CAS 2024/A/10770 Norbert Kobielski v. World Athletics

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Jordi **López Batet**, Attorney-at-Law, Barcelona, Spain

in the arbitration between

Norbert Kobielski, Poland

Represented by Mr Łukasz Klimczyk, Attorney-at-Law in Wroclaw, Poland

Appellant

and

World Athletics, Monaco

Represented by Mr Nicolas Zbinden, Attorney-at-Law in Lausanne, Switzerland

Respondent

*****

I. THE PARTIES

1. Mr. Norbert Kobielski (the "Athlete" or the "Appellant") is a Polish international-level athlete competing in the discipline of high jump.

2. World Athletics ("WA" or the "Respondent") is the international governing body for the sports of athletics.

II. FACTUAL BACKGROUND

A. FACTS

3. Below is a summary of the main relevant facts, as established on the basis of the Parties' written and oral submissions and the evidence taken in the course of the present appeal arbitration proceedings. This background is set out for the sole purpose of providing a synopsis of the matter in dispute. While the Sole Arbitrator has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in these proceedings, the Award refers only to the submissions and evidence deemed necessary to explain the reasoning.

4. On 26 May 2024, the Athlete provided a urine sample during the "Opolski Festiwal Skoków" in Opole, Poland (the "Sample").

5. On 28 June 2024, the WADA-accredited laboratory in Warsaw (the "Laboratory") reported that the analysis of the Sample revealed the presence of the pentedrone norephedrine metabolite, a metabolite of pentedrone or α-pyrrolidinovalerophenone ("α-PVP"). Both pentedrone and α-PVP are cathinone analogues. Cathinone and its analogues are classified as Prohibited Substances under the WADA 2024 Prohibited List ("the List") in the category S6.B Specified Stimulants. Therefore, pentedrone norephedrine metabolite is considered a Specified Substance and is prohibited In-Competition.

B. PROCEEDINGS BEFORE THE ATHLETICS INTEGRITY UNIT

6. On 3 July 2024, the Athletics Integrity Unit (the "AIU") communicated the Adverse Analytical Finding ("AAF") to the Athlete, informed him that such AAF could result in Anti-Doping Rule Violations under Rule 2.1 and/or Rule 2.2 of the 2024 World Athletics Anti-Doping Rules (the "WA ADR") as well as in the potential imposition of a Provisional Suspension. The Athlete was also informed of his right to request a Provisional Hearing by submitting written reasons to the AIU explaining why an Optional Provisional Suspension should not be imposed.

7. On 11 July 2024, the Athlete submitted his explanations on the AAF to the AIU and the reasons why an Optional Provisional Suspension should not be imposed on him.

8. On 23 July 2024, the AIU resolved to impose a Provisional Suspension on the Athlete, in the following terms:

> "63. *Pursuant to the foregoing, the Athlete has failed to establish that any of the grounds identified in Rule 7.4.4 exist to demonstrate that an Optional Provisional Suspension should not be imposed upon him in his case.*
>
> *64. The AIU has therefore decided to impose an Optional Provisional Suspension upon the Athlete in accordance with Rule 7.4.2 effective immediately.*"

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

9. On 28 July 2024, the Appellant filed a Statement of Appeal with the Court of Arbitration of Sport ("CAS") against WA with respect to the decision rendered by the AIU on 23 July 2024 (the "Appealed Decision"). In his Statement of Appeal, the Appellant requested the implementation of an expedited procedure, requested the appointment of a sole arbitrator and requested the stay of the Appealed Decision.

10. On 29 July 2024, upon request of the CAS Court Office, the Athlete informed that it was his understanding that these proceedings were to be referred to the CAS Appeal Arbitration Division. However, the Athlete mentioned that if WA confirmed the jurisdiction of the CAS Paris Ad Hoc Division to deal with the case, then he would agree to refer it to such Ad Hoc Division.

11. On 30 July 2024, the CAS Court Office noted that indeed this case was related to the participation of the Athlete in the Paris 2024 Olympic Games (the "OG 2024") -in particular, in the high jump competition scheduled on 7 August 2024 - and invited the Respondent to state whether it would agree that this case be dealt exclusively with the CAS Paris Ad Hoc Division and to provide its position on the request for stay of the Appealed Decision.

12. On 30 July 2024, WA informed that it considered that the appeal could be determined by the CAS Appeal Arbitration Division on an expedited basis, proposed a procedural calendar enabling to have the operative part of the award issued by 4 August 2024 and considered for this reason that the request for stay made by the Appellant was moot.

13. On 31 July 2024, the CAS Court Office formally acknowledged receipt of the Statement of Appeal, which also served as the Appeal Brief, sent it to WA and invited the latter to file its Answer. In the same correspondence, the CAS Court Office informed the Parties that failing an agreement to refer the procedure to the CAS Ad Hoc Division for the OG 2024, the arbitration had been assigned to the CAS Appeal Arbitration Division, and confirmed the Parties' agreement to expedite the procedure with the following procedural timetable (subject to the Sole Arbitrator's possible adaptation): WA filing its Answer by

1 August 2024, 20:00 CEST; a hearing being held via video conference on 2 August 2024; and the notification of the operative part of the Arbitral Award being provided by 4 August 2024 by 10:00 CEST, with the possibility of a slight delay if necessary. The CAS Court Office also noted the Appellant's request that the AIU be required to submit the full case file related to the Athlete's proceedings and invited WA to address this request in its Answer, and that the proceedings would be conducted in English and resolved by a Sole Arbitrator as agreed by the Parties. Finally, the CAS Court Office acknowledged the Appellant's application for provisional measures but indicated that this request could become moot in light of the expedited calendar and the issuance of the operative part of the Award by 4 August 2024.

14. On 1 August 2024, the CAS Court Office informed the Parties that, pursuant to Article R54 of the CAS Code, the Arbitral Tribunal appointed to decide the present matter had been constituted as follows:

Sole Arbitrator: Mr Jordi López Batet, Attorney-at-Law in Barcelona, Spain.

15. In the same letter of 1 August 2024, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to slightly modify the procedural schedule previously established.

16. Also on 1 August 2024, the Respondent filed its Answer.

17. Also on 1 August 2024, the Appellant submitted an unsolicited email which reads as follows:

"I acknowledge receipt of WA's position, but at the same time note that there is no power of attorney on file authorising Mr Nicolas Zbinden, who signed the content of the Answer, to represent WA in this case.

With regard to the exhibits submitted by WA:

*1) one of them is a certified reference material dated **24 April 2014** - in this regard, we request that WA be required to provide and/or obtain information from the manufacturer as to whether this is still a (valid) certificate. This is all the more justified as the manufacturer's website states that the product is no longer available for sale.*

The validity of the certificate is an important circumstance of the case, as it appears from the explanations in the Answer that an analytical result confirming the presence of "PENTENDRONE NOREPHEDRINE METABOLITE" was issued on the basis of this reference material, which, as the Answer indicates, is only the trade name of this material.

Furthermore, in the context of the above-mentioned case, it is also important to ask the manufacturer of the above-mentioned certificate to explain why 'NOREPHEDRINE' is encoded in the name of the certified reference material.

