CAS 2024/A/10821 Fédération Internationale de Volleyball v. Polish Anti-Doping Agency & A.

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Dr. Despina Mavromati, Attorney-at-law in Lausanne, Switzerland

in the arbitration between

Fédération Internationale de Volleyball (FIVB), Lausanne, Switzerland

Represented by Dr Paul Fischer and Mr David Menz, Martens Rechtsanwaltsgesellschaft mbH, Munich, Germany

Appellant

and

Polish Anti-Doping Agency (POLADA), Warsaw, Poland

Represented by Mr Michal Rynkowski, POLADA President and Mr Lukasz Krych, Warsaw, Poland

First Respondent

A., […], Poland

Represented by Mr Jan Łukomski, Łukomski Niklewicz Adwokacka Spółka Partnerska, Poznań, Poland

Second Respondent

I. PARTIES

1. The Fédération Internationale de Volleyball (hereinafter the "FIVB" or the "Appellant") is the governing body for all forms of the sport of volleyball on a global level. Its seat is in Lausanne, Switzerland.

2. The Polish Anti-Doping Agency (hereinafter "POLADA" or the "First Respondent") is the national anti-doping organisation (hereinafter "NADO") in Poland, recognized as such by the World Anti-Doping Agency (hereinafter "WADA"). POLADA has its registered seat in Warsaw, Poland.

3. Ms. A. (hereinafter the "Athlete" or the "Second Respondent") is a professional volleyball player, born on […], who is an international-level athlete.

4. The FIVB, POLADA and the Athlete are hereinafter referred to collectively as the "Parties".

II. FACTUAL BACKGROUND

A. Background Facts

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

6. On 26 April 2024, the Athlete was subject to an out-of-competition test in Spala, Poland, and submitted her sample (hereinafter the "Sample").

7. On 21 May 2024, the WADA-accredited laboratory in Warsaw, Poland (the "Laboratory") reported the analysis of the "A" Sample and found that said Sample contained the substance Canrenone at a concentration of 99 ng/mL. Canrenone is a prohibited substance at all times under the WADA Prohibited List (2024) and forms part of Category S5 (Diuretics and Masking Agents). All prohibited substances in this class are *Specified Substances* for the purposes of the WADA Code.

8. At the time of collection of the Sample, the Athlete had neither applied for, nor been granted, any Therapeutic Use Exemption (hereinafter "TUE") with respect to Canrenone.

9. The Athlete did not declare the use of the drug Verospiron in the Doping Control Form (hereinafter "DCF") signed by the Athlete at the time of the Sample collection.

10. On 21 May 2024, POLADA issued a notification letter (hereinafter "Notification Letter"), notifying the Athlete that the Sample contained a prohibited substance and hence, POLADA considered that she may have committed an Anti-Doping Rule Violation ("ADRV"). Through the Notification Letter, the Athlete was informed of her right to request the "B" Sample opening and analysis and be present or nominate a representative to attend the "B" Sample opening.

11. The Athlete did not exercise her right to request the "B" Sample opening and analysis.

12. On 21 May 2024, POLADA issued a separate letter to the Athlete notifying her of an immediate provisional suspension until the issuance of a decision in accordance with Article 7.4.2 of the POLADA ADR.

13. On 24 May 2024, the Athlete filed an appeal against the imposition of a provisional suspension.

14. On the same day, the Athlete filed an application to the International Testing Agency (hereinafter "ITA"), requesting a retroactive TUE for Spironolactone, which is a prohibited substance in accordance with the 2024 Prohibited List (S.5 diuretics and masking agents) and which metabolizes partially to Canrenone, i.e., the prohibited substance detected in the analysis of the Sample, in the human body. The Athlete based her application on the diagnosis that she suffered from […] and had been under treatment for the same with the drug Verospiron, which contains Spironolactone, since 31 January 2024.

15. On 29 May 2024, POLADA issued a letter to the Athlete stating that due to the submission of a retroactive TUE application, the provisional suspension imposed on her has been revoked.

16. On 8 June 2024, the ITA issued a certificate of approval for the therapeutic use of Spironolactone effective from 8 June 2024 to 7 June 2025.

B. Proceedings before the previous instance

17. On 11 June 2024, the ITA issued the reasoned decision regarding the Athlete's application for a retroactive TUE for Spironolactone. The ITA decided to deny the retroactive application, as the requirements provided under Articles 4.1 and 4.3 of the International Standard for Therapeutic Use Exemptions were not fulfilled but still approved a prospective TUE for one year.

18. On 13 June 2024, POLADA issued a letter (hereinafter "Charge Letter") whereby the Athlete was informed of the initiation of disciplinary proceedings against her as per Article 8 of the POLADA ADR, for the presence of a prohibited substance in the Sample, as set out under Article 2.1 of the POLADA ADR and use of a prohibited substance under Article 2.2 of the POLADA ADR.

19. On 19 June 2024, the Athlete submitted her reply to the Charge Letter. In essence, the Athlete submitted in her reply that she suffered from a medical condition called […] for a long time and was prescribed the drug Verospiron, which contained Spironolactone, as part of her treatment for this condition. While she informed her doctor that she was a professional athlete, she was not informed that taking the medicine would result in an ADRV. The Athlete regrets that she failed to inform her team doctor about the drug, however this was unintentional and was due to lack of awareness. Finally, Spironolactone did not affect her athletic performance nor did it provide her with any sporting advantage and she had, since then, be granted a TUE and a future exemption for this substance. The Athlete further underlined that she was participating at the Women's Volleyball national League, and at the turns of July and August 2024 was scheduled to participate in the Olympic Games in Paris and that disqualification for a substance she could now use would constitute a grossly severe sanction.

20. The hearing took place on 3 July 2024 and the operative part of the decision of the Disciplinary Panel ("DP") of First Instance ("Appealed Decision") was notified on the Athlete on the same day. The English translation of the operative part of the Appealed Decision, that was transmitted to POLADA on 7 August 2024, reads as follows:

"I. A. is considered guilty of the aforementioned violation of the Anti-Doping Rules of the Polish Anti-Doping Agency 2021;

II. On the basis of Article 10.6.1.1 of the Anti-Doping Rules of the Polish Anti-Doping Agency 2021 a sanction of reprimand is imposed on the respondent;

III. The present decision will be made public."

21. The grounds for the Appealed Decision (hereinafter the "Grounds"), in Polish language, were notified to the Appellant on 1 August 2024. An English translation was provided by POLADA on 7 August 2024.

22. In essence, the Appealed Decision confirmed the ADRV under the applicable rules holding that, under the POLADA ADR, it was the Athlete's personal duty to ensure to ensure that no prohibited substance entered her body. However, it found that the Athlete's failure to declare the medicine in the Doping Control Form and to inform her team doctor about her condition was probably because […] is a condition that can lead to embarrassing situations and have a negative impact on her self-confidence. Furthermore, the Appealed Decision held that the treatment was in line with the current standards of the treatment of the medical condition but still off-label use and therefore required additional consent by the Athlete. Such consent was not requested by the Athlete's doctor (who was not a specialized doctor in sports medicine) and the Athlete was not informed of the off-label application of the drug.

23. The Appealed Decision further found that the Athlete's hormone tests confirmed the presence of the prohibited substance in the Athlete's urine sample and thus the origin of the substance. Moreover, the granting of a prospective TUE confirmed the legitimacy of the previously started therapy with the drug containing the prohibited substance.

