CAS 2021/A/8126 Russian Anti-Doping Agency v. Rodion Bochkov
CAS 2021/A/8152 World Anti-Doping Agency v. Russian Anti-Doping Agency & Rodion Bochkov

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 proceedings between

World Anti-Doping Agency, Montreal, Canada

Represented by Mr. Ross Wenzel, WADA's General Counsel, and Mr. Nicolas Zbinden, Attorney-at-Law with Kellerhals Carrard in Lausanne, Switzerland.

- Appellant -

Russian Anti-Doping Agency, Moscow, Russia

Represented by Mr. Graham Arthur, Attorney-at-Law with GM Arthur in Liverpool, United Kingdom.

- First Respondent -

and

Rodion Bochkov, Enem, Republic of Adygeya, Russia

Represented by Mr. Artem Patsev and Ms. Anna Antseliovich, Attorneys-at-Law with CleverConsult in Moscow, Russia.

- Second Respondent -

I. PARTIES

1. World Anti-Doping Agency ("WADA" or the "Appellant") is a private law foundation constituted under Swiss Law to promote and coordinate at international level the fight against doping in sport. WADA has its registered seat in Lausanne, Switzerland, and its headquarters in Montreal, Canada.

2. Russian Anti-Doping Agency ("RUSADA" or the "First Respondent") is the national anti-doping organization of Russia, with seat in Moscow, Russia.

3. Mr. Rodion Bochkov (the "Athlete" or the "Second Respondent") is a Russian weightlifter, with domicile in Enem, Republic of Adygeya, Russia.

II. BACKGROUND FACTS AND THE PROCEEDINGS BEFORE THE RUSADA DISCIPLINARY ANTI-DOPING COMMITTEE

4. The elements set out below are a summary of the main relevant facts, as established on the basis of the written submissions of the Parties, the exhibits produced as well as the evidence examined in the course of the proceedings. Additional facts and allegations may be set out, where relevant, in connection with the ensuing legal discussion. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, in its Award reference is made only to the submissions and evidence the Sole Arbitrator considers necessary to explain its reasoning.

5. On 17 September 2015, the Athlete provided a urine sample (3916463) in an out-of-competition doping control, the analysis of which was reported as negative at that time.

6. This sample 3916463 was re-analyzed in 2020 by the WADA accredited laboratory in Lausanne (the "Laboratory").

7. On 3 April 2020, the analysis of Sample A3916463 resulted in the Laboratory reporting an Adverse Analytical Finding ("AAF") for M3 metabolite of dehydrochloromethyltestosterone ("DHCMT"), which is listed as an anabolic agent under section S1 of the WADA 2015 Prohibited List (the "Prohibited List"). DHCMT is a Non-Specified Substance within the Prohibited List and its use is prohibited at all times.

8. On 19 May 2020, RUSADA notified the AAF to the Athlete and informed him *inter alia* that (i) it could represent a potential Anti-Doping Rule Violation ("ADRV") of Presence of Prohibited Substance or its Metabolites or Markers pursuant to Article 2.1 of the All-Russian Anti-Doping Rules ("ADR"), (ii) he had the right to submit a request

for the B Sample analysis and to ask for copies of the documents on the results on the analysis of the A and B samples and (ii) he was provisionally suspended.

9. The Athlete did not request the analysis of his B sample.

10. On 26 May 2020, the Athlete sent a communication to RUSADA in which *inter alia* he (i) stated that he had never used any prohibited substance intentionally and *"did not admit the sanction of 4-year period, because I do not feel guilty*", (ii) requested a hearing being held in his case, (iii) asked to request to the Laboratory the concentration of the detected metabolite in his sample for the purpose of clearing the facts of the case, as well as if the metabolite was unique for dehydrochlormethyltestosterone and (iv) asked for the list of his doping tests.

11. On 9 June 2020, the Laboratory sent a letter to WADA on the concentration of the metabolite detected in the Athlete's sample which in the pertinent part reads as follows:

"[…] (DHCMT; "Turinabol") is a non-threshold substance, prohibited at all times. […]

Therefore, there is no requirement to quantify the concentration of the mentioned substance in sample code below. Consequently, the laboratory has applied a method that was developed for qualitative purposes and, other than having established that the mentioned substance is present in the sample at a concentration above the method's limit of detection, assignment of the absolute concentration of the analyte in the sample falls outside the intended purpose.

Taking these qualifications into account, an indicative estimation of the concentration is provided for information purposes only. The concentration of "Turinabol metabolite M3", was obtained by comparison of the response of the sample with the response of a positive quality control sample for the same substance and an internal standard analysed in the same sample batch. The indicative estimate for the concentration of the target compound in the sample obtained in this manner is approximately:

A3916463 *Turinabol M3 concentration ≈7 pg/mL*

Specific gravity 1.026"

12. On 11 June 2020, RUSADA informed the Athlete that it had received the concentration information from the Laboratory and that the concentration of DHCMT metabolite found in his Sample A3916463 was 7 pg/mL. In addition, a copy of the Athlete's doping tests available in ADAMS and RUSADA archives was provided to the Athlete.

13. On 22 June 2020, the Athlete's representatives requested RUSADA to provide the Doping Control Form for sample 3915519 collected from the Athlete on 11 July 2015 and all the data concerning sample A3916463 collected on 17 September 2015 that were entered to ADAMS after the analysis (in the form it was entered, stored in ADAMS and available for ADAMS users). The Athlete also asked RUSADA to clarify with the Laboratory *"if the detected metabolite (4-chloro-18-nor-17b-hydroxymethyl, 17a-methyl-5a-androst-13-en-3a-ol) unique for dehydrochlormethyltestosterone (parental substance) or any other substances could be parental for the detected by the Laboratory metabolite. If the reply is positive, please inform us what other substances could produce the metabolite (4-chloro-18-nor-17b-hydroxymethyl, 17a-methyl-5a-androst-13-en-3a-ol)."*

14. On 6 July 2020, RUSADA forwarded to the Athlete (i) a letter of the Laboratory concerning the metabolite detected in the Athlete's sample 3916463, (ii) a copy of the Doping Control Form of the Athlete's sample collected on 11 July 2015 and (iii) doping test information of sample 3916463. The letter of the Laboratory reads in the pertinent part as follows:

"An adverse analytical finding (AAF) was reported in this sample for4-chloro-18-nor-17b-hydroxymethyl, 17a-methyl-5a-androst-13-en-3a-ol), which is the most often associated as the most long term metabolite of dehydrochlormethyltestosterone (DHCMT; "ORAL Turinabol") and named as "metabolite M3" according to the publication by Sobolevsky and Rodchenkov from 2012. Due to structural similarity and metaboli (sic) *processes of the human body, the same exogenous compound can result from the administration of e.g. methylclostebol or chloromethylandrostenediol ("promagnon")[…].*

According to the 2015 International Standard of the List of Prohibited Substances and Methods, these both substances, similarly to DHCMT, are categorized as non-threshold substance, prohibited at all times […]."

15. On 7 July 2020, the Athlete's representatives requested to submit to the Laboratory "*what is the limit of detection for the initial screening and for the confirmation analytical testing procedure for the methodology used by the Laboratory for sample 3916463".*

16. On 9 July 2020, WADA sent a letter to RUSADA, which was forwarded to the Athlete, in the following terms:

"Pursuant to the International Standard for Laboratories, article 5.3.4.4.2.3 and the WADA Technical Document (TD) – TD2019LDOC, WADA-accredited laboratories are not required to produce method validation data – such as LOD information – or other evidence of method validation in any legal proceeding. To this end, LAD will maintain

a strict adherence to the ISL and the TD and not provide RUSADA or any other non-authorised entity with the LOD information.

That said, RUSADA may benefit from requesting LAD to provide the Laboratory Documentation Package (LDP) for sample 3916463 and any other sample currently subject of a RUSADA Results Management process. The LDP contains all necessary analytical data related to an AAF for an efficient Result Management process."

17. On 17 July 2020, the Athlete's representatives requested RUSADA (i) "*to request directly from Lausanne Laboratory the data about the LOD set out for the method developed and validated by Lausanne Laboratory and applied by the laboratory during re-checking sample No. 3916463"* and (ii) "*to request directly from Lausanne Laboratory the entire (continuous) package of documents on handling sample No. 3916463 (internal/external chain of custody) for the period of its existence that is from September 17 2015 till now."*

18. On 23 November 2020, RUSADA communicated to the Athlete that as far as chain of custody documents were concerned, these should be properly requested by seeking a copy of the relevant Laboratory Documentation Package, and that the Laboratory was empowered to report an AAF at any level, without reference to any Limit of Detection ("LOD").

19. On 16 December 2020, the Athlete submitted his position on the matter at stake to the RUSADA Disciplinary Anti-Doping Committee ("DADC") and requested the DADC to establish that no ADRV was committed by him or alternatively, that if it was found that the Athlete committed an ADRV, a reprimand and not a period of ineligibility was imposed on him. Section IV of the aforementioned submissions reads as follows:

"IV Conclusions

52. Hereby Rodion Bochkov reaffirmed, that he truly refused to conduct B Sample analysis. The fact of the detection of a prohibited substance in the athlete`s sample constitutes an anti-doping rules violation under art. 2.1 of the Rules.

