2020/ADD/7 International Ski Federation v. Andrus Veerpalu
2020/ADD/13 International Ski Federation v. Andrus Veerpalu

ARBITRAL AWARD

delivered by the

ANTI-DOPING DIVISION
OF THE COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mrs. Raphaëlle Favre Schnyder, Attorney-at-Law in Zurich, Switzerland

in the arbitration between

International Ski Federation, Switzerland

Represented by Dr. Stefan Netzle and Dr. Mirjam Koller, Attorneys-at-Law, TIMES Attorneys AG, Zurich, Switzerland

Claimant

and

Andrus Veerpalu, Estonia

Represented by and Mr. Rafael Brägger and Dr. Thilo Pachmann, Attorneys-at-Law with Pachmann Ltd, Zurich, Switzerland

Respondent

I. PARTIES

1. The Fédération Internationale de Ski (the "Claimant" or "FIS") is the world governing body of skiing and snowboarding. Its seat is in Oberhofen, Switzerland.

2. Mr. Andrus Veerpalu (the "Athlete" or "Respondent"), born 8 February 1971, is a former professional athlete in cross-country skiing and a multiple medal winner for Estonia at Olympic Winter Games and World Championships (including a gold medal each at the Olympic Games 2002 in Salt Lake City and the Olympic Games 2006 in Torino in the 15 km classic technique). He retired from active sports in February 2011.

II. FACTUAL BACKGROUND

3. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced in this procedure as they concern the merits of this case. Additional facts and allegations found in the parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, she only refers to the submissions and evidence she considers necessary to explain her reasoning.

4. The FIS Nordic World Ski Championships 2019 took place in Seefeld, Austria from 19 February to 3 March 2019 (the "Event"). The Respondent took part in that event as a service staff member ("NSA Team Service Staff") for the national team of Kazakhstan where he was responsible for ski preparation and waxing. The Kazakhstan National Team delegation consisted of 14 athletes (5 women and 9 men), including Alexey Poltoranin, and 19 staff members.

5. During the Event, on 27 February 2019, the Austrian police raided the belongings of several athletes and athlete support personnel from Austria, Estonia and Kazakhstan on suspicion of violating Austrian anti-doping laws. Simultaneously, German police officers searched the medical practice of Dr Mark Schmidt in Erfurt, Germany. This joint police operation became publicly known as the "Operation Aderlass".

6. In the context of Operation Aderlass, a number of athletes (including Andreas Veerpalu (the Athlete's son) and Alexey Poltoranin) were arrested and interrogated by the Austrian police. The Athlete himself was neither arrested nor interviewed at that time.

7. The police searched the Athlete's hotel room in Seefeld during the raid and found a heavy box containing medical equipment, supplements and prohibited substances. The same hotel room was also used by Alexey Poltoranin for prohibited blood doping treatments.

8. Following the police raids in Seefeld and Erfurt, law enforcement authorities of Germany, Austria and Estonia initiated criminal investigations and proceedings against a number of athletes and support personnel.

9. The focus of the criminal investigations against the Estonian team was directed towards "Team Haanja", a sponsored sport team of several Estonian cross-country skiers (including Andreas Veerpalu) and other Estonian athletes, as well as Alexey Poltoranin (who trained with "Team Haanja").

10. "Team Haanja" was managed by Mati Alaver, the former coach of the Estonian cross-country skiing team. Following the raids and investigations, Mr. Alaver confessed to establishing contacts between the Dr Schmidt and several athletes from "Team Haanja" since 2016.

11. Dr Schmidt performed several blood doping treatments on these athletes, which can be described as follows: Blood was taken from the athletes during the non-competition periods. The blood bags were stored in a special refrigerator in the medical practice of Dr Schmidt. Immediately before a competition, one or two bags of the previously withdrawn blood were re-infused. Immediately after the competition, the same amount was withdrawn again from the athlete.

12. To set off the increased blood values, the athletes drank large amounts of water with a high salt content (one to two teaspoons salt per 500 ml water) after the competition and took albumin to cover up the blood doping.

13. During the course of "Operation Aderlass", the police interviewed Mr Dario Nemec whereby Mr. Nemec informed the police authorities about a meeting between himself and the Athlete on 4 December 2016 at the service station "Rosegg" on the Motorway A11 near Villach, Austria where, on behalf of Dr Schmidt, he delivered a package containing IGF-1 in return for a payment of EUR 3,200.

14. The Athlete does not dispute that this meeting took place, but disputes that he was aware of the contents of the package. Instead, the Athlete asserts that he never checked the contents of Mr Nemec's package and was told that it simply contained vitamins for Mr. Poltoranin, who had a flu at the time.

A. Proceedings before the FIS

15. On 28 September 2019, the FIS - in accordance with Art. 14.1.1 FIS Anti-Doping Rules 2019 ("FIS ADR 2019") - notified the Estonian Ski Association that it was opening disciplinary proceedings against the Respondent and provisionally suspending him under Art. 7.9 FIS ADR 2019. The Athlete was invited to respond within 10 days and to participate in an in-person interview on 23 or 24 October 2019. The Athlete, however, did not respond.

16. On 16 October 2019, FIS's legal counsel contacted the Athlete's counsel to again invited the Athlete to attend an in-person interview before formal charges were made against him. The Athlete declined FIS's request.

17. On 30 November 2019, the FIS sent a formal letter to the Respondent ("Notice of Charge") charging him as follows:

> *- the commission of repeated anti-doping rule violations, in particular of Article 2.9 ADR ('Complicity') by assisting, aiding, conspiring and covering up or any other type of intentional complicity involving an anti-doping rule violation, and*
>
> *- failure to cooperate in full with the FIS investigating the ADRV allegations under Article 22.1.6 ADR 2019, since you refused to attend an in-person interview to which you had been invited by the FIS.*

18. On 18 December 2019 (i.e. two and a half months after the imposition of the provisional suspension), the Athlete requested that FIS lift his provisional suspension with immediate effect and objected to all charges brought by the FIS against him.

19. On 3 January 2020, the FIS forwarded the Athlete's request to lift the provisional suspension to the FIS Independent Anti-Doping Delegate ("IADD").

20. On 31 January 2020, the IADD dismissed the Athlete's request to lift his provisional suspension (the "IADD Decision").

21. On 21 February 2020, the Respondent appealed the IADD Decision to the Court of Arbitration for Sport ("CAS"), Appeals Arbitration Division and requested the immediate lifting of the provisional suspension vis-à-vis a request provisional measures (CAS 2020/A/6781).

22. On 6 March 2020, the Deputy President of the Appeals Arbitration Division of the CAS rejected the Athlete's application for provisional measures.

23. The Respondent's Appeal (CAS 2020/A/6781) against the decision of the IADD is still pending.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

24. On 5 May 2020, the Claimant filed its Request for Arbitration with the Anti-Doping Division of the Court of Arbitration for Sport (the "CAS ADD") in accordance with Article A13 of the CAS ADD Rules (the "ADD Rules").

25. On 6 May 2020, the CAS ADD invited the Athlete to file an Answer to the Request for Arbitration and invited the Parties to mutually agree on a Sole Arbitrator from the special list of CAS ADD Presidents/Sole Arbitrators in accordance with Article A16 of the ADD Rules.

26. On 20 May 2020, the Parties were informed by the CAS ADD Court Office that on agreement of the Parties, and on behalf of the President of the CAS ADD, Ms. Raphaëlle Favre Schnyder, Attorney-at-Law, Zurich, Switzerland, was confirmed as Sole Arbitrator.

27. On 25 June 2020, following an agreed-upon extension of time, the Athlete filed his answer (including an objection to CAS jurisdiction).

28. On 27 July 2020, following the direction of the Sole Arbitrator, the Claimant filed a Reply submission, including its response to the Athlete's objection to jurisdiction.

29. On 25 August 2020, the Athlete filed a Sur-Reply submission.

30. On 1 October 2020, Claimant requested a 20-day period of time to supplement its Request for Arbitration so as to bring new charges against the Athlete.

31. On 2 October 2020, the Athlete opposed to the Claimant being granted an additional period of time to file any supplemental documents.

32. On 20 October 2020, following various exchanges between the parties on the Claimant's desire to file new charges against the Athlete, the CAS ADD suspended procedure 2020/ADD/7 pending the Claimant's filing of a new Request for Arbitration. Upon receipt of the new Request for Arbitration, the Sole Arbitrator noted that a deadline of 20 would be granted to the Athlete for filing his Answer.

33. On 9 November 2020, the Claimant filed a new Request for Arbitration (2020/ADD/13) and *inter alia* invited the Athlete to state by 11 November 2020 whether he agreed to the consolidation of the new procedure with 2020/ADD/7 in accordance with Article A14 of the ADD Rules. Also, the Athlete was invited to state his agreement to Ms Raphaëlle Favre Schnyder acting as Sole Arbitrator in the new procedure.

34. On 25 November 2020, the Parties were advised by the CAS Court Office that the President of the ADD has decided to consolidate procedures 2020/ADD/7 and 2020/ADD/13 in accordance with Article A14 of the ADD Rules given the similar nature of the two procedures. In doing so, the President of the ADD referred this procedure to Ms Raphaelle Favre Schnyder as Sole Arbitrator in accordance with Article A16 of the ADD Rules.

35. On 30 November 2020, the Athlete filed his Answer in 2020/ADD/13.

36. On 9 & 10 February 2021, the Athlete and Claimant, respectively, signed and returned the Order of Procedure.

37. On 10 February 2021, a video hearing was held. The Sole Arbitrator was joined by Mr. Brent John Nowicki, Managing Counsel, and joined by the following:

For the Claimant:

- Dr. Stephen Netzle, Counsel
- Dr. Mirjam Koller, Counsel
- Mr. Franz Schwarzenbacher, Witness
- Mr. Dario Nemec, Witness
- Prof. Snježana Husnjak Pavlek, Translator
- Dr. Mark Schmidt, Witness

For the Athlete:

- Mr. Rafael Brägger, Counsel
- Mr. Andrus Veerpalu, Athlete
- Mati Alaver, Witness
- Mr. Alexey Poltoranin, Witness
- Andreas Veerpalu, Witness
- Dr. Aleksandr Lushchaev, Witness
- Mr. Alexey Nakonechnyy, Witness

38. At the outset of the hearing, the Parties confirmed that they had no objection to the Sole Arbitrator. That said, the Athlete reiterated his objection to admissibility and jurisdiction. No objections to the way in which the procedure was handled or organized were noted.

IV. SUBMISSIONS OF THE PARTIES

A. The Claimant

39. The Claimant's submissions on the merits, in essence, may be summarised as follows:

- In contravention of Article 2.9 FIS ADR 2016 (the relevant rules for substantive purposes) the Athlete committed an anti-doping rule violation ('ADRV') he granted access to his room to Dr. Mark Schmid to perform blood transfusion on Alexey Poltoranin thereby being an accomplice to Alexey Poltoranin's admitted blood doping during the World Championships in Seefeld.

