CAS 2022/A/8895 World Anti-Doping Agency (WADA) v. Russian Anti-Doping Agency (RUSADA) & Ilya Bogatyrev

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Dr. Heiner Kahlert, Attorney-at-Law, Munich, Germany

in the arbitration between

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

Represented by Messrs. Nicolas Zbinden and Anton Sotir, Attorneys-at-Law, Kellerhals Carrard, Lausanne, Switzerland

Appellant

and

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

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

First Respondent

Mr. Ilya Bogatyrev, Omsk, Russia

Second Respondent

I. PARTIES

1. The World Anti-Doping Agency ("**WADA**" or the "**Appellant**") is the international Anti-Doping Organisation.[1] It has its registered seat in Lausanne, Switzerland, and has its headquarters in Montreal, Canada.

2. The Russian Anti-Doping Agency ("**RUSADA**" or the "**First Respondent**") is the National Anti-Doping Organisation in Russia.

3. Mr. Ilya Bogatyrev (the "**Athlete**" or the "**Second Respondent**"), born on 19 January 2001, is a boxer from Russia.

4. The First Respondent and the Second Respondent are hereinafter referred to as the "**Respondents**". The Appellant and the Respondents are hereinafter referred to as the "**Parties**".

II. FACTUAL BACKGROUND

5. Below is a summary of the relevant facts and allegations based on the Parties' submissions (including the evidence adduced). Additional facts and allegations found in the Parties' submissions may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceeding, he refers in his Award only to the submissions he considers necessary to explain its reasoning.

A. Inclusion in AIBA's Registered Testing Pool

6. On 30 January 2020, the International Testing Agency (the "**ITA**") notified the Athlete, on behalf of the International Boxing Federation (then named "**AIBA**"), of his inclusion in the Registered Testing Pool (the "**RTP**") of AIBA. On 20 February 2020, the Athlete returned a form signed on 19 February 2020, acknowledging that he had read and understood the contents of the aforementioned notification letter, including such aspects as his inclusion in the RTP, the resulting whereabouts obligations and the consequences of failing to comply with those obligations.

B. Potential first missed test

7. On 24 August 2020, at 17:57, a doping control officer ("**DCO**") arrived at the Athlete's home address in Omsk, which the Athlete had indicated in the Anti-Doping Administration & Management System ("**ADAMS**") as the location where he would be available for testing that day between 18:00 and 19:00. At 18:00, the DCO called the intercom but received no answer. After he had gained access to the building, he went to the Athlete's apartment and rang the bell at 18:02; however, nobody answered or opened

[1] Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the 2021 RUSADA ADR, as per the English translation submitted by WADA.

the door. From that point on until 18:55, the DCO regularly rang the bell, knocked on the door and went outside to the balcony of the Athlete's apartment. At 18:55, he unsuccessfully tried to reach the Athlete by phone, using the number provided by the Athlete in ADAMS. Subsequently, the DCO went to the concierge, who told him she had not seen the Athlete that day. At 19:03, the DCO left the premises.

8. By letter of 15 September 2020, the ITA notified the Athlete of an apparent missed test in accordance Article 5.6 of the International Boxing Association Anti-Doping Rules (the "**AIBA ADR**") in their 2020 edition (the "**2020 AIBA ADR**") and Article I.4.3 of the WADA International Standard for Testing and Investigations (the "**ISTI**") in its 2020 edition (the "**2020 ISTI**"). The letter provided further information and invited the Athlete to comment on the apparent missed test by 29 September 2020.

9. By email of 28 September 2020, the Athlete wrote to the ITA as follows:

> *"*[…] *This is my mistake, I'm sorry. On August 24, I was on a plane and flew to another city for competitions. city* [sic] *of Kemerovo. I couldn't fill in the table anywhere and didn't have the time to do it. I'm sorry, if you need anything from me, please tell me. Thanks for understanding."*

10. By letter of 13 October 2020, the ITA informed the Athlete that having evaluated his explanation, the ITA had decided to record a missed test against him because he had been unable to establish that there was no negligent behaviour on his part that had caused or contributed to his failure to be available for testing. Among other things, the ITA informed the Athlete of his right to request an administrative review of the ITA's decision within seven days, and that a combination of three missed tests and/or failing failures committed within a 12-month period would constitute an anti-doping rule violation ("**ADRV**"). The Athlete did not request an administrative review.

C. Potential second missed test

11. On 17 October 2020, at 17:25, the same DCO arrived at the Athlete's home address in Omsk, which the Athlete had indicated in ADAMS as the location where he would be available for testing that day between 17:30 and 18:30. The DCO gained access to the building, went to the Athlete's apartment and knocked on the door several times at 17:30. After no one had answered, the DCO went to a place from which he could observe the door. He knocked on the door again at 17:45, 18:00 and 18:15, but no one opened. At 18:25, he phoned the Athlete, who responded that he was in Kislovodsk (which is a city that is more than 3,000 kilometres away from Omsk). After the call, the DCO again knocked on the door but not one answered. He left the premises at 18:33.

12. By letter of 22 October 2020, the ITA notified the Athlete of an apparent second missed test in accordance with Article 5.6 of the 2020 AIBA ADR and Article I.4.3 of the 2020 ISTI. The letter provided further information and invited comments by 5 November 2020, noting that failure of the Athlete to respond would be deemed as acceptance and would result in the recording of a missed test. The ITA further clarified that *"if*

*recorded, this will constitute your **Second** Whereabouts Failure in the last 12-months"* (emphasis as in the original).

13. By email of 12 January 2021, the ITA sent a reminder to the Athlete, attaching again its 22 October 2020 letter, and granting him a new deadline of 19 January 2021 to respond, informing the Athlete that failing any comments by him within that deadline, a whereabouts failure would be recorded against him.

14. By letter of 16 February 2021, the ITA noted that the Athlete had again failed to respond and found that he was therefore deemed to have accepted having committed a whereabouts failure. Consequently, the ITA recorded a second missed test within 12 months. Among other things, the ITA reminded the Athlete that three whereabouts failures within 12 months would constitute an ADRV and informed him of his right to request an administrative review of the ITA's decision within seven days. The Athlete did not file any such request.

D. Potential third missed test

15. On 30 April 2021, a DCO arrived at the Athlete's home address in Omsk, which the Athlete had indicated in ADAMS as the location where he would be available for testing that day between 18:00 and 19:00. At 18:00, the DCO rang the doorbell. The door was opened by a person who introduced herself as the Athlete's mother. She told the DCO that the Athlete was in Moscow for competitions from 26 April to 5 May 2021.

16. By letter of 17 May 2021, RUSADA notified the Athlete of an apparent third missed test in accordance with Article 4.8.9 of the 2021 edition of the ISTI (the "**2021 ISTI**") and invited the Athlete to comment by 31 May 2021. RUSADA further informed the Athlete that *"This case will be your **third*** [i.e. whereabouts failure]*"* and that *"Three failures of the kind within 12 months may lead to ineligibility period for up to 2 years"* (according to the English translation submitted by WADA).

17. On 27 May 2021, the Athlete provided the following explanation:

> *"*[…] *I was not available for out-of-competition testing, as I was in the city of Serpukhov, Moscow Region during the specified time slot as I was a participant in the Russian Boxing Championship among juniors 19-22 (duration from 04/25/2021 to 05/03/2021).*
>
> *Despite the fact that since 2020 I have not taken part in any competitions as part of the Russian national team and I am not a national-level athlete, I tried to follow the rules of accessibility and providing information about my whereabouts, but sometimes I had problems with the ability to enter and completing the ADAMS system.*
>
> *I lost control over the timeliness of the last filing of my whereabouts due to previous difficult life circumstances of force majeure, namely, the fact that my mother, Tatyana Rybnikova, who suffers from cancer, has worsened her health.*

> *Due to the situation with the coronavirus (COVID-19) pandemic, there were problems with the timeliness of medical monitoring and treatment in a specialized medical institution. To overcome the circumstances, the efforts of the whole family were required, so the decision to participate in the competition was made by me just before the departure.*
>
> *In addition, in order to maintain the financial situation of my family (mother and minor brother), I combine study, training and work.* […]*"* (as per the English translation submitted by WADA).

18. On 8 June 2021, following a request for clarification from RUSADA, the Athlete further explained that

> *"*[…] *I received the personal invitation to the competitions on April 14, 2021. At first I decided to reject the invitation because my mother felt unwell. Later her condition got more or less stabilized and on April 24, when I was about to return my ticket I decided to participate in the competitions and on April 25 I left for Moscow.* […]*"* (as per the English translation submitted by WADA)

19. On 23 June 2021, in response to another request for clarification from RUSADA, the Athlete provided his birth certificate, confirming that Ms. Tatyana Rybnikova was his mother, and a medical certificate confirming that her status of a disabled person (due to a "*general disease*", as per the English translation submitted by WADA) had been renewed for the period of 1 October 2020 to 10 September 2021.

20. By letter of 28 July 2021, RUSADA informed the Athlete that despite his explanations, "[t]*his case will be your third whereabouts failure*" (as per the English translation submitted by WADA). RUSADA further informed him of his right to request an administrative review of the decision by 11 August 2021, failing which a missed test would be recorded.

21. By letter of 5 August 2021, the Athlete requested an administrative review, referring to the explanations he had provided previously.