2) we also note the additional opinion of Prof. Saugy which, due to its specialised nature, requires us to have it verified by an expert, but given the scheduled date of the hearing, this may be very difficult (if not impossible) to do. Given the relevance of the issue raised, we would like to be granted the right to respond to its contents (we are already taking steps to determine whether Dr Kwaśnica will be able to respond to the opinion and, if so, when this will be possible).

At the same time, in light of the WA's position that the Laboratory did not request a second opinion in this case (paragraph 22 of the Answer), I hereby respectfully request that the WA and/or the Laboratory be ordered to submit to the case file all correspondence concerning my Client's sample that it had with WADA (if there was any correspondence other than that previously produced for the case file) and with other WADA-accredited laboratories.

In view of the fact that the analysis of Sample "B" is scheduled for tomorrow, the result of which will probably be communicated to the Parties after the hearing, and in view of the aforementioned requests for evidence and the need for a more detailed examination of the expert report, which may make it impossible to consider the case in comprehensive manner during tomorrow's hearing, I fully uphold request for provisional measures in the form of staying appealed decision and to allow the Parties to take all the necessary steps to verify the correctness of the analysis carried out by the Laboratory (at the moment we our position is that we established can that there is untrue information on the test report regarding the detection of the PENTENDRONE NOREPHEDRINE METABOLITE, which does not exist as a compound - as confirmed by Prof. Saugy), which may require more time and the involvement of third parties."

18. On 2 August 2024, WA submitted a power of attorney in favour of his counsel Mr Nicolas Zbinden.

19. Also on 2August 2024, both Parties signed the Order of Procedure of this arbitration.

20. On 2 August 2024, a hearing was held by video-conference in these proceedings. The following persons attended the hearing in addition to the Sole Arbitrator and Mr Giovanni Maria Fares, CAS Counsel:

    a. The Appellant

    b. Counsel for the Appellant - Mr Łukasz Klimczyk.

    c. Counsel for the Respondent – Mr Nicolas Zbinden.

    d. Mr Tony Jackson, AIU Deputy Head of Case Management.

    e. Mr Huw Roberts, AIU General Counsel.

    f. Prof. Martial Saugy, expert proposed by the Respondent.

21. After the Parties' opening statements, Prof. Saugy was examined, the Parties made their respective closing statements and a turn for rebuttal was also granted to them. At the outset of the hearing, the Parties confirmed that they had no objections with regard to the constitution and composition of the Panel, and at the end of the hearing all the Parties expressly declared that they did not have any objections with respect to the procedure.

22. After the hearing, the CAS Court Office, on behalf of the Sole Arbitrator, informed the Parties that (i) the Respondent had to provide by 2 August 2024 at 18.00 CEST, all correspondence concerning the Appellant's sample that it had with WADA (if there was any correspondence other than that previously produced for the case file) and with other WADA-accredited laboratories, (ii) the Appellant was granted until 3 August 2024 at 11.00 CEST to strictly comment on the correspondence provided by the Respondent as per point (i) above, and the Respondent was granted until 2 August 2024 at 17.00 CEST to file its comments strictly focused on those of the Appellant on such matter, (iii) the Respondent was ordered to produce the results of the Appellant's B sample analysis that were expected to be received on 2 August 2024 in the afternoon as soon as it received them and both Parties were granted until 3 August 2024 at 17.00 CEST to file their comments strictly focused on such B sample analysis' results and (iv) all the remaining petitions made by the Appellant in his email of 1 August 2024 at 9:50 pm were dismissed, the reasons for such a dismissal to be given in the award with grounds that will be drafted in due time.

23. On 2 August 2024, the Respondent provided the correspondence between the Laboratory and other WADA accredited laboratories concerning the Appellant's sample, as well as the Athlete's B Sample results (which confirmed the AAF reported after the A Sample analysis).

24. On 3 August 2024, the Appellant filed his comments to the correspondence produced by WA and the B Sample results, in the following terms:

*"**A. Correspondence:***

1. *During the hearing, the Respondent stated that it was simply a matter of a positive analytical result.*

2. *This is contradicted not only by the evidence so far, but also by additional (albeit in our view incomplete - as discussed below) correspondence from the laboratories.*

3. *First, an important observation - 6 WADA-accredited laboratories (not including the Warsaw laboratory) were involved in the interpretation of this analytical result, i.e.:*

    1) Institute of Biochemistry - German Sport University Cologne

    2) DoCoLab Universiteit Gent-UGent

    3) Institute of Doping Analysis and Sports Biochemistry (IDAS) – Dresden

4) Drug Control Centre King's College London

5) INRS Centre Armand-Frappier Santé Biotechnologie

6) Seibersdorf Labor GmbH Doping Control Laboratory

4. *None of them were able to help - they did not have the knowledge, the experience or the ability to carry out such analyses. This shows that if the Athlete's sample had been sent to another laboratory for analysis, we would not have present case (this is also a reason for lifting the Provisional Suspension - it is clearly unfair to maintain it during proceedings in which Athlete will contest that the detected metabolite is actually a Prohibited Substance).*

5. *Beside that reply from Mr Tiia Kuuranne dated 28 June 2024 confirm position expressed by Athlete and his expert Dr Kwaśnica, i.e:*

   *If I have understood correctly, the metabolite **is not a cathinone derivative** and in the absence of the parent compound, I would be **very cautious** in interpreting the results.*

6. *The above confirms that the metabolite detected by another director of a WADA-accredited laboratory was determined not to be a metabolite of a Cathinone derivative (which undermines Prof. Saugy's position) and at the same time indicates that in the absence of a parent compound the laboratory should be **very cautious** in interpreting the result (i.e. the matter is not as obvious as the WA attorney claims).*

7. *There is therefore no doubt that in this case the Warsaw laboratory (due to the fact that this was the first time this type of substance had been detected and in view of the information received from other WADA-accredited laboratories) should request a second opinion based on Article 5.3.8.1 of the ISL or report the result as an Atypical Finding.*

8. *This is confirmed by the opposing opinions and positions on the matter - on the one hand, Prof. Saugy's opinion that this metabolite is unlikely to be a metabolite other than Pentendrone or PVP, which contradicts the position of the Director of the Switzerland accredited by WADA laboratory, who states that this metabolite is not a derivative of cathinone, and, on the other hand, he agrees with the metabolism of the substance as presented by Dr Kwaśnica (but dispute result of such process).*

9. *Metabolism takes place in two steps:*

   1) reduction of the ketone group (c=0) in the pentahedron to a hydroxyl group (oh);

   2) NB delacylation, i.e. removal of the sub-satellite (in this case the methyl group - ch3) from the nitrogen (nitrogen - i.e.: n).