53. RAA RUSADA could not establish the fact of the anti-doping rules violation by Rodion Bochkov as the amount of the prohibited substance detected in the Athlete`s sample is very small and RAA RUSADA has not provided the data on the Lausanne Laboratory`s limited (sic) *of detection for the methodology used to detect this substance, which clearly confirms the Athlete`s version on the false positive result.*

54. In case, the RAA RUSADA Disciplinary Anti-Doping Committee concludes that the fact of the antidoping rules violation by the Athlete has been established, than (sic) *Rodion Bochkov insists that his fault or negligence in the anti-doping rules violation*

was highly non-significant and, at the same time, Rodion Bochkov could establish how (how, under which circumstances) the prohibited substance entered his body following the balance of probability principle showing (according to the CAS interpretation) at the same time the proof of unlikeliness of the other (alternative) ways of the enter of the prohibited substance the Athlete`s body.

55. The abovementioned is the basis for the imposition of a reprimand with no period of ineligibility to the Athlete under art. 10.5.1.2 of the Rules."

20. On 27 May 2021, a hearing before the DADC took place.

21. On 27 May 2021, the DADC resolved that the Athlete did not commit an ADRV. DADC's decision reads in the pertinent part as follows:

"[…]

17. In this regard, the Committee agrees that the Athlete's request to provide information about Limit of Detection (LOD) is aimed at establishing the fact being important for full and fair proceedings on the case.

18. RUSADA has not provided information about the Limit of Detection (LOD) of the Laboratory.

19. Information was given to the Committee than (sic) *in the period preceding sample A3916463 and later after a small break, the following samples were collected from the athlete:*

- *3915519 of July 11, 2015*
- *3964406 of July 25, 2017*
- *3963938 of August 05, 2017*

20. No prohibited substances, its metabolites or markers of prohibited method were found in the above mentioned samples.

21. No information about re-checking the results of the study of these samples was provided to the Committee.

22. Based on the presumption that in its work, the laboratory is guided by the principles of independence and professionalism, and on the athlete's presumption of innocence, the Committee believes that unless it is proved otherwise, as of the period of collection of the samples preceding sample A3916463, there was no dehydrochlormethyltestosterone metabolite in athlete's body.

23. In the case of athlete Shilovski, the Committee was given summary note of August 05, 2020 received from WADA Intelligence INRS-InstitutArmand-Frappier, signed by laboratory director, professor Christiane Ayotte.

24. In that summary note, professor Christiane Ayotte gives the following conclusions which are relevant for the current case as well:

"It was shown that one-time intake of DHCMT by a male volunteer can be identified by metabolite MZ in trace amounts (2-3 picograms/ml) almost 7 months later, whilst one-time intake of 25 mg of methylclostebol can be found (but it is not confirmed) in similar very low amounts within the period from 12 to 16 months. Assuming that before December 2021, the athlete consumed on a daily basis, for example, doses of methylclostebol, it is possible that weak signal of MZ metabolite could still be detected – in very low amounts close to or below the limit of detection (5 picograms/ml or less) – in the urine sample collected 21 months later, especially if that sample was not diluted, it had normal density as it was in this case".

Then, in the same document:

"In conclusion, based on the episodic data of urine samples, it is impossible to make the conclusion about the dosage, frequency and intake time with some degree of uncertainty. Very weak signal seen at sample 2943800 because of the microscopic residual content, can be the result of using multiple "regular" dosages of methylclostebol, for example, before December 2021, but it is highly unlikely that this result was obtained as a result of a consumption of supplement with low level of contamination. The result of the test conducted in the period from December 2012 to September 2014, could have shed the light on the facts of this case, but as they are not present, it is impossible to interpret the results of sample of 2014 as a repeated intake".

25. In this regard, the samples preceding sample A3916463, should also have contained metabolite of dehydrochlormethyltestosterone. The concentration of metabolite should have been much higher than the concentration established by the Laboratory during repeated studies of sample A3916463.

26. Absence in the preceding samples of metabolite of dehydrochlormethyltestosterone causes reasonable doubts about the presence of dehydrochlormethyltestosterone in athlete's body.

27. Pursuant to art. 3.1.1. of All-Russian Anti-Doping Rules, adopted by Minister of Sport on June 18, 2015, which were valid at the period of the violation of the Anti-Doping requirements imputed to the athlete:

"The Anti-Doping Organization shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the Anti-

Doping Organization has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than mere balance of probability but less than proof beyond a reasonable doubt. Where the Code places the burden of proof upon the Athlete or other person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability."

28. Taking into account that:

- *The negligible concentration of metabolite is on the verge of authenticity, which significantly increases the probability of the false positive results of studying the sample;*
- *No information has been given to the Committee about the Limit of Detection (LOD) for initial (screening) and confirming analysis;*
- *The kinetics of the concentration of metabolite of dehydrochlormethyltestosterone in athlete's samples has not been disclosed;*
- *The Athlete's samples preceding sample A3916463, are "clean";*
- *In the initial study of sample A3916463, presence of metabolite of dehydrochlormethyltestosterone has not been established;*
- *Previously, the Athlete has not committed violations of anti-doping rules and requirements;*

The Committee concludes that RUSADA has not fulfilled the condition regarding the burden of proof pursuant to standard stipulated by article 3.1.1 of All-Russian Anti-Doping Rules.

29. In addition, the Committee takes into account that much time has passed from sample collection from the Athlete, which negatively impact the Athlete's capabilities of protecting his rights.

30. Under such circumstances, reduction of the burden of proof established by art. 3.1.1 of All-Russian Anti-Doping Rules, is even more unacceptable and would not correspond to the high standards of conducting anti-doping proceedings stipulated by the World Anti-Doping Code, and the practice of its application based on these standards.

31. The Committee decided to acknowledge Rodion Bochkov as not having committed violations of anti-doping rules and requirements."

22. On 21 June 2021, the aforementioned decision was formally received by RUSADA.

23. On 22 June 2021, WADA received copy of the referred decision.

24. On 6 July 2021, WADA requested the case file that led to the aforementioned DADC decision.

25. On 20 July 2021, RUSADA provided by email the elements of the case file to WADA.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION OF SPORT

26. On 12 July 2021, RUSADA filed a Statement of Appeal with the Court of Arbitration for Sport (the "CAS") against the Athlete with respect to the Decision No. 99/2021 rendered by the DADC on 27 May 2021 (the "Appealed Decision"). In its Statement of Appeal, which gave rise to the case *CAS 2021/A/8126*, RUSADA requested (i) the matter be submitted to a Sole Arbitrator, (ii) English be the language of the arbitration and (iii) an extension to file the Appeal Brief be granted, and submitted the following prayers for relief:

"RUSADA respectfully requests the Panel to:

a) Set aside Decision No. 99/2021 dated 27 May 2021.
b) Find that Mr. Bochkov has committed an Anti-Doping Rule Violation contrary to the ADR.
c) Impose a period of ineligibility of four (4) years in respect of such Anti-Doping Rule Violation as required by the ADR.
d) Order Mr. Bochkov to reimburse the Appellant its legal costs and other expenses.
e) Order Mr. Bochkov to bear the costs of the arbitration"

27. On 20 July 2021, the CAS Court Office acknowledged receipt of this Statement of Appeal, sent it to the Athlete and invited him to comment, *inter alia*, on the request for term extension made by the RUSADA in its Statement of Appeal, the choice of English as language of the arbitration and the submission of the case to a Sole Arbitrator.

28. On 9 August 2021, the CAS Court Office, in view of the absence of any communication from the Athlete in this respect, granted the term extension requested by RUSADA to file its Appeal Brief.

29. Also on 9 August 2021, WADA filed a Statement of Appeal with the CAS against the Athlete with respect to the Appealed Decision. In its Statement of Appeal, which gave rise to the case *CAS 2021/A/8152*, WADA requested (i) the matter be submitted to a Sole Arbitrator, (ii) English be the language of the arbitration and (iii) the appeal be consolidated with the one filed by RUSADA which is the object of the proceeding CAS *2021/A/8126*. WADA's request for relief was the following:

"WADA respectfully requests the Panel to rule as follows:

1. *The appeal of WADA is admissible.*
2. *The decision rendered on 27 May 2021 by the Disciplinary Anti-Doping Committee of RUSADA in the matter of Rodion Bochkov is set aside*
3. *Rodion Bochkov is found to have committed an anti-doping rule violation.*
4. *Rodion Bochkov is sanctioned with a four-year period of ineligibility starting on the date on which the CAS award enters into force. Any period of provisional suspension or ineligibility effectively served by Rodion Bochkov before the entry into force of the CAS award shall be credited against the total period of ineligibility to be served.*
5. *All competitive results obtained by Rodion Rochkov from and including 17 September 2015 are disqualified, with all resulting consequences (including forfeiture of medals, points and prizes).*
6. *The arbitration costs shall be borne by the Respondents jointly and severally.*
7. *WADA is granted a contribution to its legal and other costs."*

30. On 18 August 2021, the CAS Court Office acknowledged receipt of the Statement of Appeal in the case *CAS 2021/A/8152*, sent it to the Athlete and RUSADA and invited them to comment, *inter alia*, on the request for consolidation of the proceedings with the case CAS 2021/A/8126, the choice of English as language of the arbitration and the submission of the case to a Sole Arbitrator.

31. On 19 August 2021, the CAS Court Office, in view of the absence of any communication from the Athlete in this respect, informed that it would be for the President of the CAS Appeals Arbitration Division, or her Deputy, to decide on the number of arbitrators dealing with the case *CAS 2021/A/8126*.