24. In view of the above, the Appealed Decision confirmed that the Athlete should be imposed the sanction of a reprimand for no substantive fault.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

25. On 28 August 2024, the CAS Court Office acknowledged receipt of the Statement of Appeal filed on 22 August 2024 by the Appellant and noted that it requested an extension until 23 September 2024 to file its Appeal Brief. The CAS Court Office invited the Respondents to comment on this request and suspended the deadline for filing the Appeal Brief as from 28 August 2024.

26. On 2 September 2024, the Athlete responded via her lawyer, consenting to the use of English as the language of the proceedings, to the request for extension to file the Appeal Brief requested by the Appellant and to the appointment of a Sole Arbitrator in this matter.

27. On 5 September 2024, the Appellant sought the consent of the Second Respondent to use Artificial Intelligence ("AI") translation tools for the relevant documents in the present case from Polish language into English.

28. On 13 September 2024, the CAS Court Office noted that the Athlete objected to the use of AI translation tools by the Appellant, mainly due to data protection considerations, and sought the Respondents' comments on the Appellant's subsidiary request to allow the Appellant to first file the documents in the Polish language and to submit translations into English only if deemed necessary by the Sole Arbitrator. The CAS Court Office further noted that the Respondents' silence on this request would be held as an agreement.

29. On 26 September 2024, the CAS Court Office acknowledged receipt of the Appeal Brief filed on 23 September 2024 and the Athlete's letters of 19 September 2024 and informed the Parties that the case would be decided by a Sole Arbitrator, to be appointed pursuant to Article R54 of the CAS Code.

30. In the same letter, the CAS Court Office noted that the Deputy Division President had decided to invite the Appellant to submit the exhibits that were drafted in Polish duly translated in English (without AI translation tools) on or before 10 October 2024. To the extent that both Respondents were Polish speaking, the Deputy Division President decided that certified / sworn translations would be reserved if one of the Respondents would challenge the accuracy of the produced translations, in which case the Panel / Sole Arbitrator would decide how to finally address this issue.

31. On 7 October 2024 and as agreed by the Parties, the CAS Court Office notified the Appeal Brief to the Respondents, who were invited to file with the CAS an Answer within twenty days upon receipt of the CAS letter by courier.

32. On 10 October 2024, the CAS Court Office acknowledged receipt of the Appellant's correspondence, along with the translated exhibits uploaded onto the e-Filing platform on the same day.

33. On 1 November 2024, the CAS Court Office acknowledged receipt of the First Respondent's Answer sent by email on 28 October 2024 and of the Second Respondent filed via the CAS e-Filing platform and by email on 29 October 2024. The CAS Court Office noted that the Answer of the First Respondent had not been uploaded onto the CAS e-Filing platform and invited the First Respondent to submit, by 6 November 2024, a proof of sending of the hard copies of its answer.

34. On 8 November 2024, the CAS Court Office acknowledged receipt of the First Respondent's email sent on that same day, whereby the First Respondent confirmed having submitted the Answer exclusively by email on 28 October 2024. In the same letter, it invited the other Parties to indicate, by 14 November 2024, if they would nonetheless accept that the Answer be admitted on file.

35. On 18 November 2024, the CAS Court Office acknowledged receipt of the Appellant's letter dated 12 November 2024, admitting the Answer of the First Respondent to the file, and of the letter of the Second Respondent dated 14 November 2024, objecting thereto but suggesting that the First Respondent be granted an additional deadline *"to file a reply to the Appeal Brief in the correct form"*. In the same letter, the CAS Court Office suggested to the Parties that the First Respondent be granted a short deadline to download its Answer onto the CAS e-Filing platform or to send hard copies of such brief. On 22 November 2024, the CAS Court Office acknowledged letters sent by the Appellant and the Athlete, accepting such proposal and invited the First Respondent to send its Answer by courier or download such brief onto the CAS e-Filing platform by 29 November 2024.

36. On 3 December 2024, the CAS Court Office acknowledged receipt of the First Respondent's Answer onto the CAS e-Filing platform on 28 November 2024 and accepted said submission to the file.

37. On 5 December 2024, the CAS Court Office issued the Notice of Formation of the Panel as follows:

> Sole Arbitrator: Dr Despina Mavromati, Attorney-at-law in Lausanne, Switzerland

38. On 13 December 2024 and after having duly consulted the Parties, the CAS Court Office informed them that the Sole Arbitrator decided to hold a hearing by video conference and, further a request from the Athlete, a case management conference. Moreover, the Sole Arbitrator noted the Appellant's request of 12 December 2024 to be allowed to express its comments on the Athlete's requests "*to allow an opinion of an expert witness*" formulated in her Answer and invited the Appellant and the First Respondent to submit their comments by 20 December 2024.

39. On 19 December 2024, the Appellant objected to the Athlete's requests "*to allow an opinion of an expert witness*" formulated in her Answer.

40. As will be further addressed under section [IV] (B) below, the Appellant further objected to the appointment of an independent expert based on Swiss law and the jurisprudence of the Swiss Federal Tribunal, stating that said conditions were not met in the present case.

41. On 20 December 2024, the CAS Court Office acknowledged the Appellant's letter dated 19 December 2024 and *inter alia* noted that, in the Sole Arbitrator's understanding, the Appellant had requested to be authorized to produce an expert opinion herself rather than the appointment of an independent expert by the panel. As such, the Sole Arbitrator would be inclined to grant such expert opinion provided that the other parties' right to be heard are duly respected and, inversely, would not intend to appoint such expert based on her own investigating powers. The CAS Court Office further noted that said issue would be discussed during the case management conference.

42. On 3 January 2025, the Athlete filed a letter including submissions regarding her request for an expert opinion and adduced a "Psychological Report" from psychologist Ms. […], responding to the Appellant's submissions dated 19 December 2024.

43. On 7 January 2025, the CAS Court Office acknowledged receipt of the Athlete's correspondence and enclosures dated 3 January 2025, noting that the other Parties would have the possibility to express themselves regarding said correspondence and submissions during the case management conference, that would be held on 9 January 2025 at 11h00 am CET.

44. On 9 January 2025, the Sole Arbitrator held a Case Management Conference in the presence of the following parties:

- Ms Pauline Pellaux, CAS Counsel
- Dr Despina Mavromati, Sole Arbitrator
- Mr David Menz and Mr Vishakh Ranjit, External Counsel for the Appellant
- Ms Alessandra Deliberato, FIVB Senior Legal Counsel
- Mr Hubert Dziudzik , Deputy Director of POLADA
- Mr Jan Łukomski, Counsel of the Athlete

45. After the Case Management Conference, the CAS Court Office sent a letter to the Parties, on behalf of the Sole Arbitrator, confirming the issues discussed and decided during the meeting as follows:

- The hearing was confirmed to be held by video-conference on 4 February 2025 at 9:30 am CET

- The Sole Arbitrator decided to accept the Psychological Report of Ms […] on file as well as her testimony during the hearing; at the same time, the Appellant was invited to submit observations and adduce evidence strictly limited to this report, on or before 24 January 2025.

- The Parties were invited to agree on a joint hearing schedule.

46. On 23 January 2025, the CAS Court Office sent a letter enclosing an Order of Procedure, which was returned duly signed by all Parties on 24 and 31 January 2025, respectively.

47. On 24 January 2025, the Appellant sent its submission about the Psychological Report of Ms […] along with an expert report by Prof. Dr. Catani. In this correspondence, the Appellant informed the CAS Court Office that Prof. Catani would be called to testify at the hearing.

