlete has committed an ADRV for the presence of Fenoterol in his Sample pursuant to Article 2.1.1 and/ or 2.1.2 of the WA ADR. The Athlete has accepted the findings of the A Sample and waived the analysis of the B Sample.

64. It is further accepted that the ADRV was unintentional, and that the consequence of an ADRV for a Specified Substance (like Fenoterol) in breach of Article 2.1 WA ADR is in principle a two year suspension. The Parties further accept that the Athlete has discharged his burden to establish the source of Fenoterol in his Sample, namely through inhalation of Berodual.

65. In this respect, the Panel considers irrelevant the arguments raised by the Appellant regarding the strict liability principle, to the extent that they relate to the establishment of the ADRV itself and therefore not to the assessment of the degree of fault. The Panel further accepts that the ADRV was not intentional, the product was used for medical reasons, and did not enhance the Athlete's performance. However, these elements do not justify a reduction of the Player's suspension based on his level of fault, for the reasons that follow.

A. The Athlete's Level of Fault

a. Relevant Legal Framework and CAS Case Law

66. To the extent that WA does not consider that there is a plausible scenario for an intentional ADRV and accepts that the route of ingestion was through inhalation of the Berodual, the main relevant provision to assess the Athlete's level of fault in the applicable regulations is Article 10.6 WA ADR, which provides as follows:

> *"Art. 10.6 Reduction of the Period of Ineligibility based on No Significant Fault or Negligence*
>
> *Art. 10.6.1 Reduction of Sanctions in Particular Circumstances for Violations of Art. 2.1, 2.2 or 2.6.*
>
> *All reductions under Art. 10.6.1 are mutually exclusive and not cumulative.*
>
> *Art. 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."

67. No Significant Fault or Negligence within the meaning of Article 10.6 WA ADR is defined as follows: *"The Athlete or other Person's establishing 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 relationship to the anti-doping rule violation. Except in the case of a Protected Person or Recreational Athlete, for any violation of Art. 2.1, the Athlete must also establish how the Prohibited Substance entered the Athlete's system."*

68. In turn, fault is defined as *"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 other Person's experience (...), 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 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 (...)"*

69. The Panel accepts that, for the determination of the level of fault, the Čilić case has developed a series of steps that athletes should take in order to satisfy their standard of care, distinguishing between the degrees of fault, ranging from "light" to "normal" to "significant" with respective periods of Ineligibility loosely allocated to each. To the extent that the Čilić case was issued prior to the 2015 and the 2021 amendments of the sanctioning regime in the WADA Code, the three categories of fault and respective periods of ineligibility should be adapted accordingly (cf CAS 2016/A/4371, para. 90).

70. Furthermore, the Čilić case distinguishes between objective level of fault ("what standard of care could have been expected from a reasonable person in the athlete's situation") and subjective level of fault ("what could have been expected from that particular athlete, in light of his personal capacities"), with the objective level of fault being the most cogent to determine the particular category of fault.

71. The Panel sees no reason to depart from the above framework and will consider all relevant criteria and arguments raised by the Parties in order to determine whether the Appealed Decision should be amended or confirmed. At the same time, the Panel notes that CAS case law can provide valuable assistance in many instances but is not binding upon this Panel and each case should be decided on its own merits and surrounding circumstances.

b. Objective Elements of the Fault Assessment

72. In the present case, it is accepted that the Athlete a) took Berodual following subscription by a pulmonologist for suspected bronchial asthma; b) was not in competition at the moment of the sample collection and his consumption did not have a performance-enhancing effect; c) did not disclose that he took said medication on his

DCF; d) did not review the ingredients in the leaflet of Berodual; e) did not cross-check the ingredients with the prohibited list.

73. From the elements of the file and the hearing, the Panel accepts that said medication was validly prescribed by the Athlete's doctor to treat a medical condition. However, relying blindly on a doctor's advice is not sufficient, as such, to discharge his burden of care and benefit from a reduction of the ineligibility period for No Significant Fault. Therefore, the Athlete's references to CAS 2014/A/3798 are irrelevant to the extent that said award highlights the athletes' personal responsibility to manage any medication administered to them and for what they are ingesting.