22. By letter of 8 September 2021, RUSADA informed the Athlete that a staff member not previously involved in the consideration of this case had reviewed the Athlete's explanations but had concluded that none of them could justify the Athlete's failure to update his whereabouts information between his departure for Moscow on 25 April 2021 and the missed test on 30 April 2021. RUSADA concluded that, therefore, its decision of 28 July 2021 to record a whereabouts failure was valid. RUSADA confirmed that this was the Athlete's third whereabouts failure and that *"three failures of the kind (missed test or filing failure) within 12 months will lead to ineligibility period of up to 2 years"* (according to the English translation submitted by WADA).

E. Results management procedure before RUSADA in respect of the apparent ADRV

23. After having previously informed the ITA by email of 20 May 2021 that it was beginning the Results Management for a possible third missed test of the Athlete, RUSADA notified the ITA by email of 21 September 2021 that it had recorded a third missed test against the Athlete. By email of 23 September 2021, the ITA responded that

> *"*[…] [w]*e therefore understand and agree that RUSADA acts as results management authority for the potential 2.4 ADRV within the meaning of Article 7.1.6 of the World Anti-Doping Code.* […]*".*

24. By letter of 28 September 2021, RUSADA notified the Athlete of a potential ADRV pursuant to "*cl. 4.4 of the All-Russian Anti-Doping Rules* […] *and art. 2.4 of the World Anti-Doping Code*" due to three missed tests within a 12-month period. Among other things, RUSADA invited the Athlete to provide written explanations within seven days and informed him that he could voluntarily accept a provisional suspension by signing the relevant form provided by RUSADA.

25. On 7 October 2021, the Athlete voluntarily accepted a provisional suspension by returning a signed version of the relevant form.

26. By letter of 14 October 2021, RUSADA noted that the Athlete had failed to provide any explanation within the set deadline, and therefore charged the Athlete with an ADRV under *"cl. 4.4. of the Rules and art. 2.4 of the Code"*. RUSADA further provided detailed explanations as regards the Athlete's options, including the right to provide substantial assistance, admit the ADRV, enter into a case resolution agreement and contest the charge of an ADRV in writing within 20 days.

27. By email of 28 October 2021, the Athlete requested a hearing.

28. On 16 December 2021, a hearing was held before the Disciplinary Anti-Doping Committee of RUSADA (the "**RUSADA DADC**"). On 4 April 2022,[2] the RUSADA DADC took a decision with reference number 53/2022 (the "**Appealed Decision**"), which forms the subject matter of the present appeal. It reads, in its relevant part, as follows:

> *"*[…] *The Committee found that the Athlete, while in the registered testing pool, from October 17, 2020 to April 30, 2021, violated the rules of accessibility for testing at least 3 times, thereby committing a violation of cl. 4.4 of the Rules.*

[2] While the first page of the decision bears a date of 16 December 2021, the last sentence of the decision is "*The decision was made on April 04, 2022*". Hence, it seems the former date was merely a reference to the date of the hearing; while the RUSADA DADC may well have taken the decision on the same date, the written decision with reasons seems to have been completed only on 4 April 2022.

In accordance with cl. 12.3.2. of the Rules, for violation of cl. 4.4, the period of ineligibility shall be two (2) years, subject to reduction down to a minimum of one (1) year, depending on the Athlete's degree of fault.

During the hearings, the Committee found that there was no evidence of the existence of serious suspicions that the Athlete's behaviour was caused by an attempt to avoid testing, in addition, [RUSADA] *did not declare such evidence.*

Thus, the Committee considers it possible to reduce the sanction due to the fact that the Athlete did not avoid testing, but did not take his duty to fill in the ADAMS system responsibly. It is also confirmed by the information submitted by RUSADA that the Athlete passed three tests between the second and the third missed tests.

Based on the foregoing, the Committee decided that [the Athlete] *has committed an ADRV and to impose a sanction of one-year ineligibility, starting from October 07, 2021. In accordance with cl.12.10 all competitive results from 30 April 2021 shall be disqualified.* […]*"*

29. WADA requested the case file in respect of the Appealed Decision on 25 April 2022 and received elements of the case file on 29 April 2022.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

30. On 18 May 2022, the Appellant filed its Statement of Appeal within the meaning of Article R48 of the Code of Sports-related Arbitration (2021 edition) (the "**CAS Code**") before the Court of Arbitration for Sport ("**CAS**"). In its Statement of Appeal, the Appellant requested that the dispute be decided by a sole arbitrator and that the same arbitrator be appointed to this case and to the pending arbitration CAS 2022/A/8809, considering that in WADA's view, both cases presented very similar issues.

31. On 24 May 2022, the CAS Court Office notified the Statement of Appeal to the Respondents and invited them to comment, within seven days, on the Appellant's requests that a sole arbitrator be appointed and that the same arbitrator be appointed in CAS 2022/A/8809. The Respondents were furthermore informed that absent any objection within five days, the language of the arbitration would be English.

32. By letter of 31 May 2022, the First Respondent confirmed that it had no objection to the appointment of the same sole arbitrator in this arbitration and in CAS 2022/A/8809, or to English being the language of the arbitration.

33. By letter of 8 June 2022, the CAS Court Office informed the Parties that the Second Respondent had not responded to the CAS Court Office letter of 24 May 2022. The CAS Court Office further noted that due to the then current situation in Russia, it could not send any courier to Russia and would therefore communicate by email only for the time being.

34. On 9 June 2022, within the deadline as extended by the CAS Director General, the Appellant filed its Appeal Brief within the meaning of Article R54 of the CAS Code.

35. By letter of 10 June 2022, the CAS Court Office notified the Appeal Brief to the Respondents, invited them to file their Answers within 20 days and informed them that if (one of) the Respondents failed to submit their Answers, the sole arbitrator might nevertheless proceed with the arbitration and deliver an award.

36. By letter of 8 July 2022, within the deadline as extended by the CAS Director General, the First Respondent submitted its Answer within the meaning of Article R55 of the CAS Code.

37. By letter of 11 July 2022, the CAS Court Office notified the First Respondent's Answer to the Appellant and the Second Respondent, informed the Parties that the Second Respondent had failed to file an Answer and invited them to indicate by 18 July 2022 whether they preferred for a hearing to be held or for an award to be issued based solely on the Parties' written submissions.

38. By email of 18 July 2022, the Appellant confirmed that it did not consider a hearing necessary. Moreover, in response to comments regarding costs contained in the First Respondent's Answer, the Appellant made certain remarks related to costs. By email of the same day, the First Respondent stated that it had no objection to an award being issued based solely on the Parties' written submissions.

39. By letter of 21 July 2022, the CAS Court Office noted the Appellant's and the First Respondent's positions on the holding of a hearing and granted another opportunity to the Second Respondent to indicate his preference in this regard. The Second Respondent did not do so.

40. On 16 August 2022, the CAS Court Office provided a disclosure declaration signed by Dr. Heiner Kahlert to the Parties and informed the Parties that pursuant to Article R34 of the CAS Code, an arbitrator may be challenged *"if the circumstances give rise to legitimate doubts over his independence"* and that any such challenge had to be brought within seven days after the ground for the challenge has become known.

41. On 25 August 2022, the CAS Court Office informed the Parties that no challenge had been filed against the appointment of Dr. Kahlert within the deadline prescribed at Article R34 of the CAS Code.

42. By letter of 29 August 2022, the CAS Court Office, on behalf of the President of the CAS Appeals Arbitration Division, informed the Parties that pursuant to Articles R33, R52, R53 and R54 of the CAS Code, the Panel had been constituted as follows:

    Sole Arbitrator: Dr. Heiner Kahlert, Attorney-at-Law in Munich, Germany.

43. On 21 September 2022, the CAS Court Office, on behalf of the Sole Arbitrator, provided a Procedural Order (the "**Procedural Order**") to the Parties by which the Appellant

was invited to file submissions on certain specific points arising from the Parties' written submissions.

44. On 14 October 2022, within the deadline as previously extended by the Sole Arbitrator, the Appellant provided its submission in response to the Procedural Order.

45. On 18 October 2022, on behalf of the Sole Arbitrator, the CAS Court Office invited the Respondents to comment on the Appellant's submission in response to the Procedural Order by 1 November 2022.

46. On 1 November 2022, the First Respondent filed its comments.

47. On 16 November 2022, the CAS Court Office notified the First Respondent's comments to the Parties and further informed the Parties that the Second Respondent had not submitted any comments on the Appellant's submission of 14 October 2022.

48. On 6 December 2022, the CAS Court Office, on behalf of the Sole Arbitrator and in view of the Procedural Order and the written submissions made in response to it, again invited the Parties to confirm, by 21 December 2022, whether they preferred for a hearing to be held or for an award being issued based solely on the Parties' written submissions. In addition, the Respondents were invited to comment on the Appellant's remarks on costs as contained in the Appellant's email of 18 July 2022.

49. By emails of 20 and 21 December 2022, respectively, the First Respondent and the Appellant reiterated their previous positions in respect of the necessity of a hearing. The First Respondent further requested an extension until 6 January 2023 to comment on the Appellant's comments on costs contained in the latter's email of 18 July 2022.

50. By letter of 21 December 2022, the CAS Court Office *inter alia* informed the Parties that its letter of 6 December 2022 had been successfully delivered to the Second Respondent by courier on 14 December 2022, together with a hard copy of the full case file (excluding the exhibits to the Parties' submissions), and that the Second Respondent had not responded to that letter. The CAS Court Office further granted the First Respondent's request for an extension of its deadline to comment on costs.