10. *Effect would be the same if we were dealing with a compound like metabolite detected in the Athlete's sample, but with a group (of some kind) attached to the nitrogen. Then there will be no reduction step - because there is nothing to reduce - but there will be an n-delacylation step and as a result our metabolite will be formed, but such a substance (with a hydroxyl group and not a ketone group) should be considered an analogue of **Catine** (more than Cathinone).*

11. *There is no any supportive evidence why Prof. Saugy states' that the detected metabolite is exclusively related to the ingestion of Pentedrone or PVP (or another unidentified cathinone*

analogue), because (from above email from the Director of the Switzerland laboratory and dr Kwaśnica opinion) it could just as well be the result of the ingestion of an N-alkyl derivative of 1- phenyl-1hydroxy pentane - a ***Catine*** *analogue (not Cathinone analogue). The expert's categorical opinion was not supported by any factual arguments, but in addition, the expert agreed that the metabolism of this type of compound proceeds through an n-dealkylation step (disconnection of substituents at the amino group), which leads to the formation of the detected metabolite. His conclusion seems therefore illogical (this is right now not only confirmed by Dr Kwaśnica, but also opinion of Ms. Kuuranne).*

12. *The publication referred to by the experts in the email correspondence Testing for Designer Stimulants: Metabolic Profiles of 16 Synthetic Cathinones Excreted Free in Human UrineJournal of Analytical Toxicology, Volume 38, Issue 5, June 2014, Pages 233-241 – it shows besides the fact that the detected substance is indeed a metabolite of Pentedrone , the presence in the urine sample of Pentedrone itself (or the so-called Parent Compound- PC), but also of another metabolite of it (according to the indicated metabolic pathway) - i.e. Norpentedrone. Thus, the expert's quibbles about the absence of Parent Compound in the urine of the Athlete are not entirely true, because at 513 ng/mL PC should be detected (or its other metabolite, Norpentedron – as indicated in the publication referred in the email correspondence).*

13. *Regarding the issue of the incompleteness of the forwarded correspondence, we point out two issues that need to be clarified/completed by WA and/or the Laboratory:*

    1) in email dated 26 June 2024, Ms Dorota Kwiatkowska only refers to a "pasted" message from Mr Guenter Gmeiner of the Seibersdorf laboratory.

    In this regard, WA was obliged to provide the complete correspondence regarding the sample, and from this email, it appears that there is an additional email (reply) from Mr Gunter Gmeiner, which was not provided in its entirety.

    2) in email dated 28 June 2024, Ms Dorota Kwiatkowska wrote: "We received an ***answer*** *that we can conclude the presence of this prohibited substance in the sample".*

    In this regard, we also request that the WA and/or Laboratory be obliged to provide this answer which, in the opinion of the Laboratory, should decide whether the result should be considered as AAF.

14. *These points are extremely relevant and perfectly illustrate what the Athlete has been pointing out all along about the current process - we have a compound that the laboratory has detected for the first time, the laboratory doesn't really know what it is or where it might have come from in the Athlete's sample (we have contradicts opinion is it metabolite of Cathine analogue, Cathinione analogue or maybe some different substance which is similar), tries to get confirmation, but no one really confirms the result, with the final decision from the Laboratory (instead of taking action in accordance with the ISL to clearly verify the result, such as obtaining a second opinion and/or reporting an Atypical Finding for further verification) being that it is AAF, and shifting the burden of proof to the Athlete.*

15. *This is precisely the reason for lifting the Provisional Suspension - in the totality of the circumstances of this case (emails about all clean results; reporting a substance that does not exist and then claiming it is a trade name; the lack of sufficient knowledge and experience of*

WADA-accredited laboratories in detecting similar compounds; and finally, the shifting of the burden of proof to Athlete with its limited access to entire documents relevant to this case (example: the Athlete has not received the email correspondence between the laboratories that he requested since the date of the decision until yesterday, i.e. he lost another two weeks to obtain the email correspondence between the laboratories that he requested from the very beginning), before such an important competition as the Olympic Games), it is definitely not fair to uphold the Provisional Suspension.

B. Result of the B sample:

16. *The Respondent has taken the position that the result of Sample 'B' is not relevant for the purposes of this case, and we would be surprised to find a different position right now.*

17. *However, in our view, the result of Sample 'B' itself only confirms Athlete's previous position - Laboratory again reported the presence in B sample of a compound that does not exist - PENTENDRONE NOREPHEDRINE METABOLITE (even though Laboratory is already aware of the allegations made in this regard, they continue to make the incorrect designation in the test report).*

18. *Consequently, Athlete fully maintains his previous position regarding "A" sample, also with regard to "B" sample."*

25. Also on 3 August 2024, the Respondent filed its comments to those of the Appellant as per the CAS Court Office letter of 2 August 2024, in the following terms:

1.1. *"Mr Klimczyk argues that the Athlete's Sample would not have tested positive if it had been sent to a different WADA-accredited laboratory, and that this makes it unfair to impose the Provisional Suspension.*

1.2. *Whilst the Athlete might feel that this is unfortunate for him, it is most certainly not unfair. It ignores the particular problem of cathinone analogues acknowledged to exist in Poland in the scientific literature (see footnote 4 of World Athletics Answer Brief)1 and therefore the particular reason why the WADA-accredited Laboratory in Warsaw has the capability and experience to detect 1-phenyl-1-hydroxy-2-aminopentane (the pentedrone norephedrine metabolite).*

1.3. *Mr Klimczyk asserts based on an email from Prof. Kuuranne on 27 June 2024 that "the metabolite detected […] was determined not to be a metabolite of a Cathinone derivative (which undermines Prof. Saugy's opinion)". With all due respect, this is not what Prof. Kuuranne said: what she said is that the metabolite itself is not a cathinone analogue, i.e. a cathinone structure (which is undisputed). In her e-mail attached to this letter, Prof. Kuuranne confirms that Mr Klimczyk's interpretation is incorrect: more particularly, she states that she was not referring in her comment to metabolism, but to chemical structure, and confirms that, although the metabolite does not have a cathinone structure, it may be a metabolite of a cathinone analogue.*

1.4. On this key issue, it is undisputed between the parties that 1-phenyl-1-hydroxy-2-aminopentane is a metabolite of pentedrone, a cathinone analogue. Even the Athlete's expert, Dr Kwaśnica, accepts this in specific terms: "In the case of pentedrone, it leads to the production of 1 - phenyl -1 -hydroxy-2 -aminopentane (CAS 64037 -35 -0)".

1.5. Mr Klimczyk's argument that the Warsaw laboratory should request a second opinion is also wrong. Article 5.3.8.1 of the ISL places no obligation upon the Warsaw Laboratory to do so and the Warsaw Laboratory did not consider it needed to in this instance.

1.6. In any event, the Warsaw Laboratory received clear instructions from WADA in its e-mail of 28 June 2024 at 13:54 as to the requirements to report an Adverse Analytical Finding. The Warsaw Laboratory responded by confirming that everything was clear (from that e-mail) and subsequently reported the Adverse Analytical Finding. Mr Klimczyk has not demonstrated any criteria that has not been established to report the Adverse Analytical Finding and both Prof. Saugy and Prof. Olivier Rabin, WADA Senior Director, Science & Medicine, confirm that the Adverse Analytical Finding was properly reported.

1.7. Mr Klimczyk's continued attempts to create confusion where there is none are unattractive. There is no "doubt" with the analysis. It is for the Athlete to establish a departure which could reasonably have caused the Adverse Analytical Finding, and he certainly has not done that.

1.8. Further, Mr Klimczyk was granted a deadline to "strictly comment on the correspondence provided". However, and unsurprisingly, he has taken the opportunity to file additional submissions in respect of Prof. Saugy's evidence at para. 9-12. The place to make these submissions was at the hearing yesterday. It was Mr Klimczyk's choice not to question Prof. Saugy on such matters yesterday, as it was not to call his own expert to give evidence. His attempt to have new scientific submissions admitted through the back door is to be resisted and World Athletics submits that these submissions should therefore be disregarded.