32. On 19 August 2021, WADA requested for an extension of the deadline to file its Appeal Brief in the case *CAS 2021/A/8152*.

33. On 20 August 2021, the CAS Court Office invited the Athlete and RUSADA to comment on the request for term extension to file the Appeal Brief made by the WADA in the proceeding *CAS 2021/A/8152*.

34. On 25 August 2021, RUSADA's counsel communicated to the CAS Court Office that it did not object to the term extension requested by WADA and stated that it may be well that the proceedings *8126* and *8152* could be consolidated, but also that at that time he was not in a position to advise RUSADA as to the Statement of Appeal in the proceeding *CAS 2021/A/8152*.

35. On 26 August 2021, RUSADA requested for an extension to file its Appeal Brief in the proceedings *CAS 2021/A/8126*.

36. On 26 August 2021, the CAS Court Office noted that the Athlete did not object to the request for deadline extension to file the Appeal Brief in the case *CAS 2021/A/8152* and granted it.

37. On 30 August 2021, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division had decided to submit the case *CAS 2021/A/8126* to a Sole Arbitrator.

38. On 31 August 2021, the Athlete's counsel communicated to the CAS Court Office that the Athlete agreed to (i) submit the cases *CAS 2021/A/8126* and *CAS 2021/A/8152* to a Sole Arbitrator, (ii) the consolidation of the aforementioned cases and (iii) the extension of the deadlines for RUSADA and WADA to file their respective Appeal Briefs.

39. Also on 31 August 2021, the CAS Court Office informed that (i) unless RUSADA objected to it by 1 September 2021, the proceedings *CAS 2021/A/8126* and *CAS 2021/A/8152* would be consolidated and (ii) the term extension requested by RUSADA to file its Appeal Brief was granted.

40. On 3 September 2021, RUSADA communicated to the CAS Court Office *inter alia* that it accepted the consolidation of the proceedings CAS *2021/A/8126* and CAS *2021/A/8152*.

41. On 9 September 2021, CAS Court Office informed the Parties that an extension to file its Appeal Brief in the case *CAS 2021/A/8152* until 20 September 2021 was granted to WADA.

42. On 16 September 2021, the CAS Court Office informed that an extension to file its Appeal Brief in the cases *CAS 2021/A/8126* and *CAS 2021/A/8152* until 24 September 2021 was granted to RUSADA in light of the other Parties' agreement in this respect.

43. On 21 September 2021, the CAS Court Office communicated to the Parties that the proceedings *CAS 2021/A/8126* and *CAS 2021/A/8152* were consolidated in accordance with Article R52.5 of the CAS Code.

44. On 24 September 2021, RUSADA filed its Appeal Brief, seeking the following relief:

"148. RUSADA respectfully requests that –

148.1 The Decision be set aside.

148.2 Mr. Bochkov be found to have committed an Article 2.1 anti-doping rule violation contrary to the ADR, with the appropriate sanction being a four-year period of ineligibility, with credit being applied in respect of the provisional suspension.

148.3 The conditions applicable to the period of Ineligibility should be those as specified in ADR Article 10.12.1.

148.4 Costs including the costs of the consolidated arbitration and a contribution towards legal costs be awarded to RUSADA in accordance with Rule 64.4 and Rule 64.5."

45. On 24 September 2021, WADA filed its Appeal Brief, seeking the following relief:

"WADA respectfully requests the Panel to rule as follows:

1. *The appeal of WADA is admissible.*
2. *The decision rendered on 27 May 2021 by the Disciplinary Anti-Doping Committee of RUSADA in the matter of Rodion Bochkov is set aside.*
3. *Rodion Bochkov is found to have committed an anti-doping rule violation.*
4. *Rodion Bochkov is sanctioned with a four-year period of ineligibility starting on the date on which the CAS award enters into force. Any period of provisional suspension or ineligibility effectively served by Rodion Bochkov before the entry into force of the CAS award shall be credited against the total period of ineligibility to be served.*
5. *All competitive results obtained by Rodion Rochkov from and including 17 September 2015 are disqualified, with all resulting consequences (including forfeiture of medals, points and prizes).*
6. *The arbitration costs shall be borne by the Respondents jointly and severally.*
7. *WADA is granted a contribution to its legal and other costs."*

46. On 27 September 2021, the CAS Court Office invited the Athlete to file his Answer to the Appeal Briefs filed by WADA and RUSADA.

47. On 30 September 2021, the Athlete requested an extension to file his Answer until 28 November 2021.

48. On 1 October 2021, RUSADA sent an email to the CAS Court Office informing that it did not object to the request for deadline extension made by the Athlete.

49. On 5 October 2021, WADA informed the CAS Court Office that it objected to the request for deadline extension made by the Athlete and that any extension it should not exceed 10 days in length.

50. On 6 October 2021, the CAS Court Office informed the Parties that in light of WADA's objection, the issue of the request for extension to file the Answer until 28 November 2021 would be decided by the President of the CAS Appeals Arbitration Division, who finally decided to grant an extension of 20 days.

51. On 18 October 2021, the Athlete filed a letter by virtue of which it requested the Sole Arbitrator to order WADA and RUSADA to produce (i) the full laboratory documentation package for the analysis of the Athlete's sample A3916363 conducted by the Laboratory, (ii) the DADC's decision in the case of the athlete Ms. Ekaterina Vlasova.

52. On 20 October 2021, the CAS Court Office invited WADA and RUSADA to file the documents requested by the Athlete or to otherwise provide their comments on the requests made by the Athlete, and informed the Parties that the Athlete's deadline to file his Answer was suspended until further notice.

53. On 26 October 2021, WADA filed a letter in which it replied to the request for production of documents made by the Athlete, in the sense of affirming that there is no laboratory documentation package on the Athlete's sample in WADA's control or possession and that in any event, it was noted that the Athlete had not requested it in the proceedings of instance. With the same letter, WADA provided to the file the Russian language decision on the Vlasova case that was notified to WADA by RUSADA. Additionally, WADA also produced to the file a letter of the International Testing Agency ("ITA") dated 25 October 2021 by virtue of which ITA had informed the Athlete (i) that he had been tested positive for the metabolite of DHCMT in an out-of-competition test conducted by the International Weightlifting Federation ("IWF") on 6 September 2021 (the "2021 Sample") and (ii) about a potential ADRV of Use of Prohibited Substances (mesteronole, metenolone and oxandrolone) in 2012 based on the information of the LIMS Database obtained by WADA from the Moscow Anti-Doping Laboratory in 2019, being the Athlete provisionally suspended from the date of such ITA's letter.

54. On 29 October 2021, the Athlete filed a letter commenting on WADA's letter of 26 October 2021. In essence, the Athlete noted that the document on the Vlasova case enclosed by WADA to its letter was not the reasoned decision of such case and that this should be in the possession of RUSADA, and explained the reasons why he deemed it necessary to have access to the Laboratory Documentation Package at that stage, in spite of not having requested it in the first instance.

55. On 16 November 2021, on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to decide the present dispute had been constituted as follows:

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

56. On 23 November 2021, RUSADA communicated to the CAS Court Office that (i) the Laboratory Documentation Package requested by the Athlete had been provided to him and (ii) it had requested consent from Ms. Ekaterina Vlasova to share a copy of the decision requested by the Athlete, but Ms. Vlasova failed to provide such consent.

57. On 24 November 2021, the CAS Court Office invited WADA to provide a copy in English of the exhibit in Russian provided with its letter of 26 October 2021.

58. On 29 November 2021, the CAS Court Office sent a letter to the Parties in which (i) it was noted that RUSADA had affirmed having provided the Laboratory Documentation Package to the Athlete, so unless the latter denied having received it, the Sole Arbitrator considered that no order for production of this documentation was to be issued, (ii) it was pointed out that the Athlete failed to duly explain the relevance of the Vlasova decision for the case at hand and rejected the request for production of such document and (iii) the ITA letter of 25 October 2021 produced by WADA with its letter of 26 October 2021 was admitted to the file given that (i) the letter is dated after WADA's Appeal Brief and neither RUSADA nor the Athlete opposed to such admission.

59. On 1 December 2021, WADA provided the translation into English of the document in Russian attached to its letter of 26 October 2021.

60. On 20 December 2021, the Athlete sent an email to the CAS Court Office which in the pertinent part reads as follows:

"We hereby inform you that the Athlete has contacted Ms. Vlasova directly and received the latter's consent to use the Vlasova decision in the present CAS proceeding. Enclosed is the text of the decision of the RUSADA Disciplinary Anti-Doping Committee in regard of Ms. Vlasova and its translation into English. The Respondent will provide later the reasons for including the decision into the case file (and its relevancy to this case) in his Answer brief.

Additionally, the Respondent wishes to inform the Sole Arbitrator and the parties that he has consulted with experts regarding the Laboratory Documentation Packages obtained for both the 2015 and 2021 samples and has no plans to pursue a line of defense based on possible departures from the International Standard for Laboratories. After receiving the information about positive sample 2021 the Respondent believes that the source of the prohibited substance in both samples was a contaminated product.

Due to the de novo nature of the CAS proceedings, he is currently investigating a new version and is requesting additional time to do this by extending the deadline to provide his Answer Brief till 31 January 2022. Such extension could be explained by the fact

that, firstly, the Respondent (the Athlete) plans to conduct research/es of food products, what requires some sufficient time, and secondly, to the fact that 31 December-9 January are declared public holidays in Russia, so it will be impossible even to prepare the translation of the received documents.