51. On 11 January 2023, within the deadline as previously extended and thereupon re-instated by the Sole Arbitrator after consultation of the other Parties, the First Respondent filed its comments on the Appellant's remarks related to costs. The CAS Court Office, on behalf of the Sole Arbitrator and following a respective request by the Appellant of the same day, granted the Appellant the opportunity to file final observations on costs by 17 January 2023.

52. On 13 January 2023, the CAS Court Office clarified that the Second Respondent had not made any comments or submissions on costs.

53. On 20 January 2023, within the deadline as previously extended by the Sole Arbitrator, the Appellant filed its final observations on the cost issue.

54. By letter of 24 February 2023, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to issue his award based solely on the Parties' written submissions. Furthermore, the Parties were requested to return a signed copy of the Order of Procedure by 3 March 2023.

55. On 27 February and 1 March 2023, respectively, the Appellant and the First Respondent returned signed copies of the Order of Procedure. The Second Respondent failed to do so, in spite of a reminder sent by the CAS Court Office on 6 March 2023.

IV. SUBMISSIONS OF THE PARTIES

56. The following summary of the Parties' positions is illustrative only and does not necessarily comprise every submission advanced by the Parties. The Sole Arbitrator confirms, however, that he has carefully considered all the submissions made by the Parties, regardless of whether there is any specific reference to them in the following summary.

A. WADA's submissions and requests for relief

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

- As to Results Management authority, the first and second missed tests were under the authority of the ITA, acting on behalf of AIBA. By contrast, the third missed test was under the Results Management authority of RUSADA, given that (i) RUSADA conducted the doping control giving rise to the missed test, (ii) RUSADA informed the ITA that it would conduct the Results Management for that missed test, and (iii) no objection was raised by the ITA or by the Athlete subsequently. Similarly, in respect of the ADRV, RUSADA had Results Management authority based on Article 7.1 of the World Anti-Doping Code (the "WADC") because (i) the last missed test was conducted on the initiative of RUSADA, (ii) RUSADA is the anti-doping organization that first provided notice to the Athlete of the potential ADRV, and (iii) the ITA (on behalf of AIBA) expressly agreed that RUSADA shall conduct Results Management.

- It follows from the above that the 2020 AIBA ADR and the 2020 ISTI are applicable to the first two missed tests, while the third is subject to the Russian Anti-Doping Rules (the "**RUSADA ADR**") in their 2021 edition (the "**2021 RUSADA ADR**"), the 2021[3] edition of the International Standard for Results Management (the "**2021 ISRM**") and the 2021 ISTI. The ADRV, in turn, is subject to the 2021 RUSADA ADR and the 2021 ISRM. Should the 2021 RUSADA ADR not yet have entered into force when the ADRV was committed because the order of the Russian Ministry of Sport approving the 2021 RUSADA ADR was dated 24 June 2021 (i.e. subsequent to the ADRV), the relevant provisions in the previous rules, i.e. the 2015 edition of the RUSADA ADR (the "**2015 RUSADA ADR**"), were materially the same as in the 2021 RUSADA ADR. Hence,

[3] The Sole Arbitrator notes that WADA submitted the 20 May 2021 edition of the ISRM, which incorporated minor changes to the 1 January 2021 edition. As none of those changes is relevant to the present case, this Award refers without distinction to the 2021 ISRM.

there should not be any impact on the present matter, irrespective of which of the two editions one applies. In addition, both the AIBA ADR and the RUSADA ADR reflect the WADC.

- The Athlete's liability is unchallenged as he accepted having committed an ADRV and did not appeal against the Appealed Decision. Therefore, "*the only question is the sanction to be imposed*".

- Article 12.3.2. of the 2021 RUSADA ADR provides that in case of three whereabouts failures within 12 months, the standard applicable sanction is a two-year period of ineligibility, subject to a possible reduction based on the Athlete's degree of fault.

- The Appellant understands that no written explanations were provided by the Athlete within the proceeding before the RUSADA DADC and that he has never sought any mitigation of the applicable consequences. Instead, it was at the sole initiative of the RUSADA DADC to reduce the standard sanction. However, the reasons provided by the RUSADA DADC do not justify any reduction. In particular, as follows from Article 12.3.2 of the 2021 RUSADA ADR and the definition of "*Fault*", lack of intent to avoid testing is a necessary precondition for reducing the sanction, but it is not relevant when assessing the athlete's degree of fault. Instead, it is the degree of care exercised by the Athlete with respect to his whereabouts duties that is relevant at this stage.

- The Athlete's fault must be assessed in relation to all three whereabouts failures, as confirmed by a number of CAS awards, including CAS 2020/A/7526 & 7559, para. 206 and CAS 2020/A/7528, para. 168(c).

- None of the explanations provided by the Athlete show a lack of fault. Instead, the Athlete's fault is significant considering the following circumstances:

    - The Athlete's explanation for the first missed failure, i.e., that he "*couldn't fill in the table anywhere and didn't have time to do it*", evidences a general disregard of the Athlete for his whereabouts obligations.

    - The Athlete admitted for each of the three whereabouts failures having been aware at least a few days in advance that he would be in entirely different locations than those indicated in his ADAMS profile. Nonetheless, each time, he failed to update the relevant information.

    - While the Athlete's personal issues could have impacted him, they do not absolve him of the stringent requirement to be diligent with respect to his whereabouts. In this regard, WADA refers to CAS 2014/A/2, paras. 150-154; SR/253/2020, paras. 53-59, 65f., 117-126 and 137; SR/092/2020, paras. 42f., 68-71 and 78-80.

    - With two 'strikes' against him, the Athlete should have been on "*red alert*". In the words of CAS 2020/A/7528, para. 184, the Athlete should therefore "*have taken every step within his control to ensure that a third Whereabouts Failure did not happen*". Still, the Athlete disregarded his whereabouts obligations and failed to

update information in ADAMS from 25 April 2021 onwards (including 30 April 2021, i.e., the date of the third missed test). He conceded that he was aware as early as on 14 April 2021, i.e., more than ten days in advance, that he would possibly go to Moscow and he had a plane ticket that he was "*about to return*"; in any event, as early as on 25 April 2021, he departed to Moscow and was certain that during the following week he would not be in Omsk but in Moscow, 2700km away. It is difficult to conceive of more negligent behaviour bearing in mind the degree of risk that should have been perceived by the Athlete.

- In CAS 2015/A/4210, the standard sanction of 2 years' ineligibility was imposed even though the filing failure was due to the athlete being in another city as a result of his wife's hospitalization and although he had specifically notified a third party in charge of his whereabouts filings that he had changed location. The Athlete bears a higher degree of fault than the athlete in that case.

- In summary, the period of ineligibility shall be two years commencing on the date of the decision, with credit for the period of provisional suspension and ineligibility effectively served by the Athlete.

- Pursuant to Article 12.10 of the 2021 RUSADA ADR, any competitive results obtained by the Athlete from 30 April 2021 should be disqualified, with all associated consequences.

- RUSADA shall be primarily liable for the costs of the arbitration as well as the legal and other costs to be awarded to WADA. As per consistent CAS case law, even in circumstances where the appeal is against a decision from an independent tribunal or any other body, the decision is attributed to the Anti-Doping Organisation with Results Management responsibility, which bears full responsibility for the decision (CAS 2017/A/5260, para. 123; CAS 2017/A/5369, para. 121; CAS 2018/A/5990, para. 209; CAS 2019/A/6157, para. 82). Contrary to RUSADA's argument, those CAS decisions also emphasized that the Anti-Doping Organisation with Results Management responsibility had to suffer arbitration costs. It is irrelevant that those awards were rendered under the 2015 edition of the WADC (the "**2015 WADC**") because the national tribunals at issue in those cases were as independent as now required by the 2021 edition of the WADC (the "**2021 WADC**"). It is equally irrelevant that RUSADA shared WADA's position in the present appeal; as a Respondent in this CAS proceeding, RUSADA necessarily 'loses' if the appeal is upheld. It would be unfair to put the cost on the Athlete, who did not render the decision that WADA was forced to appeal and who cannot be blamed for having benefited from a lenient decision.

58. WADA made the following requests for relief:

"1. The appeal of WADA is admissible.

2. The decision dated 16 December 2021 rendered by the Disciplinary Anti-Doping Committee of RUSADA in the matter of Ilya Bogatyrev is set aside.

3. Ilya Bogatyrev is found to have committed an anti-doping rule violation pursuant to Article 4.4 of the RUSADA ADR.

4. Ilya Bogatyrev is sanctioned with a two-year period of ineligibility starting on the date on which the CAS award enters into force. Any period of provisional suspension and ineligibility effectively served by Ilya Bogatyrev 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 Ilya Bogatyrev from and including 30 April 2021 (i.e. the date of the anti-doping rule violation) are disqualified, with all resulting consequences (including forfeiture of medals, points and prizes).

6. The arbitration costs shall be borne by RUSADA or, in the alternative, by the Respondents jointly and severally.

7. WADA is granted a significant contribution to its legal and other costs."

B. RUSADA's submissions and requests for relief

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

- RUSADA does not dispute WADA's right to appeal, the timeliness of the appeal, or the jurisdiction of CAS to decide upon the appeal.