1.9. In any event, World Athletics has liaised with Prof. Saugy on these matters, who has confirmed that the new submissions made by Mr Klimczyk are not only unsupported by any evidence but remain fundamentally wrong: as Prof. Saugy explained at the hearing yesterday, 1-phenyl-1-hydroxy-2-aminopentane has 11 carbon atoms whereas cathine has only 9 carbon atoms. Prof. Saugy has confirmed that cathine analogues (like cathine) contain only 9 carbon atoms. Therefore, it remains impossible for 1-phenyl-1- hydroxy-2-aminopentane to come from cathine or a cathine analogue, because cathine has only 9 carbon atoms whereas 1-phenyl-1-hydroxy-2-aminopentane has 11 carbon atoms (and carbon atoms cannot be created from thin air).

1.10. Prof. Saugy also explained at the hearing yesterday that it is not unusual at all to detect only a metabolite (and not the parent compound), which will always depend on the timing of the ingestion (he cited by way of example where you typically see the metabolite ritalinic acid but not the parent compound, methylphenidate). The Warsaw Laboratory has confirmed that it does not test for norpentedrone, so the point advanced about the absence of this metabolite in the Athlete's Sample being indicative of the source being something other than a cathinone analogue goes nowhere.

1.11. World Athletics notes the new request for documents made by Mr Klimczyk. In the interest of time, and to avoid fruitless debate, World Athletics has liaised with the Warsaw Laboratory and has obtained a copy of the e-mail exchanged with Dr Gmeiner (enclosed).

1.12. Finally, Mr Klimczyk misquotes the e-mail from Dr Dorota Kwiatkowska of 28 June 2024, which states as follows:

"Eventually, we got a reply that we may conclude the presence of this prohibited substance in the sample."

1.13. The reference to "a reply" is to the e-mail that Dr Kwiatkowska received from WADA on 28 June 2024 at 13:54.

1.14. In the end, as explained at the hearing, the matter is simple: the metabolite of a prohibited substance has been correctly identified, and this is sufficient proof of an ADRV. The result of the Athlete's 'B' Sample has now confirmed that of the 'A'. The Athlete has not come up with anything to challenge this, except smoke and speculation.

1.15. In the circumstances, the Athlete has not established "no reasonable prospect of the violation being upheld", quite the contrary. There is also no basis to claim that the Provisional Suspension is "clearly unfair" in the circumstances."

26. Prof. Kuuranne's email produced by WA with its submissions of 3 August 2024 reads in the pertinent part as follows:

"Sharing of specific details of analytical methods and disseminating information regarding behavior of analytes is part of laboratory compliance requirements for WADA accredited laboratories (ISL, Annex A, Code of ethics for laboratories). I therefore answered the question on the basis of my own experience and knowledge as follows:

"If I have understood correctly, the metabolite is not a cathinone derivative and in the absence of the parent compound, I would be very cautious in interpreting the results. Is this also the metabolite that is shared with PVP?"

To avoid any misinterpretation of the wording, I would like to emphasize the parts highlighted in colors:

- *The identified substance does not have a cathinone structure. Respectfully, my comment is not about metabolism but about the structure of the identified compound, and does not discuss the origin of the compound. Therefore, respectfully, the interpretation of my response as "a metabolite detected by the Warsaw laboratory was not a metabolite of a Cathinone derivatuve" is incorrect. Biotransformation of a ketone group (=O) to secondary alcohol (-OH) is a common metabolic pathway and consequently, the identified substance may be a metabolite of a cathinone derivative (analogue), even though it no longer has this structure […]*

- *Remark on the absence of parent compound was made to discuss the potential origin (e.g. administered compound) of the identified substance (metabolite) between the laboratories, as the same metabolite is observed after the administration of e.g. pentedrone and a-PVP, which both are cathinone analogs.*

  For clarification, in this context my wording, "derivative" is a synonym for "analog", i.e. substances that share the same chemical structure.

  I hope that these details will assist in clarifying the context of my response to Warsaw laboratory."

27. On 4 August 2024, the CAS Court Office informed the Parties that the requests made by the Appellant in paragraph 13 of his letter of 3 August 2024 were dismissed for reasons that would be provided in the award and notified them the operative part of the award.

IV. SUBMISSIONS OF THE PARTIES

28. The following summary of the Parties' positions is illustrative only and does not necessarily comprise each contention put forward by them. However, in considering and deciding upon the Parties' claims, the Sole Arbitrator has carefully considered all the submissions made and the evidence adduced by the Parties, even if there is no specific reference to those submissions in this section of the Award or in the legal analysis that follows.

A. THE APPELLANT

29. The Appellant, in his Statement of Appeal serving as Appel Brief, made the following prayers for relief:

A. "In principal

120. The Athlete hereby respectfully requests the CAS to issue a decision holding that:

1) *the request to lift an Optional Provisional Suspension is accepted;*
2) *the Optional Provisional Suspension imposed on Athlete is lifted;*
3) *the Athlete is eligible to compete (especially during OG 2024) during anti-doping proceedings;*
4) *that the Respondent shall bear the costs of the arbitral proceedings and contribute an amount to the legal costs and other expenses of the Athlete incurred in connection with the proceedings of the Athlete regarding to Rule R64.5 of the Code;*
5) *that the Respondent shall bear the additional costs of the proceedings which occur due to the proceedings before the AIU.*

B. In alternative (request for provisional measure)

(i) Request:

121. If it is not possible for CAS to hear the Appeal and issue a decision by ***4 August 2024*** *(day before scheduled day of departure for Paris), the Athlete will then make an alternative request for a provisional measure for the duration of the proceedings (request for provisional measure), with the following reasoning being equally justified for the purpose of lifting the OPS.*

122. The Athlete hereby submit a request for provisional measure in the form ***of stay of the appealed decision***

123. The Athlete hereby respectfully request that the President of the CAS Division, prior to the transfer of the Panel or Sole Arbitrators and base (sic) *on this application, make an order for provisional measure and rules as follows:*

1) the request of the Athlete for stay the appealed Decision rendered by the AIU in the matter of Mr. Norbert Kobielski is granted;
2) that the appealed Decision does not cause legal effects (especially during OG 2024), at least until the end of these proceedings and issuance of final awards on merits;
3) that the costs of the order will be determined in the final award or in any decision terminating the procedure.

or

124. The Athlete hereby respectfully request that the Panel and/or Sole Arbitrator, make an order for provisional measure and rules as follows:

1) the request of the Athlete for stay the appealed rendered by the AIU in the matter of Mr. Norbert Kobielski is granted;
2) that the appealed Decision does not cause legal effects on the Athlete, and that the Athlete is eligible to compete with immediate effect (especially during OG 2024), at least until the end of these proceedings and issuance of final award on merits;
3) that the costs of the order will be determined in the final award or in any decision terminating the procedure."

30. The Appellant's submissions, in essence, may be summarized as follows:

- The Optional Provisional Suspension imposed by the AIU under Rule 7.4.2 of the WA ADR should be lifted in accordance with Rule 7.4.4 a), b), and e) of the WA ADR.