As the Athlete is now provisionally suspended by the ITA based on the adverse analytical finding on his sample taken in September 2021, he is a person interested in the first place in a speedy proceeding and there will not be any negative consequences of such extension for other athletes and/or the anti-doping organizations.

In the light of the above the Respondent kindly asks to extend the deadline to file his Answer Brief till 31 January 2022."

61. On 20 December 2021, RUSADA and WADA were invited to state their position on the request for extension to file the Answer made by the Athlete in his email of the same date. WADA opposed to such extension but mentioned it would accept a final extension until 14 January 2022, while RUSADA left to the Sole Arbitrator to decide as to the appropriate timeframe for the service of the Answer by the Athlete.

62. On 29 December 2021, the Athlete filed a letter in which he insisted on the request for extension to file the Answer until 31 January 2021, which in the pertinent part reads as follows:

"[…] the Athlete is currently provisionally suspended by the ITA (and he obeys the suspension very carefully) within the proceedings opened by the ITA against him in October 2021 ("the ITA proceedings"). Given that the ITA proceedings are now suspended (unilaterally by the ITA) pending resolution of the cases of reference, there will be no adverse inference both to RUSADA and WADA (and to the ITA as well) if the Athlete's deadline to file is extended for any period of time. Thus, the Sole Arbitrator will note that it is the Athlete himself who is the most motivated party to speed the things up in order to get an award as soon as it is practically possible, and he is doing his best (together with his team) to mount the defense and to file the Answer Brief with as much evidence, including the scientific evidence, as circumstances permit.

Second, the Athlete fails to understand the logic in WADA's and RUSADA's positions (in regard of the extension requested) when the latters mentioned that "there is no reason to justify another extension of more than a month to the Athlete's deadline". The reason that may amount to a basis for an extension do depend on the types of the additional efforts/actions made by a party who is seeking such an extension, and some other objective circumstances (like that festive periods, etc.). In other words, if an additional mass-spectra analysis or a production of some archive documents are required in a particular case, then a relevant extension should be granted to a party depending on the realistic expectations and the nature of the evidence sought. If denied,

such a party may invoke the fundamental legal principles and argue that its right for a fair trial has been violated.

In the case at stake the Athlete indeed believed bona fide that he has discovered the source of the prohibited substance through which it has found its way into the Athlete's system in 2015, and filed the relevant arguments and evidence within RUSADA proceedings. It is not the Athlete's fault that the members of the RUSADA DADC paid little (if any) attention to these arguments and substantiated their decision (which is challenged here) with some other arguments, including those never put forward by any party. The Sole Arbitrator will also note that the Athlete has been informed about the possible ADRV allegedly committed in 2015 five years later (in May 2020). Needless to say, it is almost impossible to find any evidence (still less a detailed one) in regard of the events taken place five years prior the Notification of a possible ADRV, so the Athlete's opportunities to build his defense have been severely limited by such a delay not attributable to him. Indeed, the Athlete has been absolutely sure that a nutritional supplement (BCAA complex by PRO "KING PROTEIN", Russia) contaminated with DHCMT was the source of the prohibited substance detected in his sample of 2015 in traces amount. All his "clean" samples provided before and after September 2015 confirmed such a conclusion as well. However, when a new Notice of Assertion was received in October 2021 in regard of the sample provided by the Athlete in September 2021 (while the Athlete stopped consuming BCAA complex by KING PROTEIN back in 2015) it became absolutely clear that some another source of contamination exists in 2021, and the same "another source" might also have existed in 2015. That being said, the Athlete started a new investigation in regard of the possible sources of contamination just after the careful expert analysis of the Laboratory Documentation Packages (LDPs) that have been provided to the Athlete in the end of November 2021 only. As the Athlete shares the same interest with the other parties to proceed with his case in a timely and legally correct manner, he sought some additional information from his investigative and expert team on the expected time frames when their work is completed. The expert said that the work is ongoing, and they expect the first results by 20-22 January 2022. So the Athlete reasonably assumes that the evidence may be translated into English and his Answer brief may be finalized by 31 January 2022, as respectfully requested before.

That being said, the Athlete respectfully maintains his kind request for the Sole Arbitrator to grant an extension to file the Answer Brief until 31 January 2022."

63. On 3 January 2022, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to grant the extension to file the Answer until 31 January 2022.

64. On 31 January 2022, the Athlete filed its Answer, seeking the following relief:

"1. The Appellant respectfully requests the Panel to rule as follows:

i. This answer is admissible.
ii. The decision rendered on 27 May 2021 by the RUSADA Disciplinary Anti-Doping Committee in relation of Mr. Bochkov is set aside.
iii. Mr. Bochkov is found to have committed an Anti-Doping Rule Violation but bears no fault or negligence and no period of ineligibility shall be imposed on him.

Alternatively

iv. Mr. Bochkov is found to have committed an Anti-Doping Rule Violation but bears no significant fault or negligence and 0-4 months period of ineligibility shall be imposed on him, with commencement of such period of ineligibility from the date of sample collection and disqualification of results obtained during the period of ineligibility, i.e. for 4 months ineligibility, i.e. for 4 months ineligibility all results are disqualified for the period 17.09.2015-17.01.2016
v. The arbitration costs shall be borne by RUSADA and WADA jointly and severally.
vi. Mr. Bochkov is granted a fair contribution to its legal and other costs incurred with these proceedings.

65. On 1 February 2021, the CAS Court Office sent a letter to the Parties in which, *inter alia*, invited them to inform whether they preferred a hearing to be held in this matter of for the Sole Arbitrator to issue an Award based solely on the Parties' written submissions.

66. On 8 February 2022, WADA expressed its preference for a hearing being held in this case.

67. On 9 February 2022, the Athlete expressed its preference for a hearing being held in this case.

68. On 24 February 2022, WADA filed an email in the following terms:

[…] WADA notes that the Athlete completely dropped his case that the positive was misreported (which was the sole basis for the Appealed Decision). The Athlete's primary case is now one of contamination, including a wholly new case of meat contamination, and he provides a study conducted by a Dr. Temerdashev to support his theory. For obvious reasons of right to be heard, WADA must be allowed to address these claims, including with expert evidence. WADA therefore requests leave to file a scientific report specifically responding to the Athlete's claim that the positive came from contamination and to call an expert at the hearing to address these matters.

In the interest of time, WADA already consulted with Prof. Ayotte, who has particular expertise in the area in her capacity as Director of the Montreal WADA-accredited laboratory. Having reviewed the Athlete's submission and the expert report in particular, Prof. Ayotte provided us with the attached report. WADA submits the short report herewith so that the Sole Arbitrator and the other parties can satisfy themselves that WADA is not seeking to introduce new matters, but only to respond to the Athlete's claims. Should the above request for leave be granted, WADA should file the attached report as evidence and would call Prof. Ayotte to testify to it."

69. On 28 February 2022, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a hearing in this case.

70. On 5 March 2022, the Athlete filed a letter in which *inter alia*, it welcomed the production of Prof. Ayotte's report to the file and asked to be allowed to file a short comment strictly limited to such report.

71. On 8 March 2022, the CAS Court Office invited WADA and RUSADA to file their positions on the Athlete's letter of 5 March 2022.

72. On 11 March 2022, WADA stated that it would have no objection to the Athlete filing a short counter-report by his expert Dr. Temerdashev limited to Prof. Ayotte's report content, but contended that the Athlete should not be allowed to file any submission.

73. On 16 March 2022, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to admit Prof. Ayotte's report filed by WADA and to grant the Athlete a deadline of 15 days to file his comments strictly limited to such report.

74. On 22 March 2022, after consulting the Parties on their availabilities, the CAS Court Office informed the Parties that the hearing would take place on 12 May 2022 by videoconference.

75. On 31 March 2022, the Athlete filed his comments on Prof. Ayotte's report, which in the pertinent part read as follows:

"

1. *As Professor Ayotte rightly noted, the method used by Dr. Temerdashev was not indeed validated – due to obvious time-saving reasons; however, right now his research group is carrying out the method validation using solid-phase extraction and dilute-and-shoot procedures.*

2. *According to Dr. Temerdashev, in order to prevent carry-over of the autosampler needle, it was carefully washed before and after sample injection. Considering the*

specificity of a bag mixer, sample bags cannot be used twice; in this case, cross-contamination risk was minimized too.

3. *Twenty samples were collected from different farmers, including big farms. These are major meat distributors in the South of Russia, and that was the reason why Dr. Temerdashev's team has chosen them. Dr. Temerdashev agrees with Prof. Ayotte that much more samples from all regions of Russia are needed for a detailed investigation and risk calculation, however the aim of this research financed by Mr Bochkov himself was to prove the possibility of consumption of contaminated meat sample in Russia, and in Mr Bochkov's home region (Republic of Adygeya) in particular. Unfortunately Mr Bochkov himself does not have ample financial and administrative resources to organize a full-scale research in all Russian regions. Expecting an individual Russian weightlifter, not a billionaire or a tycoon, to provide funding a first-class huge scientific research covering the majority of Russian regions seems truly unreasonable, if not bizarre.*

4. *The research conducted by Dr. Temerdashev indeed did not prove that DHCMT could be found in meat (in Russia). However, Oral-turinabol is an expensive anabolic agent, while testosterone and methandienone (found in the analyzed meat samples) are much cheaper. Mr Bochkov assumes that this is the main reason of wide usage of these two anabolic agents in farming. However, only 20 samples purchased in a close geographical area, and during one week have only been analyzed, so the selection of samples is relevantly small. Thus, the presence of some other anabolic agents (also prohibited in farming in Russia, just like testosterone and methandienone) in other farm products, in other regions or in other time may not be excluded: meat contamination is a well-known risk factor for the athletes [1-21], and the main purpose of this short study was to demonstrate the existence of this risk in Russia. Mr Bochkov also wants to emphasize that, being completely transparent, he nevertheless provided the full documentation in regard of the research conducted, and DHCMT absence was clearly declared in the analyzed samples. [...]."*

76. On 14 April 2022, the CAS Court Office informed the Parties that it had received the Order of Procedure signed by all of them.