- It is undisputed that as per the provisions of the ISTI, RUSADA is the Results Management authority under the RUSADA ADR and has standing to assert the relevant ADRV against the Athlete.

- The Athlete was at all material times subject to the 2021 RUSADA ADR, which are fully compliant with the WADC. Should the 2021 RUSADA ADR be deemed to have come into effect after the third missed test took place, then the 2015 RUSADA ADR would have applied, and the relevant provisions of the two versions are substantially the same.

- As the Athlete has not disputed that he is guilty of three missed tests within 12 months, he has committed an ADRV. The issues raised by this appeal are therefore confined to the sanction that should be imposed on the Athlete. The WADC has been written based on a stakeholder consensus that a period of ineligibility of one to two years is a proportionate measure to underwrite the effectiveness of the whereabouts system. It is the Athlete's burden to show that the level of fault is such that the otherwise standard sanction of two years' ineligibility should be reduced. He has failed to discharge that burden.

- With respect to the first and second missed tests, the Athlete was several hours' flying time away from Omsk, i.e., the city that he had indicated in ADAMS for the 60-minute time slot. Hence, he must have had plenty of time to update his whereabouts information

and there are no mitigating circumstances that explain the Athlete's whereabouts failure. In addition, it should be noted that the second missed test occurred just four days after the Athlete had been sent a reminder as to his whereabouts responsibilities in the ITA's letter of 13 October 2020.

- In relation to the third missed test, the Athlete had several days to update his whereabouts information as he had decided to travel already five days prior to the missed test. While RUSADA does not dispute the facts asserted by the Athlete as regards his mother's health and acknowledges that he may well have experienced significant stress and anxiety arising from it, this cannot mitigate his fault in terms of failing to update his whereabouts information. The Athlete was on notice as a result of the first and second missed test and had plenty of time to update his whereabouts information.

- Therefore, a period of ineligibility of two years should be imposed. Contrary to the Appealed Decision, the fact that the Athlete did not attempt to avoid testing is not a 'positive' that can be applied when assessing his fault. Equally contrary to the Appealed Decision, the fact that the Athlete tested negative twice between the second and third missed test has no bearing either on the Athlete's fault, as such fault strictly relates to his whereabouts failures.

- If the appeal is successful, RUSADA should not be required to bear any arbitration costs or to contribute towards WADA's legal fees. Three of the CAS awards invoked by WADA (CAS 2017/A/5369, CAS 2017/A/5260 and CAS 2018/A/5990) do not establish any basis for the proposition that a National Anti-Doping Organization ("**NADO**") should be by default responsible for the costs of an appeal brought against a decision made by a national-level body that is constituted according to the relevant ADR; instead, those decisions merely provide a basis for including a NADO as a respondent. The award in CAS 2019/A/6157, in turn, can be distinguished on the facts because in that case, the NADO defended its decision before CAS and was therefore a clear 'loser', whereas RUSADA agrees with WADA that the Appealed Decision is erroneous, and merely refrained for budgetary reasons from appealing itself; therefore, as between WADA and RUSADA, there is no "*prevailing party*" within the meaning of Article R64.5 of the CAS Code. In addition, all four CAS awards referred to by WADA were issued under the 2015 WADC. Under the 2021 WADC, ADRV disputes are resolved by operationally independent hearing panels, such as the RUSADA DADC. The position taken by RUSADA before the RUSADA DADC was the same position as the position taken by WADA – and RUSADA – in this appeal. The Appealed Decision took a different position, but was made by the operationally independent RUSADA DADC, over which RUSADA (quite properly) has no influence. There is nothing inherent in the system devised by the 2021 WADC that makes a NADO financially accountable for mistaken decisions of an operationally independent hearing panel.

60. RUSADA made the following requests for relief:

> *"81.1. Mr Bogatyrev has committed an anti-doping rule violation arising from the commission of three whereabouts violations between August 2020 and April 2021.*

81.2. Mr Bogatyrev has provided no evidence that would justify the reduction of the standard sanction of a two year period of Ineligibility.

81.3. The consequences to be imposed upon Mr Bogatyrev should be those as provided for in ADR Article 12.2.3 and Article 12.8.

82. RUSADA respectfully requests that the costs incurred by RUSADA in relation to this appeal be paid by Mr Bogatyrev in their entirety in accordance with Rule 64.4 and Rule 64.5 of the Code of Sports-related Arbitration."

C. The Athlete

61. The Athlete did not make any submissions in this arbitration.

V. JURISDICTION

62. The Sole Arbitrator observes that while RUSADA has expressly accepted CAS jurisdiction, the Athlete has not participated in the arbitration. Therefore, the Sole Arbitrator must examine jurisdiction *ex officio* (see, *ex multis*, Swiss Federal Tribunal, ATF 120 II 155 (162); CAS 2012/A/2877, para. 36; CAS 2008/A/1699, para. 15).

63. Pursuant to Article R47 of the CAS Code:

"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. […]" (emphasis added)

64. As the Appealed Decision was taken by the RUSADA DADC, the relevant regulations within the meaning of Article R47 of the CAS Code are the RUSADA ADR. Regarding the applicable edition of the RUSADA ADR in respect of jurisdiction, the Sole Arbitrator relies on the well-established principle of *tempus regit actum*, according to which substantive aspects are governed by the regulations in force at the time of the relevant facts, while procedural matters are governed by the rules in force at the time when the procedural action occurs (see, *ex multis*, CAS 2018/A/5628, para. 70 with further references). Questions of jurisdiction are procedural matters (see *ibid*.). Therefore, the 2021 RUSADA ADR are applicable because they were in force during the entire proceeding before the RUSADA DADC and at the time when WADA filed its appeal to CAS.

65. The 2021 RUSADA ADR provide as follows, in relevant parts:

"15.1.2. […] *Where WADA has the right to appeal under Chapter XV of the Rules and no other party has appealed a final decision pursuant to these Rules, WADA*

may appeal such decision directly to CAS without having to exhaust internal remedies specified by the Rules.

15.2 […] *The decisions specified below may be appealed exclusively pursuant to the procedure stipulated by Clause 15.2 hereof:*

• A decision that the Rules' violation was committed
• A decision to impose or not to impose Consequences for the Rules violation
[…]

15.2.1. […] *If a violation occurred during an International Event or International-Level Athletes are involved, the decision made may be appealed exclusively to CAS.*

15.2.2. […] *Where Clause 15.2.1 hereof does not apply, the decision may be appealed to the National Appeal Body.*

[…]

15.2.3.1. In cases stipulated by Clauses 15.2.1 and 15.2.2 hereof, the following parties shall have the right to appeal:

[…]

f) WADA." (emphasis added)

66. Accordingly, pursuant to Articles 15.1.2, 15.2 and 15.2.3.1 of the 2021 RUSADA ADR, CAS has jurisdiction over an appeal by WADA against a decision of RUSADA imposing (or not imposing) Consequences for a violation of the "*Rules*", the latter being a defined term denoting the RUSADA ADR. The present appeal was filed by WADA against a decision by RUSADA imposing certain Consequences for a violation of Article 4.4 of the RUSADA ADR. As no other party has appealed, it may be left open whether the dispute falls under Article 15.2.1 or 15.2.2, in particular, whether the Second Respondent is an International-Level Athlete. This is because, in either case, Article 15.1.2 provides that in case no other party has appealed a final decision pursuant to these Rules WADA may appeal directly to CAS, i.e., without having to exhaust internal remedies.

67. Therefore, the Sole Arbitrator has jurisdiction to adjudicate the present matter.

VI. ADMISSIBILITY

68. 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."

69. Accordingly, Article R49 of the CAS Code accords priority to any time limit for appeal provided for in the regulations governing the body that issued the decision appealed against. Pursuant to Article 15.2.3.4 of the 2021 RUSADA ADR:

> *"The time to file an appeal by WADA shall be the later of:*
> *a) Twenty-one (21) days from the expiry of the time for filing an appeal by other parties*
> *b) Twenty-one (21) days after WADA's receipt of a complete file relating to the decision."* (emphasis added)

70. The Appellant received elements of the case file on 29 April 2022. The Sole Arbitrator does not need to decide whether the documents received constituted the "*complete file*" within the meaning of Article 15.2.3 of the 2021 RUSADA ADR. In any case, the Statement of Appeal was filed on 18 May 2022 and, therefore, within 21 days of receipt of those documents by the Appellant.

71. Moreover, the Second Respondent's failure to submit its Answer, to provide a signed copy of the Order of Procedure, or to participate in any other manner in this proceeding, did not prevent the Sole Arbitrator from proceeding with the arbitration and delivering this Award (see Article R55(2) of the CAS Code; CAS 2018/A/5945, para. 39). The Sole Arbitrator is satisfied that the Second Respondent was duly notified of the arbitration but chose not to participate in it. Every communication was sent to the Second Respondent by email to the address that he had indicated in his ADAMS profile and that he had used in his communications with the ITA. In addition, out of an abundance of caution, and without prejudice to the efficacy of the prior communications by the CAS Court Office, the entire case file (except for exhibits to the Parties' submissions) was again delivered to the Second Respondent by courier.

72. As no Party raised any objections as to the admissibility of the appeal and as there are no indications in the file that the appeal could be inadmissible for any other reasons, the Sole Arbitrator determines that the appeal is admissible.