Rule 7.4.4 a) and b) of the WA ADR

- The Optional Provisional Suspension is based on the detection in the Appellant's sample of a substance ("*Pentedrone Norephedrine Metabolite*") that does not exist, as confirmed by the expert opinion from Dr. Andrzej Kwasnica. Dr. Kwasnica affirms that "*Pentedrone Norephedrine Metabolite*" is not a recognized compound in chemistry. Pentedrone and norephedrine are chemically distinct substances, and there is no known

metabolite that combines elements of both. Furthermore, these substances do not share common metabolites. Therefore, the suspension should be lifted based on this.

- Dr. Kwasnica further identified that the substance detected by the Laboratory could correspond to "*1-phenyl-1-hydroxy-2-aminopentane*" (CAS 64037-35-0), a compound that shares structural similarities with norephedrine, a substance included in WADA's Monitoring Program but not prohibited. Given that the Laboratory did not detect the substance pentedrone itself, it cannot be conclusively determined that the detected substance is attributable to the ingestion of pentedrone. This calls into question the Laboratory's conclusion that the substance detected is a metabolite of pentedrone. Instead, the detected substance may be related to a permitted substance. Therefore, this potential misidentification also justifies the immediate lifting of the Optional Provisional Suspension.

- There is evidence in the case indicating that the Laboratory itself expressed doubts regarding the AAF. Correspondence between the Laboratory and WADA reveals uncertainty about whether the detected substance indeed constituted an AAF. The Laboratory sought clarification from WADA, which responded that it could not confirm the validity of the Laboratory's analytical result and recommended further consultation with other WADA-accredited laboratories. WADA's correspondence did not confirm that "*Pentedrone Norephedrine Metabolite*" is a cathinone analogue, nor did it provide a definitive validation of the Laboratory's result. WADA clarified that it could not guide the Laboratory on how to interpret or report their findings beyond what is established in WADA's rules. Despite this, the Laboratory reported the AAF based on its interpretation.

- Communications between the Laboratory and other WADA-accredited laboratories revealed that some laboratories had not encountered this compound before or did not test for pentedrone, further complicating the certainty of the AAF. The lack of consensus and the non-detection of pentedrone itself suggest that the finding should have been classified as an Atypical Finding, which would have required further investigation.

- An email from a European Athletics official to the competition organizer initially stated that all samples from the event, including the sample in question, were negative. This was later explained by the AIU as a communication error, but the initial statement raises concerns about the accuracy of the reported findings.

- In the event that the AIU or the Laboratory claim that a different substance was detected in the sample -whether it be a metabolite of pentedrone known under a different name or a result of a communication error- it is necessary to prove beyond reasonable doubt that the sample contained such a substance.

- The circumstances of the case require submitting all relevant Standard Operating Procedures ("SOP") documents and considering the analysis of the B sample at another WADA-accredited laboratory, at the expense and risk of the AIU, as permitted by the International Standard for Laboratories ("ISL"). Furthermore, a thorough verification is required to determine whether the detected metabolite indeed originated from pentedrone and to assess the validity of not having a specified decision limit for cathinone analogues. These actions require additional information, cooperation, and time, which is currently challenging given the lack of access to necessary documents and the imminent OG 2024. This also justifies lifting the Optional Provisional Suspension immediately.

Rule 7.4.4 e) of the WA ADR

- The Athlete would face irreparable harm if the Optional Provisional Suspension was maintained, as he would lose the opportunity to participate in the OG 2024. This risk is not solely due to the AAF but also because of delays in the doping control process that are not attributable to the Athlete. The sample was collected on 26 May 2024 and delivered to the Laboratory on 29 May 2024, but the result was not disclosed to the Athlete until 3 July 2024, a delay of 35 days which violates the ISL, that mandates that the result is disclosed within 20 days. Had the results been disclosed on time, the Athlete could have taken necessary steps to investigate and defend his case before the OG 2024. The delay in this case negatively impacted the Athlete's ability to defend himself and could justify the lifting of the Optional Provisional Suspension.

- In addition, the detected substance is prohibited only during the "*In-Competition*" period, meaning its use outside this period is permissible and carries no consequences under the WA ADR. The "In-Competition" period, as defined by the WA ADR, begins at 23:59 p.m. on the day before the competition. In this case, the anti-doping control occurred at 20:25 on 26 May 2024, so the "*Out-of-Competition*" period extended until 23:58 on 25 May 2024. Given the low concentration of the detected substance, which is significantly lower than the decision limits for other substances in the same group, and considering the timing of its potential ingestion, it is more likely that the substance entered the Athlete's system during the "*Out-of-Competition*" period, when its use was permitted. This conclusion is supported by the AIU's opinion, which indicated that the detected concentration corresponds to a level measurable within approximately 24 hours after the intake of a "*pharmacologically active*" dose of a cathinone analogue. Additionally, the substance in question is no longer present in the Athlete's body, confirming that it had no impact on his current performance capabilities.

- The Athlete obtained his OG 2024 qualification during the Diamond League Finals in Eugene on 18 September 2023, where he was subject to anti-doping control that did not reveal the presence of any prohibited substance. The Athlete secured such qualification in full compliance with anti-doping rules.

- The number of anti-doping cases involving cathinone analogues, including the detected substance, is marginal, further demonstrating that the substance in question is rarely detected and is not commonly used in sport.

- The Athlete has demonstrated, on the balance of probabilities, that the circumstances are exceptional, and that maintaining the Optional Provisional Suspension would cause irreparable harm, making it unfair to continue the suspension.

B. THE RESPONDENT

31. In its Answer, the Respondent requested an award be rendered in the following terms:

I. "The appeal filed by Norbert Kobielski is dismissed;

II. The arbitration costs (if any) shall be borne by Norbert Kobielski;

III. World Athletics is granted an award on costs."

32. The Respondent's submissions, in essence, may be summarized as follows:

- The Athlete did not establish any of the grounds under Rule 7.4.4 of the WA ADR to avoid the imposition of the Optional Provisional Suspension.

- Regarding the Appellant's argument that the detected metabolite "*does not exist*," it shall be noted that "*Pentedrone Norephedrine Metabolite*" is simply the commercial name of the certified reference material used by the Laboratory. The exact chemical name is 1-phenyl-1-hydroxy-2-aminopentane, a metabolite of pentedrone and/or α-PVP, as confirmed by Prof. Martial Saugy.

- The fact that the reference material includes "*Norephedrine*" in its name does not imply chemical similarity with norephedrine. Prof. Saugy pointed out that norephedrine, composed of 9 carbon atoms, cannot metabolize into 1-phenyl-1-hydroxy-2-aminopentane, which has 11 carbon atoms. The same applies to cathine.

- Under Rule 3.2.1 of the WA ADR, analytical methods or decision limits approved by WADA are presumed scientifically valid. The burden is on the Athlete to prove that the method used by the Laboratory was not scientifically valid in identifying a prohibited substance. There is no uncertainty regarding the AAF. Rule 3.2.4 of the WA ADR presumes that WADA-accredited laboratories conduct sample analysis and custodial procedures according to the ISL. The Athlete must demonstrate a departure from these standards that could have reasonably caused the AAF, which he failed to do *in casu*.