77. On 11 May 2022, the CAS Court Office, on behalf of the Sole Arbitrator, provided the Parties with a tentative hearing schedule for their perusal.

78. On 11 May 2022, RUSADA requested confirmation that the Athlete would attend the hearing for cross-examination.

79. On 11 May 2022, the Athlete's counsels confirmed Mr. Bochkov's presence at the hearing and also stated that Ms. Anna Grisay, who had already issued a witness

statement in these proceedings, was also available to testify at the hearing if the Sole Arbitrator considered it necessary. Additionally, the Athlete proposed to adjust the examination of experts' schedule, in the sense of Prof. Ayotte declaring before Dr. Temerdashev, and produced additional documentation to be admitted to the file (some scientific articles on food contamination by anabolic steroids).

80. On 11 May 2022, WADA proposed that the order of their intervention proposed in the tentative hearing schedule was switched (WADA going first and RUSADA second), and also that the experts be heard together as part of a hot tub.

81. On 11 May 2022, the CAS Court Office, on behalf of the Sole Arbitrator, informed the Parties that (i) the Athlete's party statement would be included in the definitive hearing schedule, (ii) WADA would go first and RUSADA second in their respective turns of intervention, (iii) WADA and RUSADA were invited to express their position on (a) the attendance of Ms. Gritsay at the hearing as witness, (b) the Athlete's proposal to hear Prof. Ayotte first and Dr. Temersdashev thereafter and (c) the admission of the new documents enclosed to the Athlete's correspondence of 11 May 2022, and (iv) the Athlete and RUSADA were invited to express their position of WADA's proposal to hear the experts as part of a hot tub.

82. On 12 May 2022, the Sole Arbitrator, after having examined the Parties respective positions on the issues referred to in the CAS Court Office letter of 11 May 2022, decided that (i) given that none of the Parties had expressly requested the presence of Ms. Gritsay to be examined as witness at the hearing, she was not required to attend to the hearing, (ii) the experts were to be examined separately first and the order of their examination proposed in the Tentative Hearing Schedule (Dr. Temerdashev first, Prof. Ayotte second) was maintained, even if at the end of the examination of Prof. Ayotte, both experts would be requested to jointly appear at the hearing again so that the Parties and/or the Sole Arbitrator could make further questions or requests for clarification, and (iii) the documents produced by the Athlete with his email of 11 May 2022 were not admitted to the file for the reasons that would be explained in the Award. An amended Hearing Schedule was hence sent to the Parties.

83. The reason that led the Sole Arbitrator not to admit the documents produced by the Athlete with his email of 11 May 2022 is that in his view, the prerequisites of article R56 of the CAS Code for the admission of new exhibits to the file after the Appeal Brief and Answer were not met: the Parties did not agree to the production of these documents to the file and the Sole Arbitrator considered that no exceptional circumstances justifying the later production of such new exhibits existed. The documents that the Athlete intended to include in the file (scientific articles on food contamination by anabolic steroids published long time ago) could have been well produced to the file in

timely manner, and there is no ground that can validly explain having waited for the day before the hearing to do it.

84. On 12 May 2022, RUSADA filed a better quality copy of the document attached as Annex 2 to its Appeal Brief. WADA and the Athlete had no objection to its admission to the file.

85. On 12 May 2022, a hearing was held by video-conference in these proceedings. The Sole Arbitrator, Ms. Carolin Fischer, CAS counsel and the following persons attended the hearing:

- For WADA:
  - Mr. Ross Wenzel and Mr. Nicolas Zbinden, counsels.
  - Prof. Christiane Ayotte, expert.
- For RUSADA:
  - Mr. Graham Arthur, counsel.
- For the Athlete:
  - Mr. Artem Patsev and Ms. Anna Antseliovich, counsels.
  - Mr. Rodion Bochkov.
  - Mr. Azamat Temerdashev, expert.

After the Parties' opening statements, the experts Dr. Temerdashev and Prof. Ayotte, and thereafter the Athlete, were examined. Thereafter, 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.

IV. SUBMISSIONS OF THE PARTIES

86. 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. WADA

87. WADA's submissions, in essence, may be summarized as follows:

(i) DHCMT, which is a Prohibited Substance, was detected in the Athlete's sample.

(ii) DHCMT is a non-threshold substance, so any reported concentration of this substance constitutes an ADRV. The fact that no information was given to the DADC about the LOD for initial (screening) and confirming analysis is irrelevant as DHCMT is a non-threshold substance.

(iii) The fact that a prior sample of the Athlete did not return an AAF is of no avail for the purposes of these proceedings.

(iv) The Athlete's ADRV (presence of metabolite of DHCMT) was intentional. The Athlete could not even establish the origin of the Prohibited Substance found in his sample. The Athlete's explanations on the hypothesis of contaminated meat or contaminated supplement (BCAA-King Protein) are unsubstantiated and purely speculative. For the same reason, the scenarios of No Fault or Negligence and No Significant Fault or Negligence shall be also excluded.

(v) Therefore, the Athlete, in accordance with the ADR, shall be sanctioned with a 4-year period of ineligibility and his competitive results are to be disqualified from and including 17 September 2015.

B. RUSADA

88. RUSADA's submissions, in essence, may be summarized as follows:

(i) In the Appealed Decision, the DACC misconceived the significance and the nature of the LOD that applies to DHCMT. DHCMT is a non-threshold substance, so the amount, level or concentration of the substance identified in the Athlete's sample is irrelevant.

(ii) The fact that an Athlete's sample preceding the one which gave rise to the AAF was not tested positive is also irrelevant.

(iii) An ADRV of Presence of Prohibited Substance has been established and the Athlete did not prove that it was not intentional. The Athlete's theory on the consumption of a contaminated supplement or contaminated meat is a mere unproven speculation. No Fault or Negligence and No Significant Fault or Negligence scenarios shall be thus also excluded.

(iv) Therefore, the Athlete, in accordance with the ADR, shall be sanctioned with a 4-year period of ineligibility.

C. THE ATHLETE

89. The Athlete submissions, in essence, may be summarized as follows:

(i) After having revised the full Laboratory Documentation Package of the sample that gave rise to the AAF, the Athlete does not contest the laboratory analysis of said sample and admits the ADRV (presence of metabolite of DHCMT).

(ii) The Athlete believes that either contaminated meat or the consumption of the supplement BCAA-King Protein between 11 July 2015 (date of a "clean" sample taken from the Athlete) and 17 September 2015 (date of the collection of the Athlete's sample that gave rise to the AAF) and 17 September 2015, is the most likely source of the Prohibited Substance found in his sample.

(iii) The Athlete contends that in the area in which he lives (Republic of Adydeya, Russia), the use of anabolic steroids in animal husbandry is a common practice. As a weightlifter athlete, his diet should contain meat, which he eats on a daily basis and buys from his wife's parents and from local stores or farmers. Expert Dr. Temerdashev corroborated in a report made upon the Athlete's request based on the analysis of meat samples bought in the area of reference that positive meat samples containing anabolic steroids were observed.

(iv) The version of the contaminated meat never crossed the Athlete's mind in the proceedings before the DADC, in which he sustained that the source of the contamination was the consumption of "BCAA-King Protein". Only when the Athlete received the letter of ITA of 25 October 2021 in which a new AAF was communicated to him for presence of DHCMT's metabolite, he began investigating the meat contamination version.

(v) If the Athlete had taken even a single dose of DHCMT, the concentration of this substance found in his sample would have been much higher than the one arising out of the Doping Control Report.

(vi) Having established the origin of the Prohibited Substance, the Athlete contends that his conduct bore no Fault or Negligence and that no period of ineligibility is to be imposed on him.

(vii) In case the Sole Arbitrator considered that a scenario of No Fault or Negligence cannot be applied to Athlete, his fault should be qualified as "No Significant" and the period of ineligibility to be imposed on him should be fixed between 0 and 4 months in accordance with Article 10.5.1.2 of the ADR, the CAS jurisprudence on No Significant Fault or Negligence and the principle of proportionality. If the source of the contamination was the consumption of meat, the Athlete could not prevent the ingestion of the Prohibited Substance even with the utmost caution. If the source was the ingestion of BCAA-King Protein, a light degree of fault should

be applicable as he had been using this product for years, being it administered by team doctors at training camps and having the Athlete bought this product in specialized stores of sport nutrition for a long time, so the Athlete could have no idea that this supplement could contain a Prohibited Substance. Additionally, at the time of the doping control that finally gave rise to the AAF, the Athlete was only 21 years old, and he had limited knowledge of doping issues.

