



**TAS / CAS**  
TRIBUNAL ARBITRAL DU SPORT  
COURT OF ARBITRATION FOR SPORT  
TRIBUNAL ARBITRAL DEL DEPORTE

**CAS 2023/A/9903 World Anti-Doping Agency (WADA) v. Russian Anti-Doping Agency (RUSADA) & Mikhail Chekmaryev**

## **ARBITRAL AWARD**

**delivered by the**

## **COURT OF ARBITRATION FOR SPORT**

**sitting in the following composition:**

Sole Arbitrator: Prof. Dr. An Vermeersch, Professor of Law, Ghent, Belgium

**in the arbitration between**

**World Anti-Doping Agency (WADA)**, Montreal, Canada

Represented by Mr Nicolas Zbinden and Mr Anton Sotir, Attorneys-at-Law with Kellerhals Carrard, Lausanne, Switzerland and Ross Wenzel, WADA General Counsel, Lausanne, Switzerland

**– Appellant –**

**and**

**Russian Anti-Doping Agency (RUSADA)**, Moscow, Russia

Represented by Mr Graham Mark Arthur, Solicitor, Liverpool, United Kingdom

**– First Respondent –**

**and**

**Mr Mikhail Chekmaryev**, Orenburg, Russia

**– Second Respondent –**

\* \* \* \* \*

## **I. PARTIES**

1. The World Anti-Doping Agency (“WADA” or the “Appellant”) is the independent International Anti-Doping Agency, constituted as a private law foundation under Swiss law, whose aim is to promote and coordinate the fight against doping in sport internationally.
2. The Russian Anti-Doping Agency (“RUSADA” or the “First Respondent”) is the National Anti-Doping Organisation in Russia, with registered office in Moscow, Russia. RUSADA is a signatory to the World Anti-Doping Code (“WADC”).
3. Mr Mikhail Chekmaryev (the “Athlete” or the “Second Respondent”) is a 49-year-old former para-ice (sledge) hockey player from Russia at the start of the proceedings before the CAS.
4. The Appellant, the First Respondent and the Second Respondent are jointly referred to as the “Parties”.

## **II. FACTUAL BACKGROUND**

5. Below is a summary of the main relevant facts, as established on the basis of the written submission(s) and correspondence of the Parties in the course of the proceedings. As will be explained in further detail below, the written submissions in the present case in the meaning of Article R44.1 of the CAS Code of Sports-related Arbitration (the “Code”) are limited to the Appellant’s Statement of Appeal. The content of the Appellant’s Statement of Appeal has not been contested, or otherwise commented on, by either of the Respondents.
6. On 12 January 2013, the Athlete provided a sample out-of-competition (sample 2743972).
7. The sample was found to contain chlorthalidone in the Moscow Laboratory’s Laboratory Information Management System (“LIMS”). Chlorthalidone is a specified substance prohibited at all times pursuant to S5 (Diuretics and other masking agents) of the 2013 WADA Prohibited List. The positive finding was subject to a successful Confirmation Procedure.
8. As part of the Russian protection scheme, the sample was improperly reported as negative in the WADA Anti-Doping Administration & Management System (ADAMS). The Moscow Laboratory manipulated the Athlete’s steroid profile for the sample to ensure that a non-suspicious Testosterone / Epitestosterone (T/E) Ratio value of “1.1” was entered in ADAMS, instead of a suspicious value of “7.8”.
9. On 19 July 2021, RUSADA notified the Athlete of a potential Article 2.2 (Use) anti-doping rule violation (“ADRV”) in connection with his sample.

10. On 5 July 2023, RUSADA notified WADA and the International Paralympic Committee (“IPC”) of its decision no. VD-3222 of 4 July 2023 not to move forward with the matter on account of the fact that, in its opinion, “*there [was] insufficient evidence to continue the results management*”.