74. The Athlete supports that he informed his doctor that he was a professional athlete and the doctor did not warn him of the risk of an ADRV. However, this is disputed by WA and the Athlete has not adduced any evidence to this effect. During the hearing, the Athlete said that Montenegro is a small country and his doctor certainly knew that he was a professional athlete. While the Panel accepts the Athlete's argument that the doctor's refusal to provide a statement cannot be held against the Athlete, it is equally true that the Panel does not have any other element – apart from the Athlete's own assertion - to conclude that the Athlete's allegations are true and can therefore not conclude that he had *"a reasonable expectation that the prescribed medication would not contravene anti-doping regulations".*

75. With respect to the Athlete's argument that CAS case law classifies athletes using medication for legitimate therapeutic purposes as bearing "light fault", the Panel considers that said affirmation is inaccurate and must be put in perspective. As mentioned above, CAS case law offers valuable guidance in similar cases but is not binding, and the Panel must consider the specific circumstances surrounding the case at hand.

76. More specifically, in the case relied upon by the Athlete (CAS ADD OG AD 18/004), the Panel agrees that it relates to the same prohibited substance (Fenoterol). In this case, the athlete, who was also using the prohibited substance in order to treat his asthma (like the Athlete did), was charged with an ADRV In Competition (during the 2018 Olympic Games) and was suspended for eight months by his federation. However, and as rightly pointed out by the Respondent, that case was different as it was established that the substance / inhalator was administered to the athlete by the doctor of his national team, after specifically asking him whether the medication was prohibited, and the team doctor mistakenly informed the athlete that it was allowed up to a certain limit. In the present case, and as explained by the Athlete during the hearing, the Athlete did not inform the team doctor about the prescription of Berodual by another doctor, who – as admitted by the Athlete himself – was not a specialist in sports.

77. Therefore, the Athlete remains obligated to verify whether the medication contains a Prohibited Substance and to request a TUE, if necessary, which he failed to do. This failure constitutes a significant level of fault and does not mitigate the level of negligence displayed.

78. With respect to a press release to which the Athlete refers, the Panel agrees with WA that it cannot draw any conclusions or criteria from a statement issued by another federation relating to another athlete and resolved through an acceptance of consequences, making it thus impossible to determine what was the objective and subjective level of fault of that particular athlete in that case.

79. In any event, and most importantly, the Athlete did not read the patient leaflet of the medication before consuming Berodual. Had he done so, he would have seen that the leaflet clearly provided as follows: *"Note for athletes: Use of Berodual solution for inhalation may result in a positive doping test" (emphasis added).* The Panel agrees with the Respondent that ignoring such a clear and obvious red flag directly correlates to his level of fault, in line with CAS 2023/A/9482 paras 138-145. In this regard, the Panel finds immaterial that the doping warning was not included on the packaging itself, as Athletes cannot expect medications to contain such warnings. In fact, a clear indication on the packaging could raise legitimate questions about a potential intentional use and could have led to potentially harsher sanctions under the applicable regulations of the WA ADR.

80. Furthermore, it is undisputed that the Athlete did not disclose Berodual on his DCF. More specifically, it could not be established – and would in any event be of no relevance as will be shown below- that the Athlete's mother showed the Prohibited Substance to the DCA during Sample Collection. First, from the witness statements filed but also the witness testimony during the hearing, the Panel was not convinced that either the DCA were shown the disputed medication and / or the inhalator. During her examination, the Athlete's mother testified that she showed the medication to the DCA – who was the DCO's wife - and that the DCA had allegedly said *"we are not going to write this down".* However, such a statement would make little sense coming from a DCA or a DCO, to the extent that it would not be their call to determine what should be written in the DCF. Moreover, both the interview report of the DCO adduced by WA and his examination as a witness during the hearing show no elements whatsoever of such a statement, leading the Panel to conclude that it is more likely than not that the DCA was never shown the medication containing the Prohibited Substance and / or the inhalator during Sample Collection and they did not express any views on it.

81. In any event, and even if the above disputed facts were to be established, they would not justify the Athlete's failure to mention the medication in the DCF, as it is the Athlete's personal responsibility to write in the DCF all the supplements or medication he has been using in the seven days prior to Sample Collection. The Player himself admitted during the hearing that it did cross his mind to write Berodual on his DCF and this was "a big mistake." However, he was somehow comforted by the fact that the DCA had seen the inhalator and said that *"we are not going to write this down".*

82. Moreover, the Athlete had consumed the medication shortly before testing. Therefore, there is no reason to consider – and none was brought forward by the Athlete - why he would have genuinely forgotten about it. The Athlete's argument that he thought that he should only write down performance-enhancing medication can hardly be reconciled with the fact that he did disclose other substances, such as the "Vit-Suplement".