48. On 3 February 2025 and after an exchange of communications on this issue, the CAS Court Office acknowledged receipt of the tentative hearing schedule established by the Parties.

49. On 4 February 2025 at 9:30 CET, the hearing took place by video conference. The following persons were present at the hearing

– Dr. Despina Mavromati, Sole Arbitrator

– Ms. Pauline Pellaux, Counsel to the CAS

– Mr. David Menz, External Counsel of the Appellant

– Mr. Vishakh Ranjit, External Counsel of the Appellant

– Ms Alessandra Deliberato, Senior Legal Counsel at the FIVB

– Mr Jan Łukomski, Counsel of the Athlete

– Ms. A., Athlete

– Mr Jakub Chudy, Interpreter of the Athlete

– Dr. Michal Rynkowski, Director of POLADA

50. In addition to the persons mentioned above, the following persons were heard during the evidentiary proceedings

– Dr. […], Clinical Dermatologist, Witness called by the Appellant

– Ms. […], Psychologist, Expert Witness called by the Appellant

– Dr. Marco Catani, Clinical Psychiatrist, Expert Witness called by the Appellant

51. At the end of the hearing, the Parties confirmed that they were satisfied with the conduct of the proceedings, and they did not have any procedural objections thereto.

IV. SUBMISSIONS OF THE PARTIES

A. Main Submissions

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

- The Appealed Decision correctly established that the Athlete violated Article 2.1 and 2.2 of the POLADA ADR. The appropriate consequences for said ADRVs are however disputed. The imposition of a reprimand was too lenient and incompatible with the Athlete's significant level of fault in the present matter and failed to impose any sanctions with respect to the disqualification of results obtained by the Athlete.

- With respect to the period of ineligibility, the Appellant does not consider that there is a serious possibility for the Athlete to have intentionally committed the ADRVs and therefore does not request an ineligibility period of four years under Article 10.2.1.2 of the POLADA ADR.

- The standard ineligibility period applicable in the present case is two years pursuant to Article 10.2.2 of the POLADA ADR. However, the Appealed Decision erroneously reduced the standard sanction to a reprimand applying Article 10.6.1.1 of the POLADA ADR and finding that "no substantial fault" existed on the Athlete's part. Though the Athlete provided certain explanations for her ADRVs, her degree of fault in the present case does not warrant a reduction of the applicable ineligibility period to a reprimand only.

- The Appellant does not challenge the alleged source of the prohibited substance and accepts that the medication Verospiron prescribed by the Athlete's doctor and consumed from 31 January 2024 was the source of the prohibited substance Canrenone found in her Sample.

- With respect to her degree of fault, the Appellant analysed 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 that level of risk. The reduction based on "No Significant Fault or Negligence" is only possible *"where the circumstances justifying a deviation from the duty of exercising the "utmost caution" are truly exceptional, and not in the vast majority of cases."*

- Relying on CAS case law, the Appellant considers that the Athlete's bears a significant fault in the present case: the Athlete was an experienced volleyball player who had received sufficient anti-doping education during her long career and therefore aware of her responsibilities as a professional athlete. As such, the mere fact that the medication

was consumed by the Athlete for a therapeutic purpose is irrelevant to the degree of fault analysis.

- The Athlete admittedly failed to do sufficient research and due diligence to ensure that the medication she consumes does not contain any prohibited substances, such as reading the label of the product, cross-check the ingredients with the list of prohibited substance, or make an internet search of the product.

- The only step that she took was to inform her doctor that she is a professional athlete and she had to undergo anti-doping testing. However, her doctor was not a specialized doctor in sports medicine and thus not an expert. Even if he were an expert, such duty cannot be entirely delegated to her doctor to fulfil her anti-doping obligations. The Athlete should have informed her team doctor, which she failed to do without any compelling reason to this effect. While the Athlete only mentions her "lack of awareness" as the reason of the failure, the Appealed Decision attributes a separate reason for this omission by the Athlete, namely the Athlete's possible embarrassment caused by her medical condition, such reason is however not convincing as the team doctor is bound by professional rules of confidentiality. As such, it cannot be reasonably assumed that she took sufficient steps to prevent the possibility of a prohibited substance entering her body.

- With respect to the Athlete's submissions that she suffered from a medical condition for a long time and she was undergoing treatment prior to the prescription of Verospiron, the Athlete failed to mention that she conducted any research or due diligence regarding these other medications she consumed. This rather undermines her case showing her extremely casual approach to her anti-doping obligations in general.

- The Athlete's argument that the prohibited substance found in her sample lacked any performance-enhancing effect and was only used for treating her medical issue cannot be considered relevant for the assessment of the degree of fault of an athlete, under CAS case law.

- Last, the Athlete's potential embarrassment due to her illness is not a sufficient reason for the Athlete to ignore her anti-doping responsibilities. Even if such an argument was to be accepted, it is highly unlikely that solely by mentioning the name of a medication on the DCF within the confidential antidoping process, the Athlete would have had to face any embarrassment.

- With respect to the prescription from the Athlete's doctor and the subsequent obtention of a TUE from the competent sports organisation, 'light fault' has been found in cases where an athlete tested positive before obtaining the TUE. However, the Appellant is ready to consider that the prospective TUE is one element of the Athlete's degree of fault, even though it should not automatically result in a finding of "light" fault as it would otherwise undermine the athletes' incentive to apply for a TUE as early as possible and seek other preventive measures.

- In conclusion, the Appellant considers that the imposition of a reprimand in this case is completely inappropriate, as the Athlete, an experienced volley-ball player, failed to comply with her anti-doping obligations even though she received considerable anti-doping education in her career. While the Appellant is prepared to consider the prospective TUE granted to the Athlete for the determination of the Athlete's degree of fault, this certainly does not justify the reduction applied by the POLADA AD or result in a finding of "light" fault. By contrast, the appropriate ineligibility case in the present case must be 12 months.

- With respect to the disqualification of results, and under a strict application of Article 10.10 of the POLADA, the Sole Arbitrator should disqualify all competitive results obtained by the Athlete from the date the Sample was collected, i.e., 26 April 2024, through the date of commencement of the ineligibility period imposed, including forfeiture of any medals, points, prizes and prize money. However, and although the Athlete bears the burden of proving it, the Appellant acknowledges the potential applicability of the fairness exception contained in Article 10.10 of the POLADA ADR in this case and accepts that considering the prospective TUE obtained by the Athlete, the said purpose would be achieved by disqualifying the Athlete's results until the effective date of the prospective TUE. As such, the Appellant seeks the disqualification of all competitive results of the Athlete obtained from the date the Sample was collected, i.e., 26 April 2024, until the effective date of the TUE obtained by the Athlete i.e., 8 June 2024, including forfeiture of any medals, points, prizes and prize money.

- The Appellant submitted the following requests for relief:

  "I. to confirm the finding of the Disciplinary Panel of First Instance of the Polish Anti-Doping Agency, in its decision dated 3 July 2024, that A. committed violations of Article 2.1 and Article 2.2 of the Polish Anti-Doping Agency Anti-Doping Rules 2021;

  II. to amend the decision of the Disciplinary Panel of First Instance of the Polish Anti-Doping Agency dated 3 July 2024 insofar as to impose on A. a period of ineligibility of 12 months commencing on the date of issuance of the award in the present appeal;

  III. to disqualify all the competitive results of A. obtained from 26 April 2024 until 8 June 2024;

  IV. to order the Polish Anti-Doping Agency and/or A. to bear the entire costs of these arbitration proceedings; and

  V. to order the Polish Anti-Doping Agency and/or A. to pay to the Appellant a contribution towards its legal fees and other expenses incurred in connection with these appeal proceedings, in an amount to be specified at a later stage."