VII. APPLICABLE LAW

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

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

74. In the present case, it is necessary to distinguish between each of the alleged missed tests and the potential resulting ADRV. This is because the anti-doping regulations to be applied are, at least in principle, those of the Anti-Doping Organization that has Results Management authority. While the first two alleged missed tests and the related Results Management were conducted by the ITA on behalf of AIBA, the third alleged missed test was conducted by RUSADA, as was the Results Management in relation to that third alleged missed test and the potential ADRV resulting from it. To the extent that the involvement of those different Anti-Doping Organizations derived from or resulted in a shift in Results Management authority, this could entail the applicability of different anti-doping regulations. Therefore, it is necessary to ascertain the applicable regulations separately for each alleged missed test and the ADRV (see sections A. to D. below). Subsidiarily to the applicable regulations, Russian law shall apply, being the law of the country in which the RUSADA DADC is domiciled; however, the Sole Arbitrator notes that neither Party made any submissions on Russian law.

A. Potential first and second missed tests

75. Both Article 7.1 of the 2020 AIBA ADR and Article 7.1.1 of the 2015 RUSADA ADR, which were in force when the first and the second alleged missed tests occurred and when the relevant Results Management procedures were initiated, refer to the WADC for the allocation of Results Management authority. Pursuant to Article 7.1.2 of the (then applicable) 2015 WADC and Article I.5.1 of the 2020 ISTI, the Results Management authority in relation to a potential whereabouts failure (filing failure or missed test) lies with the Anti-Doping Organization with whom the athlete in question files whereabouts information. It transpires from Article I.2.2 and the comment to Article I.5.1 of the 2020 ISTI that an athlete files whereabouts information with the Anti-Doping Organization in whose RTP that athlete is included. As the Athlete was, at all relevant times, included in AIBA's RTP (see para. 94 *infra*), it follows that he filed his whereabouts information with AIBA and that AIBA therefore had Results Management authority in relation to any missed tests. This is not changed by the fact that the ITA managed AIBA's RTP and any whereabouts failures on behalf of AIBA.

76. Therefore, the Sole Arbitrator finds that the AIBA ADR are applicable to the first two alleged missed tests and the related Results Management procedures. In accordance with the principle of *tempus regit actum* (see para. 64 *supra*), it is the 2020 AIBA ADR that apply, together with the 2020 ISTI, as those were the regulations in force when the alleged missed tests occurred and when the relevant Results Management procedures were initiated.

B. Potential third missed test

77. In relation to the third alleged missed test, WADA and RUSADA assert that RUSADA had Results Management authority. According to WADA, this follows from RUSADA having conducted the missed test. In addition, WADA submits that RUSADA's Results Management authority also derives from the fact that RUSADA had informed the ITA that it would conduct Results Management and that neither the ITA nor the Athlete objected thereto.

78. The Sole Arbitrator is not persuaded by this line of argument. Article 7.1.4 of the 2021 edition of the AIBA ADR (the "**2021 AIBA ADR**"), Article 9.1.3 of the 2021 RUSADA ADR, Article 7.1.6 of the 2021 WADC and Article B.3.1 of the 2021 ISRM, all of which had entered into force before the Athlete committed the alleged third missed test,[4] unambiguously provide that Results Management authority lies with the Anti-Doping Organization with whom the relevant athlete files whereabouts information. There is no indication that the Athlete was added to RUSADA's RTP (and that he was notified that henceforth he needed to file his whereabouts information with RUSADA, pursuant to Article B.3.1 of the 2021 ISRM or Article 4.8.6.5 of the 2021 ISTI). Therefore, AIBA continued having Results Management authority over any missed tests.

79. Contrary to WADA's view, pursuant to the plain wording of the above-mentioned provisions, the fact that the alleged missed test was conducted by RUSADA is not relevant to the allocation of Results Management authority. Equally, contrary to WADA's second argument, it does not follow from the 2021 WADC, the 2021 RUSADA ADR or the 2021 AIBA ADR that Results Management authority shifted to RUSADA simply because neither the ITA nor the Athlete objected to RUSADA conducting Results Management. Moreover, as a matter of principle, failure to respond to an email is not the same as agreeing to the contents of that email. Finally, the Sole Arbitrator notes that while the applicable regulations foresee the possibility of delegating certain aspects of Results Management to third parties (see, in particular, Article 20 of the 2021 WADC and Article 4.8.14.1 (a) of the 2021 ISTI), they do not provide for shifting Results Management authority as such to a third party. By contrast, Article 20 of the 2021 WADC expressly clarifies that while delegation is possible, the Anti-Doping Organization holding Results Management authority "*remains fully responsible for ensuring that any aspect it delegates is performed in compliance with the Code*". Accordingly, if at all, the ITA's silence to RUSADA's email of 20 May 2021 would have merely rendered RUSADA a Delegated Third Party, which would not have changed the fact that AIBA continued to have Results Management authority.

80. Consequently, the Sole Arbitrator finds that the alleged third missed test is governed by the 2021 AIBA ADR. In addition, the 2021 ISRM and the 2021 ISTI are applicable.

C. Potential ADRV

81. With respect to the asserted ADRV, WADA argues that RUSADA's Results Management authority is based on Article 7.1 of the WADC, given that RUSADA conducted the third missed test, that it first provided notice to the Athlete of the potential ADRV, and that the ITA (on behalf of AIBA) expressly agreed that RUSADA conduct Results Management.

82. The Sole Arbitrator agrees that the ADRV falls within RUSADA's Results Management authority. According to their plain wording, Article 7.1.4 of the 2021 AIBA ADR, Article 9.1.3 of the 2021 RUSADA ADR and Article 7.1.6. of the 2021 WADC apply only to a "*potential whereabouts failure*". This is not the same as a potential ADRV,

[4] In relation to the 2021 RUSADA ADR, see in detail para. 84 *infra*.

even if the ADRV is based on a combination of three whereabouts failures. For the ADRV, one must therefore resort to Article 7.1.1 of the 2021 AIBA ADR, Article 9.1.1 of the 2021 RUSADA ADR and Article 7.1 of the 2021 WADC. This understanding is also confirmed by the fact that Article 7.1 of the 2021 WADC carves out from its scope of application only "*Articles 6.6, 6.8 and 7.1.3 through 7.1.5 below*" (emphasis added), not however Article 7.1.6. of the 2021 WADC, i.e., the provision that deals with Results Management authority for whereabouts failures. This omission can only be explained by the fact that contrary to Article 7.1 of the 2021 WADC, Article 7.1.6 does not deal with ADRVs (but rather with isolated elements of an ADRV), meaning there is no overlap between the two provisions that needed to be addressed by the rule-maker. The same holds true for Article 7.1.1 of the 2021 AIBA ADR and Article 9.1.3 of the 2021 RUSADA ADR, the corresponding carve-outs of which likewise do not include any reference to the provisions dealing with Results Management authority for potential whereabouts failures.

83. Therefore, according to Article 7.1.1 of the 2021 AIBA ADR and Article 7.1 of the 2021 WADC, as no Sample collection is involved, Results Management authority for the alleged ADRV lies with "*the Anti-Doping Organization which first provides notice to an Athlete* […] *of a potential anti-doping rule violation and then diligently pursues that anti-doping rule violation*"; the same is foreseen, with slightly different wording, in Article 9.1.1 of the 2021 RUSADA ADR. In the present case, the Anti-Doping Organization that first notified the Athlete of the potential ADRV (on 28 September 2021) is RUSADA. RUSADA also conducted the Results Management procedure that led to the Appealed Decision. Thus, RUSADA has Results Management authority over the potential ADRV, which is therefore governed by the 2021 RUSADA ADR.

84. The Sole Arbitrator notes that, with respect to the applicable edition of the RUSADA ADR, certain doubts stem from Order No. 464 promulgated by the Russian Ministry of Sport (the "**Order**"). The Order was issued on 24 June 2021, i.e., after the alleged ADRV had been committed, and states that it "*approved*" the 2021 RUSADA ADR. It is not clear from the Order, or from any other document on file, whether this approval by the Russian Ministry of Sport was a condition precedent for the entry into force of the 2021 RUSADA ADR. Should that be the case, the 2021 RUSADA ADR would have entered into force only after the alleged ADRV had been committed. This, in turn, would mean that the potential ADRV would be governed by the 2015 RUSADA ADR instead. However, as mentioned, it is not clear from the record whether the Order did in fact have any impact on the entry into force of the 2021 RUSADA ADR. Indeed, despite a request for clarification by the Sole Arbitrator, none of the Parties shed any further light on the legal significance of the Order as it relates to the coming into force of the 2021 RUSADA ADR. Without there being any suggestion by any of the Parties that the approval granted in the Order was a condition precedent for the 2021 RUSADA ADR entering into force, the Sole Arbitrator is not prepared to depart from the wording of the 2021 RUSADA ADR itself, whereby it entered into force on 1 January 2021. Therefore, the Sole Arbitrator finds that the alleged ADRV and the relevant Results Management is governed by the 2021 RUSADA ADR. In addition, the 2021 IRSM and the 2021 ISTI are applicable.

D. Summary

85. In summary, the applicable regulations are as follows:

- Potential first and second missed tests: 2020 AIBA ADR and 2020 ISTI
- Potential third missed test: 2021 AIBA ADR, 2021 ISRM and 2021 ISTI
- Potential ADRV: 2021 RUSADA ADR, 2021 ISRM and 2021 ISTI.