- The Athlete's claim that the Laboratory should have included communications with other laboratories as per Article 5.3.8.1 of the ISL is incorrect. This provision only applies to requests for second opinions before reporting an AAF. The Laboratory's communications with WADA were about gathering feedback on new psychoactive substances, not about seeking a second opinion before reporting the AAF.

- Rule 4.3 of the WA ADR states that WADA's decisions regarding the Prohibited List, including the classification of substances, are final and cannot be challenged by an Athlete. Therefore, the Athlete's argument regarding the lack of a decision limit for cathinone analogues is without merit.

- The Athlete refers to lit. (b) of Rule 7.4.4 of the WA ADR in his submission to try to ground his case, but he does not explain its relevance to his appeal. Since the violation is established and the Athlete has not proven the source of the Prohibited Substance, he has not demonstrated a "*strong arguable case*" that no period of Ineligibility is likely to be imposed. The Athlete has also not provided any basis for reducing the standard two-year period of Ineligibility.

- The Athlete relies on lit. (e) of Rule 7.4.4 of the WA ADR to ground his case, by citing alleged delays in reporting the AAF, the fact that the prohibited substance is banned only In-Competition, the absence of the substance in his body, his testing during the competition in which he qualified for the OG 2024, and the limited number of cathinone analogue positive results. However, none of these circumstances make it "*clearly unfair*" to impose a Provisional Suspension in this case: (a) the alleged delay in reporting the AAF is not substantiated, as Article 5.3.8.4 of the ISL states that the Laboratory "*should*" report results in ADAMS within 20 days, but this is a guideline, not a mandatory requirement; and (b) the fact that (i) the substance is prohibited only In-Competition, (ii) the substance is no longer in the Athlete's body, and that (iii) the Athlete was tested during his qualification for the Olympic Games without an AAF being reported is also irrelevant in terms of unfairness.

V. JURISDICTION

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

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

34. Rule 7.4.5 of the WA ADR reads as follows:

> "***Appeal against a Provisional Suspension:*** *Where the Integrity Unit imposes (or does not lift) a Provisional Suspension after a Provisional Hearing, the Athlete or other Person has a right to appeal the decision to CAS in accordance with Rule 13 (save that there will be no right to appeal a decision not to eliminate a Provisional Suspension on account of the Athlete's assertion that the violation is likely to have involved a Contaminated Product), provided however that the Provisional Suspension shall remain in effect pending a decision by CAS on the merits of the appeal. For the avoidance of doubt, an appeal to CAS against a Provisional Suspension (or a decision not to lift a Provisional Suspension) shall not stay, delay or otherwise prevent the matter from proceeding to a hearing before the Disciplinary Tribunal in accordance with Rule 8*."

35. None of the Parties has contested the jurisdiction of the CAS in these proceedings.

36. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the Parties.

37. It follows from the aforementioned that CAS has jurisdiction to adjudicate and decide on the present dispute.

VI. ADMISSIBILITY

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

> "*In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against.*"

39. Rule 13.6.1 of the WA ADR reads, in its pertinent part, as follows:

> "*13.6.1 Appeals to CAS*
>
> (a) *The time to file an appeal to the CAS will be thirty (30) days from the date of receipt of the reasoned decision by the appealing party. Where the appellant is a party other than World Athletics or WADA, to be a valid filing under this Rule 13.6.1, a copy of the appeal must be filed on the same day with World Athletics.*"

40. The Appealed Decision was notified to the Parties on 23 July 2024. The Statement of Appeal was filed on 28 July 2024, within 30 days of the date of the Appealed Decision.

41. The Respondent has not contested the admissibility of the appeal in any way.

42. It follows that the appeal is admissible.

VII. APPLICABLE LAW

43. Article R58 of the CAS Code provides the following:

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

44. Both Parties have referred in their submissions to the application of the WA ADR, and the Sole Arbitrator agrees that this set of rules is the one applicable to resolve this case.

45. Based on the aforementioned, the Sole Arbitrator will decide this dispute in accordance with the WA ADR.

VIII. MERITS

A. Preliminary issue: the dismissal of some of the Appellant's requests made in his letter of 1 August 2024 and in his submissions of 3 August 2024

46. On 1 August 2024, the Athlete made several requests for information and documentation to the CAS, some of which were dismissed by the Sole Arbitrator by virtue of the CAS Court Office letter of 2 August 2024. Reasons for such a dismissal are given below.

47. The requests for information from the manufacturer on the certified reference material produced by WA with its Answer were rejected as in the Sole Arbitrator's view, they were immaterial to, and irrelevant vis-à-vis, the substantive issues of the case. In accordance with Prof. Martial Saugy's expert report produced by WA with its Answer and his declaration at the hearing, it was made clear that 1-phenyl-1-hydroxy-2-aminopentane indeed exists and is a metabolite of pentedrone and/or α-PVP, irrespective of issues of naming or nomenclature.

48. With regard to the request to be granted the right to respond Prof. Saugy's expert report contents as made in the Athlete's email of 1 August 2024, it is the Sole Arbitrator's opinion that the Athlete had the possibility to bring his own expert to the hearing to rebut the considerations made by Prof. Saugy in his report, a report which by the way, consisted only of 4 pages and only addressed 5 questions (some of which were answered in one paragraph only). In any event, the Athlete voluntarily decided not to call his expert to appear at the hearing.

49. Regarding the request for stay of the Appealed Decision made by the Athlete in his letter of 1 August 2024, the Sole Arbitrator decided to dismiss it not only because the Athlete

agreed to an expedited procedure with a decision being rendered by 4 August 2024, but also because the grounds on which such request was based did not justify the stay: the Athlete had the opportunity in these proceedings to comment *inter alia* on (i) the B Sample analysis, (ii) the correspondence exchanged between the Laboratory and other WADA-accredited laboratories and (iii) Prof. Saugy's report.

50. With regard to the complaint made by the Appellant in his submissions of 3 August 2024 that WA did not provide the complete correspondence regarding the Athlete's sample as it appeared that an additional email from Mr. Günter Gmeiner existed, the Sole Arbitrator shall point out that this email was anyhow produced by WA with its submissions of 3 August 2024 and that the content of such email is coincident with the quote made of it by Dr. Kwiatkowska in her email of 26 June 2024.

51. Finally, concerning the request made by the Appellant in para.13.2 of his submissions of 3 August 2024, the Sole Arbitrator considers that the reference made by Dr. Kwiatkowska to the "*reply*" in her email of 28 June 2024 has to do with the email she received from Prof. Kuuranne on 27 June 2024, which had been already produced to the CAS file by WA. The Athlete failed to prove that it could reasonably refer to something different.

B. The merits of the case

52. The Sole Arbitrator shall firstly note that given that a decision on the case was issued by 4 August 2024, only the Athlete's principal requests for relief are to be entertained in this award, and not those made by the Athlete in the alternative and for the case that "*it is not possible for CAS to hear the Appeal and issue a decision by 4 August 2024)*".