### **III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

11. On 16 August 2023, the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport (“CAS”), in accordance with the CAS Code of Sports-related Arbitration (the “Code”), against the First Respondent and the Second Respondent, in respect of the decision no. VD-3222 rendered by RUSADA on 4 July 2023 (the “Appealed Decision”). In its Statement of Appeal, WADA requested that the present dispute to be submitted to a Sole Arbitrator.
12. On 21 August 2023, the CAS Court Office notified the Statement of Appeal to the Respondents and invited the Respondents to state whether they agreed to WADA’s request that a Sole Arbitrator be appointed, and for the appeal to proceed in English. The CAS Court Office further invited WADA to submit its Appeal Brief within 10 days pursuant to Article R51 of the Code.
13. On 24 August 2023, WADA requested an extension of three weeks of its deadline to file the Appeal Brief, until 18 September 2023.
14. On 25 August 2023, the CAS Court Office informed the Respondents of the extension of time requested by WADA and invited them to comment on such request, by 18 September 2023. The CAS Court Office further informed the Parties that WADA’s deadline to file the Appeal Brief was suspended as of 25 August 2023 and until further notice.
15. On 30 August 2023, taking note of the fact that none of the Respondents had reverted to the CAS Court Office in this regard, the CAS Court Office granted the Appellant’s request for extension of the deadline to file its Appeal Brief.
16. On 6 September 2023, the First Respondent agreed to the appeal being submitted for resolution by a Sole Arbitrator and for the appeal to proceed in English.
17. On 15 September 2023, WADA requested for another extension of its deadline to file the Appeal Brief, until 10 October 2023, stating that the First Respondent had already agreed to such request.
18. On 19 September 2023, the CAS Court Office took note of the Appellant’s request for another extension of its deadline to file its Appeal Brief and the First Respondent’s agreement to such requested extension. The Second Respondent was invited to comment on the requested extension, by 22 September 2023. The Parties were informed that in case of absence of answer by the Second Respondent or in case of objection, it would be for the President of the CAS Appeal Arbitration Division, or her Deputy, to decide, pursuant to Article R32(2) of the Code.

19. On 25 September 2023, the CAS Court Office noted that the Athlete did not state his position within the deadline fixed in the CAS Court Office letter dated 19 September 2023.
20. On 26 September 2023, the CAS Court Office informed the Parties that the Deputy President of the CAS Appeals Arbitration Division had decided to grant the Appellant's request for a further extension of the deadline to file its Appeal Brief until 10 October 2023.
21. On 29 September 2023, WADA requested, on behalf of WADA and RUSADA, a suspension of the proceedings until 30 November 2023, including a suspension of WADA's deadline to file the Appeal Brief, with a view to explore a potential settlement of the case.
22. On 2 October 2023, RUSADA confirmed not to object to the proposed suspension.
23. Also on 2 October 2023, the CAS Court Office took note of the Appellant's and RUSADA's joint request for a suspension of the proceedings until 30 November 2023, including a suspension of WADA's deadline to file the Appeal Brief. The Second Respondent was invited to comment on the requested extension, by 5 October 2023. The Parties were informed that in case of absence of answer by the Second Respondent or in case of objection, it would be for the President of the CAS Appeal Arbitration Division, or her Deputy, to decide, pursuant to Article R32(2) of the Code. Furthermore, the CAS Court Office informed the Parties that WADA's deadline to file the Appeal Brief was suspended as of receipt of the CAS Court Office letter by email and until further notice.
24. On 11 October 2023, the CAS Court Office informed the Parties that the Deputy President of the CAS Appeals Arbitration Division, having duly taken into consideration the Parties' positions, had decided to grant the request by the Appellant to suspend the procedure until 30 November 2023.
25. After several extensions of the suspension of the proceedings, RUSADA, on 21 March 2024, informed WADA, the Athlete and the CAS Court Office that it had received new evidence following the issuance of the Appealed Decision. RUSADA considered that, based on this new evidence, the available evidence was sufficient to continue the Results Management procedure in this case. RUSADA further stated in its letter:

*“There is no provision within the relevant Anti-Doping Rules for RUSADA to unilaterally withdraw the Decision and resume the Results Management process. CAS Rule 57 does permit the Decision to be annulled and for the matter to be referred back to RUSADA.*

*In the circumstances, RUSADA therefore, in relation to WADA's Statement of Appeal, says that -*

*1. RUSADA agrees that the Appeal is admissible.*

2. *RUSADA agrees that the Decision may be set aside.*

*RUSADA respectfully invites CAS to order that the Decision is annulled and that the matter is remitted back to RUSADA, so that the Results Management process may be completed by resolution of the Charge”.*