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

- It agrees with the Appellant's evaluation of facts and legal analysis of the case and has also seen ground to file an appeal itself, however it refrained from doing so due to the costs of the appeal before the CAS.

- First Respondent notes that its Answer is *"of a supplementary character to the Appeal Brief, considering that POLADA shares the same evaluation of the ADRV as FIVB"*.

- Moreover, the prohibited substance found in the Athlete's sample is included in the group of diuretics / masking agents, therefore it is by definition a prohibited substance even when it does not enhance sports performance.

- According to the testimony given by the Athlete, the medication lasted for 60 days, which means that the therapy should have ended at the end of March 2024; given that the Athlete did not declare the use of this drug in the doping control form on 26 April 2024, it is not likely that the Athlete was still using the drug at that time.

- The Athlete is an experienced, high-level athlete, member of the Polish national team and with previous anti-doping training, as such her explanations to her doctor were insufficient. Even considering that she fully trusted her doctor, this would not be sufficient to release her from her obligation to verify for herself whether the treatment was safe for her as an athlete. The Athlete thus failed to verify the composition of the drug which was in her possession since at least 31 January 2024, even more since the substance indicated on the package is itself a prohibited substance. Such action was expected from her as a national team member and would not require specialized knowledge.

- Therefore, the circumstances of the case do not justify a low degree of fault *"but this is, of course, on the condition that CAS finds that the Athlete has demonstrated the use of this drug during the period when the doping control took place"*.

- From a procedural standpoint, First Respondent noted that the denomination by the Appellant of the first instance panel as a Disciplinary Panel of first instance of POLADA or as established by POLADA is misleading. Said Disciplinary Panel is independent and separate from POLADA as required by the WADA Code, International Standard for Results Management and the WADA Regulations.

- During the hearing, First Respondent reiterated that it agreed with the position of the Appellant, considering that the Appealed Decision was "generous" and that First Respondent requested from the beginning a 2-year sanction or a 16-month sanction, but based on the TUE and the overall assessment, they would follow the proposal by the Appellant.

- As such, First Respondent filed the following requests for relief:

> *"I. the appeal filed by FIVB on 23 September 2024 is upheld;*

II. To amend the decision of the Disciplinary Panel of First Instance dated 3 July 2024 insofar as to impose a period of ineligibility of 12 months commencing on the date of issuance of the award in the present appeal;

III. To disqualify all the competitive results of A. obtained from 26 April 2024 until 8 June 2024;

IV. To order A. to bear the entire costs of these arbitration proceedings; and

V. to order A. to pay to the Appellant a contribution towards its legal fees and other expenses incurred in connection with these appeal proceedings, in an amount to be specified at a later stage."

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

- During the first-instance proceedings, the Athlete admitted that she committed an ADRV and said that she was sorry for that.

- According to the applicable regulations, there is no numerus clausus of circumstances that should be considered when assessing an athlete's fault or its degree. Specific circumstances that can be considered include any relevant criterion that could explain a lack of diligence in the athlete's behaviour.

- The Athlete suffers from […], also known as […] in women, primarily caused by genetic and hormonal factors, with an increased sensitivity to androgens leading to […]. This causes […]. Beyond its physiological effects, its psychological and emotional impact includes self-esteem and body image issues, social anxiety and isolation, depression and anxiety, but also frustration due to ineffective treatments.

- The Athlete notes that previously undergone therapies were ineffective as they were based on cosmetic products and not prescribed medication, leading to lowered mood and depression. During the first-instance proceedings it was established that the Athlete consulted her practitioner Dr. […] and duly informed him that she was a professional athlete, as also proven by his witness statement. There are no guidelines issued by the Athlete's volleyball federation regarding consultation with doctors, and athletes *"have not been instructed to consult their medications or therapies with any doctor recommended by the Federation"*. Therefore, the Athlete was not aware that consulting with her doctor only would not be sufficient.

- During therapy the Athlete was undergoing an extremely stressful period in her life resulting from the disease and impairing her ability to recognize the significance of her actions, resulting in diminished awareness and forgetting about a need for doing her own research regarding the prescribed medication.

- The medication taken by the Athlete (Verospiron) was in accordance with the current treatment standards for this medical condition and was prescribed by a qualified doctor, as this is not disputed by the Appellant.

- Immediately after the Athlete found that she had been using a prohibited substance she applied for the TUE and on 8 June 2024 she received a TUE for the use of said treatment and use of this medication for one year. This confirms that said medication is appropriate and does not constitute a violation of the anti-doping regulations. Pursuant to CAS case law, in situations where an athlete gets a prescription from a doctor for a medication and later actually obtains a TUE for its use, only "light fault" can be attributed to the athlete in case he/she tests positive before obtaining the TUE.

- As such, the Athlete's fault should not be at the top of the lower end of the "light fault" range, but rather at the very bottom of it, due to the surrounding circumstances, including her long unsuccessful therapy, the fact that she consulted a qualified doctor, the feeling of shame, stress and depression that impaired her actions, the lack of enhancing effect connected to the medication, and her cooperation with POLADA during the anti-doping proceedings.

- To the extent that the Athlete received this medication for a treatment that was approved by the ITA, punishing her with any period of ineligibility would only bring her further shame, depression and deprive her of her livelihood. Any sanction would therefore drastically violate the principle of proportionality which could constitute a breach of public policy.

- The Athlete's high level of stress and depression due to her condition impaired her cognitive abilities, justifying her not applying for a TUE at an earlier stage.

- In her submissions, the Athlete requested to be heard during the hearing and called her doctor Dr. […] to give testimony, along with expert witnesses to testify on her suffering from stress and depression as a consequence of her condition and determine that *"the Athlete's lowered mood affected her ability to recognize the significance of her actions"*.

- With respect to the allocation of costs, the Athlete noted that, due to her limited monthly income (of EUR 1'132 after taxation in 2023), burdening her with legal fees and other procedural costs would exhaust her financial resources. Furthermore, with the possibility of ending her professional career in case that the appeal would be accepted, the Athlete would hardly be able to incur costs of these proceedings and reimbursing the costs borne by the Appellant. The Athlete would be willing to adduce her tax declaration proving her financial situation.

- The Athlete submitted the following requests for relief:

  "1) dismiss the Appeal,

  2) uphold the decision from 3 July 2024 of the Disciplinary Panel of First Instance of the Polish Anti-Doping Agency,

  3) order the Appellant to bear the entire costs of these arbitration proceedings,

4) order the Appellant to pay the Second Respondent a contribution towards her legal fees and other expenses incurred in connection with these appeal proceedings in the amount to be specified at a later stage.

Alternatively, in case the Sole Arbitrator issues an award accepting the appeal, the Second Respondent wishes to request the Sole Arbitrator to declare:

5) that she is relieved of an obligation to bear costs of these arbitration proceedings (against point V. of the Appellant's Request for Relief) and that she is relieved of an obligation to pay to the Appellant a contribution towards Appellant's legal fees and other expenses incurred in connection with these appeal proceedings (against point VI. Of the Appellant's Request for Relief)."

B. Submissions on the Psychological Report filed by the Athlete and the Report filed by the Appellant

55. In her letter dated 3 January 2025, the Athlete adduced a Psychological Report from psychologist Ms […] intended to address the Athlete's suffering from stress and depression as consequences of […] and evaluate the extent to which the ineffective treatment and its impact on her emotional functioning affected her capacity to recognize the significance of her actions. The content of the submission and the Athlete's arguments can be summarized as follows:

- Ms […] had been providing psychological therapy to the Athlete and issued a report diagnosing the Athlete with depressive disorder, including an assessment of the psychological impairments stemming from her condition.