53. In the Appealed Decision, after conducting a Provisional Hearing in accordance with the WA ADR, the AIU imposed a Provisional Suspension on the Athlete based on Rule 7.4.2 of the WA ADR, which reads as follows:

> "*Optional Provisional Suspensions in the case of an Adverse Analytical Finding for a Specified Substance, Contaminated Product or other Anti-Doping Rule Violations: Where an Adverse Analytical Finding is reported for a Specified Substance, Contaminated Product, or in the case of other Anti-Doping Rule Violations not covered by Rule 7.4.1, the Integrity Unit may Provisionally Suspend the Athlete or other Person pending resolution of their case, provided however that a Provisional Suspension may not be imposed unless the Athlete or other Person is given an opportunity for a Provisional Hearing either (at the election of the Integrity Unit) before imposition of the Provisional Suspension or on a timely basis after imposition of the Provisional Suspension*."

54. While Rule 7.4.2 of the WA ADR indeed allows the AIU to impose a Provisional Suspension on an athlete, Rule 7.4.4 of the WA ADR outlines the grounds under which a such Provisional Suspension may be lifted:

"*Where a Provisional Suspension has been imposed (or may be imposed) in accordance with this Rule 7, the Athlete or other Person may make a written submission to the Integrity Unit showing cause why the Provisional Suspension should be lifted (or, where it has not yet been imposed, should not be imposed) by establishing that:*

a) the violation has no reasonable prospect of being upheld, e.g., due to a serious flaw in the case such as the Integrity Unit has no jurisdiction over the Athlete or other Person; or
b) there is a strong arguable case that the circumstances are such that no period of Ineligibility is likely to be imposed;
c) the violation asserted is likely to have involved a Contaminated Product;
d) the violation asserted involves a Substance of Abuse and the Athlete establishes entitlement to a reduced period of Ineligibility under Rule 10.2.4(a);
e) *other facts exist that make it clearly unfair, in all the circumstances of the case, to impose a Provisional Suspension prior to determination of the anti-doping rule violation(s). This ground is to be construed narrowly and applied only in truly exceptional circumstances. For example, the fact that the Provisional Suspension would prevent the Athlete or other Person competing or participating in a particular Competition shall not qualify as exceptional circumstances for these purposes*."

55. Bearing the aforementioned in mind and applying it *in casu*, for the Provisional Suspension to be lifted, the Athlete shall establish that one of the grounds specified under Rule 7.4.4 of the WA ADR takes place. In his appeal, the Athlete relies on grounds a), b) and e) of Rule 7.4.4 WA ADR and requests the Provisional Suspension be lifted based on them.

56. For the avoidance of doubt, the Sole Arbitrator's task in these proceedings is the determination on the occurrence or not of any of the events set out in Rule 7.4.4. WA ADR based on the facts brought to his attention and the evidence taken, and not to determine whether an ADRV has been committed by the Athlete and the potential sanction to be imposed on him. In this respect, the Sole Arbitrator shall recall and shares the following considerations made in CAS 2011/A/2479, also referred to a Provisional Suspension imposed on an athlete: "*the Panel underlines that its task is not to determine whether an anti-doping rule violation has been committed by Sinkewitz and, if so, whether Sinkewitz has to be sanctioned. This duty is left for the NADA's competent hearing body (i.e. the DIS-Deutsche Sportschiedsgericht, "DIS-SportG") – which shall have to assess the available evidence, including expert opinions, and apply the pertinent rules. As a consequence, any decision taken by this Panel with respect to the lifting of the Provisional Suspension does not affect the different question of the existence of an anti-doping rule violation (and of an alleged disciplinary responsibility of Sinkewitz) or bind any body (including any possible CAS panel at a later stage) called to adjudicate on it.*"

i. Rule 7.4.4. a) of the WA ADR. The violation has no reasonable prospect of being upheld, e.g., due to a serious flaw in the case such as the Integrity Unit has no jurisdiction over the Athlete or other Person

57. The Sole Arbitrator shall start his analysis by noting that the AIU (whose jurisdiction over the Athlete has not been contested by the latter) notified the AAF to the Athlete on 3 July 2024. In this communication, the AIU *inter alia* mentioned that the Athlete did not have a Therapeutic Use Exemption (which has not been contradicted by the Athlete), that there was no apparent departure from the International Standard for Testing and Investigation ("ISTI") of from the ISL that could reasonably have caused the AAF and that the AAF may result in an ADRV pursuant to Rule 2.1 and/or Rule 2.2 of the WA ADR.

58. The Sole Arbitrator shall also note that (i) in line with CAS 2011/A/2479, Rule 7.4.4.a) WA ADR makes it clear that the Athlete "*bears the burden to prove that the apparent anti-doping rule violation has no reasonable prospect of being upheld: in fact, if this burden is not discharged, the provisional suspension "shall not be lifted*" and (ii) in the verification of such condition, his assessment shall be limited to an evaluation of the chances of success of the case, in order to determine whether the Appellant has proved that they are not reasonable. As already mentioned above, it is not for the Sole Arbitrator to consider in these proceedings whether an ADRV has actually been committed.

59. Under this ground a) and to justify that the violation has no reasonable prospects of being upheld, the Athlete in essence (i) suggests that the metabolite identified by the Laboratory does not exist, (ii) raises the possibility that such metabolite could have resulted from the ingestion of a permitted substance rather than from a prohibited one, (iii) considers that the result of the Athlete's sample analysis should have been classified as an Atypical Finding rather than as an AAF and (iv) insists on the need for the AIU to scientifically confirm the analytical evaluation and classification of the detected substance as an analogue of a Prohibited Substance.

60. After having analyzed the Appellant's arguments and the evidence brought to these proceedings, the Sole Arbitrator considers that the Athlete failed to establish that the violation has no reasonable prospect of being upheld.

61. Without prejudging (as it is not the object of this proceedings to determine whether an ADRV has taken place and its consequences), the case presented by WA appears to be substantiated, and WA has contested with expert evidence the Appellant's arguments and contentions intending to support the occurrence of ground a) of Rule 7.4.4. of the WA ADR *in casu*.

62. Prof. Saugy's report produced by WA with its Answer is conclusive in stating that (i) the pentedrone norephedrine metabolite has been identified as a metabolite of Pentedrone and/or α-PVP, which are both cathinone analogues, and that the exact chemical name of this compound is 1-phenyl-1-hydroxy-2-aminopentane, (ii) 1-phenyl-1-hydroxy-2-aminopentane is composed of 11 atoms of carbons together with 1 of oxygen and 1 of nitrogen (+ 17 hydrogens), while Norephedrine (in the hypothesis presented by the

Appellant) has only 9 atoms of Carbons together with 1 of oxygen and 1 of Nitrogen (+ 13 hydrogens), (iii) the absence of pentedrone or PVP in the Athlete's urine does not mean that the presence of the metabolite cannot be unequivocally attributable to the ingestion of these two compounds, (iv) regarding the Athlete's ingestion of a non-prohibited substance (for example Norephedrine) being the cause of the AAF, he could not agree that 1-phenyl-1-hydroxy-2-aminoheptane with 11 Carbons is a metabolite of Norephedrine and/or Cathine with only 9 Carbons in their chemical structure, and (v) if the source of the AAF was not pentedrone or PVP, it is extremely likely that the source must be another cathinone analogue. Regarding Dr. Kwasnica statement in his report that the presence of 1-phenyl-1-hydroxy-2-aminopentane in the Athlete's urine sample may be attributable to his ingestion of any N-alkyl derivative of this substance (which are not classified as prohibited substances by WADA), Prof. Saugy mentioned that any N-alkyl derivate of 1-phenyl-1-hydroxy-2-aminopentane is a substance with similar chemical structure or similar biological effect and is therefore part of the cathinone analogues as described in the prohibited list.