26. Also on 21 March 2024, the CAS Court Office acknowledged receipt of RUSADA’s letter of the same day and invited the Appellant and the Second Respondent to comment on RUSADA’s explanations and its requests, no later than 26 March 2024.
27. On 27 March 2024, within an extended deadline, WADA informed the CAS Court Office that it “[had] no objection to RUSADA’s request, provided that WADA’s deadline to file the Appeal Brief remains suspended until the requested CAS order is issued (and subsequently RUSADA’s Results Management process is completed by way of a final decision on the Athlete’s anti-doping rule violation)”.
28. Also on 27 March 2024, the CAS Court Office provided WADA’s email to the Respondents and further noted that the Second Respondent had not provided his comments, within the deadline granted by the CAS Court Office. The CAS Court Office advised the Parties that further information would follow in due course, and confirmed that the Appellant’s deadline to file its Appeal Brief would remain suspended until further notice.
29. On 14 June 2024, the CAS Court Office informed the Parties that, pursuant to Article R54 of the Code and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the Arbitral Tribunal appointed to decide the case was constituted as follows:
- Sole Arbitrator: Prof. Dr An Vermeersch, Professor in Heusden, Belgium.
30. On 2 July 2024, the CAS Court Office invited WADA and RUSADA, on behalf of the Sole Arbitrator, to clarify whether the following understanding of the Sole Arbitrator of WADA’s and RUSADA’s position of 27 March 2024 and 21 March 2024, respectively, was correct:

*“WADA and RUSADA agree on the following elements:*

*1) The Appeal filed by WADA on 16 August 2023 against the Russian Anti-Doping Agency (RUSADA) (the “First Respondent”) and Mr Mikhail Chekmaryev (the “Second Respondent”) with respect to the decision no. VD-3222 rendered by RUSADA on 4 July 2023 is admissible;*

*2) The decision no. VD-3222 rendered by RUSADA on 4 July 2023 is set aside and the case is referred back to RUSADA so that RUSADA’s Results Management process can be completed by way of a final decision on the Athlete’s anti-doping rule violation;*

*3) The Sole Arbitrator to decide on the costs.*

*The Sole Arbitrator further understands that WADA and RUSADA agree that in the meantime, WADA's deadline to file the Appeal Brief remains suspended until further notice and that in case, prior to the submission of any Appeal Brief, a CAS award should be issued or the present proceedings be terminated otherwise, the present proceedings may, depending on the circumstances, being finalized without any possibility of WADA to file an Appeal Brief".*

31. In the same letter, the Parties were informed that upon receipt of WADA's and RUSADA's comments, or otherwise expiry of the mentioned time-limit, the Second Respondent would be invited to comment.

32. On 9 July 2024, RUSADA, referring to the CAS Court Office letter of 2 July 2024, informed the CAS Court Office as follows:

*"1. RUSADA agrees that the appeal filed by WADA is admissible.*

*2. As per RUSADA's letter dated 21 March 2024, RUSADA agrees that the decision referred to in CAS's letter can be annulled and the matter remitted back to RUSADA so that the Results Management process initiated prior that decision being made may resume.*

*3. The Sole Arbitrator may rule on costs without further submission from the parties, unless the Sole Arbitrator requests such submissions.*

*RUSADA agrees that the deadline for submission of an Appeal Brief by WADA may remain suspended until further notice".*

33. On 11 July 2024, WADA, also referring to the CAS Court Office letter of 2 July 2024, confirmed the Sole Arbitrator's understanding of WADA's and RUSADA's position, *"including that a CAS Award can be rendered without WADA filing an Appeal Brief to the extent that the Appealed Decision is set aside and the matter is referred back to RUSADA for completion of its Results Management, as per item 2 of your letter".*

34. On 16 July 2024, the CAS Court Office duly noted WADA's and RUSADA's comments, and on behalf of the Sole Arbitrator, invited the Second Respondent to comment. Furthermore, the Parties were informed that in light of the fact that previously, it was not possible to send any courier to Russia, and as therefore, thus far all documents had been transmitted to the Second Respondent exclusively by email, out of an abundance of caution, and without prejudice to the efficacy of the prior communications by the CAS Court Office to the Second Respondent, the Second Respondent would receive a hard copy of the full case file (without Exhibit 3 and 4 to the Request for Arbitration).

35. On 1 August 2024, the Athlete confirmed receipt of the "case materials" by courier and informed the CAS Court Office as follows:

*"I agree that the case will be returned to RUSADA for processing the results and making a final decision".*

36. On 22 August 2024 (WADA), on 29 August 2024 (the Athlete) and on 4 September 2024 (RUSADA), the Parties returned signed copies of the Order of Procedure, which had been issued by the CAS Court Office on behalf of the Sole Arbitrator.

#### **IV. SUBMISSION OF THE PARTIES**

##### **A. The Appellant's Position**

37. WADA argues that RUSADA erred in making the Appealed Decision. In its Statement of Appeal, WADA asserts that the evidence of Use of a prohibited substance by the Athlete is compelling.