(viii) Credit for the period of provisional suspension already served by the Athlete shall be granted, and in addition, the period of Ineligibility should commence at an earlier date given that Delays not Attributable to the Athlete have taken place in this case. His sample taken in 2015 was received by the Laboratory for re-analysis on 3 May 2019 but was not analyzed until 3 April 2020, and the AAF was reported to him only on 19 May 2020. This delay is incomprehensible given that the problems of doping in weightlifting were reported in the McClaren Reports back in 2016.

(ix) As to the disqualification of results, the fairness exception established in Article 10.8 of the ADR should apply. The low concentration of the Prohibited Substance found in the Athlete's sample could not influence his sporting results. Therefore, his competitive results obtained after 17 September 2015 should remain untouched. The Athlete underwent 35 doping controls from 2015 to 2020, and in all of them he tested negative. In addition, the disqualification of results backdated to more than 6 years would result in a substantial loss for the Athlete, as he would have to return the prize monies. The Athlete should not be penalized in an excessive form for a decision of WADA/IWF/RUSADA not to proceed with re-testing and result management at an earlier date.

V. JURISDICTION

90. Article R47 of the CAS 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. […]"

91. Articles 13.2, 13.2.1, 13.2.2 and 13.2.3 of the ADR read in the pertinent part as follows:

"13.2. Appeals from Decisions Regarding Anti-Doping Rule Violations, Consequences, Provisional Suspensions, Recognition of Decisions and Jurisdiction.

The following decisions may be appealed exclusively as provided in Articles 13.2-13.6:

[…]

- *A decision that no anti-doping rule violation was committed.*

13.2.1. Appeals Involving International-Level Athletes or International Events

In cases arising from participation in an International Event or in cases involving International Level Athletes, the decision may be appealed exclusively to CAS.

13.2.3. Persons Entitled to Appeal

In cases under Articles 13.2.1, the following parties shall have the right to appeal to CAS:

[…]

d) the ADA and (if different) the National Anti-Doping Organization of the Person's country of residence or countries where the Person is a national or licence holder.

[…]

f) WADA"

92. The Appealed Decision, in its final part, reads as follows:

"Pursuant to article 13 of the All-Russian Anti-Doping Rules, the decision of the Disciplinary Anti-Doping Committee of RUSADA Anti-Doping Agency may be appealed to Court of Arbitration for Sport in the city of Lausanne, Switzerland, within 21 (twenty-one) days."

93. The Sole Arbitrator notes that (i) the Appealed Decision declares that the Athlete did not commit an anti-doping rule violation, (ii) the ADR stipulate that decisions of the kind involved herein are appealable to CAS, being WADA and RUSADA entitled to appeal these decisions in accordance with article 13.2.3 of the ADR, (iii) the Appealed Decision expressly mentions that it can be appealed before the CAS in accordance with article 13 of the ADR, and (iv) none of the Parties has objected CAS jurisdiction to deal with this case and all of them signed the respective Order of Procedure.

94. Therefore, in accordance with article R47 of the CAS Code and the provisions cited above, CAS has jurisdiction to decide the present matter.

VI. ADMISSIBILITY

95. 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."*

96. Article 13.6 of the ADR reads in the pertinent part as follows:

> *"The time to file an appeal to CAS shall be twenty-one days from the date of the receipt of the decision by the appealing party. […]*
>
> *The above notwithstanding, the filing deadline for an appeal filed by WADA shall be the later of:*
>
> *(b) Twenty-one days after the last day on which any other party in the case could have appealed, or*
> *(c) Twenty-one days after WADA's receipt of the complete file relating to the decision"*

97. RUSADA asserts (and the Athlete did not refute) that the grounds of the Appealed Decision were notified to RUSADA on 21 June 2021, and the Statement of Appeal was filed on 12 July 2021, hence within the 21-day term established by the applicable regulations.

98. WADA asserts (and the Athlete did not refute) that the elements of the case file were communicated to WADA on 20 July 2021, and the Statement of Appeal was filed on 9 August 2021, hence within the 21-day term established by the applicable regulations.

99. In addition, the Athlete has not contested in any way the admissibility of the appeals filed by RUSADA and WADA.

100. It follows that the appeals are admissible.

VII. APPLICABLE LAW

101. Article R58 of the CAS Code reads 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."

102. In the present case, all the Parties agreed that the present dispute shall be decided in accordance with the ADR (ed. 2015).

103. Taking the aforementioned into account, as well as the date in which the relevant facts took place, the Sole Arbitrator concurs with the aforementioned view of the Parties and will resolve this dispute according to the ADR (ed. 2015), in their condition of "applicable regulations" and of "rules of law chosen by the parties".

VIII. MERITS

A. Introduction

104. Before addressing the merits of the case, the Sole Arbitrator shall make reference to which is the scope of the present appeal and which are the issues to be resolved in this Award, in light of the Parties' submissions and requests for relief.

105. The Sole Arbitrator shall firstly point out that in the Appealed Decision, the DADC considered that RUSADA did not discharge the burden of proof as to the commission of an ADRV of Presence of Prohibited Substance and thus declared that no ADRV was committed by the Athlete, basically based on the following grounds:

- *"The negligible concentration of metabolite is on the verge of authenticity, which significantly increases the probability of the false positive results of studying the sample;*
- *No information has been given to the Committee about the Limit of Detection (LOD) for initial (screening) and confirming analysis;*
- *The kinetics of the concentration of metabolite of dehydrochlormethyltestosterone in athlete's samples has not been disclosed;*
- *The Athlete's samples preceding sample A3916463, are "clean";*
- *In the initial study of sample A3916463, presence of metabolite of dehydrochlormethyltestosterone has not been established;*
- *Previously, the Athlete has not committed violations of anti-doping rules and requirements;"*

106. WADA and RUSADA do not share this view and are requesting in these proceedings that the Appealed Decision is set aside and that the Athlete is sanctioned for the

commission of an ADRV of Presence of Prohibited Substance (metabolite of DHCMT) as established in Article 2.1. of the ADR ("*sufficient proof of anti-doping rule violation under Article 2.1 is established by […] presence of a Prohibited Substance or its Metabolites […] in an Athlete sample where the Athlete waives analysis of the B Sample and the B Sample is not analysed*", essentially because (i) the presence of DHCMT was detected in the Athlete's sample and (ii) DHCMT is a non-threshold substance, so any reported concentration of this substance constitutes an ADRV, being any information on the LOD for initial (screening) and confirming analysis irrelevant. Bearing in mind that in their view, the Athlete's ADRV was intentional, WADA and RUSADA claim that the Athlete is sanctioned with a 4-year period of ineligibility plus other consequences as established in their respective requests for relief.

107. On the side of the Athlete, the Sole Arbitrator notes that in these proceedings before the CAS, the Athlete has admitted the ADRV (presence of metabolite of DHCMT, which constitutes a violation of Article 2.1 of the ADR) and hence, he does not claim for the confirmation of the Appealed Decision: the Athlete requests that the Appealed Decision is set aside and that he is found to have committed the ADRV, but also claims that he bore No Fault or Negligence and consequently, that no period of ineligibility is imposed on him. On a subsidiary basis, in case the sanction of ineligibility is not eliminated for No Fault or Negligence, the Athlete requests that he is found to have committed an ADRV but that he bore No Significant Fault or Negligence and that a sanction of 0 to 4 months of ineligibility is imposed on him, with commencement of such period of ineligibility from the date of the sample collection and disqualification of results obtained during the period of ineligibility.

108. In light of the Athlete's aforementioned admission of the ADRV, the commission of the ADRV is not an issue anymore in these proceedings and thus, the matters to be resolved in this Award have to do with the consequences of this ADRV in accordance with the requests for relief made by the Parties and the applicable regulations.

B. Consequences of the ADRV

i. Ineligibility

109. The Sole Arbitrator notes in this respect that WADA and RUSADA request that a sanction of 4 years of ineligibility is imposed to the Athlete for the commission of the ADRV referred to above, and that the Athlete, even if he has admitted the ADRV, claims that no period of ineligibility shall be imposed on him based on his No Fault or Negligence and alternatively, that the sanction of ineligibility to be imposed does not exceed the period of 4 months based on his No Significant Fault or Negligence.

110. To decide on this issue, the Sole Arbitrator shall depart from the provisions of Article 10.2 of the ADR, which in the pertinent part reads as follows:

"The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6:

10.2.1. The period of ineligibility shall be four years where:

10.2.1.1. The anti-doping rule violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional. […]

10.2.2 If Article 10.2.1 does not apply, the period of Ineligibility shall be two years.

10.2.3 As used in Articles 10.2 and 10.3, the term 'intentional' is meant to identify those Athletes who cheat. The term, therefore, requires that the Athlete or other Person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. […]".

111. In accordance with Article 10.2.1 of the ADR, the standard period of ineligibility for an ADRV of Presence of Prohibited Substance is 4 years, if the ADRV does not involve a Specified Substance (which is the case herein) and the Athlete cannot establish that the ADRV was not intentional. If Article 10.2.1 of the ADR does not apply, then the period of ineligibility to be imposed is of 2 years.

112. However, Articles 10.4 and 10.5 of the ADR respectively enable the elimination or reduction of the sanction of ineligibility foreseen in Article 10.2 of the ADR based on No Fault or Negligence and No Significant Fault or Negligence respectively, in the following terms:

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

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

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

10.5.1. Reduction of Sanctions for Specified Substances or Contaminated Products for Violations of Article 2.1, 2.2 or 2.6.