- According to Art. 2.9 FIS ADR 2016, the following conduct is prohibited and considered an ADRV: *"Assisting, encouraging, aiding, abetting, conspiring, covering up or any other type of intentional complicity involving an anti-doping rule violation, Attempted anti-doping rule violation or violation of Article 10.12.1 by another Person"*.

- The CAS already decided in its longstanding jurisprudence that the wording of Art. 2.9 FIS ADR 2016 has to be interpreted broadly. According to the CAS, the wording *"assisting, encouraging, aiding, abetting, conspiring, covering up or any other type of intentional complicity involving an anti-doping rule violation"*: *"is intended to be very broad and to cover any ADR violation by any person bound by the ADR, including a coach or a support staff member, and is not limited to the ADR violations of fellow athletes"*.

- Furthermore, the CAS established that *"although 'complicity' is likely to involve some degree of knowledge on the part of the persons alleged to be complicit, it is not necessary that that person knew all of the people involved or all of the Prohibited Methods being used"*. This means that a doping sanction based on Art. 2.9 FIS ADR 2016 does not require that the concerned person knows everything about the doping offences committed in the context of the entire doping scheme. It must be sufficient if the person has somehow facilitated the doping offense.

- The Final report of the Austrian Police constitutes clear evidence that the Athlete committed ADRVs.

- On 21 February 2019, the police had intercepted a discussion between Dr Mark Schmid and his father Ansgar Schmidt whereby the former informed the latter that he would be contacted by Mati Alaver to organise a meeting in which he – i.e. Ansgard Schmidt – would receive a room key for his son.

- On 22 February 2019 Dr Mark Schmidt informed his father that he should ring the door of the apartment no. 24 of the house "Excelsior" and say *"Hello Mr. Alexander"*. Ansgard Schmidt would then receive a key so that Dr Schmidt could enter the apartment on the next day.

- Shortly before 8pm on 22 February 2019, Ansgard Schmidt rang at the door of the house "Excelsior" and spoke to the intercom system. A few moments later, the Athlete opened the door, spoke shortly with Ansgard Schmidt and gave him a key. Ansgard Schmidt testified that the Respondent understood that he – i.e. Ansgard Schmidt – was related to Dr Mark Schmidt. Furthermore, according to the testimony of Ansgard

Schmidt, the Respondent told him: *"Tomorrow morning, as agreed"*, which was understood as a reference to the agreed blood transfusion of Alexey Poltoranin. The conversation between Ansgard Schmidt and the Respondent was photographed by the police.

- On 23 February 2019 at 7:58 am: Dr Mark Schmidt walked from his apartment to the house "Excelsior" to perform a blood infusion on Alexey Poltoranin before the 30km skiathlon, which started on 12:30 pm.65 This was confirmed by Alexey Poltoranin during his interrogation by the Austrian police.

- On 27 February 2019, the Austrian police accompanied Ms Diana Sommer to room no 24 of the house Excelsior where she was expected by Alexey Poltoranin who awaited her as she was supposed to perform a blood transfusion on him.

- Alexey Poltoranin confirmed during his interrogation by the Austrian police that the blood doping treatments took place in the apartment room shared by the Athlete and Jan Alvela (room no. 24 of the house "Excelsior") because he could have been controlled by WADA at any time in his own room in Alpenhotel.

- Upon their arrival in room 24, the police found a heavy metal box and a sport bag containing several doping utensils in the Respondent's hotel room. In particular, the police found one ampoule "Dexamethasone", two ampoules "Prednisolone" (both substances are prohibited according to Art. S9 WADA Prohibited List 2019), 100 ml albumin solution (prohibited according to Art. S5 WADA Prohibited List 2019) and one inhalation device with "Flutiform" (prohibited according to Art. S9 WADA Prohibited List 2019).

40. The Claimant brought additional charges in relation with an alleged former ADRV as follows:

- In addition, during its investigation into Dr Mark Schmidt, the police interrogated Mr Dario Nemec, one of Dr Mark Schmidt's provider of prohibited substances for use by athletes participating in high-level sports competitions, who explained having met the Athlete in December 2016.

- According to Mr Nemec's in December 2016, Dr Mark Schmidt ordered the supply of the prohibited substance IGF-1 produced by the pharmaceutical company Sigma-Aldrich from him.

- The purchase and the handover to the Athlete of the prohibited product IGF-1 took place on 4 December 2016 at the service station "Rosegg" on the motorway A11 near Villach (AUT) as was arranged by Dr Mark Schmidt and Mati Alaver. The Athlete received instructions about the driving route from Ramsau (AUT) to the delivery point from coach Mati Alaver.

- Upon arrival at the service station "Rosegg", Dario Nemec gave the Athlete two packages of IGF-1, and the Athlete paid to Mr. Nemec a purchase price of EUR 3'200 in cash.

- At the latest on 6 December 2016, the Respondent left Ramsau and drove to Livigno (ITA). Livigno is a well-known Nordic skiing training venue located close to

Valdidentro / Isolaccia, where the Alpen Cup took place in which Karel Tammjärv participated.

41. In both its Requests for Arbitration, the Claimant requested the following relief:

On behalf of the Federation International de Ski, the undersigned respectfully request the honourable Panel:

(1) to declare Andrus Veerpalu ineligible from participating in any FIS-sanctioned event or other activity for a period of four years starting from the date of the final hearing decision providing for ineligibility for having committed an Anti-Doping Rule Violation contrary to Article 2.9 of the FIS Anti-Doping Rules;

(2) to order that Andrus Veerpalu shall bear the costs of these arbitration proceedings in its entirety;

(3) to order Andrus Veerpalu to reimburse the legal fees of the Fédération Internationale de Ski (FIS) and other expenses related to the present arbitration.

B. The Athlete

42. The Athlete's submissions, on the merits in essence, may be summarized as follows:

- He took part in the FIS Nordic World Championships 2019 exclusively as a service staff member for the nation al team of Kazakhstan and had no link or relationship at all to team Haanja. His task was solely to provide athletes with fast skis and he had nothing to do with the physical condition and preparation of the athletes. He has no knowledge at all of the doping scheme admittedly organised and orchestrated by Mati Alaver for the members of team Haanja.

- The Athlete disputes that he handed over a key to Anger Schmidt on the evening of 22 February 2019 as alleged by the Claimant. There is no evidence that he had planned or had the intention to encounter Ansgar Schmidt; their meeting was a coincidence and a random encounter only. He relies upon:

- Dr Mark Schmidt and Mati Alaver never expected the Athlete to play a role in this. In his entire interrogation, Dr Schmidt never mentioned the Athlete's name.

- According to the intercepted telephone call between Dr Mark Schmidt and Ansgard Schmidt the latter was supposed to meet the "General". The "General" is Mati Alaver, not the Athlete.

- According to Ansgard Schmidt, he was supposed to say *"Hallo Herr Alexander"* (*"Hello Mr. Alexander"*) when ringing the doorbell of apartment no. 24. However "Alexander" is presumably a reference to either Alexey Poltoranin (with "Alexander" being a germanization of the Russian/Kazakh name "Alexey") or to Dr Aleksandr Lushchaev, his doctor.

- Also, it is manifest from the evidence that the neither the Athlete nor his roommate Jan Alvela expected Ansgard Schmidt or any other visitor to come by that evening as Ansgard Schmidt had to wait a very long time and almost left before the door was finally opened.

- As the door to room 24 was always unlocked, there was no need to meet with Ansgard Schmid and no key to hand over. Also, Ansgar Schmid never stated that he was handed over a key and even less so, that such key should have been handed over by the Athlete.

- The metal box was not especially large or heavy and could easily have been overlooked, as it was covered by several other bags. Also it was locked and as the Athlete did not have a key to it, he could not have opened it to know its content. He is and was not the owner of the metal box and the criminal authorities were unable to determine its ownership.

- As the police has established that Dr Mark Schmid and Dinna Sommer always carried their equipment necessary for the blood treatment, there would have been no need to store equipment in the Athletes room.

- While Alexey Poltoranin admitted having been treated in the Athlete's room, was not tested positive to any of the substances contained in the metal box.

- Dr Alexander Lushchaev, Alexey Poltoranin's medical doctor confirmed having brought the metal box and sports bag and stored his equipment for treating Alexey Poltoranin in room 24, as he stayed in the Jugendherberge in Innsbruck and did not want to carry the equipment around.

- Also, sport bags in every shape and form are common in accommodations occupied by sport professionals.

43. As for the additional evidence submitted by the Claimant in its second request for arbitration, the Athlete further submitted that he:

- While he was in Ramsau am Dachstein in early December 2016 to inspect that the snow and ski track conditions, he was asked by Mati Alaver to pick up a parcel on a motorway service area in southern Austria about one-and-a-half hours away. Mati Alaver told the Athlete that it was medicine for bed-ridden Alexey Poltoranin to bolster his immune system and gave him an envelope with what the Athlete presumes was money, but did not check.

- The Respondent then drove to the pick-up point Mati Alaver had told him about. There, a man whom he did not know and had never seen before (or after) approached him. That man gave him a small parcel and the Respondent gave him the envelope. There was no talking between them apart from saying hello and goodbye. In particular, the bearer of the parcel did not tell the Respondent what was in it. There was no phone call or other kind of communication between the two before or after the encounter, neither.

- The Respondent put the parcel on the back seat of his car and drove back to Ramsau. Back in Ramsau, he gave the parcel to Mati Alaver. Since it was not for him, the Respondent did not open the parcel and did also not see Mati Alaver or anybody else opening it. Accordingly, the Respondent never saw its content. However, he has no reason to doubt that it was medicine for Alexey Poltoranin, as Mati Alaver had told him.

- The evidence submitted by the Claimant does not show that the Athlete was aware of the content of the parcel and the emails exchanged between Dr Mark Schmidt and Mati Alaver do not mention his name, but that of his son Andreas, i.e. his code name "Andrei". The fact that his phone number was mentioned in the email correspondence as *"Andrei handy"* can be explained by a short notice change of the driver.

- Besides Dario Nemec's statement, there is no evidence that the parcel in question contained IGF-1 and Dario Nemec's evidence is unreliable as mostly wrong regarding places, dates and hours.

- All other evidence confirm that the package did not contain IGF-1. The fact that the email correspondence between Dr Schmidt and Mati Alaver mentions "Pulver" proves that it was not IGF-1 and this substance was always referred to as "Isostar" by Dr Mark Schmidt. In addition, Karel Tammjärv asked questions to Dr Mark Schmidt regarding the usage of Vitamin-E, not "Isostar" and the evidence shows that IGF-1 is not a powdery substance, but a liquid.