38. In its Statement of Appeal, WADA requested the CAS to rule as follows:

*“1. The appeal of WADA is admissible.*

*2. The decision dated 4 July 2023 rendered by RUSADA in the matter of Mikhail Chekmaryev is set aside.*

*3. Mikhail Chekmaryev is found to have committed an anti-doping rule violation pursuant to Article 2.2 of the 2012 All-Russian Anti-Doping Rules.*

*4. Mikhail Chekmaryev is sanctioned with a two-year period of ineligibility starting on the date on which the CAS award enters into force.*

*5. The arbitration costs shall be borne by RUSADA.*

*6. WADA is granted a significant contribution to its legal and other costs”.*

39. As described under section III. (Proceedings before the Court of Arbitration for Sport), upon WADA's request, the deadline for WADA to submit its Appeal Brief has been suspended several times and until the date of the present award. WADA did not file an Appeal Brief in the course of the proceedings.

40. As further described under section III. (Proceedings before the Court of Arbitration for Sport), when RUSADA (in its letter of 21 March 2024) indicated that it had received new evidence, on the basis of which it considered that the available evidence was sufficient to continue the Results Management procedure and consequently requested the CAS to set aside the Appealed decision, WADA agreed (in its email dated 27 March 2024 and confirmed in its email dated 11 July 2024) that *“a CAS Award could be rendered without WADA filing an Appeal Brief to the extent that the Appealed Decision is set aside and the matter is referred back to RUSADA for completion of its Results Management”*.

41. The Sole Arbitrator therefore understands that WADA requests that the Appealed Decision be set aside and that the matter is referred back to RUSADA for completion of its Results Management.

**B. The First Respondent's Position**

42. As described under section III. (Proceedings before the Court of Arbitration for Sport), RUSADA requests the CAS to set aside the Appealed Decision as, on the basis of new evidence received following the issuance of the Appealed Decision, it considers that the available evidence is now sufficient to continue the Results Management procedure.

**C. The Second Respondent's Position**

43. The Second Respondent (in its email dated 1 August 2024) agreed that the case will be returned to RUSADA for processing the results and making a final decision.

**V. JURISDICTION**

44. Article R47 of the Code provides the following:

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

45. WADA relies on Article 15.1.2 and Article 15.2.3 of the 2021 All-Russian Anti-Doping Rules (the “2021 Russian ADR”), which provide that WADA has a right of appeal against the Appealed Decision directly to CAS if no other party has appealed the final decision within RUSADA’s process. It follows from the entire context of the proceedings that no other party has appealed the Appealed Decision.
46. The Sole Arbitrator therefore finds that CAS holds jurisdiction to decide on the present matter. Moreover the Sole Arbitrator notes that the jurisdiction of CAS is not contested by either the First Respondent or the Second Respondent, and is confirmed by the Appellant’s and the First Respondent’s position in the course of the proceedings. As outlined above, the Parties signed and returned the Order of Procedure, issued by the CAS Court Office on behalf of the Sole Arbitrator which noted, inter alia, that: (a) WADA relies on Rule 15.1.2 and 15.2.3 of the 2021 Russian ADR as conferring jurisdiction on the CAS; and (b) the jurisdiction of the CAS was not contested by any of the Parties and was confirmed by the signature of the Order of Procedure.
47. Pursuant to Article R57 of the Code, the Sole Arbitrator has full power to review the facts and the law of this case.

**VI. ADMISSIBILITY**

48. Article R49 of the Code provides the following :



*“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”.*

49. Article 15.2.3.4 of the 2021 Russian ADR states that:

*“[t]he time to file an appeal by WADA shall be the later of:*

*(a) Twenty-one (21) days from the expiry of the time for filing an appeal by other parties*

*(b) Twenty-one (21) days after WADA’s receipt of a complete file relating to the decision”.*

50. The IPC, which has a right of appeal within twenty-one days (Article 15.2.3 and Article 5.2.3.3 of the 2021 Russian ADR), received the Appealed Decision on 5 July 2023. Accordingly, the IPC’s time limit to appeal expired at the earliest on 26 July 2023. As a result, under Article 15.2.3.4(a) of the 2021 Russian ADR, WADA’s time limit to appeal could not have been earlier than 16 August 2023.

51. WADA filed its Statement of Appeal timely on 16 August 2023. The appeal complied with all other requirements of Article R48 of the Code, including the payment of the CAS Court Office fee.

52. The First Respondent confirmed the admissibility of the appeal whereas the Second Respondent has not contested the admissibility of the appeal.

53. The Sole Arbitrator, therefore, confirms that WADA’s appeal is admissible.

## **VII. APPLICABLE LAW**

54. Article R58 of the Code provides as follows:

*“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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*

55. RUSADA rendered the Appealed Decision in application of Article 5.4 of the International Standard for Results Management (“ISRM”) and under the 2021 Russian ADR.