10.5.1.1. Specified Substances

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

10.5.1.2. Contaminated Products

In cases where the Athlete or other Person can establish No Significant Fault or Negligence and that the detected Prohibited Substance came from a Contaminated Product, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years Ineligibility, depending on the Athlete's or other Person's degree of Fault.

10.5.2. Application of No Significant Fault or Negligence beyond the Application of Article 10.5.1.

If an Athlete or other Person establishes in an individual case where Article 10.5.1 is not applicable, that he or she bears No Significant Fault or Negligence, then, subject to further reduction or elimination as provided in Article 10.6, the otherwise applicable period of Ineligibility may be reduced based on the Athlete or other Person's degree of Fault, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this Article may be no less than eight years.

113. The concepts of No Fault or Negligence and No Significant Fault or Negligence are defined in the ADR as follows:

No Fault or Negligence: The Athlete or other Person's establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system.

No Significant Fault or Negligence: The Athlete or other Person's establishing that his or her Fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the anti-doping rule violation. Except in the case of a Minor, for any

violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system.

114. Taking the aforementioned into consideration, in a case of violation of Article 2.1 of the ADR as the one at stake, for the sanction of ineligibility to be eliminated (main request of the Athlete) or reduced (alternative request) it is necessary that the Athlete establishes how the Prohibited Substance entered his/her system, which *in casu* means establishing how DHCMT entered the Athlete's body.

115. In this respect, it shall be recalled that in accordance with CAS jurisprudence (i) the establishment of the origin of the prohibited substance by the athlete shall be based on real evidence and not on mere speculation and (ii) the mere assertion of the athlete on the origin of the substance without bringing evidence supporting it is insufficient for the purposes of establishing how the prohibited substance entered his/her body (*inter alia*, CAS 2006/A/1067, CAS 2014/A/3615, or CAS 2014/A/3820).

116. In the case at stake, the Athlete contends that "*the most likely source of the prohibited substance in his body was either contaminated meat that he consumed between 11 July and 17 September 2015, or the consumption of the BCAA by KING PROTEIN supplement during the same period*". The Athlete affirms in summary that (i) as a weightlifter, his diet shall contain meat that he eats on a daily basis and buys from his wife's parents and other local stores or farmers, (ii) in his area of residence (Republic of Adydeya) the use of anabolic steroids in animal husbandry is common and (iii) in 2015, he consumed the supplement BCAA-King Protein, which had been administered to him by team doctors at training camps and bought by him in specialized stores of sport nutrition.

117. The Sole Arbitrator, after having examined the allegations made and the evidence brought by the Athlete to the proceedings, does not consider proven that the origin of the DHCMT found in the Athlete's body is the ingestion of contaminated meat or the consumption of BCAA-King Protein, being a doping scenario much more likely in this respect.

118. With regard to the ingestion of contaminated meat as the origin of the DCHMT found in his sample, the Athlete mainly grounds his contention in an expert report of Dr. Temerdashev, taking as basis 20 meat samples collected from local markets in Krasnodar, Enem and Maykop (Russia) and analyzed by the mass-spectra chemical laboratory of Kuban State University. Dr. Temerdashev concluded in his report that "*positive meat samples containing anabolic steroids were observed*". On the other hand, WADA produced to the file another report, issued by Prof. Ayotte, which concludes that a doping scenario *"is more plausible […] than the highly unlikely consumption of contaminated meat*".

119. After having checked these reports, the Sole Arbitrator shall firstly conclude that Dr. Temerdashev's report lacks probationary value vis-à-vis the establishment of the origin of the prohibited substance in the Athlete's sample. As the Athlete expressly recognized in his letter of 31 March 2022, the method used by Dr. Temerdashev to conduct his analysis was not validated, an issue that as confirmed by Prof. Ayotte in her report and at the hearing, affects the reliability of Dr. Temerdashev's report. In the same line, in this same letter of 31 March 2022 the Athlete states that "*Dr. Temerdashev agrees with Prof. Ayotte that much more samples from all regions of Russia are needed for a detailed investigation and risk calculation*", which in the Sole Arbitrator's opinion also impacts on the trustworthiness of Dr. Temerdashev's report. In addition, Dr. Temerdashev's report makes no specific reference to presence of DHCMT in the samples analyzed, but simply to anabolic steroids -the substances found in 3 out of the 20 samples analyzed were methandienon, testosterone and oxprenolol-. In fact, in the Athlete's letter of 31 March 2022 it is expressly stated that "*the research conducted by Dr. Temerdashev indeed did not prove that DCHMT could be found in meat (in Russia)*" and that "*DHCMT absence was clearly declared in the analyzed samples*".

120. Secondly, the Sole Arbitrator finds it also relevant to this purpose that (i) Prof. Ayotte expressly referred in her report (and confirmed at the hearing) that "*I am not aware that DCHMT (or methandienone) was ever found to contaminate meat*", (ii) both Dr. Temerdashev and Prof. Ayotte admitted at the hearing that DHCMT is an expensive compound and (iii) Prof. Ayotte affirmed at the hearing that it is not normal that meat is contaminated with this anabolic steroid, but with others that are cheaper. This, together with the fact that Prof. Ayotte referred in her report that "*DHCMT is not a legitimate medication anywhere in the developed world*" and that "*the black market appears to be the source of DHCMT*" leads the Sole Arbitrator to believe that it is hardly credible that DHCMT is administered by the farmers in the area of the Republic of Adygeya (Russia) to their animals, and less that this was made back in 2015, when the AAF took place. Moreover, the Sole Arbitrator did not find any convincing reason (and less evidence in the file) to sustain *in casu* that "*M3 is not an exclusive metabolite of DHCMT and could have been produced by the use of other anabolic steroids by vets or farmers*".

121. In addition, it shall be also pointed out that Prof. Ayotte stated and duly explained in her report that "*the AAF reported by the Lausanne Laboratory for the athlete's September 2015 sample 3916463 is not so low at 10 pg/mL (as claimed in the Answer Brief), that it could only be due to a contamination of some kind*", and that "*there is no reason to exclude the deliberate administration of DCHMT […]*" to the Athlete sometime in the period April 2013 to July 2015.

122. Finally, it is also worth mentioning that while Prof. Ayotte conclusion in her report is assertive and rotund on which is the more likely scenario on the origin of the Prohibited

Substance found in the Athlete's sample ("*this doping scenario is more plausible in my opinion than the highly unlikely consumption of contaminated meat*"), Dr. Temerdashev's conclusions in his report do not directly address the issue and simply states that "*positive meat samples containing anabolic steroids were observed. Even prohibition of their usage in veterinary (according to national standard GOST 33482-2015) and illegality on the market cannot prevent their usage by farmers to increase body weight of the animals and increase muscle growth speed*".

123. To end with the meat contamination hypothesis, the Sole Arbitrator shall remark that all the other evidence produced by the Athlete to try to hold his argument (scientific articles on anabolic hormones in animal breeding, witness statement of Ms. Gritsay -partner of the Athlete-, pictures of the Athlete's house and food markets…) is non-specific and immaterial, does not prove the Athlete's contention in the case at hand and is thus of no avail.

124. Consequently, the Sole Arbitrator is of the view that the Athlete failed to establish that contaminated meat was the source of the Prohibited Substance found in his sample.

125. With regard to the consumption of the supplement BCAA-King Protein as the potential source of the DCHMT found in his sample, the Sole Arbitrator finds that the allegations made by the Athlete in this respect are completely unsubstantiated. The Athlete affirms having consumed this product in 2015 but has not produced any piece of evidence to these proceedings that can validly support this statement: no ticket of purchase of the product, no document issued by the doctors that allegedly prescribed the product to him, no witness corroborating that he ingested this product in 2015 and no other evidence that could substantiate his assertion. On top of this, the fact that the Athlete did not disclose the consumption of this specific product in the Doping Control Form of 17 September 2015, after having admitted in these proceedings that in spring and summer 2015, he consumed such product after the training sessions, is also quite telling. In these circumstances of absolute absence of evidence, the considerations made by the DADC in the Decision 14/2016 (Vlasova case) are completely irrelevant to the case at hand.

126. Therefore, the Sole Arbitrator shall conclude that the Athlete failed to establish how DHCMT entered his body and thus, the request for elimination of the sanction based on No Fault or Negligence (as well as the claim for the reduction of the standard sanction based on No Significant Fault or Negligence) shall be rejected.

127. This being said, the Sole Arbitrator shall continue its reasoning by recalling that in the case at hand, the Athlete's violation involves DMCHT, which is not a Specified Substance. In accordance with Article 10.2 of the ADR, a sanction of ineligibility of 4 years is to be imposed in this kind of cases, unless the Athlete establishes (by a balance of probability, as per article 3.1. of the ADR) that his violation was not intentional. If

Article 10.2.1 of the ADR does not apply, then the period of Ineligibility shall be two years.

128. After analysing the evidence brought to the proceedings, the Sole Arbitrator concludes that the Athlete failed to establish that the ADRV was not intentional. In fact, the Sole Arbitrator observes that the Athlete mainly devoted his efforts to trying to prove that he bore No Fault or Negligence and alternatively No Significant Fault or Negligence (including establishing the origin of the substance detected in his sample), but raised no conclusive argument (and less evidence) on his purported lack of intentionality. The fact that, as alleged by the Athlete, the sample was collected many years before its re-analysis, or that the concentration of the substance found in the sample is higher or lower in a non-threshold Prohibited Substance as DHCMT, are not relevant factors in terms of intentionality in this case and less prove that the ADRV was not intentional. This, together with the fact that the Athlete did not even establish how DHCMT entered his body, leads the Sole Arbitrator to consider that the Athlete failed to establish that his ADRV was unintentional and consequently, the Sole Arbitrator finds that the standard period of ineligibility of 4 years shall apply and be imposed on the Athlete.