- More importantly, the Athlete's name is not mentioned once in the email correspondence between Dr Mark Schmid, Mati Alaver and Karel Tammjärv which however evidences how Mati Alaver took care to conceal the doping activities as the athletes did not know that other athletes were also involved.

- Also, according to the Claimant, the IGF-1 was intended for Karel Tammjärv's participation in the 2017 Nordic World Ski Championships in Lahti, Finland. However, Karel Tammjärv (nor Andreas Veerpalu, Algo Kärp or Alexey Poltoranin) did not test positive for IGF-1 at these Championships (and also not for anything else). Consistent with this is the fact that Karel Tammjärv was not sanctioned for use of IGF-1 but only of hGH and Insulin pens; both he had received from Mati Alaver or directly from Dr Mark Schmidt, not from the Respondent.

- According to art. 3.1, first sentence FIS ADR, FIS shall have the burden of establishing that an anti-doping rule violation has occurred.

- The present case claim is not a "typical" doping case where the Claimant can simply present an Adverse Analytical Finding and then wait and see if the athlete is able to prove his or her innocence (see art. 2.1.2 FIS ADR). Rather, the Claimant has to prove that the Athlete would have committed an ADRV, not the other way around. The same is warranted under the applicable art. 8 of the SCC.

- The standard of proof shall be whether FIS 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 (art. 3.1, second sentence FIS ADR).

- The Respondent is of the view that the allegations raised against him by the Claimant are, even if they were true, only minor in nature.

- The underlying rationale of the "comfortable satisfaction" standard is that sports federation like the Claimant have restricted powers of investigation compared to national formal interrogation authorities and do in particular not have invasive

investigative means (like raids, confiscation, arrests, wire-tapping, etc.) at their disposal (CAS 2014/A/3832 & 3833; FIS ADD-A-8).

- In the present case, however, the Claimant has been able to use all these means: The Austrian and German Police provided the Claimant with all the evidence and intelligence they had gathered in the context of the "Operation Aderlass" such as minutes of wire-taped conversations and in-person interrogations, mobile phone messages, surveillance photos, indices of confiscated items, etc. Accordingly, the Claimant was precisely not in a *"difficult position to produce evidence in relation to the offence in question"* (CAS 2014/A/3832 & 3833). There is therefore no reason whatsoever to lower the standard of proof in this case; rather, it is very much like an "Ordinary" criminal case where the applicable standard of proof is, without a doubt, the proof beyond reasonable doubt (see e.g. art. 10 para. 3 of the Swiss Criminal Procedure Code [CPC]12).

- The Athlete considers that the fact that his name is not mentioned once in the interrogation minutes of Karel Tammjärv, Andreas Veerpalu, Dr. Mark Schmid and of Dina Sommer and that he was not recognized by the latter in the pictures submitted to her is evidence that he was not involved; so is the assurance by Alexey Poltoranin that the Athlete was unaware of the blood doping treatments, repeated several times.

- Even if the Claimant could have proven that the athlete was aware of the blood doping scheme, such awareness would not be sufficient as the *"pure knowledge of doping practices does not fall under the scope of Art. 2.9 FIS ADR 2016"*.

- Given that there were no complicity actions by the Athlete, there is no legal basis for sanctions against him. Yet, the relevant CAS award leaves no doubt that any individual sanctioned for complicity must have at least some knowledge of the scheme he is accused of having conspired in. It therefore cannot be said that no knowledge would be required.

- In any event, there was no intention on the Respondent's part (which is required for all alternatives) to be complicit in the doping scheme. There is no negligent, or unknowing, complicity in an ADRV.

- The Respondent submits that the Claimant has not met its burden of proof and that the elements of the complicity offence under 2.9 FIS ADR 2016 are not fulfilled.

44. In his Answer on the merits in CAS 2020/ADD/7, the Athlete requested the following relief:

1. *The CAS ADD shall not enter into the Claimant's Request for Arbitration.*
2. *Alternatively to no. 1 above: The Claimant's Requests for Relief shall be dismissed in their entirety.*
3. *Tt shall be held that the Respondent did not commit an Anti-Doping Rule Violation, and no period of ineligibility shall be imposed on the Respondent.*
4. *The Provisional Suspension against the Respondent shall be lifted.*
5. *The Claimant shall be ordered to pay all costs and fees relating to these arbitration proceedings, including, but not limited to, the entire costs for the Respondent's lawyers, witnesses and experts, which the Respondent will produce in due course.*

45. In his Answer on the merits in CAS 2020/ADD/13, the Athlete requested the following relief:

1. *The Claimant's Request for Arbitration of 4 November 2020 shall be declared inadmissible.*
2. *Alternatively to no. 1: The Claimant's Requests for Relief in its Request for Arbitration of 4 November 2020 shall be dismissed in their entirety.*
3. *In any event: It shall be held that the Respondent did not commit an Anti-Doping Rule Violation, and no period of ineligibility or any other sanction shall be imposed on the Respondent.*
4. *The Provisional Suspension against the Respondent shall be lifted.*
5. *The Claimant shall be ordered to pay all costs and fees relating to these arbitration proceedings, including, but not limited to, the entire costs for the Respondent's lawyers, witnesses and experts, which the Respondent will produce in due course.*

V. ADMISSIBILITY

46. The Athlete has made a preliminary procedural objection as to the timeliness of the Request for Arbitration filed by the Claimant. The Sole Arbitrator will examine this objection as a threshold matter.

A. The Athlete's Position

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

- The Athlete concedes that Article A13 of the ADD Rules would not provide for a deadline to submit the Request for Arbitration, but that Art. A7 para. 2 CAS ADD Rules does.

- Article A7 of the ADD Rules reads in relevant part:

  With the exception of the time limit for the Request for Arbitration, any request for a first extension of time of a maximum of five days may be decided by the Managing Counsel of the CAS ADD without consulting any other party.

- Neither Article A7 nor Article A13 of the ADD Rules provide for the duration of the relevant time limit or its starting point. However, by analogous application of the subsidiarily applicable CAS Code, the time limit for a Request for Arbitration is twenty-one days (Art. R32 para. 2 of the CAS Code of Sports-related Arbitration with

reference to Article R49 of the CAS Code). As a matter of fact, such interpretation is even in the Claimant's favor as one could also argue that the time limit shall be determined by way of analogy to Article R51 para. 1 of the CAS Code regarding the appeal brief instead, i.e. at ten days. Even further in the Claimant's favor, it could be argued that the duration is the twenty-one and the ten-day deadlines together, i.e. thirty-one days.

- Determining the starting point of this twenty-one-day time limit is slightly trickier since, unlike in appeal cases, there is no *"receipt of the decision appealed against it"* (Article R49 of the CAS Code) that could be used as a reference in ADD cases. The Athlete submits that the most logical and purposeful interpretation is that the conclusion of the Claimant's investigation is decisive and that therefore, the Claimant has a (non-extendable) deadline of twenty-one days from the conclusion of its investigation to file the Request for Arbitration.

- As it happens, the Claimant has made completely contradictory statements on the alleged conclusion of its investigation in the Respondent's case:

- As early as 28 September 2019, the Claimant wrote to the Athlete: *"The case is now ready for adjudication by the competent tribunal, which is the Court of Arbitration for Sport Anti-Doping Division (CAS ADD)"*. On 30 November 2019, the Claimant told the Athlete that it had *"concluded its investigation"*. On 23 December 2019, the Claimant wrote to the Respondent that they would *"forward the case along with the case file and evidence to the CAS ADD for adjudication"*. Said procedural step was reconfirmed by the Claimant in its submissions to CAS dated 3 March 2020 and 6 March 2020 in the proceeding CAS 2020/A/6781:

  The FIS is now preparing a Request for Arbitration with the CAS ADD. As already stated in its submission of 3 March 2020, the Respondent is now preparing a Request for Arbitration with the CA5 ADD because of the alleged (but disputed) ADRV of the Respondent, which is separate from the current proceedings about the provisional suspension.

- The Athlete submits that the Claimant concluded its investigation against him at the very latest on 30 November 2019 when it sent its Notice of Charge to the Respondent. However, in the present case it does actually not matter which exact point in time is declared relevant: In all four cases the twenty-one-day (and also a theoretically possible thirty-one-day) deadline for the Claimant to file its Request for Arbitration has lapsed long before the request was eventually filed (5 May 2020). Even from the most recent point in time (6 March 2020), two months passed.

- The Athlete notes that together with its Request for Arbitration, the Claimant did not file a single piece of evidence on the merits which had not been in its possession since the end of 2019/early 2020. It, therefore, cannot be said that the Claimant would have been "dependent" on the outcome of other proceedings or investigations and would thereby have been prevented from filing the Request for Arbitration earlier.

- Sports arbitration, in particular the one by CAS and the CAS ADD, is regularly praised by the Claimant for being particularly speedy and efficient. On the other hand, it is notorious that criminal investigations by public prosecutors, in particular in larger cases (which the Respondent submits applies to "Operation Aderlass"), regularly take

several years. It goes without saying that under such circumstances, the Claimant cannot file a Request for Arbitration whenever it feels like it (especially in cases where, like in the present one, a provisional suspension is in force) such as after the conclusion of public investigations. In other words, a deadline must apply. This is also warranted by the principle of sparing exercise of rights ("Gebot der schonenden Rechtsausiibung").

- The Athlete further makes an analogy with criminal investigations against former FIFA Executive Committee members Joseph Blatter and Michel Platini and former FIFA Secretary General Jérôme Valcke that are still pending today. The disciplinary and subsequent arbitration proceedings against them, in turn, were opened in 2015 and concluded in 2016. In fact, in the Platini case, the Swiss Federal Tribunal and the European Court of Human Rights have already rendered their respective decisions in the meantime. Had FIFA waited until the conclusion of the criminal investigations, not even a first-instance decision would be available by now (and Mess. Blatter and Platini probably still Presidents of FIFA and UEFA). Also, they would have been banned much longer than would be allowed — in fact, Mr. Platini's ban has meanwhile already expired (October 2019). On that note, it is important to highlight that FIFA regulations limit the maximum duration of provisional suspensions to 90 days, in exceptional circumstances extendable once for another 90 days (Article 85 of the FIFA Code of Ethics, 2019 edition). The sole fact that such — reasonable and fair — limitation does not exist in the FIS Anti-Doping Rules (FIS ADR) does not entitle the Claimant to delay the filing of its Request for Arbitration at will. A fortiori, a deadline must exist.