- The Athlete held that she had already raised her psychological burden during the first-instance proceedings. Furthermore, she consulted a psychologist and was diagnosed with depressive disorder, a condition persisting for at least 18 months, noting that these issues affected her cognitive functioning and her ability to make rational decisions. The Athlete also supported that retroactive diagnoses are widely accepted under CAS case law (CAS 2016/A/4631 and CAS 2015/A/4127).

- In her report, Ms […] noted that the Athlete visited her practice in September 2024 due to a difficult life situation that was impairing her daily functioning. She has been struggling with significant […] for years, which has negatively impacted on her self-esteem. She has also been suffering from excessive stress due to the high pressure placed on professional athletes. According to the report, the cognitive functioning of the Athlete is *"currently slightly impaired secondary to diagnosed adjustment and mood disorders"*. According to her report, "[t]*hese factors would "have affected her ability to concentrate, even during matches, resulting in a belief in her low effectiveness, gradual mental health deterioration, and limited ability to make rational life decisions while desperately striving for physical and mental well-being*".

56. On 24 January 2025, and as directed by the Sole Arbitrator following the Case Management Conference, the Appellant provided observations and evidence,

nominating Prof. Dr. Marco Catani as its expert witness and attaching his report to its submissions (the "Catani Report"), summarized as follows:

- First, the Appellant submitted that the Psychological Report was insufficient to prove that the Athlete did suffer from an "adjustive disorder" and a "depressive disorder" at the relevant time, i.e. between 31 January 2024, when she consulted Dr. […] and started her treatment with Verospiron and the date of the sample collection on 26 April 2024. Said report does not explain what these disorders are and how they could affect the Athlete's fulfilment of her anti-doping obligations. In essence, the Psychological Report only states that the Athlete's condition persisted for at least 18 months but does not state that her conclusions relate to this time period.

- Based on the Catani Report, the Psychological Report "lacks comprehensive details necessary for a thorough evaluation". Specifically for the Athlete's cognitive difficulties affecting her "ability to make rational life decisions", a psychometric assessment would have been necessary to evaluate the severity of her impairments. The Psychological Report further lacks elements about the Athlete's personal, medical and psychiatric history, necessary for such a diagnosis and includes no treatment plan. Furthermore, a retrospective diagnosis would require the collection of supporting evidence or collateral history, which was not provided in the Psychological Report.

57. The Appellant further supports that the Athlete has not invited any family members to testify about her personal life and confirm the assessment provided in the Psychological Report. Also, while the Appellant gives due importance to mental health, it exercises caution in case such as this one, where the illnesses have not been diagnosed through physiological tests and their diagnosis is heavily reliant on the patient's self-reporting of symptoms. What is more, these arguments on mental health appeared only at the appellate stage of the proceedings.

58. Even if the Psychological Report were to be found sufficient to establish the Athlete's psychological illness at the relevant time, she has failed to prove that said illness prevented her from performing her anti-doping obligations: first, such illness would affect all areas of her life and not be selective. In this regard, the Athlete called no witness from her personal or professional life who would testify on her deterioration of mental health and its impact on her professional life.

59. According to the Appellant, the Athlete has been posting images of her social life on her public social media profile and that it is unlikely that an individual with severe self-image issues would constantly and publicly post such images.

60. Furthermore, the Athlete continued playing professional volleyball including for the Polish women's national volleyball team in 2024 without any noticeable deterioration of her performance level. In the view of the Appellant, this would be in contradiction to the Psychological Report stating that her "ability to perform effectively at work" was hindered. According to the Catani Report, the symptoms mentioned in the Psychological Report would not have allowed the Athlete to perform at her normal levels. What is more, to the extent that the Athlete informed her doctor Dr […] that she is a professional

athlete, she should also be aware of her general anti-doping obligations, including her research of any medication prior to its consumption. This is reinforced by the fact that the Athlete had been prescribed Verospiron on 31 January 2024 and had more than three months to conduct sufficient research until the date of the sample collection on 24 April 2024.

C. Hearing and Examination of Parties and Witnesses

61. During the hearing, the Sole Arbitrator heard testimonies from the parties' experts and the Athlete. In essence, all experts confirmed the content of their reports, which are also briefly summarized hereafter.

Testimony of the Athlete

62. During her examination and in her closing statements, the Athlete confirmed the very difficult situation she had endured due to her illness, that in turn caused a depression and a constant feeling of shame as she is a public person. The problem had already started back in 2023, and she initially started with some lighter treatment but there was no improvement. The Athlete was slowly withdrawing from her social life and would not open to anyone about her condition in order to avoid embarrassment. All this in turn […] and lowered her self-esteem.

63. The Athlete further stated that the pictures posted on social media were done out of social pressure, in order to show a more positive image of herself to the outside, rather than as a sign of emotional wellbeing.

64. She then reached out to Dr. […] who was a trusted professional and diagnosed her medical condition, starting again with alternative therapies before prescribing her the treatment that included the prohibited substance. The Athlete further confirmed that when she visited Dr. […] she informed him that she was a volleyball player and he told her that this medication did not contain any prohibited substances. She would take the medication once daily, sometimes she would forget.

65. In her closing submissions, the Athlete showed again her regret and acknowledged her fault, while reiterating the difficulties she went through due to her medical condition that impacted on her image and her mental state. The Athlete confirmed that it was extremely difficult to confide in a psychologist about her mental health problems, as her medical condition impacted on her image as a public person. While Prof. Catani assessed the Psychological Report in a couple of pages, he could not possibly know how difficult it was for her and how much time it took her to reach a level of emotional stability. The Athlete accepted that there are anti-doping rules that need to be applied but at the same time supported that she was sufficiently punished and ashamed throughout the proceedings and by filing for a TUE, first through the information on the media and second by losing her dream of attending the Olympic Games in Paris.

Testimony of Dr. […]

66. Dr. […] confirmed that the Athlete first visited him in January 2024, experiencing an extensive […]. As with young patients of the Athlete's age, he considered various kinds of treatments, focusing on any planned pregnancy, lactation and her overall psychological state. Dr. […] said that he is a dermatologist but could still see that the Athlete was suffering of depressed mood because of her voice and overall behaviour. He had the impression that that time […] was the predominant problem in her life. The medication he recommended is the one usually recommended for this type of medical condition. Dr. […] also confirmed that the Athlete told him that she played volleyball during the Athlete's first visit but he did not get that she was a professional athlete and he probably misunderstood. He would never have told her to apply for a TUE because he did not consider the prescribed medication to contain a prohibited substance, also because he did not have experience in this regard.

67. Dr. […] confirmed that he is a certified dermatologist with no specialization in sports medicine and no experience in treating professional athletes. While the treatment started in January 2024, the Athlete's last control was on 25 March 2024, prescribing the medication until May 2024, to the extent that the Athlete successfully responded to the medication. When asked why the Athlete applied for a TUE once the treatment was concluded, Dr. […] confirmed that the Athlete suffered from a chronic condition that would most likely come back, and she would need to continue the use of this medication. Dr. […] further stated that the prescribed medication was in line with global recommendations and no further consent was needed.