86. For completeness, the Sole Arbitrator notes that the provisions that are decisive for the outcome of this case are materially the same in all of the above-mentioned regulations. In particular, even if one were to allocate Results Management authority differently between AIBA and RUSADA and therefore applied the AIBA ADR instead of the RUSADA ADR, or *vice-versa*, and even if one applied the 2015 RUSADA ADR instead of the 2021 RUSADA ADR, the result would remain the same.

87. In addition, the Sole Arbitrator wishes to emphasize that whenever applying a provision that is no longer in force at the time this award is rendered, he has considered whether the successor provision(s) would be more favourable to the Athlete and should therefore be applied instead, in accordance with the principle of *lex mitior*, as recognized by well-established CAS jurisprudence (see, *ex multis*, CAS 2019/A/6669, para. 123).

VIII. MERITS

88. WADA argues, supported by RUSADA, that the Athlete's "liability is unchallenged as he accepted having committed an ADRV and did not appeal against the Appealed Decision" and that, therefore, "the only question is the sanction to be imposed". The Sole Arbitrator does not agree, as already indicated in the Procedural Order.

89. In particular, the Sole Arbitrator has not been referred to any document that would amount to an acknowledgement by the Athlete of having committed an ADRV. If at all, the Athlete's explanation in respect of the third alleged missed test, in combination with the Athlete's request for an administrative review, rather seems to suggest that he considers that no third missed test should have been declared and that he did not, therefore, commit an ADRV.

90. Moreover, while the Athlete has not participated in this arbitration, this does not amount to an acknowledgement of the facts as presented by WADA, and even less of WADA's legal conclusion that an ADRV was committed. Rather, it is for the Sole Arbitrator to satisfy himself that the appeal is well-founded (see KAUFMANN-KOHLER/RIGOZZI, International Arbitration – Law and Practice in Switzerland, 2015, para. 6.20; see also CAS 2018/A/5945, para. 40). As WADA requests that a longer period of ineligibility compared to the Appealed Decision be imposed on the Athlete, the appeal is well-founded only if the Sole Arbitrator is satisfied that the Athlete committed an ADRV (see section A. *infra*) and that the appropriate sanction is the one sought by WADA (see section B. *infra*).

A. Commission of an ADRV

91. Article 5.1 of the 2021 RUSADA ADR provides as follows:

> *"RUSADA shall have the burden of establishing that violation of the Rules has occurred. The standard of proof shall be whether RUSADA has established violation of the Rules to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability, but less than proof beyond a reasonable doubt. […]" (emphasis added)*

92. As WADA is appealing the RUSADA DADC's decision to seek a higher sanction to be imposed on the Athlete, in this arbitration the burden and standard of proof as set out in Article 5.1 of the RUSADA ADR apply to WADA (cf. CAS 2021/A/7840, para. 90). Accordingly, it is for WADA to prove, to the comfortable satisfaction of the Sole Arbitrator, that the Athlete committed an ADRV.

93. WADA asserts that the Athlete violated Article 4.4 of the 2021 RUSADA ADR, which provides as follows:

> "4.4. Whereabouts failures
>
> *Any combination of three missed tests and/or filing failures, as defined in the International Standard for Results Management, within a twelve-month period by an Athlete in a Registered Testing Pool."* (emphasis added)

94. Accordingly, the alleged ADRV presupposes inclusion of the Athlete in an RTP (see section 1. *infra*) and three missed tests within 12 months (see section 2.i. *infra*).

1. Inclusion of the Athlete in an RTP

95. The Sole Arbitrator is comfortably satisfied that, at all relevant times, the Athlete was included in AIBA's RTP. He was notified of his inclusion by letter from the ITA dated 30 January 2020. While the Sole Arbitrator notes that contrary to Article I.2.1(a) of the 2020 ISTI, the ITA's letter did not indicate a "*specified date in the future*" as of which the Athlete would be included in the RTP, there is no indication that the Athlete ever objected to the lack of a specified date, or that he suffered any prejudice. Indeed, the Athlete clearly considered himself included in the RTP, at the very latest as of 19 February 2020 when he signed a form acknowledging *inter alia* that he understood the obligations he was subject to as a member of the RTP. Therefore, pursuant to Article 3.2.3 of the 2020 AIBA ADR, Article 3.2.3 of the 2021 AIBA ADR and Article 5.2.3 of the 2021 RUSADA ADR, any missed test or ADRV that the Athlete may have committed cannot be invalidated on this basis.

96. Moreover, there is no indication in the record that the Athlete was ever notified of being removed from AIBA's RTP, or that the Athlete ever notified AIBA of his retirement from competition. Therefore, he continued to be in AIBA's RTP and was, at all material

times, subject to the applicable whereabouts requirements (see initially Article 5.6.3 of the 2020 AIBA ADR and Article I.2.4 of the 2020 ISTI, and subsequently Article 5.5.6 of the 2021 AIBA ADR and Article 4.8.7.3 of the 2021 ISTI).

2. Three missed tests within 12 months

97. As follows from Article 5.6.2 of the 2020 AIBA ADR (for the first two alleged missed tests), Article 5.5.5 of the 2021 AIBA ADR (for the third alleged missed test) and Article 7.5.5 of the 2021 RUSADA ADR, the requirements for declaring a missed test are as set forth in Article I.4.3 of the 2020 ISTI (for the first two alleged missed tests) and Article B.2.4 of the 2021 ISRM (for the third alleged missed test). In summary, the Athlete can only be considered as having committed a missed test if the following requirements are met:

(i) When notified of his inclusion in the RTP, the Athlete was advised that he would be liable for a missed test if he failed to be available for testing during the 60-minute slots and at the location(s) specified in his whereabouts filings.

(ii) During one of those 60-minute time slots, the Athlete was unavailable for testing even though the DCO did what was reasonable in the circumstances to try and locate the Athlete at the location specified in the Athlete's whereabouts filing.

(iii) In case of a second or third missed test: Any previous potential missed test had already been notified to the Athlete before the relevant test attempt.

(iv) The Athlete's unavailability for testing was at least negligent, which is rebuttably presumed if the previous three requirements are met.

98. The Sole Arbitrator is comfortably satisfied that requirement (i) is met. The ITA's letter to the Athlete of 30 January 2020 not only informed him of his inclusion in AIBA's RTP, but also expressly advised him that "*if inaccurate or incomplete whereabouts information in ADAMS results in an unsuccessful attempt to test you out-of-competition during your 1-hour testing slot, you will be liable for a MISSED TEST* […]". While a missed test may also be committed in case of accurate and complete whereabouts information (e.g., if the athlete is at the location specified in his whereabouts filings but does not hear the knock on the door or does not respond to the DCO for other reasons), the Sole Arbitrator finds that the above advice was nonetheless sufficient for the case at hand. This is because all three potential missed tests do concern allegedly inaccurate whereabouts information. In other words, there is no indication that the advice provided by the ITA could have caused the alleged missed tests – as would be required, pursuant Article 5.2.3 of the 2021 RUSADA ADR, for potentially invalidating a missed test.

99. With respect to requirements (ii) to (iv), the Sole Arbitrator will now analyse in turn below each of the three missed tests alleged by WADA.

i. First alleged missed test

100. Based on the documentation provided by WADA, in particular the "*Unsuccessful Attempt Report*" completed by the DCO, the Sole Arbitrator has no reason to doubt that the Athlete was unavailable for testing on 24 August 2020 during the 60-minute time slot and at the location he had specified in his whereabouts filings. In particular, the DCO certainly did (at least) what was reasonable in the circumstances to try and locate the Athlete. In addition to calling the intercom, ringing the bell and knocking at the door numerous times, he also checked the Athlete's balcony, tried to call the Athlete and spoke to the concierge.

101. In addition, the Sole Arbitrator notes that the only explanation by the Athlete on record is his email to the ITA of 28 September 2020. In that email, the Athlete stated that during the 60-minute time slot he was on a plane and "*couldn't fill in the table anywhere and didn't have the time to do it*". However, the Athlete failed to provide any explanation as to why, without any negligence on his part, he was unable to or did not have the time to update his whereabouts filings. Therefore, the Athlete failed to rebut the presumption of negligence.

102. Consequently, the Sole Arbitrator finds that the Athlete committed a first missed test on 24 August 2020 (the "**First Missed Test**").

ii. Second alleged missed test

103. The Sole Arbitrator is comfortably satisfied that the Athlete was unavailable for testing on 17 October 2020 during the 60-minute time slot indicated by the Athlete in his whereabouts filings, despite sufficient efforts from the DCO to locate the Athlete at the address provided by him in ADAMS. As evidenced by the "*Unsuccessful Attempt Report*" completed by the DCO, the Athlete confirmed to the DCO by phone, during the 60-minutes time slot, that in fact he was in another city thousands of kilometres from the location indicated in his whereabouts filings.

104. Moreover, the Sole Arbitrator finds it established that prior to the unsuccessful attempt to test the Athlete on 17 October 2020, the Athlete had been notified of the First Missed Test. The respective notification letter from the ITA is dated 15 September 2020. The Athlete received that letter prior to 17 October 2020, as evidenced by his response thereto of 28 September 2020.

105. Furthermore, the Athlete has not rebutted the presumption of negligence. In fact, he has not provided any explanation at all, neither in this arbitration nor during the previous stages of the Results Management, as to why he did not timely update his whereabouts filing.