- It must also be noted that according to the well-established "contra proferentem" rule, any ambiguity in the federation's regulations must be interpreted in favor of the athlete. Accordingly, if the ADD Rules provide for a deadline to file the Request for Arbitration but fail to explicitly define its duration and starting point, this is to the detriment of the Claimant who imposes these rules on the Respondent. The ADD Rule providing for a deadline to file the Request for Arbitration can therefore not simply be ignored.

- The absence of a deadline to file the Request for Arbitration would evidently be unfair to the athlete and was certainly not what the regulators of the CAS ADD Rules had in mind. In a case like the present one where the Claimant has imposed a Provisional Suspension on the Athlete, and where the Provisional Suspension remains in force until the decision of the hearing panel, the Provisional Suspension could remain in place literally forever if there was no deadline to file the request. The possibility to appeal the Provisional Suspension, in turn, is no remedy since the standard of proof in an appeal against the Provisional Suspension is much lower than in the final award ("reasonable possibility"; Article 7.9.2 FIS ADR).

- The Claimant even tries to blame the Athlete for the delay as it tried to pressure the Respondent to appear for an in-person interview to which the Athlete did not give in. However, there is no right for the Claimant — and consequently no obligation for the Respondent — to interrogate the Athlete in-person.

B. The Claimant's Position

48. The Claimant's submissions, in essence, may be summarized as follows:

- Article A13 of the ADD Rules does not provide for a deadline to submit the Request for Arbitration. As the FIS was dependent on the results of the investigation by the public prosecutor's offices in Germany and Austria, and due to the fact that to date, the Respondent has avoided being questioned in—person, it was not possible for the Claimant to file the Request for Arbitration at an earlier stage.

- The Athlete's opinion that the Request for Arbitration was submitted too late and is, therefore, not admissible, is misconceived. Article A7 para. 2 of the ADD Rules does not provide for a deadline to submit a request as argued by the Athlete. The CAS ADD is the first-instance authority to conduct proceedings and issue decisions when an alleged ADRV has been filed and for imposition of any sanctions resulting from a finding that an ADRV has occurred. Article A2 of the ADD Rules para. 2 says:

  These Rules apply only to the resolution by first instance arbitration of alleged antidoping rule violations filed with CAS ADD. They neither apply with respect to appeals against any other decision rendered by an entity referred to in this Article nor against any decision rendered by the CAS ADD.

- It is up to the Claimant to carry out the results management process and to bring the matter of a suspected ADRV committed under its jurisdiction to adjudication in accordance with Article 8 of the ADR, which corresponds to Article 8 of the WADC. Neither the ADR nor the WADC provide for any specific time limits within which the case must be submitted to the hearing body, which is also acknowledged by the Athlete. The process of initiating an arbitral procedure with the CAS ADD is described in Article A13 of the ADD Rules.

- The Claimant does not understand the reference to an *"exception of the time limit for the Request for Arbitration"* in Article A7 para. 2 of the ADD Rules either because there is no such time limit, except the time limit for completion of a request which does not meet the requirements of Article A13 para. 1 of the ADD Rules.

- The Athlete's idea of introducing a period for the filing of a Request for Arbitration by analogy to the "Special Provisions Applicable to the Appeal Arbitration Procedure" has no legal basis. Even if an analogous application of the CAS Code would be taken into consideration, the Special Provisions for the Ordinary Arbitration Procedure would be more appropriate for first-instance procedures before the CAS ADD because there is simply no "decision" to appeal. Article R38 of the CAS Code does not provide for any time limits to file the Request for Arbitration.

- The Claimant had good reasons not to submit the procedure before the CAS in haste:

  a. When the Notice of Charge was issued, the Claimant first offered the Athlete the possibility to accept the charge of an ADRV without a hearing, just as his son Andreas Veerpalu and Alexey Poltoranin did.

b. It was the Athlete who initiated a variety of procedures before different tribunals against his provisional suspension, which considerably delayed the prosecution of his case.

c. The criminal proceedings initiated by the competent state authorities in Austria and Germany were and are still ongoing, and further evidence is expected.

- The Athlete argues that criminal investigations can take several years as the cases of former FIFA functionaries show. In order to provide the Athlete with a fair proceeding and not to prolong the present case, the Claimant was ready to file the Request for Arbitration, although it was not in possession of all results of the criminal proceedings against him. Such further results must however be admitted as soon as they become known. Therefore, the Claimant does not accept the allegation of having delayed the proceedings before the CAS ADD.

C. The Sole Arbitrator's Findings on Admissibility

49. The Sole Arbitrator notes that as per Art. 2 CAS ADD Rules, *"CAS ADD shall be the first-instance authority to conduct proceedings and issue decisions when an alleged anti-doping rule violation has been filed with it and for imposition of any sanctions resulting from a finding that an anti-doping rule violation has occurred"*. Also, *"If, in accordance with Articles 7.4.3 WADC, an Anti-Doping Organization is requested to provide a Athlete or other Person with: (a) an opportunity for a Provisional Hearing, either before imposition of the Provisional Suspension or on a timely basis after imposition of the Provisional Suspension; or (b) an opportunity for an expedited hearing in accordance with Article 8 WADC on a timely basis after imposition of a Provisional Suspension, and the Anti-Doping Organization does not refer the request to the CAS ADD within a reasonable time, the Athlete or Other Person may file an application with CAS ADD for Provisional Measures or an award on the merits following an expedited procedure. The costs of such procedure, with the exception of the filing fee (see Article A23), shall be paid pursuant to Article A24"*.

50. As CAS ADD is the first-instance authority, there is no deadline for the filing of the Request for Arbitration and there is no need nor reason to apply per analogy the provisions of the CAS Code providing for the 21-day deadline to appeal. The reference to an *"exception of the time limit for the Request for Arbitration"* contained in Article 7 para. 2 CAS ADD concerns, for example, statutory deadlines as set out in specific regulations, like the 8-year deadline of Article 17 WADC 2009. As no such statutory deadline is applicable in the case at hand, the Request for Arbitration was filed in a timely manner.

51. In any case, FIS ADR 2019 provides in Art. 7.9.3 : *"Alternatively, the Athlete may request an expedited final hearing relating to the merits of the alleged anti-doping rule violation before the CAS Anti Doping Division ("CAS ADD") in accordance with Article 8. The Provisional Suspension shall then be reviewed in the context of the expedited final hearing"*. Thus, the Athlete would have had the possibility to request an expedited final hearing at any time after the provisional suspension.

52. Hence, the Sole Arbitrator confirms that the Request for Arbitration this first instance proceeding is not submitted to a deadline and thus timely. Therefore, the Request for Arbitration is admissible.

VI. JURISDICTION

53. The jurisdiction of the ADD has also been challenged by the Athlete. Having found this procedure "admissible", the Sole Arbitrator will now examine the jurisdiction of the CAS ADD to decide this dispute.

A. The Athlete's Objection to Jurisdiction

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

- The Athlete does not accept the jurisdiction of the CAS ADD over him. By reference to sections I.5 and IV.1 of the Athlete's Statement of Appeal of 21 February 2020 in the case CAS 2020/A/6781, the Athlete argues that the FIS Statutes do not contain an arbitral clause which would cover any dispute between the FIS and its members, officials, athletes etc. Rather, the arbitral clauses in the FIS Statutes are very specific and confined to particular cases. For all other disputes, the jurisdiction of the ordinary courts applies.

- The arbitral proceedings the Athlete is forced into cannot covered by his free will. Also, when the Athlete entered the FIS World Cup and World Ski Championships he not aware, and not made aware (e.g. by the Claimant or the national ski federation), of the FIS regulations providing for mandatory arbitration by the CAS ADD. This is in particular true for the charges brought forward in relation with the alleged purchase of IGF-1 in December 2016 as at the time, the CAS ADD did not even exist and the Athlete could therefore not be made aware of the FIS regulations providing for mandatory arbitration before the CAS ADD. The arbitration is not, therefore, based on an agreement between the Parties, but instead on a legal fiction.

- Irrespective of the above, the Athlete expects, and trusts, that the new exhibits filed by the Claimant on the issue of jurisdiction will be removed from the file.

- In addition, the Athlete considers that the filing of the Request for Arbitration was incorrect as according to the CAS guidelines on e-filing applicable to CAS ADD proceedings by virtue of Article A6 para. 3 of the ADD Rules, which provide as follows:

  The e-filing service can only be activated after the opening of arbitration proceedings by the CAS Court Office. This implies the prior filing of a Request for Arbitration (Art. R38 of the CAS Code) or a Statement of Appeal (Art. R48) by email, facsimile or courier, within the deadline set out in Art. R49 of the CAS Code, as well as the allocation of a case number for the arbitration proceedings in question.

- According to the Athlete, the guidelines are crystal clear: The Request for Arbitration cannot and must not be filed via the e-filing service. Rather, the Request for Arbitration must always be submitted by email, facsimile or courier.

B. The Claimant's Response on Jurisdiction

55. The Claimant's submissions, in essence, may be summarized as follows:

- Article A2 of the ADD Rules reads as follows:

  CAS ADD shall be the first-instance authority to conduct proceedings and issue decisions when an alleged anti-doping rule violation has been filed with it and for imposition of any sanctions resulting from a finding that an anti-doping rule violation has occurred. CAS ADD has jurisdiction to rule as a first-instance authority on behalf of any sports entity which has formally delegated its powers to CAS ADD to conduct anti-doping proceedings and impose applicable sanctions.

- In May 2019, the Claimant signed an agreement with the CAS ADD, delegating adjudicatory powers for the determination of anti-doping rule violations and the resulting sanctions to the CAS ADD in accordance with Article A2 of the ADD Rules.

- The corresponding provisions in the FIS Anti-Doping Rules Edition 201934 ("FIS ADR 2019") are the following:

  Article 8:

  When FIS sends a notice to an Athlete or other Person asserting an anti-doping rule violation, and the Athlete or other Person does not waive a hearing in accordance with Article 7.10.1 or Article 7.10.2, then the case shall be referred to the CAS ADD for hearing and adjudication according to the Arbitration Rules of the CAS ADD.

  Art. 7.10.1:

  An Athlete or other Person against whom an anti-doping rule violation is asserted may admit that violation at any time, waive a hearing, and accept the Consequences that are mandated by these Anti-Doping Rules or (where some discretion as to Consequences exists under these Anti-Doping Rules) that have been offered by FIS.

  Art. 7.10.2:

  Alternatively, if the Athlete or other Person against whom an anti-doping rule violation is asserted fails to dispute that assertion within the deadline specified in the notice sent by the FIS asserting the violation, then he/she shall be deemed to have admitted the violation, to have waived a hearing, and to have accepted the Consequences that are mandated by these Anti-Doping Rules or (where some discretion as to Consequences exists under these Anti-Doping Rules) that have been offered by FIS.