83. The Panel now moves to another argument raised by the Athlete in order to establish No Significant Fault or Negligence, namely that he was in a medical emergency context when he used the Prohibited Substance on 21 January 2024 and that this prevented him from taking steps to ensure the medication did not contain Prohibited Substances. The Panel agrees with the Respondent that such medical emergency could not be established, as this was corroborated by the DCO's statements that he did not notice anything unusual about the condition of the Athlete during the Sample Collection which took place less than one hour after the alleged medical emergency.

84. The Panel is further confused with the different versions of events, as provided by the Athlete in his First Explanation (where he stated that the medical emergency occurred after the DCO had arrived) and his Second Explanation, which was also reiterated during the Athlete's testimony at the hearing, that it occurred at approximately 17:20, i.e. 40 minutes before the DCO arrived at his house.

85. According to the Athlete's own statements, he was prescribed and purchased Berodual three days prior to such alleged emergency, giving him therefore more than enough time to ensure that such medication did not contain any Prohibited Substance. In any event, the Athlete's argument becomes moot by the fact that – always according to his own statements – he had already used the medication on 18 January 2024, when he visited the doctor's clinic and was not in a medical emergency, as also explained during the hearing. Therefore, this argument should equally be dismissed.

86. The Athlete's argument that he conducted an internet search which showed that said medication was safe to use for infants, giving him the impression that it did not contain any Prohibited Substance, is equally unconvincing. As shown by WA, a simple internet search of the medication on Google of *"Is Berodual prohibited in sport?"* or *"Berodual drops doping"* would clearly indicate that said medication is prohibited in sport. Additionally, Berodual's active substance, which is also the Prohibited Substance (i.e. Fenoterol), is clearly displayed in big characters on the packaging and on the bottle of Berodual. The fact that Berodual is safe for infants or the fact that the Athlete was taking it as a child – as explained during the hearing - is not an indication that it is not prohibited in sport.

87. Going now to the Athlete's argument that he took the Prohibited Substance out of competition, it is also true that the Athlete was in final stages of preparation for the World Aquatics Championships, which were only two weeks away. Moreover, the Prohibited Substance is a substance that is prohibited both in-competition and out-of-competition, obliging athletes to exercise caution not only during competitions but also outside of competitions. Therefore, the Panel considers that this argument is equally immaterial for the reduction of the Athlete's level of fault and, consequently, his ineligibility period.

c. Subjective Elements of the Fault Assessment

88. On the subjective elements of the Athlete's level of fault, WA submitted that the Athlete has received very comprehensive anti-doping education and that the invitation for the

2023 and the 2024 World Aquatics Championships in Doha clearly warned athletes of the need to check any medication they used against the Prohibited List.

89. In his Statement of Appeal, the Athlete admits that he completed WADA's ADEL program, however *"this does not negate the emergency circumstances under which the medication was consumed"*. During the hearing, however, when asked whether he had received anti-doping education during his career, the Athlete said that he had never had any kind of a 'lecture' or something similar. While he and his fellow team members had some tests to fill out, there was not a significant level of knowledge among them and therefore the answers were given to them beforehand *"in order to make everything shorter and faster"*, so there were no official lectures or explanations regarding forbidden substances.

90. The Panel does not consider that the Athlete's arguments regarding his anti-doping education – or the alleged lack thereof – can be used, either in isolation or in connection to the alleged medical emergency – in order to reduce his level of fault: the Athlete received some sort of anti-doping education and it is immaterial – if not further damaging - for the Athlete's case that he did not wish to actually learn something from the theoretical tests he was subject to. Moreover, to the extent that the Panel dealt with the issue of medical emergency above, it does not need to address the Athlete's arguments anew at this stage.

91. Furthermore, when it comes to the Athlete's experience, it is undisputed that the Athlete is a successful, experienced, international-level athlete, who has been competing at the highest level since 2016, including the 2017, 2023 and 2024 World Aquatics Championships and the 2020 Tokyo Olympic Games. As the Athlete confirmed during the hearing, he has been tested approximately 10 times in his career. What is more, the Panel notes that the doctor was in his home country in Montenegro.