106. Therefore, the Sole Arbitrator finds that the Athlete committed a second missed test on 17 October 2020 (the "**Second Missed Test**").

iii. Third alleged missed test

107. The Sole Arbitrator finds it established that on 30 April 2021, the Athlete was unavailable for testing during the 60-minute time slot and at the location specified by the Athlete in ADAMS. In this regard, the Sole Arbitrator has no reason to doubt the veracity of the (translated) "*Unsuccessful Attempt Report*", whereby the DCO was told by the woman who opened the door and who introduced herself as the Athlete's mother, that the Athlete was in Moscow for a competition. In fact, the Athlete himself confirmed in his explanations to RUSADA that he was in the Moscow region for competitions that lasted from 25 April to 5 May 2021. In addition, WADA furnished a confirmation from a technical delegate of that competition confirming that the Athlete held two bouts on 27 and 29 April 2021.

108. Moreover, the Sole Arbitrator is comfortably satisfied that the ITA had notified the Athlete of the Second Missed Test before 30 April 2021. WADA submitted a pertinent letter of the ITA dated 22 October 2020 and a reminder dated 12 January 2021. While there is no response from the Athlete nor a delivery confirmation nor a read receipt on record, WADA has furnished the cover emails by which the ITA communicated the two letters to the Athlete. The email address to which those emails were sent is identical to the email address indicated in the Athlete's ADAMS profile. As evidenced by multiple emails from the Athlete on the record, this is also the email address that the Athlete used in his communications with the ITA. Under those circumstances, it is very unlikely that both relevant emails were not received by the Athlete, without there being any suggestion that the ITA received any error message. In addition, had the Athlete never been notified of the Second Missed Test, one would have expected him to raise this point when he responded to the notification of a potential third missed test.

109. Finally, the explanations that the Athlete provided to RUSADA do not rebut the presumption that the Athlete's unavailability for testing was at least negligent. The Sole Arbitrator has great sympathy for the Athlete, who found himself in a very difficult situation at the time in view of his mother's severe illness and the complications created by the Covid-19 pandemic. However, it cannot be said that no negligence at all contributed to his failure to update his whereabouts filing on or before 30 April 2021. This is regardless of whether one takes guidance from the definition of "*No Fault or Negligence*" in the Annex to the 2021 RUSADA ADR, which refers to the "*exercise of utmost caution*", or whether one applies instead a more lenient standard in the sense of the average level of diligence that could be expected from a reasonable person (as would be the applicable standard under Swiss law, see KOSTKIEWICZ/NOBEL/SCHWANDER/WOLF, Schweizerisches Obligationenrecht, 2nd edition, 2001, Article 41, para. 65). In both cases, it was negligent of the Athlete not to update his whereabouts filings for a full five days after leaving for competitions from the address he had indicated in his whereabouts filings. This holds true in particular as he should have been all the more careful after he had already accumulated two missed tests in the previous eight months.

110. Thus, the Sole Arbitrator finds that the Athlete committed a third missed test on 30 April 2021 (the "**Third Missed Test**"). However, as will become clear below, the Sole Arbitrator does consider that the circumstances surrounding the Third Missed Test are relevant to the determination of the Athlete's degree of Fault and, thus, to the assessment of the applicable sanction.

111. For completeness, the Sole Arbitrator notes that the Third Missed Test is not invalidated by the fact that the relevant Results Management was conducted by RUSADA, despite AIBA having had Results Management authority (see para. 78 *supra*). Pursuant to Article 3.2.3 of the 2021 AIBA ADR (consistent with Article 3.2.3 of the 2021 WADC and Article 5.2.3 of the 2021 RUSADA ADR):

> *"Departures from any* […] *anti-doping rule or policy set forth in the Code or in an Anti-Doping Organization's rules shall not invalidate* […] *evidence of an anti-doping rule violation, and shall not constitute a defense to an anti-doping rule violation* […]*".*

112. A missed test being an element of an ADRV, the Sole Arbitrator finds that Article 3.2.3 of the 2021 AIBA ADR applies also to departures from any anti-doping rule (including on Results Management authority) in respect of the recording of a missed test. Therefore, even if the ITA (acting on behalf of AIBA) did not validly delegate Results Management to RUSADA given that the ITA failed to respond to RUSADA's email of 20 May 2021 (see para. 23 *supra*) – a question which may be left open here – the resulting departure from the rules on Results Management authority would still not invalidate the Third Missed Test. This holds true in particular as the Athlete did not raise any objection during any stage of the Results Management procedures in relation to the Third Missed Test and with respect to the ADRV.

3. Conclusion

113. It follows from the above that WADA has established that the Athlete committed a combination of three missed tests within twelve months and, therefore, an ADRV within the meaning of Article 4.4 of the 2021 RUSADA ADR.

B. Sanction to be imposed

114. As an initial matter, the Sole Arbitrator notes that in accordance with Article 15.1.1 of the 2021 RUSADA ADR:

> *"In making its decision, CAS shall not give deference to the discretion exercised by the body whose decision is being appealed."*

115. Accordingly, the Sole Arbitrator is not confined to assessing whether the sanction imposed by the Appealed Decision is "*evidently and grossly disproportionate to the offence*", as may otherwise have been the case based on well-established CAS jurisprudence (see, *ex multis*, CAS 2012/A/2756, para. 8.31 with further references). Instead, where the applicable regulations leave discretion as to the gravity of the sanction, it is for the Sole Arbitrator to determine the sanction that he deems to be the appropriate one.

116. In respect of the period of ineligibility to be imposed on the Athlete, Article 12.3.2 of the 2021 RUSADA ADR provides as follows:

> *"For violations of Clause 4.4 of the Rules, the period of Ineligibility shall be two years, subject to reduction down to a minimum of one year, depending on the Athlete's degree of Fault. The flexibility between two years and one year of Ineligibility in this Clause is not available to Athletes where a pattern of last-minute whereabouts changes or other conduct raises a serious suspicion that the Athlete was trying to avoid being available for Testing."*

117. None of the Parties has suggested, and neither does the Sole Arbitrator find any indication in the file, that there is a pattern of the Athlete changing his whereabouts filings last-minute, or any other conduct raising a serious suspicion that he was trying to avoid being tested. Indeed, as mentioned in the Appealed Decision and as confirmed by the Athlete's testing history submitted by WADA in this arbitration, the Athlete passed three doping tests between the Second and the Third Missed Tests, which is rather an indication that he did not try to avoid being tested. Therefore, Article 12.3.2 of the 2021 RUSADA ADR provides "*flexibility between two years and one year of Ineligibility*". While the Sole Arbitrator agrees with WADA's submission that the standard period of ineligibility is two years, this does not change the fact that this period can be reduced "*depending on the Athlete's degree of Fault*".

118. In this regard, it is important to note that contrary to Article 12.6 of the 2021 RUSADA ADR, Article 12.3.2 does not require "*No Significant Fault or Negligence*". It follows, as a matter of systematic interpretation, that a reduction under Article 12.3.2 of the 2021 RUSADA ADR remains possible even if the Athlete's Fault was significant. In addition, the Sole Arbitrator agrees with the finding of the panel in CAS 2020/A/7528, para. 187, that the categorization of degrees of Fault established in the *Cilic* case (CAS 2013/A/3327 and CAS 2013/A/3335, paras. 69 et seq.)

> *"*[…] *is a helpful guide, though the calibration would necessarily be different here in light of the different possible period of ineligibility of 12-24 months; thus (albeit using slightly different labels) the following levels of fault would correspond to whereabouts cases: 'high' (20-24 months, with a midpoint of 22 months), 'medium' (16-20 months, with a midpoint of 18 months), and 'low'* [(]*12-16 months, with a midpoint of 14 months)."*

119. It is thus for the Sole Arbitrator to determine whether the Athlete's level of Fault is high, medium or low, and to assess the appropriate sanction within the applicable category. In doing so, the Sole Arbitrator finds it useful to take guidance from the following findings in the *Cilic* case (CAS 2013/A/3327):

> *"71. In order to determine into which category of fault a particular case might fall, it is helpful to consider both the objective and the subjective level of fault. The objective element describes what standard of care could have been expected from a reasonable person in the athlete's situation. The subjective element describes what could have been expected from that particular athlete, in light of his personal capacities.*

72. The Panel suggests that the objective element should be foremost in determining into which of the three relevant categories a particular case falls.

73. The subjective element can then be used to move a particular athlete up or down within that category.

74. Of course, in exceptional cases, it may be that the subjective elements are so significant that they move a particular athlete not only to the extremity of a particular category, but also into a different category altogether. That would be the exception to the rule, however."

120. In terms of the factors to be considered when determining the Athlete's degree of Fault, the Sole Arbitrator relies on the definition of "*Fault*" in the Annex to the 2021 RUSADA ADR, which provides as follows:

"Fault is any breach of duty or any lack of care appropriate to a particular situation.

Factors to be taken into consideration in assessing an Athlete or other Person's degree of Fault include, for example, the Athlete's or other Person's experience, whether the Athlete or other Person is a Protected Person, special considerations such as impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In assessing the Athlete's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behavior. […]*"* (emphasis added)

121. Finally, in line with CAS jurisprudence, the Sole Arbitrator finds that when determining the Athlete's degree of Fault, he must take account of the circumstances surrounding all three missed tests (CAS 2020/A/7528, para. 168(c); CAS 2020/A/7526 & 7559, para. 206).