- On 30 November 2019, the Claimant sent formal notices of charge in compliance with Article 8 of the FIS ADR 2019 to the Respondent. The Respondent objected to all charges made by the FIS as well as to the proposed consequences, which is why the Claimant submitted the present Request for Arbitration to the CAS ADD.

- Art. 186 para. 1 Swiss Private International Law Act provides that the *"arbitral tribunal shall rule on its own jurisdiction"*. The arbitral tribunal is vested with the so-called Kompetenz-Kompetenz, i.e. the authority to determine whether it has jurisdiction to determine the merits of the case.

- According to Art. A13 of the ADD Rules, the Claimant has to provide *"a copy of the regulations containing the arbitration agreement or of any document providing for arbitration in accordance with these Rules"*. This article does not require that the arbitration clause be

contained in the Statutes of an international federation. To the contrary, it is sufficient if it is contained in the federation's regulations as confirmed by Swiss legal literature.

- The wording of Article 8 of the FIS ADR 2019 is absolutely clear and leaves no room for jurisdiction other than that of the CAS ADD.

- It is well-established under Swiss law that the accreditation to a sport event is a sufficient consent of the athletes or support personnel to be bound by the regulations of the federation organising this event. The jurisprudence of the Swiss Federal Tribunal regarding the participation at a sport event is clear: An athlete or support personal acknowledges to be bound by the regulations of a federation if he requests the authorisation of the corresponding federation to participate at an event organised by this federation. Usually, this is documented by an accreditation. This means in other words that the participating athletes accept by applying for an accreditation to be bound by all regulations of the corresponding federation.

- The Athlete has been accredited with the FIS for the World Cup season 2014/2015, 2015/2016, 2016/2017 and 2018/2019. Furthermore, it is established that the Athlete took part at the 2019 FIS Nordic World Ski Championships as an accredited service staff member for the national team of Kazakhstan. In accordance with the jurisprudence of the Swiss Federal Tribunal, by applying for such an accreditation, the Athlete implicitly accepted to be bound by the regulations of the FIS and in particular by the jurisdiction of the CAS ADD as a first-instance authority.

- At the time of issuing the accreditation for the Athlete to participate in the function of a service staff member at the 2019 FIS Nordic World Ski Championships, the FIS ADR 2019 has indeed not yet entered into force and the FIS ADR 2016 did provide the jurisdiction of the CAS as a second instance (see Art. 8 of the FIS ADR 2016) only after the FIS Doping Panel had rendered its decision as the first instance.

- However, by delegating adjudicatory powers for the determination of anti-doping rule violations and the resulting sanctions to the CAS ADD in accordance with Art. A2 of the ADD Rules, the FIS Doping Panel is no longer competent to act as a first-instance body and has fully been replaced by the CAS ADD.

- It is a well-established procedural legal principle that the version of the procedural regulations apply, which is in force at the time the procedure is initiated. Since the proceedings against Andrus Veerpalu was initiated on 28 September 2019, the current version of the FIS ADR, i.e. the FIS ADR 2019, apply regarding the question, which is the competent body to decide the matter as a first instance.

- One arrives at the same result when considering the hypothetical will of the parties when they agreed on arbitration in the context of the accreditation: They accepted that a body other than a state court would decide any alleged ADRV independently whether the FIS ADR 2016 or the FIS ADR 2019 is applicable.

- Furthermore, the CAS ADD does not limit the rights of the Athlete. As in earlier proceedings before the FIS Doping Panel, the accused persons have the right to be heard, a full right to defence, a right to hearing, a right to an appeal, etc. In other words, the persons accused of doping are not prejudiced by the jurisdiction of the CAS ADD

at first instance. In addition, while the FIS Doping Panel consists of members of the FIS Council, the CAS ADD is fully independent from the Claimant, which was actually the reason for outsourcing the first-instance jurisdiction.

- The jurisdiction of the CAS ADD does not include the Athlete's violation of Art. 22.1.6 of the FIS ADR 2019, namely his lack of co-operation with FIS, which remains to be decided by the FIS Court.

- The Athlete further argues that the CAS ADD was not competent to decide the present case because the arbitral proceedings was *"not covered by his free will"*. It is difficult to understand the Athlete's argument, considering (i) that the jurisdiction is validly established in the rules and regulations of the Claimant (ii) that the Claimant has been competing on international level from 1990 until 2011 and has been a support person since then. It is an obligation of athletes and support personnel to be familiar with the rules and regulations, which apply to participants in international competitions, especially in relation to doping.

- The Athlete was undisputedly accredited as "NSA Team Service Staff" for the Kazakhstan team at the 2019 FIS Nordic World Ski Championships, according to the official accreditation list of the FIS for the 2019 FIS Nordic World Ski Championships. He was in possession of a badge, i.e. a pass, which gave him access to restricted areas like competition sites and team areas. A specialized company in Innsbruck produced the badge by order of the Austrian Ski Association, i.e. the organising NSA of the event. The badges were handed over to the team management, which distributed them to the accredited athletes and support personnel, including the Athlete. Without this badge, the Athlete would not have been able to enter the competition area and other restricted zones at the event.

- Even in the unlikely case that the Athlete's accreditation is not considered voluntary consent to arbitrate, the CAS is nevertheless competent to decide the present case as according to the Swiss Federal Tribunal, certain behaviour such as influencing a contract constitutes an implied consent to arbitrate.

- Applied to the present case, by participating at the 2019 FIS Nordic World Ski Championships, the Athlete agreed to be bound by the FIS regulations. Not least because of his long international skiing career and an earlier doping procedure before the CAS, he knew that the CAS ADD was competent in the event of a doping violation at World Ski Championships and consciously accepted this by participating.

- The competence of the CAS ADD is further established by the alleged abuse of the Respondent's accreditation: As an organizer, the Claimant was responsible for the accreditations of the athletes and the support personnel to the 2019 FIS Nordic World Ski Championships. By committing ADRVs during this event, the Athlete abused his accreditation for unsportsmanlike conduct. It is the Claimant's responsibility to make sure that accreditations are used for the intended purpose, and enforce compliance. The Athlete abused his accreditation when he supported and facilitated the use of a prohibited method (i.e. autologous blood infusions at the site of competition) during and on the site of the FIS Nordic World Ski Championships 2019.

C. The Sole Arbitrator's Findings on Jurisdiction

56. Article A2 of the ADD Rules provides as follows:

CAS ADD shall be the first-instance authority to conduct proceedings and issue decisions when an alleged anti-doping rule violation has been filed with it and for imposition of any sanctions resulting from a finding that an anti-doping rule violation has occurred. CAS ADD has jurisdiction to rule as a first-instance authority on behalf of any sports entity which has formally delegated its powers to CAS ADD to conduct anti-doping proceedings and impose applicable sanctions.

57. These Rules apply whenever a case is filed with CAS ADD. Such filing may arise by reason of an arbitration clause in the Anti-Doping Rules of a sports entity, by contract or by specific agreement.

58. Since the proceedings against the Athlete were initiated on 28 September 2019, the current version of the FIS ADR, i.e. the FIS ADR 2019, addresses the question as to the competent body required to decide the matter as a first instance.

59. Article 8 FIS ADR 2019 provides as follows:

"When FIS sends a notice to an Athlete or other Person asserting an anti-doping rule violation, and the Athlete or other Person does not waive a hearing in accordance with Article 7.10.1 or Article 7.10.2, then the case shall be referred to the CAS ADD for hearing and adjudication according to the Arbitration Rules of the CAS ADD".

60. The Claimant bases its competence to initiate a disciplinary procedure against the Respondent on the FIS ADR. The Respondent qualifies as an Athlete Support Personnel. The FIS ADR describe the scope of application in relevant parts as follows:

"These Anti-Doping Rules shall apply to FIS and to each of its National Ski Association. They also apply to the following Athletes, Athlete Support Personnel and other Persons, each of whom is deemed, as a condition of his/her membership, accreditation and/or participation in the sport, to have agreed to be bound by these Anti-Doping Rules, and to have submitted to the authority of FIS to enforce these Anti-Doping Rules and to the jurisdiction of the hearing panels specified in Article 8 and Article 13 to hear and determine cases and appeals brought under these Anti-Doping Rules:

a) all Athletes and Athlete Support Personnel who are members of FIS, or of any National Ski Association, or of any member or affiliate organisation of any National Ski Association;

b) all Athletes and Athlete Support Personnel participating in such capacity in Events, Competitions and other activities organised, convened, authorised or recognised by FIS, or any National Ski Association, or any member or affiliate organisation of any National Ski Association, wherever held

c) any other Athlete or Athlete Support Personnel or other Person who, by virtue of an accreditation, a licence or other contractual arrangement, or otherwise, is subject to the jurisdiction of FIS, or of any National Ski Association, or of any member or affiliate organisation of any National Ski Association, for purposes of anti-doping; To be eligible for participation in FIS Events, an Athlete must have a licence issued by his or her National Ski Association. The FIS licence will only be issued to Athletes who have personally signed the FIS Athletes Declaration in the form approved by the FIS Council and returned it to his or her National Ski Association. […]"

61. As has been evidenced by the Claimant and not contested by the Athlete, he was an active cross-country skier from 1992 until 2011 and is still registered by the FIS under the FIS

Code 1088534. He was accredited with FIS for the World Cup seasons 2014/2015, 2015/2016, 2016/2017 and 2018/2019 and participated in the 2019 FIS World Ski Championships as accredited technical staff member for the national team of Kazakhstan.

62. The Athlete contests having been made aware that only by his accreditation as service man, he was equally subject to the mandatory arbitration before the CAS ADD as this arbitration clause has been forced on him and thus not covered by his own free will.

63. The Sole Arbitrator sees no reason to depart from the long-standing jurisprudence of CAS, confirmed by the Swiss Federal Tribunal, that arbitration clauses contained in statutes or regulations are valid and that by requesting an accreditation, the Athlete accepts to be bound by all regulations of the respective sports federation.

64. In December 2016, as well as at the time of issuing the accreditation for the Respondent to participate in the function of a service staff member at the 2019 FIS Nordic World Ski Championships, the FIS ADR 2016 provided for the first-instance jurisdiction of the FIS Doping Panel with a possibility to appeal to the CAS as a second instance (see Art. 8 FIS ADR 2016).

65. After having delegated the adjudicatory powers for the determination of anti-doping rule violations and the resulting sanctions to the CAS ADD in accordance with Art. A2 CAS ADD Rules in May 2019, the FIS Doping Panel is no longer competent to act as a first-instance body and has fully been replaced by the CAS ADD.