68. While Dr. […] confirmed that the Athlete informed him that she was a volleyball player, he does not recall how exactly she formulated her statement, but he feels that he acted negligently because he should have enquired more information in order to ascertain that the prescribed medication did not include a prohibited substance. Dr. […] compared this situation to patients who inform him that they are pregnant, in which case he should enquire the month, as there are substances that are explicitly forbidden during the first three months of pregnancy.

Testimony of Ms. […]

69. Ms. […] confirmed, at the hearing, that she had at least 10 sessions with the Athlete; her diagnosis included mood disorder, and this depression came from adjustment disorders that she was suffering from. In order to reach her diagnosis, Ms. […] conducted interviews, conversations over several months and capability tests.

70. When asked whether it was possible to determine that she was suffering from a mental disorder in April 2024, Ms. […] mentioned that it was possible and that there were various methods to do so. Even though conducting external interviews could potentially offer more accurate results and this is not always possible, and it may also constitute a violation of the patient's privacy. Even though the Athlete started her sessions in September 2024, she did not seem aware that she was suffering from depression and, according to Ms. […], this situation originated from mood disorders and adjustment

disorders. The Athlete was trying to hide her problem from others for several months, therefore revealing the problem others would have been detrimental to her mental state. During her sessions, the Athlete would mention many instances or examples of things that she missed during that period, and she was sure that the Athlete was suffering from depression at least six months before they first met.

71. Ms […] further stated that the fact that the Athlete was posting photos on herself on social media was an effort for the patient to improve herself image that had suffered significantly as a result of her situation. Last, when Ms. […] drafted her Psychological Report, she mentioned her current state as being substantively improved compared to when she had started therapy.

Testimony of Prof. Catani

72. Prof. Catani first confirmed that the medical condition suffered by the Athlete can lead to depression, which in turn can lead to a decrease of cognitive function. He then said that, even though he has no doubt that in September 2024 the Ahtlete showed symptoms of depression, it is not clear that this was related to her medical condition and the exact-time line should have been delineated. Prof. Catani subsequently reiterated the content of his report, stating that when a patient suffers from the conditions mentioned in the Psychological Report, these conditions usually affect all areas of her life. While he did not deny that the Athlete's mental state could impact on her possibility to make rational decisions, he reiterated that this would need more collateral information to be more specific if he had the opportunity to assess the patient.

V. JURISDICTION

73. Article R47 of the Code provides as follows:

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

74. Article 13.2.1 of the POLADA ADR provides as follows:

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

75. The applicable FIVB Medical & Anti-Doping Regulations of the Appellant provide under A. Scope, page 5, for the following definition:

(...) the following Athletes shall be considered to be International-Level Athletes for purposes of these Anti-Doping Rules, and therefore the specific provisions in these Anti-Doping Rules applicable to International-Level Athletes (as regards Testing but also as

regards TUEs, whereabouts information, Results Management) shall apply to such Athletes: a. Athletes who have competed in at least one FIVB Event in the relevant calendar year and/or in the previous two (2) calendar years; and b. Athletes included by the FIVB in the Registered Testing Pool or Testing Pool(s).

76. The Athlete has competed several times in the 2024 Volleyball Nations League for her national team Poland, which is an "FIVB Competition" pursuant to Article 2.2.2 g. of the applicable FIVB Event Regulations. Therefore, the Athlete is an International-Level-Athlete.

77. According to Article 13.2.3.1 of the POLADA ADR:

In cases under Article 13.2.1 of the POLADA ADR, the following parties shall have the right to appeal to CAS: (a) the Athlete or other Person who is the subject of the decision being appealed; (b) the other party to the case in which the decision was rendered; (c) the relevant International Federation; (d) POLADA and (if different) the National Anti-Doping Organization of the Person's country of residence or countries where the Person is a national or license holder; (…)

78. Accordingly, the Appellant, as the relevant international federation, had the right to file an appeal to the CAS and the latter has jurisdiction to decide the present case.

79. During the CMC and by signing the Order of Procedure, the Parties acknowledged and confirmed the jurisdiction of the CAS to hear the present Appeal.

VI. ADMISSIBILITY

80. Article R49 of the 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 of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.

81. According to Article 13.6.1 of the POLADA ADR entitled "Appeals to CAS":

"The time limit to file an appeal to CAS shall be twenty-one (21) days from the date of receipt of the decision by the appealing party. The above notwithstanding, the following shall apply in connection with appeals filed by a party entitled to appeal but which was not a party to the proceedings that led to the decision being appealed: (a) Within fifteen (15) days from the notice of the decision, such party/ies shall have the right to request a copy of the full case file pertaining to the decision from the Anti-Doping Organization that had Results Management authority; (b) If such a request is made within the fifteen (15) day period, then the party making such request shall have twenty-one (21) days from receipt of the file to file an appeal to CAS".

82. On 4 July 2024, the Appellant requested a copy of the full case file from the First Respondent, noting that the written decision should conform with Article 9 of the ISRM and, as such, it should include the full reasons for the decision.

83. On 5 July 2024, the First Respondent provided the case file, which did not include the grounds, noting that *"(…) full justification for the decision will be available soon, no later than on the 30th day from the date of issuance of the decision."*

84. The grounds of the Appealed Decision were provided on 1 August 2024, in Polish language, and the English translation was provided on 7 August 2024.

85. Accordingly, the Statement of Appeal, filed on 22 August 2024, was filed within the time limit specified in Article 13.6.1 of the POLADA ADR, regardless of whether the 21-day time limit started running upon receipt of the Polish original or of the English translation.

86. It follows that the appeal is admissible.

VII. APPLICABLE LAW

87. Article R58 of the Code provides as follows:

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

88. The present dispute will therefore be decided according to the POLADA ADR (2021 version).

VIII. OTHER PROCEDURAL MATTERS

A. Hearing by Video Conference

89. The Appellant requested a hearing through video conference in line with Article R44.2 (4) of the CAS Code to reduce the costs and for *"the convenience of the Sole Arbitrator/Panel and the Parties (and their representatives and potential witnesses)"*. This was explicitly agreed upon by all Parties during the Case Management Conference.

B. Admissibility of the Filing of an Expert Report by the Athlete

90. In its letter dated 19 December 2024, the Appellant objected to the Athlete's request for the appointment of an expert considering that the conditions for such appointment were not met in the present case.

91. In essence, the Appellant objected to the Athlete's request of both an expert witness *"within the field of psychiatry and an expert witness within the field of clinical psychology"* for the following reasons: to the extent that such request failed to indicate the names of any specific experts required under Articles R44.1, R44.2 and R55 and R57 of the CAS Code, the Appellant considered that such request pertained to the appointment of an independent expert by the Sole Arbitrator. However, such expert should be appointed by the Sole Arbitrator under Article R44.3 of the CAS Code ("if it deems it appropriate to supplement the presentation of the parties")

92. Referring to the jurisprudence of the Swiss Federal Tribunal (SFT 4P.320/1994 of 6 September 1996, at 3b), the Appellant submitted that such appointment is subject to numerous requirements, including filing in time and proper form, paying of costs, and relevance to the matter at stake. The Appellant considered that said criteria were not fulfilled, as the Athlete had not mentioned the alleged psychological impact of her illness in the first instance proceedings, therefore the request's relevance is questionable. Furthermore, the Athlete failed to provide any evidence of high stress or depression in her submissions. Similarly, an expert appointed and examined in these proceedings would only provide a general opinion on the potential impact of the Athlete's alleged illness which would not be relevant in the present case as it could not prove the Athlete's mental status at the time of the ADRV or other issues that the Athlete was facing at that time. Finally, the Appellant submitted that the Athlete would lack the financial means to pay for the costs of such expert as it requested that the Appellant bears the entire costs of the arbitration proceedings, therefore the appointment of an expert would only increase the costs of this procedure.