63. Prof. Saugy's declaration at the hearing was consistent with the conclusions of his report, as well as clear and convincing.

64. In addition, Dr. Olivier Rabin also agreed and confirmed Prof. Saugy's report, and in particular stated that the AAF was properly reported and that there is no basis for the contention that it resulted from the ingestion of a non-prohibited substance.

65. Moreover, it shall be also noted that the result of the analysis of the Athlete's B Sample confirmed the presence of the prohibited substance, and with regard to the exchange of correspondence between the Laboratory and other laboratories on pentedrone, it cannot be inferred from its content that (i) it had to do with a request for second opinion or (ii) the violation has no reasonable prospect of being upheld or (iii) for the sake of completeness, that grounds b) or e) of Rule 7.4.4 of the WA ADR are to be deemed established as regards of such correspondence.

66. The Sole Arbitrator shall also recall that, under Rule 3.2.1 of the WA ADR, analytical methods or decision limits approved by WADA are presumed scientifically valid. In this context, the burden is on the Athlete to demonstrate that the analytical method used by the Laboratory was not scientifically valid in identifying a Prohibited Substance. The Sole Arbitrator agrees with WA that the Athlete failed to meet this burden of proof. Therefore, the validity of the Laboratory's methods is upheld. Furthermore, according to Rule 3.2.4 of the WA ADR, WADA-accredited laboratories are presumed to have conducted sample analysis and custodial procedures in accordance with the ISL. To challenge this presumption, athletes are required to demonstrate that a departure from these standards occurred and that such a departure could reasonably have caused the AAF. However, the Sole Arbitrator notes that the Athlete failed to identify any such departure and one that could have reasonably influenced the positive finding.

67. Bearing the aforementioned in mind, the Sole Arbitrator finds that the Athlete failed to establish that there is no reasonable prospect of the violation being upheld, as required under ground (a) of Rule 7.4.4 of the WA ADR.

ii. Rule 7.4.4 b) of the WA ADR. There is a strong arguable case that the circumstances are such that no period of Ineligibility is likely to be imposed

68. The Athlete has also invoked, in support of his request for lifting the Provisional Suspension, ground (b) of Rule 7.4.4. of the WA ADR.

69. The Sole Arbitrator shall firstly note that this ground is treated by the Athlete in his Appeal Brief jointly with ground a) referred to above, so the same considerations made in section B.i) of this award shall also apply herein. In addition, the Sole Arbitrator shall stress that the Athlete did not provide any convincing explanation as to why in this case, no period of Ineligibility would be likely to be imposed. In particular, the Athlete did not even establish the source of the Prohibited Substance found in his sample, which is a prerequisite for a No Fault or Negligence grant in accordance with the WA ADR that could lead to the elimination of the period of Ineligibility.

70. Consequently, the Sole Arbitrator concludes that the Athlete did not establish that there is a strong arguable case that the circumstances are such that no period of Ineligibility is likely to be imposed.

iii. Rule 7.4.4 e) of the WADA ADR. Other facts exist that make it clearly unfair, in all the circumstances of the case, to impose a Provisional Suspension prior to determination of the anti-doping rule violation(s)

71. The Sole Arbitrator observes that the Athlete has also invoked Rule 7.4.4 e) of the WA ADR in his submissions, which pertains to the existence of "*other facts*" that would make it clearly unfair, in all the circumstances of the case, to impose a Provisional Suspension prior to the determination of the ADRV.

72. The Athlete has cited several specific circumstances in support of this ground: (a) alleged delays in the reporting of the AAF, for which the Athlete asserts no responsibility; (b) the fact that the prohibited substance found in his sample is banned exclusively during the In-Competition period and it is likely that it could have entered his body in an out-of-competition period; (c) the absence of the substance in the Athlete's body; (d) the fact that the Athlete was tested negative during the competition where he qualified for the Paris Olympic Games and in competitions prior and after 26 May 2024; and (e) the marginal number of positive findings involving cathinone analogues.

73. In such respect, the Sole Arbitrator shall note that in accordance with Rule 7.4.4.e) WA ADR, "*this ground is to be construed narrowly and applied only in truly exceptional circumstances.*"

74. Taking the aforementioned into account, it is the Sole Arbitrator's view that none of the aforementioned circumstances alleged by the Athlete, either considered individually or jointly, would make the Provisional Suspension imposed on him clearly unfair.

75. Regarding the alleged delay in reporting the AAF, the Athlete failed to demonstrate how the deviation from the 20-day period set forth in Article 5.3.8.4 of the ISL within which the reporting of the sample results "*should*" occur in ADAMS (even if *arguendo*, such deadline was considered compulsory) significantly impacted his ability to defend his "no Provisional Suspension contention" and how it would make clearly unfair to keep such suspension. The Athlete even failed to explain what he would have specifically done or which steps he would have taken to improve his defense in case the reporting of the sample results would have been received earlier.

76. Concerning the Athlete's thesis that the prohibited substance could have entered his body in an out-of-competition period, the Sole Arbitrator finds that it has not been duly proven, so no merit shall be made to it.

77. The fact that the prohibited substance was not present in the Athlete's body in the test made in the competition at which he qualified for the OG 2024 (back in September 2023) or in tests made before or after the one of 26 May 2024 has no relevance in terms of fairness as per Rule 7.4.4.e) of the WA ADR, as well as the fact that there are more or less cases of cathinone analogues positives worldwide. The Athlete refer to these circumstances but fails to specifically explain how or why they would render the Appealed Decision unfair.

78. Needless to say, the effect of the Provisional Suspension (preventing the Athlete from competing) does not by itself serve to invoke the fairness exception set out in Rule 7.4.4 WA ADR. As specifically mentioned in such Rule, "*the fact that the Provisional Suspension would prevent the Athlete or other Person competing or participating in a particular Competition shall not qualify as exceptional circumstances for these purposes".*

79. In summary, the Sole Arbitrator concludes that the Athlete also failed to establish existence of other facts that would make it clearly unfair, in all the circumstances of the case, to impose a Provisional Suspension prior to the determination of the ADRV.

C. Conclusion

80. After a thorough review of all the evidence and arguments presented by the Parties, the Sole Arbitrator finds that the Athlete has not successfully established the existence of a valid ground under Rule 7.4.4 of the WA ADR that justifies lifting the Provisional Suspension in this case and therefore, the appeal must be dismissed.

81. The Sole Arbitrator shall however reiterate that this conclusion does not mean or imply that the Athlete has committed an ADRV, an issue that is to be determined by the competent body within the corresponding proceedings.

IX. COSTS

(…)

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Appeal filed by Mr Norbert Kobielski on 28 July 2024 against the decision rendered by the Athletics Integrity Unit on 23 July 2024 is dismissed.

2. (…).

3. (…).

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

Seat of arbitration: Lausanne, Switzerland
Date of notification of the operative part of the award: 4 August 2024
Date of the notification of the award with grounds: 14 May 2025

THE COURT OF ARBITRATION FOR SPORT

Jordi López Batet
Sole Arbitrator