66. Relying upon CAS jurisprudence surrounding the fundamental sports law principle relating to "intertemporal issues" the Sole arbitrator finds that where there are changes to regulations, the body that adjudicates the dispute at first instance is procedural in nature and thus immediately applicable: *"…according to well-established CAS jurisprudence, intertemporal issues are governed by the general principle tempus regit actum or principle of nonretroactivity, which holds that (i) any determination of what constitutes a sanctionable rule violation and what sanctions can be imposed in consequence must be determined in accordance with the law in effect at the time of the allegedly sanctionable conduct, (ii) new rules and regulations do not apply retrospectively to facts [that] occurred before their entry into force, (iii) any procedural rule applies immediately upon its entry into force and governs any subsequent procedural act, even in proceeding related to facts [that] occurred beforehand, and (iv) any new substantive rule in force at the time of the proceedings does not apply to conduct occurring prior to the issuance of that rule unless the principle of lex mitior makes it necessary" (Emphasis original) (CAS 2017/A/5086).*

67. Results management does not stop at the adjudication phase, rather it continues from first test through to the determination of the hearing process. This is the common understanding of anti-doping organisations with results management responsibility (e.g. FIS) and has been recently codified in the 2021 WADA Code and the International Standard for Results Management. Results Management is defined as: *"The process encompassing the timeframe between notification as per Article 5 of the International Standard for Results Management, or in certain cases (e.g., Atypical Finding, Athlete Biological Passport, whereabouts failure), such pre-notification steps expressly provided for in Article 5 of the International Standard for Results Management, through the charge until the final resolution of the matter, including the end of the hearing process at first instance or on appeal (if an appeal was lodged)".*

68. The rules governing the hearing and adjudication process are procedural in nature and procedural rules apply retrospectively. Consequently, the rule changes in 2019 making the

ADD the first-instance body for FIS anti-doping cases were procedural and the Athlete did not need to consent to them.

69. The Athlete is bound by the jurisdiction of the CAS ADD as provided for by Article 8 of the 2019 FIS ADR as a consequence of his accreditations.

70. There is no detriment to the Athlete as the system is essentially the same with the ADD acting as the first-instance anti-doping body for the FIS, but the ADD notably presents greater guarantees of independence than the ADHP did previously and moreover, the Athlete's right to appeal therefrom is not impacted.

71. Therefore, the Sole Arbitrator finds that the alteration in the disciplinary body from FIS Doping Panel to the CAS ADD in the 2019 FIS ADR being procedural, applied to the Athlete.

72. The Sole Arbitrator, therefore, confirms the jurisdiction of the CAS ADD to decide this matter.

VII. APPLICABLE LAW

73. Article A20 of the ADD Rules provides as follows:

The Panel shall decide the dispute in in accordance with the WADC and with the applicable ADR or with the laws of a particular jurisdiction chosen by agreement of the parties or, in the absence of such a choice, according to Swiss law.

74. It is undisputed between the Parties alleged ADRV occurred between 2016 to 2019, and the potential existence of an ADRV shall be determined according to the rules in force at that time, namely the FIS ADR 2016. When it comes to the prohibited substances and methods, the WADA Prohibited List of 2019 applies.

75. Hence, the FIS Rules and Regulations, particularly the FIS ADR and subsidiarity Swiss law are the laws applicable to this arbitration.

VIII. MERITS

76. The submissions of the Parties were considered in their totality by the Sole Arbitrator. This Award, however, sets out only those matters which are necessary to the determination of whether or not an ADRV has been committed, and if so, the consequences thereof.

A. Has the Athlete committed an ADRV?

(i) The Legal Basis

77. The Athlete is charged with an ADRV based on Article 2.9 FIS ADR 2016. Article 2.9. of FIS ADR 2016 provides as follows:

"Assisting, encouraging, aiding, abetting, conspiring, covering up or nay other type of intentional complicity involving an anti-doping rules violation, attempted anti-doping rule violation or violation of Article 10.12.1 by another Person".

78. According to the Panel in CAS 2017/A/5425, the wording as contained in Article 2.9 of FIS ADR 2016 must be interpreted broadly as it is intended to cover *"any ADR violation by any person bound by the ADR, including a coach or support staff member […]"*. Also the CAS Panel in CAS 2007/A/1286, 18288 and 1289 stated that *"although complicity is likely to involve some degree of knowledge on the part of the persons alleged to be complicit, it is not necessary that the person knew all the people involved of all of the Prohibited Methods being used"*.

79. The FIS has the burden of proving that the alleged ADRV, in this case Complicity, has occurred to the comfortable satisfaction of the Sole Arbitrator. Article 3.1 FIS ADR 2016 provides as follows:

"Article 3.1 Burdens and Standards of Proof

FIS and its National Ski Associations shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether FIS or its National Ski Association 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, the standard of proof shall be by a balance of probability".

80. Consistent with the observations of the Panel in CAS 2017/A/5045, *"it clearly follows from the applicable provision that the applicable standard of proof is flexible"*, the threshold the FIS must meet is higher depending upon the seriousness of the allegation.

81. However, and contrary to the Athlete's contention, the standard of proof does not reside at the very upper limit of the comfortable satisfaction standard as a result of the allegation against the Athlete being of utmost seriousness and does certainly not amount to the proof beyond reasonable doubt as foreseen in criminal cases and as a result of the fact that the Claimant could rely on evidence and intelligence gathered by the German and Austrian police. Such interpretation would be contrary to the wording in Article 3.1 FIS ADR 2016 pursuant to which this standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Having the possibility to rely on evidence obtained by the police does not result in a lowering of the standard of proof as alleged by the Athlete, as the applicable standard is not one of beyond reasonable doubt, but that of comfortable satisfaction.

82. The test of comfortable satisfaction has been regularly applied by CAS (see CAS 2009/A/1912) and in CAS 2015/A/4059, the CAS Panel rejected the proposition that *"there is no material difference between proof beyond a reasonable doubt and proof of comfortable satisfaction"*. While more recently in IAAF v Cyrus Rutto – decision of the World Athletics Disciplinary Tribunal of 7 November 2019 - found that *"the IAAF need not eliminate all reasonable doubt in order to prevail. It is equally true, however, that a mere balance of probabilities is insufficient for the Tribunal to be comfortably satisfied of an anti-doping rule violation"*.

83. In view of the above, the Sole Arbitrator concurs with the Panel in CAS 2014/A/3832 & 3833 and considers that FIS has the burden of proof that a violation of its FIS ADR 2016, occurred and that such violation must be established to the comfortable satisfaction of the Sole Arbitrator.

84. Finally, regarding the degree of confidence in the quality of evidence, the Sole Arbitrator refers again to the Panel in CAS 2014/A/3832 & 3833 which in turn applied the following standard accepted by the Panel in CAS 2011/A/2490 namely that *"in assessing the evidence the Panel has borne in mind that the Player has been charged with serious offences. While this does not require that a higher standard of proof should be applied than the one applicable to the UTACP, the Panel nevertheless considers that it needs to have a high degree of confidence in the anality of evidence"*.

85. Therefore, when applied to this case it is not for the Athlete to prove that his analysis is the right or only conceivable one. Unless the FIS's conclusions clearly outweigh those of the Athlete, the FIS's burden will be unmet.

86. The assessment of the admissibility of the evidence is as provided in FIS ADR 2016 at Article 3.2:

"Article 3.2 Methods of Establishing Facts and Presumptions

Facts related to anti-doping rule violations may be established by any reliable means, including admissions. […]".

(ii) Evidence before the Sole Arbitrator

a. The Events in Seefeld in February 2019 (CAS ADD/7)

87. The Claimant relies mainly on the Final Report of the Austrian Police as well as on the interrogation of Ansgard Schmidt and Dr Mark Schmidt by the police and the interrogation of Mr. Schwarzenbacher at the hearing.

88. On 21 February 2019, the police intercepted a discussion between Dr Mark Schmidt and his father Ansgar Schmidt during which the former that he would be contacted by Mati Alaver to organise a meeting in which he – i.e. Ansgard Schmidt – would receive a room key for his son.

89. On 22 February 2019, Dr Mark Schmidt informed his father that the latter should ring the door of the apartment no. 24 of the house "Excelsior" and say *"Hello Mr. Alexander"*. Ansgard Schmidt would then receive a key so that Dr Schmidt could enter the apartment on the next day.

90. Shortly before 8pm on 22 February 2019, Ansgard Schmidt rang at the door of the house "Excelsior" and spoke to the intercom system. A few moments later, the Athlete opened the door, spoke shortly with Ansgard Schmidt and gave him something. Ansgard Schmidt testified that the Athlete understood that he – i.e. Ansgard Schmidt – was related to Dr Mark Schmidt. Furthermore, according to the testimony of Ansgard Schmidt, the Respondent told him: *"Tomorrow morning, as agreed"*, which was understood as a reference to the agreed blood transfusion of Alexey Poltoranin. The conversation between Ansgard Schmidt and the Athlete was photographed by the police.

91. On 23 February 2019 at 7:58, Dr Mark Schmidt walked from his apartment to the house "Excelsior" to perform a blood infusion on Alexey Poltoranin before the 30km skiathlon, which started at 12:30 pm on the same day. This was confirmed by Alexey Poltoranin during his interrogation by the Austrian police.

92. As evidenced by the Final Report, Diana Sommer stated that she was assigned to conduct further blood transfusions on Alexey Poltoranin on 27 February at 10:30 a.m. on behalf of Dr Mark Schmidt. The police officers were led by Ms. Sommer to the Hotel Excelsior, Seefeld, at Kirchenwald 688, Room 24, where they found Mr. Poltoranin awaiting the arrival of Ms Sommer for his blood transfusion.

93. Mr. Poltoranin explained that in order to avoid possible doping controls in his room in the Alpenhotel, Seefeld, Dorfplatz 28, he used the room of the Athlete and Jan Alvela for blood treatments, as they were mostly absent during the day and left their room open.

94. Upon arrival in the Athlete's room on 27 February 2019. the police also found a metal box with lockable drawers containing prohibited substances and a sports bag with divers material for blood transfusion. In particular, the lockable drawers contained Decametason and Prednisolone, Albumin and a Flutiform Inhaler all prohibited substances as per WADC. According to the police record, that box was too heavy to have been transported by Mr. Poltoranin for his treatments and must have therefore been stored in the room for a longer period.

95. This has been confirmed by Dr Aleksandr Lushchaev who stated in his witness statement that this was his medical equipment that he had taken with him to help with Mr. Poltoranin's recovery treatments. As he stayed at the youth hostel in Innsbruck, he had asked Jan Alvela whether he could leave that equipment in the room that the latter shared with the Athlete. He also confirmed that he was in the Athlete's room on the evening of 22 February 2019, arriving at about 20h00 together with Alexey Nakoneschnyy and that they stayed there overnight and slept on the couch.

96. It has been evidenced by Dr Mark Schmidt's statements to the police that Alexey Poltoranin used saltwater as well as Albumin to cover up the blood doping.