93. On 3 January 2025, the Athlete filed a letter including unsolicited submissions regarding her request for an expert opinion and responded to the Appellant's submissions dated 19 December 2024. She proposed Ms […] as an expert witness and adduced an expert report of this psychologist.

94. Responding to the Appellant's comments dated 19 December 2024, the Athlete noted that during the first instance proceedings, the Athlete had raised the psychological burden associated with her medical condition and treatment (also noted in the Appealed Decision). Furthermore, the filing of an expert opinion regarding the Athlete's mental health and her psychological disorders should be accepted as relevant and retroactive diagnoses of psychological disorder would be accepted in medical and legal contexts and in line with other CAS case law (CAS 2016/A/4631 and CAS 2015/A/4127). Finally, the Athlete noted that the Appellant's considerations on limiting the procedural costs should have no relevance on the hiring of the expert to the extent that this would risk violating the Athlete's right to a fair trial.

95. During the Case Management Conference, and after hearing the other Parties, the Sole Arbitrator decided to accept the witness statement adduced by the Athlete to the file and to call said witness to the hearing, while allowing the Appellant to file observations limited to the expert opinion filed by the Athlete.

96. The Sole Arbitrator decided to admit the Psychological Report to the file for the following reasons: first, it could be relevant to assess the Athlete's psychological situation and its potential impact on the outcome of the case. Whether the Athlete did raise the psychological burden during the first instance proceedings or not is not decisive for the admission of the Psychological Report, to the extent that these proceedings are *de novo* proceedings based on Article R57 of the CAS Code and the Athlete is allowed to bring new evidence and elaborate new arguments to corroborate her case. Furthermore, to the extent that the Athlete did not request the CAS to bear the costs of such expertise, the arguments raised by the Appellant regarding the likely procedural cost increase seem to be immaterial. Finally, by granting the possibility to the Appellant to file observations to the Psychological Report, the Appellant's right to be heard was respected.

IX. MERITS

97. At the outset, the Sole Arbitrator notes that it is undisputed among the Parties – and it is also correctly reflected in the Appealed Decision - that the Athlete violated Article 2.1 and 2.2 of the POLADA ADR, to the extent that the "A" Sample of the Athlete showed the presence of Canrenone, which is a prohibited substance ("Specified Substance") as per the 2024 WADA Prohibited List and the Athlete waived her right to a "B" Sample analysis. This is sufficient to establish the presence of a prohibited substance in accordance with Article 2.1.2 of the POLADA ADR.

98. What is however disputed is imposition of the appropriate consequences for said ADRVs in line with the POLADA ADR and relevant CAS case law. The issues that need to be determined by the Sole Arbitrator are therefore the following: A) the Athlete's level of fault within the meaning of Article 10.6 of the POLADA ADR and the appropriate sanction, and B) the disqualification of the Athlete's results.

A. The Athlete's Level of Fault

Relevant legal framework and Parties' respective position

99. To the extent that the Appellant does not consider that there is a plausible scenario for an intentional ADRV and has brought forward no evidence to this effect, the main relevant provision of the applicable regulations is Article 10.6.1.1 POLADA ADR, which provides as follows:

"Art. 10.6.1.1 Specified Substances or Specified Methods

Where the anti-doping rule violation involves a Specified Substance (other than a Substance of Abuse) or Specified Method, 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 a maximum, two (2) years of Ineligibility, depending on the Athlete's or other Person's degree of Fault."

100. "No Fault or Negligence" is defined in Appendix 1 of the POLADA ADR as follows:

"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 enters his or her system."

101. Both the Appellant's and the First Respondent's consider that the Appealed Decision was flawed by imposing a reprimand but also by failing to impose any sanctions with respect to the disqualification of results obtained by the Athlete. At the same time, the Parties consider that the ingestion of the prohibited substance occurred through the medication Verospiron, prescribed by her doctor on 31 January 2024. The initial doubts raised by the First Respondent regarding the source of the prohibited substance in its Answer were not corroborated by any additional arguments or evidence. Furthermore, in its oral pleadings, First Respondent aligned entirely with the position and the arguments of the Appellant. As such, the Sole Arbitrator accepts that the Athlete established how the Prohibited Substance entered her system.

102. On the other side, the Athlete, albeit accepting her fault, considers that the Appealed Decision correctly imposed a reprimand in view of her insignificant level of fault in the present case.

103. "Fault" is defined in Appendix 1 of the POLADA ADR, which reads, in its relevant parts, 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's 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. […]."

104. The Sole Arbitrator agrees with the Athlete that the determination of the level of fault depends on numerous circumstances and there is not a predefined list under the applicable rules. The CAS case law has established some commonly accepted criteria, however they are not exhaustive and the final determination depends on the specific circumstances surrounding each case. The Sole Arbitrator has therefore the discretion to assess the Athlete's fault guided by the CAS case law where relevant and, most importantly, by evaluating the concrete evidence adduced before her.

105. In the assessment of the degree of fault, CAS 2013/A/3327 & 3335 (the "Cilic case") seems to offer some guidance setting out the steps that an athlete must undertake to meet

their standard of care. More specifically, the Cilic case includes subjective and objective criteria to assess the level of fault: *"[t]he 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."* The exact circumstances considered must be specific and relevant to explain a departure from the expected standard behaviour (*see* CAS 2017/A/5015).

106. The Cilic case has listed several actions that an athlete could take to avoid taking a product that contains a prohibited substance, such as reading the label of the product used, cross-check the ingredients with the list of prohibited substances or make an internet search of the product. On the subjective factors, the Cilic case referred to the athlete's individual characteristics and circumstances, assessing what could have been expected given the athlete's unique situation.

107. In light of the above, it is the Sole Arbitrator's duty to consider each relevant factor in order to assess the Athlete's level of fault. While the situation shall be globally assessed and relevant elements are interrelated, for the sake of clarity, they have been examined under different subsections below, which however often overlap.

Lack of diligence and experience of the Athlete

108. Considering the specific circumstances of this case also in the light of the aforementioned criteria, the Athlete herself admitted her fault by failing to check the medication's label or disclose the prescribed medication to the team doctor or on her Doping Control Form. What is more, the Sole Arbitrator considers that the lack of performance-enhancing effect of a prohibited substance cannot be decisive as such for the assessment of the degree of fault (cf. CAS 2018/A/5581, § 68).

109. Moreover, the Athlete was a very experienced Athlete, as a member of the Women's Volleyball national League that was scheduled to participate in the Olympic Games Paris 2024 and had also received anti-doping education (cf. CAS 2021/A/8056, para. 98) Given these factors, the Sole Arbitrator finds that the sanction of a mere reprimand, as imposed by the Appealed Decision, was clearly inappropriate. In this respect, she does not agree with the Athlete's argument that any sanction imposed on her would "*drastically violate the principle of proportionality which could constitute a breach of public policy"*. Indeed, the applicable rules include a *"sanctioning regime which is proportionate and contains clear and concise mechanism which allows for a reduction of the applicable sanction"* (CAS 2019/A/6451; CAS 2021/A/8125, § 193).