129. Just for the sake of completeness with regard to the sanction of ineligibility, the Sole Arbitrator notes that one of RUSADA's claim in its Appeal Brief is that "*the conditions applicable to the period of Ineligibility should be those as specified in ADR Article 10.12.1*.". In this respect, the Sole Arbitrator has checked the ADR version provided by RUSADA with its Appeal Brief (which has not been challenged by any of the Parties) and realized that no Article 10.12.1 exists therein. This version of the ADR contains, among others, Article 10.12 (which refers to the Automatic Publication of Sanction) and Article 10.11.1 (referred to the Status during Ineligibility). In any event, the consequences and extent of the ineligibility sanction imposed by virtue of this Award will be those foreseen in the ADR.

130. In relation to the commencement of the period of ineligibility, article 10.10 of the ADR stipulates in the pertinent part that:

"Except as provided below, the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date Ineligibility is accepted or otherwise imposed.

10.10.1 Delays Not Attributable to the Athlete or other Person

Where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Athlete or other Person, the ADA may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. All

competitive results achieved during the period of Ineligibility, including retroactive Ineligibility, shall be Disqualified.

10.10.2. Timely Admission

Where the Athlete or other Person promptly (which, in all events, for an Athlete means before the Athlete competes again) admits the anti-doping rule violation after being confronted with the anti-doping rule violation by ADA, the period of Ineligibility may start as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. In each case, however, where this Article is applied, the Athlete or other Person shall serve at least one-half of the period of Ineligibility going forward from the date the Athlete or other Person accepted the imposition of a sanction, the date of a hearing decision imposing a sanction, or the date the sanction is otherwise imposed. This Article shall not apply where the period of Ineligibility already has been reduced under Article 10.6.3.

10.10.3. Credit for Provisional Suspension or Period of Ineligibility Served

If a Provisional Suspension is imposed and respected by the Athlete or other Person, then the Athlete or other Person shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed. [...]".

131. The Sole Arbitrator notes that the Athlete was provisionally suspended from 19 May 2020 until the issuance of the Appealed Decision, in which the DADC resolved that the Athlete did not commit an ADRV, and that the Athlete requests that credit for the period of provisional suspension already served by the Athlete is granted.

132. In addition, the Athlete claims that the period of ineligibility should commence at an earlier date due to Delays not Attributable to the Athlete. The Athlete holds in this respect that his Sample, that was collected in 2015, was received by the Laboratory for re-analysis on 3 May 2019 but was not analyzed until 3 April 2020, and the AAF came only on 19 May 2020. He also contends that this delay is incomprehensible given that the problems of doping in weightlifting were reported in the Mac Laren Reports back in 2016.

133. In light of the aforementioned provisions and the Athlete's submissions in this respect, the Sole Arbitrator considers and resolves that:

(i) The period of Ineligibility shall commence on the date of this Award, as:

a. No substantial delays took place in the hearing process or in other aspects of the Doping Control that finally led to this appeal, and some of the delays occurred were due to the multiple requests for information made by the Athlete to RUSADA before the hearing held before the DADC. The

Athlete's allegation that the sample was received for re-analysis by the Laboratory in April 2019 but was not analyzed until May 2020 does not qualify in the Sole Arbitrator's view for an anticipation of the commencement of the period of ineligibility, being it quite revealing in this respect that the Athlete did not complain about this circumstance (and in general, about any delay) in his written position filed before the DADC. What is relevant for the Sole Arbitrator is that once the Doping Control Report was issued (3rd April 2020), the Athlete was notified of the AAF without significant delay (19 May 2020), and from that moment on, the process was conducted without substantial delays in the sense established in Article 10.8 of the ADR; and

b. The Athlete did not timely admit the anti-doping rule violation.

(ii) The Athlete shall receive credit for the time he remained provisionally suspended pursuant to Article 10.10.3 of the ADR.

ii. Disqualification of results

134. The Sole Arbitrator shall finally analyze and decide on WADA's request that all competitive results obtained by the Athlete from and including 17 September 2015 (date of the sample collection) are disqualified, with all resulting consequences (including forfeiture of medals, points and prizes).

135. Article 10.8 of the ADR refers to the disqualification of results in the following terms:

"Disqualification of Results in Competitions Subsequent to Sample Collection or Commission of an Anti-Doping Rule Violation

In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article IX, all other competitive results of the Athlete obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes."

136. In accordance with this provision, the ADRV that have taken place in the case at hand should lead to the disqualification of results requested by WADA, unless fairness requires otherwise.

137. The Athlete contends that the fairness exception shall apply in this case based on the fact that (i) the concentration of the Prohibited Substance found in the sample is low and could not influence the Athlete's sporting results, (ii) the Athlete underwent 35

doping controls from 2015 to 2020, and in all of them he tested negative, (iii) the disqualification of results backdated to more than 6 years would result in a substantial loss for him, as he would have to return the prize monies and (iv) the Athlete would otherwise be penalized in an excessive form for a decision of WADA/IWF/RUSADA not to proceed with re-testing and result management at an earlier date.

138. As mentioned in *inter alia*, CAS 2015/A/4007, *"fairness" is a broad concept (CAS 2013/A/3274, para. 85), covering a number of elements that the deciding body can take into account in its decision not to disqualify some results",* and *"no single element is decisive alone: an overall evaluation of them is necessary".* In addition, it shall be taken into account that, as referred to in CAS 2022/A/9128, "*as a matter of principle, CAS panels enjoy broad discretion in adjusting the disqualification period to the circumstances of the case*", and that "*CAS Panels have frequently found that the general principle of fairness must prevail in order to avoid disproportionate sanctions (see e.g. CAS 2016/O/4881, para. 195; CAS 2018/O/5713, para. 71; CAS 2019/A/6167 para. 243 et seq.)*"

139. The assessment of the fairness exception established in Article 10.8 of the ADR shall be thus made on a case-by-case basis, and hence the Sole Arbitrator has analyzed and taken into account all the circumstances of the case to such purpose.

140. In the present case, on one hand the Sole Arbitrator notes that nearly 5 years passed between the sample collection that gave rise to the ADRV (September 2015) and the Athlete's provisional suspension in May 2020. This delay, even if it could be justified, should not go to the Athlete's detriment. However, on the other hand, the Sole Arbitrator shall also take into consideration that (i) the Athlete could neither establish his lack of intentionality nor even how the Prohibited Substance (an anabolic steroid) entered his body, (ii) even if these circumstances seem to be still *sub iudice*, it has been become known in these proceedings that (a) the Athlete was tested positive for the same substance (metabolite of DHCMT) in an out-of-competition test conducted by the IWF on 6 September 2021 and (b) the Athlete was notified by the ITA about a potential ADRV of Use of Prohibited Substances (mesteronole, metenolone and oxandrolone) in 2012 based on the information of the LIMS Database obtained by WADA from the Moscow Anti-Doping Laboratory in 2019, (iii) DHCMT a non-threshold substance, so the concentration found in the sample is not relevant, and (iv) the Athlete's alleged "clean records" are to be put at least in question given the content of the mentioned letter of ITA dated 25 October 2021.

141. After considering and assessing the aforementioned elements and circumstances, the Sole Arbitrator, in exercise of its broad discretion, finds it fair and appropriate that the Athlete's results from 17 September 2015 (date of the sample collection) to 18 May 2020 (the day before RUSADA notified the AAF to the Athlete) are disqualified with all of the resulting consequences including forfeiture of any medals, points and prizes.

C. Conclusion

142. For the reasons set out above, the Sole Arbitrator resolves that the Appealed Decision is set aside and the Athlete is sanctioned with a 4-year period of ineligibility starting from the date of this decision, with credit to be applied in respect of the provisional suspension already served by the Athlete. In addition, the Athlete's results from 17 September 2015 to 18 May 2020 shall be disqualified with all of the resulting consequences including forfeiture of any medals, points and prizes.

IX. COSTS

(…).

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ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeals filed by Russian Anti-Doping Agency and World Anti-Doping Agency against the Decision No. 99/21 rendered by the Disciplinary Anti-Doping Committee of Russian Anti-Doping Agency "RUSADA" on 27 May 2021 are partially upheld.

2. The Decision No. 99/21 rendered by the Disciplinary Anti-Doping Committee of Russian Anti-Doping Agency "RUSADA" on 27 May 2021 is set aside.

3. Mr. Rodion Bochkov is found to have committed a violation of Article 2.1 of the All-Russian Anti-Doping Rules.

4. Mr. Rodion Bochkov is imposed a period of Ineligibility of four (4) years. The period of Ineligibility shall commence on the date of this decision, with credit being applied in respect of the provisional suspension already served by Mr. Bochkov.

5. All competitive results obtained by Rodion Rochkov from and including 17 September 2015 to 18 May 2020 are disqualified, with all resulting consequences (including forfeiture of medals, points and prizes).

6. (…).

7. (…).

8. All other and further claims or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 28 November 2023

THE COURT OF ARBITRATION FOR SPORT

Mr. Jordi **López Batet**
Sole Arbitrator