97. According to the Athlete, the encounter with Ansgard Schmidt was not a meeting, but a completely random event. In his witness statement, the Athlete states as follows: *"It is true that I opened the main door downstairs of our room when an elderly gentleman rang the bell in the evening of 22th February 2019. I remember that this was around 8 o'clock. I had just returned to my room after a long day of work and changed my clothes. Jan Alvela and I expected Dr. Aleksandr Lushchaev and Alexey Nakonechnyy from the Kazakh team to come by, to cook and have dinner with us. They had not yet arrived when the bell rang. The gentleman I mentioned said something over the loudspeaker which I did not understand, probably in a foreign language. The voice was not familiar to me. Normally, Jan Alvela would answer the door when someone came (because it would be for him most of the time anyways) but he was showering. I asked him if he expected someone else than Aleksandr or Alexey. He said no. At first, we thought we would just not answer the door because we did not know who it was and we were tired. I then decided that it would be rude to just ignore the person so I just went downstairs to see who it was. The man at the door was a complete stranger to me. I had never seen him before. He started talking, to me but I did not understand what he was saying. Unfortunately I don't speak English. Talking with him was therefore not possible, so I tried to make the gentleman understand that he should leave, which he did alter some prodding. l actually got a little annoyed because he did not understand at first. The whole encounter lasted a couple of seconds only. l hear that l am accused of giving this gentleman a key to our room. I definitely did not do this (and also not to anyone else). Also, I could certainly not give someone a key without asking Jan Alvela first, because it was not only my room but also his and he is the team captain. I also understand that I am accused of saying to that gentleman "morgen früh wie verabredet". I did not say this, and I could not because I don't speak German. I don't even know what this should be referring to".*

98. At the hearing, Mati Alaver specified that as he could not be present in Seefeld, he had instructed Dr Alexander Lushchaev to meet with Ansgar Schmid but that he has not instructed the Athlete to hand him over a key.

99. This statement is not confirmed by Dr Lushchaev who stated in his witness statement: *"I am a big cross-country skiing fan and in particular of our Kazakh athlete Alexey Poltoranin. I took some days off from my work to go to Seefeld to the World Championships as a holiday. The Kazakh team organized an accreditation for me but I had to pay for my accommodation and meals myself. For Kazakh people, hotels and restaurants in Austria are extremely expensive. For this reason I decided to stay at the Youth Hostel in Innsbruck and I took the bus from Innsbruck to Seefeld when I wanted to see competitions. Also, I prepared my own meals whenever possible. In Austria, I had some medical equipment with me to help with Alexey Poltoranin's recovery after the training and competitions. Because I could not take this equipment with me every time I took the bus to Seefeld and back and very limited space was available in the Youth Hostel, I asked Jan Alvela if I could store my equipment in his room. to which he agreed. The black metal box and the black sport bag which were found in their room, including their content, are mine. I remember that aside from Jan no one was there when I put the box and the bag in the room. This was in the morning of 18 February 2019 (the day after I arrived). It is true that the box and the bag contained Dexamethasone, Prednisolone, Flutiform, and Albumin. As a doctor, I am allowed to have these substances with me. Because my equipment was in that room, I asked Alexey Poltoranin to come to that room to have his regenerative treatments after his trainings and competitions there. The content of the box and the bag were used for this purpose. Also, I was frequently with Jan and Andrus in their room to cook and have dinner with them there, instead of eating alone in Innsbruck. Alexey Nakonechnyy was also often with us. Some evenings, it got a little late when we chatted after dinner and I did not make the last bus back to Innsbruck, so I slept on the couch in their room on a couple of nights. When I was there, lots of people kept coming and going. Most of them wanted to speak with Jan Alvela who was one of the most important people of the Kazakh team. Alexey Nakonechnyy and I went together to Jan's and Andrus's room in the evening of 22 February 2019. We went there to cook and have dinner together. We arrived there shortly after 8 pm. That night was one of the nights I slept on the couch in their room. I wanted to see the skiathlon the next day and to cheer on Alexey Poltoranin".*

100. During his interrogation at the hearing, Dr Lushchaev confirmed his earlier witness statement that the black metal box and sports bag were his. However, as concerns the treatments on Mr. Poltoranin, he explained that he was not Mr. Poltoranin's official doctor but that he simply had to check his health before and after the races; however, he had not needed to provide medical assistance as Mr. Poltoranin was not ill in Seefeld. He further specified that he felt he needed all that equipment for emergency treatment in case of coma or allergic reaction, not trusting that the local medical facilities would be able to treat Mr. Poltoranin adequately. He did not confirm having been instructed by Mari Alaver to give a key to Ansgard Schmidt.

101. In his statement, the Athlete confirmed that neither the box nor the bag nor their contents were his. He specifies that *"At first I thought this must he Jan Alvela's stuff because I figured everything in the room that is not mine must be his. Meanwhile, Dr. Aleksandr Lushchaev has told me that the metal box and the sport bag including their contents are his. Apparently, he did not have enough space in his hostel room in Innsbruck where he stayed and did not want to take it with him everytime he came to Seefeld. He asked Jan if he could store some or his stuff in our room. I don't remember Aleksandr bringing his stuff when I was there, so he must have done when I was out".* The Athlete then continues by stating that *"I respect my roommates' and other people's privacy and do not search their belongings. Because our room in Seefeld was, as always, packed with all kinds of stuff, I did not notice the metal box and the sport bag. I don't know what was in the box; or in the bag".*

102. The Athlete argues that his unawareness of the doping scheme is also evidenced by the fact that none of the participants having admitted participating in the doping scheme have mentioned his name. However, the Sole Arbitrator notes that the athletes of the Team Haanja all refused to indicate the name of the person who had introduced them to Dr Mark Schmidt or to name any other involved person. Karel Tammjärv stated that he did not want to answer that questions as he was close to that person and did not want to charge this person (*"ich zu dieser Person im Nahverhältnis stehe und diese Person nicht belasten will"*). Andreas Veerpalu also refused to answer this question without giving grounds for his refusal (*"Ich will dazu keine Angaben machen. Gründe dafür will ich keine angeben"*, as he refused to explain how he financed the doping procedures. As the athletes of Team Haanja did not implicate anybody else during their interrogation by the police, even the names of the other athletes who have admitted their doping offences do not appear. Hence, the fact that his name does not appear is not evidence of the Athlete's unawareness of the doping scheme.

103. Andreas Veerpalu and Alexey Poltoranin, as well as Mati Alaver, while having admitted to submitting or organising the blood doping scheme all repeatedly denied any knowledge or involvement of the Athlete in the blood doping scheme.

104. During his interrogation by the Police on 28 February 2019, Karel Tammjärv did not name any other involved athlete or support person while at the same time cooperating with the authorities by handing over all email and sms correspondence relating to the doping scheme, including his second SIM-card. However, during the press conference a few days later, Karel Tammjärv explicitly confirmed that the Athlete was aware of his and the Athlete's son Andreas' doping.

105. The Sole Arbitrator accepts that the purpose of the extensive phone conversations between Dr Mark Schmidt, Mati Alaver and Ansgar Schmidt was to ensure Dr Schmid and Ms. Sommer could have access to the Athlete's room to perform blood doping on Mr. Poltoranin. The Sole Arbitrator finds that while there is no evidence that the Athlete handed over a key to Ansgar Schmidt or that he effectively would have stated *"tomorrow morning as agreed"*, the fact that Dr Mark Schmidt admittedly performed blood transfusion on Alexey Poltoranin on 23 February 2019 at 7:58, i.e. the morning after the meeting between the Athlete and Ansgard Schmidt in the Athlete's room, is sufficient evidence that somehow, access to the room was organised.

106. The Sole Arbitrator finds that it has been proven to her comfortable satisfaction that the Athlete's room in Seefeld was used for blood doping treatments on Alexey Poltoranin during the 2019 FIS Nordic World Championships. It has equally been proven that the Athlete's room served as storage room for the necessary blood doping treatment equipment and other prohibited substances contained in a black metal box with lockable drawers and a sports bag.

107. The Sole Arbitrator finds that the evidence shows that by meeting with Ansgard Schmidt, the Athlete knowingly organised access to his room for Dr. Mark Schmidt to perform blood doping on Alexey Poltoranin on 23 February 2019. While there was no physical evidence of the handing over of a key, nor of what exactly was discussed during the short encounter, the Sole Arbitrator finds that the Athlete's explanation of a coincidental encounter less credible than the statement of Ansgard Schmidt confirming that access would be granted on the next morning.

108. However, the Sole Arbitrator finds that there is no reasonable way the Athlete did not know about Mr Poltoranin's intention to receive blood doping treatments in his room. His statements in that regard are not credible. In particular, the fact that everything happened as organised and planned by Mati Alaver and Dr Mark Schmidt, except for the handing over of the key which was, as confirmed by the Athlete not necessary to access the room, confirms this finding: Ansgard Schmidt went to the place indicated, at the time indicated where he talked to the Athlete and Dr Mark Schmidt accessed the room on the next day to perform blood doping on Alexey Poltoranin as planned.

109. The Sole Arbitrator is not satisfied by the explanation given by the Athlete regarding his unawareness of the black metal drawer box and sports bag and finds his statements in that regard contradictory and not credible. In particular, on one hand the Athlete states that he believed the box and bags to belong to Jan Alvela and on the other hand, contends not having seen the box and the bag. Dr Lushchaev and Mr Nakoneshnyy both confirmed that the room was rather small and that they used to sit on the beds or bags.

110. The Sole Arbitrator is equally not convinced by the explanation given by Dr Lushchaev, in particular as the black metal drawers and the sports bag contained prohibited substances and methods evidently not to be used for medical regeneration treatments on a professional athlete in competition by a doctor in functional diagnostics.

111. Considering that the Police raided his room and confiscated notebooks and cell phones and other personal equipment, the statement that he found out about the doping charges only through the press on the evening of 27 February 2019 does not seem credible to the Sole Arbitrator; in particular also because not only was Alexey Poltoranin arrested immediately upon arrival of the police in the Athlete's room on February 27 at 10:30, but also his son Andreas was arrested on 27 February 2019 at 11:40.

112. To summarise, the Sole Arbitrator finds that the evidence submitted by the Claimant is sufficient to prove to her comfortable satisfaction, that the Athlete knowingly allowed Mr Poltoranin to receive blood doping in his room. The explanations provided by the Athlete do not cast sufficient doubt on the Claimant's evidence. The Athlete was a former professional cross-country skier, he was a coach, a man of influence, someone who had doping problems in the past, someone brought into the team to win, a person of trust, a person associated with many others who were caught and suspended. It is incredible to think he didn't know about this.