56. As pursuant to Article 1.1. of the 2021 Russian ADR, *“The Russian Anti-Doping Rules (hereinafter, the Rules) have been developed pursuant to Federal Law No. 329-FZ dated 4th December 2007 “On Physical Culture and Sports in the Russian Federation”*

(hereinafter, the Federal Law) and to the provisions of the International Convention against Doping in Sport adopted by the General Conference of UNESCO at the 33rd session in Paris on 19th October 2005 (Collection of Legislation of Russian Federation, 2007, No. 24, Art. 2835) and ratified by the Federal Law No. 240-FZ dated 27<sup>th</sup> December 2006 “On Ratification of the International Convention against doping in Sport” (Collection of Legislation of Russian Federation, 2007, No. 1, Art. 3) (hereinafter, the Convention), the 2021 World Anti-Doping Code approved by the World Anti-Doping Agency on 7<sup>th</sup> November 2019 (hereinafter, the Code), and International Standards of the World Anti-Doping Agency (hereinafter, WADA)”, the World Anti-Doping Code 2021 (“2021 WADC”) is also to be considered.

57. The Sole Arbitrator notes that the 2013 WADA Prohibited List, the 2012 Russian ADR and the 2009 WADC apply to the substance of the matter because the Athlete provided his sample in 2013.
58. The 2021 Russian ADR, the ISRM and the 2021 WADC are applicable to the procedural aspects of this appeal.

### VIII. MERITS

59. Considering WADA’s and RUSADA’s submissions, the Sole Arbitrator observes that both the Appellant and the First Respondent are of the position and request that the Appealed Decision should be set aside and the matter should be referred back to RUSADA for completion of its Results Management. Moreover the Sole Arbitrator notes that the Second Respondent agrees with such approach and decision.
60. According to Article R57 of the Code, “*The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance*”.
61. The Sole Arbitrator observes that the Appealed Decision was rendered on the basis of Article 5.4 of the ISRM which states that: “*If at any point during Results Management up until the charge under Article 7, the Results Management Authority decides not to move forward with a matter, it must notify the Athlete or other Person (provided that the Athlete or other Person had been already informed of the ongoing Results Management) and give notice (with reasons) to the Anti-Doping Organizations with a right of appeal under Code Article 13.2.3.*”.
62. The Sole Arbitrator further notes that it follows from RUSADA’s letter dated 21 March 2024, that RUSADA considers the reasons stated in the Appealed Decision as no longer valid as it had received new evidence following the issuance of the Appealed Decision.
63. Moreover, the Sole Arbitrator notes that WADA explicitly requests the CAS to annul the Appealed Decision and to remit the matter back to RUSADA for completion of its Results Management in the case. Likewise RUSADA, in its letter of 21 March 2024 and confirmed in its email of 9 July 2024, requests CAS to annul the Appealed Decision and to refer the matter back to RUSADA for completion of its Results Management in the

case. The Sole Arbitrator further observes that the Second Respondent agrees to such approach.

64. The Sole Arbitrator has carefully considered the Parties' positions as well as all elements in the file, and finds no grounds to object to WADA's and RUSADA's request, which is seconded by the Second Respondent.
65. In light of these elements, the Sole Arbitrator confirms that the Appealed Decision is set aside and refers the case back to RUSADA, being the first instance.
66. The above conclusion makes it unnecessary and even impossible for the Sole Arbitrator to consider the substance of this case. Accordingly, and or the avoidance of doubt, WADA's requests under items 3 and 4 of WADA's Statement of Appeal are considered moot.

#### **IX. COSTS**

(...).

\* \* \* \* \*

## **ON THESE GROUNDS**

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

1. The Appeal filed by the World Anti-Doping Agency on 16 August 2023 against the Russian Anti-Doping Agency and Mr Mikhail Chekmaryev with respect to the decision no. VD-3222 rendered by the Russian Anti-Doping Agency on 4 July 2023 is upheld.
2. The decision no. VD-3222 rendered by the Russian Anti-Doping Agency on 4 July 2023 is set aside and the case is referred back to the Russian Anti-Doping Agency so that the Russian Anti-Doping Agency's Results Management process can be completed by way of a final decision on the Athlete's anti-doping rule violation.
3. (...).
4. (...).
5. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland  
Date: 25 February 2025

**THE COURT OF ARBITRATION FOR SPORT**

**An Vermeersch**  
Sole Arbitrator