92. Accordingly, none of the subjective criteria support a reduction of the Athlete's degree of fault under the No Significant Fault or Negligence provision set out in Article 10.6.1.1 of the WA ADR.

d. Conclusion and Discussion on Proportionality

93. Based on the above analysis of all the surrounding circumstances, the Panel is satisfied that the Athlete did not intentionally commit the ADRV, nor did the violation reflect any attempt to cheat. However, the Athlete's overall conduct and degree of fault remain significant and do not justify a reduction of the standard two-year period of ineligibility under the No Significant Fault or Negligence standard. Accordingly, the Panel upholds the Appealed Decision in this regard.

94. The Athlete claims that a two-year ineligibility period is highly disproportionate and fails to meet the principle of proportionality enshrined in CAS jurisprudence, relying upon CAS ADD OG AD 18/004, as well as CAS 2016/A/4534. The Panel agrees with the Respondent that these two cases offer no help to corroborate the Athlete's argument.

95. More specifically, none of these cases applied proportionality as invoked by the Athlete. Much to the contrary, the Panel in CAS 2016/A/4534 noted how exceptional it would be to deviate from the WADA Code based on the proportionality principle, as the WADA Code was the product of wide consultation among the sporting authorities and has the proportionality principle embedded in its provisions (cf. CAS 2017/A/5015, para. 227). In any event, and to the extent that the Athlete could not establish that he bore No Significant Fault as analysed above, this case does not offer any exceptional elements that would otherwise warrant a reduction of the two-year period of ineligibility as found in the Appealed Decision.

B. Disqualification of Results and Starting Point of the Ineligibility Period

96. According to Article 10.13 of the WA ADR, the period of ineligibility shall start on the date of the present Award. Article 10.11.4 of the WA ADR provides for credit for any provisional suspension already served. The Athlete has been ineligible to compete since he was provisionally suspended on 14 February 2024 and should receive credit against the period of ineligibility already imposed.

97. The Athlete submitted that should any period of ineligibility be imposed, the Panel should find that there were *"substantial delays in the hearing and results management process that are unattributable Mr. Ukropina and backdate his sanction to make him eligible for the Olympics".*

98. In the present case, with the Paris Olympic Games having already taken place, the Athlete's request seems misplaced. In any event, Article 10.13.1 of the WA ADR does provide for the backdating of periods of ineligibility where delays have occurred. However, the Athlete did not bring forward any specific evidence in support of this request for relief. Notably, the burden of proof is on the Athlete to provide that there were substantial delays not attributable to him. At the same time, the Panel agrees with WA that the entire process was relatively quick, as the two month period needed by ITA to formally charge the Athlete after his First Explanation is not excessively long, even more as it required time to assess and investigate the Athlete's explanation.

99. Moreover, the Panel agrees with the Appealed Decision that the scope of Article 10.13.1 of the WA ADR is not mandatory, in that it is a matter for the adjudicating body to decide (if the threshold is met) to backdate a suspension. In this case the Athlete was provisionally suspended during the entire results management process and therefore the Athlete will already receive credit for any alleged delays which have occurred since 14 February 2024. Therefore, the Athlete's request is dismissed.

100. Pursuant to Article 10.10 of the WA ADR:

"All other competitive results of the Athlete obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or

Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes."

101. The provision shows that disqualification is the rule *"unless fairness requires otherwise"*. In the present case, the Panel did not hear anything from the Athlete to demonstrate that fairness requires that results be maintained nor did he indicate which competitive results were actually affected in the very brief period from the date of the positive sample collection until the date of the provisional suspension. It follows that all competitive results from that date (i.e. 21 January 2024) until the date of the Athlete's voluntary Provisional Suspension (i.e. 14 February 2024) shall be disqualified with all associated consequences.

IX. COSTS

(…)

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr Aleksa Ukropina on 2 December 2024 is dismissed.

2. The decision issued by the CAS Anti-Doping Division in the matter CAS 2024/A/ADD/105 is upheld.

3. (…).

4. (…).

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

Seat of arbitration: Lausanne, Switzerland
Date: 26 August 2025

THE COURT OF ARBITRATION FOR SPORT

Dr Despina Mavromati
President of the Panel

Romano Subiotto KC
Arbitrator

Jeffrey Benz
Arbitrator