113. The Sole Arbitrator is therefore comfortably convinced that the Athlete not only knew about but also was actively involved in allowing Dr Mark Schmidt to perform blood doping on Alexey Poltoranin by storing necessary equipment and grating access to his room. And that by doing so he committed an ADRV by being intentionally complicit in the blood doping performed on Alexey Poltoranin.

b. The Purchase of IGF-1 in December 2016 (CAS ADD /13)

114. As evidenced by the final report of 8 September 2020 and on the statements of Dario Nemec and Dr Mark Schmidt in December 2016, Dr Mark Schmidt ordered the supply of the prohibited substance IGF-1 manufactured by Sigma-Aldrich from former Croatian athlete and athletics coach Dario Nemec.

115. The Athlete's role in the purchase of the IGF-1 in December 2016 appeared after Dario Nemec had recognized him among about 30-40 people on pictures presented to Mr Nemec during his interrogation by the police. Thereafter, the police opened a new investigation into this meeting which led to the discovery that Mr Nemec had handed over to the Athlete a package containing IGF-1 against consideration of EUR 3200 on a parking lot in Austria.

116. In his statement to the police dated 19 March 2019, Dr Mark Schmidt confirms that the usual amount for the purchase of IGF-1 was between EUR 2500 and 3000. In his sms to Mati Alaver, Dr Mark Schmidt specifies that *"He just called me back. He can't make it at 1.30 pm. He's still in a meeting. He is there at 3 pm. He will leave immediately. Andrei doesn't have to start so early in Ramsau. It's only 1.5 hours from Ramsau to the meeting point. So, 3 pm at the service station Rosegg. 2.8 for the powder. 100 Euro for diesel and toll costs for the tunnel. And please give him 200, he organizes the powder and brings it to you. I think this is fair*".

117. According to the testimony of Mr. Nemec, the purchase and the handover of the prohibited product IGF-1 took place on 4 December 2016 at the service station "Rosegg" on the motorway A11 near Villach (AUT) and was arranged by Dr Mark Schmidt and Mati Alaver. The Athlete received instructions about the driving route from Ramsau (AUT) to the delivery point from coach Mati Alaver. Upon arrival at the service station "Rosegg", Dario Nemec gave the Respondent two packages of IGF-1, and the Respondent paid to Mr. Nemec a purchase price of EUR 3'200 in cash. When asked about some details at the hearing, Mr Nemec confirmed that the Athlete and himself sat in the Athlete's car, which was a Honda, to verify the cash amount and whether the IGF-1 was the correct product from Sigma-Aldrich. He further explains the difference in timeline by for one, having had lot of cases and situations to describe to the police and also because he had other clients to see on his way from Zagreb to service station "Rosegg" on the motorway A11 near Villach (AUT), which is why he started early in the morning in Zagreb.

118. At the latest on 6 December 2016, the Respondent left Ramsau and drove to Livigno (ITA). Livigno is a well-known Nordic skiing training venue located close to Valdidentro / Isolaccia, where the Alpen Cup took place in which Karel Tammjärv who was one the intended recipients of the IGF participated as did Algo Kärp, also member of Team Haanja.

119. The Athlete confirmed the meeting in early December 2016. He was in Ramsau am Dachstein/Austria in order to inspect the snow and ski track situation at the local training center. His mission was to find the optimal conditions for a training camp. According to the Athlezte's recollection, it had initially been planned that the training camp take place in Livigno/Italy (which is considerably higher, 1'816 meters above sea level) but because Alexey Poltoranin was suffering from health problems due to a flu at the time, they were looking for a place to train at a lower altitude than Livigno. Ultimately, however, as Alexey Poltoranin started to feel better, the training camp took place in Livigno, starting around 6 or 7 December 2016. He states that *"When I was in Ramsau, Mati Alaver asked me to pick up a package on a motorway service area in southern Austria. He told me it was medicine for Alexey Poltoranin, who was sick at the time, to bolster his immune system. As a service staff member, this was nothing special for me because I am used to carry out logistical tasks for the team such as picking up skis from factories, stores or sharpening services, picking up was and other service equipment, reconnoiter ski tracks, training facilities and hotels, or picking up mail and deliveries for team members. Therefore, I did not give this mission any particular thought. Mari Alaver gave me an envelope with what I assumed was money but] don't know and I did not check how much or which amount it was. I drove to the place Mati Alaver had told me about. There, a man I did not know and had never seen before approached me. He gave me a small*

package and I gave him the envelope. I remember we did not say anything to each other except hello and goodbye. I took the package, put it on the back seat of my car, and drove back to Ramsau. Back in Ramsau, I gave the package to Mari Alaver. I did not open the package and did not see Mati Alaver or anybody else opening it. I also never saw the package open. l don't know what was in it, but have no reason to doubt that it was medicine for Alexey Poltoranin who was sick".

120. Mati Alaver stated in his statement of 29 November 2020 *"In early December 2016, I asked Andrus Veerpalu if he could pick up a package about one and a half hours from Ramsau. Because Alexey Poltoranin was sick at the time. I told Andrus Veerpalu that we needed to get a medicine to support Alexey Poltoranin's immune system. I sent Andrus Veerpalu the directions and gave him an envelope with the money to give it to the vendor. When Andrus Veerpalu returned, he gave me the package which was still unopened".*

121. Alexey Poltoranin did not state anything with regard to his illness in December 2016 in his witness statement. Also, during his examination at the hearing, he could not remember having been sick or having received any medication in December 2016 but mentioned that he might have called Dr Lushchaev.

122. In his statement and at the hearing Dr Lushchaev also did not mention Alexey Poltoranin calling for medical advice in December 2016 and he could not remember having had a call from him at the time. He specified also that he was not Alexey Poltoranin' s official doctor, but an old family friend and, as also stated in his witness statement, a fan.

123. Therefore, the Sole Arbitrator finds that the testimonies of Alexey Poltoranin and Dr Lushchaev do not support the Athlete's case.

124. The meeting between Dario Nemec and the Athlete is not disputed, nor the fact that he accepted a package for Mati Alawer and paid for it. The question is therefore whether the Claimant has established to the comfortable satisfaction of the Sole Arbitrator that the Athlete knew about the content of the package being IGF-1 a prohibited substance destined to Karel Tammjärv and other members of the team Haanja.

125. Dario Nemec testified during the hearing that the Athlete and himself sat in the Athlete's car the former to verify the content of the package, the latter the amount in the envelope. On the other hand, the Athlete denies having opened the package and, in his statement, Mati Alaver confirmed that the package has been handed over to him unopened.

126. During the evidentiary hearing, the Athlete confirmed that as former high-level international athlete and active coach and staff member, he was and is aware of and knew about the anti-doping regulations and the obligations resulting therefrom.

127. Therefore, the Sole Arbitrator considers it not plausible that the Athlete thought himself to be buying legal vitamins for boosting Alexey Poltoranin' s immune system from an unknown person on a service station on the side of a motorway nor that he would not verify having been handed the requested products.

128. In addition, it has been evidenced by the Claimant through the police records and admission of Dr Mark Schmidt and of the involved athletes, that besides Karel Tammjärv, Alexey Poltoranin, Algo Kärp as well as the other members of the Team Haanja had been using IGF-1 for a longer period of time. The text message exchange between Karel Tammjärv

and Dr Mark Schmidt put in evidence proves that Karel Tammjärv asked for details on how to use the substance only one day after the purchase of the IGF-1 by the Athlete.

129. Thus, the Sole Arbitrator is convinced that by purchasing IGF-1 from Dario Nemec on 4 December 2016 he intentionally aided and assisted the doping practice of Karel Tammjärv and other members of Team Haanja.

B. Sanction

130. Article 10.3.4 FIS ADR 2016 provides as follows:

For violations of Article 2.9, the period of Ineligibility imposed shall be a minimum of two (2) years, up to four (4) years, depending on the seriousness of the violation.

131. The Sole Arbitrator finds that the Athlete violated Article 2.9 FIS ADR 2016 by allowing the blood doping of Alexey Poltoranin on 23 February 2019 and by purchasing and transporting the prohibited substance IGF-1 for use by athletes competing in FIS-sanctioned competitions on 4 December 2016.

132. Article 10.7.4.2 FIS ADR 2016: *"If, after the imposition of a sanction for a first anti-doping rule violation, FIS discovers facts involving an anti-doping rule violation by the Athlete or other Person which occurred prior to notification regarding the first violation, then FIS shall impose an additional sanction based on the sanction that could have been imposed if the two violations had been adjudicated at the same time".*

133. Pursuant to Article 10.3.4, the Sole Arbitrator has a certain margin of discretion to impose lower sanctions on each of the two ADRVs, if it were to judge the two crimes individually.

134. In case of multiple ADRVs, the period of ineligibility shall start on the date of the final decision. The period of the provisional suspension imposed by the FIS on 28 September 2019 already served shall be deducted from the otherwise applicable period of ineligibility (Article 10.11.3 FIS ADR 2016).

135. The Sole Arbitrator, having taken into consideration the fact that although the Athlete has violated the applicable FIS ADR on two occasions, the actions leading to those violations were relatively minor as they relate to logistics only, i.e. allowing access to his room and picking up a parcel. Also, they seem minor as compared to the actions of the other individuals sanctioned for participation in the doping-scheme for Team Haanja whose ADRV were more important and covered also participation in the organisation of the doping-scheme, use and attempted use of prohibited substances. The Sole Arbitrator finds that there is no proof of a more important involvement of the Athlete in the organisation of the doping scheme relating to Team Haanja. Therefore, the Sole Arbitrator sanctions the Athlete to a period of ineligibility of 2 years starting at the date of the present award. In application of Art. 10.11.3 FIS ADR 2016 the period of provisional suspension imposed by the IADD on 28 September 2019 already served shall be deducted from the period of ineligibility.

IX. COSTS

(…).

X. APPEAL

139. Pursuant to Article A21 of the ADD Rules, this award may be appealed to the CAS Appeals Arbitration Division within 21 days from receipt of the notification of the final award with reasons in accordance with Articles R47 *et seq.* of the Code of Sports-Related Arbitration, applicable to appeals procedures.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Anti-Doping Division of the Court of Arbitration for Sport has jurisdiction to decide on the subject matter of this dispute.

2. The request for arbitration filed by the International Ski Federation is admissible.

3. Andrus Veerpalu is found guilty of an anti-doping rule violation in accordance with Article 2.9 FIS ADR 2016.

4. Andrus Veerpalu is sanctioned with a 2-year period of ineligibility starting from the date of the final CAS ADD Award.

5. (…).

6. (…).

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

Seat of arbitration: Lausanne, Switzerland
Date: 17 March 2021

THE ANTI-DOPING DIVISION
OF THE COURT OF ARBITRATION FOR SPORT

Raphaëlle Favre Schnyder
Sole Arbitrator