122. With the above in mind, the Sole Arbitrator considers that the Athlete's objective level of fault is high. In the case of all three missed tests, the Athlete was far away from the address he had indicated in his whereabouts filings, i.e., he could not have made himself available even if the DCO had called him at the beginning of the 60-minute time slot (contrary to, e.g., the athlete in CAS 2020/A/7528). In addition, there is no indication that his absence was due to any unexpected occurrences or any last-minute changes to the Athlete's plans (cf. also CAS 2011/A/2671, para. 78; CAS 2020/A/7528, para. 188(a)). To the contrary, in the case of the First Missed Test, the Athlete was on a plane on his way to competitions, which suggests that he must have had sufficient time to realize that he needed to update his whereabouts filings, and to make sure he did so before the relevant 60-minute time slot began. The same holds true for the Second Missed Test, where he was in a city thousands of kilometres away during the 60-minute time slot. Finally, it is established that the Athlete was aware as early as five days before the Third Missed Test that his whereabouts filings needed to be updated. That he still

failed to do so was particularly careless in view of the fact that he had already accumulated two missed tests in the previous eight months and should therefore have been on "*high-alert*" (CAS 2020/A/7528, para. 188(b)). In other words, in the case of the Third Missed Test, the level of care exercised by the Athlete was particularly poor in relation to what should have been the perceived level of risk.

123. In respect of the Athlete's subjective level of fault, the Sole Arbitrator notes that the Athlete is still quite young. He was just 19, respectively 20, years of age and was therefore still relatively inexperienced when the three missed tests occurred. In line with CAS jurisprudence (see, e.g., CAS 2013/A/3327, para. 76(a); CAS 2011/A/2493, para. 42 *et seq*.; CAS 2010/A/2107, para. 9.35 *et seq.*) and the definition of "*Fault*" in the 2021 RUSADA ADR ("*experience*"), this is a factor to be taken into account in favour of the Athlete. In addition, with respect to the Third Missed Test, the Sole Arbitrator accepts that the Athlete was suffering from a great degree of stress (cf. CAS 2013/A/3327, para. 76(d)(iii); CAS 2012/A/2756, para. .45 *et seq.*) due to his mother's (undisputed) severe illness, which was further complicated by problems with medical care during the COVID-19 pandemic. It is also undisputed that the Athlete had to work in order to financially sustain his mother and minor brother, in addition to studying and practising his sport. The Sole Arbitrator finds it easy to see how the Athlete, in particular given his young age, could become overwhelmed with his multiple important duties in such a difficult situation. In the words of the panel in the case AAA No. 01-17-001-3244, at para. 8.4, the Athlete's "*life was outside its usual routine*" and the Sole Arbitrator can understand that this "*could reasonably distract* [the Athlete] *from* [his] *quotidian (though important) responsibilities.*"

124. In view of the above, the Sole Arbitrator finds that a period of ineligibility of 20 months, i.e., the lower end of the spectrum for an objectively high level of Fault, is appropriate. The Sole Arbitrator finds that the jurisprudence referred to by WADA does not militate in favour of a higher sanction:

- In CAS 2014/A/2, a period of ineligibility of 15 months was imposed after the athlete in that case had established that in one missed test, the DCO had failed to call him, while during the other missed test he was in distress because of hospitalization of his father and being called away by his employer. The Sole Arbitrator considers that the excuse for the latter missed test in that case is similar to the Athlete's situation surrounding the Third Missed Test. However, the Sole Arbitrator finds that a higher sanction than 15 months is appropriate here as the Athlete could only provide a reasonable justification for one of the three missed tests. In addition, his failure to update his whereabouts for five days prior to the Third Missed Test was particularly careless from an objective perspective.

- In CAS 2015/A/4210, a period of ineligibility of 24 months was imposed despite the fact that the athlete missed the test while assisting his wife in her unforeseen and urgent hospitalization. However, the panel in that case stressed the fact that the athlete had nonetheless managed to inform a third party in charge of his whereabouts filing about his change of location, which third party then failed to update his whereabouts accordingly for no apparent reason. Accordingly, it was not the amount of stress suffered

by the athlete that caused the missed test, but rather the negligence of the third party on which the athlete chose to rely. Therefore, that case is not comparable to the present matter.

- In SR/253/2020, a period of ineligibility of 20 months was imposed, based on what the arbitrator referred to as somewhat "*vague testimony*" on a "*preoccupied mental state*" at the time of one of the whereabouts failures, mainly due to the pandemic and its effect on sporting competitions, the murder of George Floyd and the Black Lives Matter movement. The Sole Arbitrator considers that the Athlete's explanations on his difficult situation around the time of the Third Missed Tests were sufficiently detailed and, as they related to the health of a close family member, could be seen as reasonably causing an even greater preoccupation of the Athlete's mental state. However, because of the high objective level of Fault in respect of the Third Missed Test, the Sole Arbitrator considers that, on balance, the same period of ineligibility as in SR/253/2020 is appropriate.

- In SR/092/2020, a period of ineligibility of 18 months was imposed, based on "*distress, fear, and distraction caused by the harassment during the time leading up to the third Missed Test*". The Sole Arbitrator finds that the subjective degree of Fault is similar in the present case. However, due to the high objective level of Fault, a slightly higher sanction seems warranted here.

- In SR/Adhocsport/272/2019, a period of ineligibility of 24 months was imposed on an athlete whose only excuse (in relation to her third missed test) was that her doorbell did not work and that she did not hear the DCO knocking on the door and calling her phone because she was sleeping and failed to take multiple obvious measures to reduce the risk of not hearing the DCO. The Sole Arbitrator considers the level of Fault of that athlete to have been significantly higher than that of the Athlete, even more so as she was found to be an experienced athlete. Therefore, a more lenient sanction is warranted in the present case.

125. Therefore, the Sole Arbitrator is satisfied that a period of ineligibility of 20 months is consistent with the jurisprudence invoked by WADA.

126. That said, in accordance with Article 12.13.2.1 of the 2021 RUSADA ADR,

> *"If a period of Ineligibility is served pursuant to a decision that is subsequently appealed, the Athlete or other Person shall receive a credit for such period of Ineligibility served against any period of Ineligibility which may ultimately be imposed on appeal."*

127. The Appealed Decision imposed a period of ineligibility of one year on the Athlete, starting from 7 October 2021. There is no suggestion by any of the Parties that the Athlete failed to serve that period of ineligibility. Therefore, the Athlete shall receive credit for one year of ineligibility already served from 7 October 2021 until and including 6 October 2022. For completeness, the Sole Arbitrator notes that, in accordance with Article 12.13.2.2 of the 2021 RUSADA ADR, the Appealed Decision

already granted the Athlete credit for the voluntary Provisional Suspension served by the Athlete, namely by backdating the period of ineligibility imposed by it. Accordingly, in order to avoid any "double-counting", the Provisional Suspension voluntarily served by the Athlete must not be credited again toward the period of ineligibility imposed by this Award.

128. In accordance with Article 12.13 of the 2021 RUSADA ADR, the period of ineligibility shall commence on the date of the final hearing decision providing for ineligibility, i.e., the date of this Award.

129. As per Article 12.10 of the 2021 RUSADA ADR, all competitive results achieved by the Athlete from 30 April 2021 (the date on which the ADRV was committed) through 7 October 2021 (the date on which the voluntary Provisional Suspension began[5]) shall be disqualified with all resulting Consequences, including forfeiture of all medals, points and prizes.

IX. COSTS

(…).

[5] Article 12.10. of the 2021 RUSADA ADR, in the English translation provided to the Sole Arbitrator, could be read as meaning that any competitive results achieved during the Provisional Suspension shall likewise be disqualified on the basis of the Article ("*starting from the date* [of the ADRV] *(including the period of Provisional Suspension or Ineligibility)*". However, the Sole Arbitrator considers that the intention of the rule-maker was merely to refer to the period from the ADRV "*through the commencement of any Provisional Suspension*", as per Article 10.10 of the 2021 WADC. This is confirmed by the fact that a qualification of any results achieved during a Provisional Suspension is expressly provided elsewhere, namely in Article 12.14.14 of the 2021 RUSADA ADR.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by the World Anti-Doping Agency (WADA) on 18 May 2022 against the decision rendered by the Disciplinary Anti-Doping Committee of the Russian Anti-Doping Agency (RUSADA) on 4 April 2022 in the matter concerning Ilya Bogatyrev is partially upheld.

2. The decision rendered by the Disciplinary Anti-Doping Committee of the Russian Anti-Doping Agency (RUSADA) on 4 April 2022 in the matter concerning Ilya Bogatyrev is amended as follows:

   (i) Ilya Bogatyrev shall serve a period of ineligibility of twenty (20) months as from the date of this award, with credit given for the period of ineligibility already served from 7 October 2021 until and including 6 October 2022.

   (ii) All competitive results achieved by Ilya Bogatyrev from 30 April 2021 through 7 October 2021 shall be disqualified with all resulting Consequences, including forfeiture of all medals, points and prizes.

3. (…).

4. (…).

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

Seat of arbitration: Lausanne, Switzerland
Date: 5 September 2023

THE COURT OF ARBITRATION FOR SPORT

Heiner Kahlert
Sole Arbitrator