110. The Sole Arbitrator notes that the Athlete acknowledged her fault in failing to disclose the medication on her DCF and reiterated the very difficult period she was going through, due to her mental state caused by her illness. As will be shown in more detail below, the Athlete's mental state – as presented through medical reports and assessed through oral evidence during the hearing– could not exonerate her from her fault of not having disclosed the medication to the DCF or to the team doctor and for not checking the packaging of the medication for potential prohibited substances, all the more as she

was taking the medication for a long period; however, it can be taken into account as a mitigating factor for her departure from her expected standard of care.

Consultation with Dr […]

111. At the same time, there are other mitigating factors that need to be considered: accordingly, as was also established during the hearing, the Athlete did inform her dermatologist Dr […] (who prescribed the medication) that she was an athlete and a volleyball player, even if it was not entirely clear whether the Athlete specified that she was subject to anti-doping obligations.

112. In this respect, although Dr. […] is not an expert in sports medicine, he specializes in the Athlete's medical condition, making it appropriate for the Athlete to seek his advice. During his testimony, Dr. […] confirmed that the Athlete had previously unsuccessfully tried other forms of treatment and that the selected treatment with Verospiron was a targeted treatment for the Athlete's illness; he further acknowledged that he should have double-checked to ensure that the prescribed medication did not include a prohibited substance for the Athlete and accepted his own fault. On this last point, however, Articles 2.1.1 and 2.2.1 of the POLADA ADR provide that it is the athletes' personal duty to ensure that no prohibited substance enters their bodies and they are solely responsible for any prohibited substance or its metabolites or markers found to be present in their samples. Also, in line with consistent CAS case law, an athlete cannot abdicate their personal duty to avoid consumption of a prohibited substance by simply relying on a doctor (cf. CAS 2023/A/9525, §§ 86-88).

The Athlete's Mental State

113. The Sole Arbitrator also carefully considered the evidence submitted before her through the Psychological Report and the Catani Report but also during the experts' and the Athlete's testimony during the hearing, showing the Athlete's mental state and the impact on her degree of fault. In the Appellant's view, the Athlete failed to prove that she suffered from these disorders at the relevant time and, even if she did, this would not prevent her from fulfilling her ADR obligations.

114. The Sole Arbitrator accepts that the Athlete suffered from a difficult health condition that likely impacted on her psychological condition. The treatment including the source of the prohibited substance was neither a nutritional supplement nor a medication taken by her own initiative and without prescription, but rather a prescribed medication by a trusted specialized physician in order to treat a serious – and chronic - health condition.

115. According to the Catani Report and Prof. Catani's testimony during the hearing, the Psychological Report was not drafted in accordance with the international standards to provide conclusive evidence on the Athlete's mental stage at the time of the ADRV. However, and notwithstanding possible formal failings in the evaluation method used in the Psychological Report, the Sole Arbitrator is satisfied that the Athlete showed clear signs of psychological distress that likely existed for a longer period, caused or at least aggravated by her medical condition.

116. The content of Prof. Catani's report was focused on evaluating the credibility of the Psychological Report, without however having examined the Athlete. On the other hand, the Sole Arbitrator gave particular emphasis on the Athlete's psychologist, Ms. […], and the Athlete herself, whose evidence was found credible and convincing, even without being supported by additional collateral information through e.g. witness statements from family and friends as supported by the Appellant. During the hearing, both experts acknowledged that the medical condition suffered by the Athlete could have an impact on her mental state, with feelings of shame, low self-esteem and legitimately lead to depression and other psychological illnesses.

117. The Sole Arbitrator also considered the Catani Report and his explanations during the hearing, according to which the Athlete's disorders mentioned in the Psychological Report would not be selective, i.e. would normally not allow her to be functional and operate normally in other sectors of her life. In its additional submissions, the Appellant adduced photos from the Athlete's public social media posts during the period that the ADRV occurred. In this regard, the Sole Arbitrator considers irrelevant that the Athlete was present on social media and regularly posted images of herself. It is equally immaterial that the Athlete continued to compete without visible signs of deterioration in her athletic performance. The presence on social media is rather a social obligation and - as also explained by the Athlete and confirmed by her psychologist Ms. […] during the hearing - put additional pressure on the Athlete and should not be used as evidence of emotional wellbeing or dismiss the findings of the Psychological Report.

118. In any event, the Sole Arbitrator considers that the Athlete's distress was not such as to cause a "lack of awareness" as supported by the Athlete or exonerate the Athlete of any fault by justifying a reprimand as found in the Appealed Decision: The Sole Arbitrator therefore considers the Athlete's psychological distress to be an additional mitigating factor for the assessment of her fault rather than an exonerating factor.

119. The Sole Arbitrator reiterates that the analysis of the degree of fault of an athlete is a highly fact-specific exercise. As such, apart from the 24-month frame enshrined in the POLADA ADR, there are neither clear-cut rules nor CAS cases that automatically apply by analogy without tailoring them to the factual matrix of the case.

120. With respect to the Appellant's argument that the Athlete raised her mental health issues for the first time at the CAS proceedings, the Athlete supported that had already raised this issue in the previous instance, as it is somehow shown by the Appealed Decision. In any event, the Sole Arbitrator does not consider decisive that the Appellant brought forward extensive arguments on her mental state disorders for the first time in the appeal proceedings before the CAS, to the extent that this is a de novo hearing under Article R57 of the CAS Code.

The Impact of the Prospective TUE

121. The Appellant accepts that there is no settled case law as to whether the granting of a prospective TUE is related to the level of fault; even though it accepts that such TUE

should be considered as a mitigating factor, it considers that this should not lead to a "light" level of fault.

122. In the present case, the Sole Arbitrator considered the totality of circumstances: as such, the Athlete suffered from a serious chronic condition that undeniably required an ongoing treatment and likely impacted on her mental state; she then sought help from a specialized practitioner and subsequently applied - and was effectively granted - a prospective TUE.

123. The Sole Arbitrator finds immaterial that the Athlete was not granted a retroactive TUE, as this would have most likely resulted in the elimination of the ADRV altogether. She agrees with the Appellant that the correct application of the rules is important and that all regulations should apply uniformly to all athletes that are subject to them. At the same time, the applicable regulations provide a defined range of sanctions, allowing consideration of the totality of circumstances in each case to ensure a proportionate sanction. As such, and while she agrees with the Appellant that the granting of a prospective TUE should not *automatically* lead to light fault, she considers that the combination of the factual matrix of the present case should lead to a light level of fault.

Conclusion

124. As seen above, the calculation of the degree of fault based on the previous version of the WADA Code (2009) and the Cilic case could also be applied by analogy to the new regime providing for a 24-month range. As such, in CAS 2015/A/3876 the Panel situated the athlete's fault to the top of the lower end of the "light fault" range, namely 16 months (for an applicable range between 12 and 24 months), finding that the athlete had not taken any precautions to avoid the adverse analytical finding (CAS 2015/A/3876, § 84).

125. In conclusion, and considering the totality of circumstances, including the timing of the Athlete's ADRV shortly before the Olympic Games in Paris, the Sole Arbitrator agrees with the Appellant and the First Respondent that the imposition of a reprimand in the Appealed Decision was clearly inappropriate as the Athlete admittedly was at fault. However, and after considering all elements and evidence in this case, the Sole Arbitrator considers that her degree of fault is situated in the upper scale of a light fault (reprimand to eight months, by analogy to the assessment in the Cilic case), namely eight months, commencing on the date of issuance of the present CAS award pursuant to Article 10.13 of the POLADA ADR. Said sanction is not disproportionate as it considers all the mitigating factors in favour of the Athlete and at the same time is in line with the applicable range under the POLADA ADR.

B. Disqualification of results

126. The Appellant correctly notes that the Appealed Decision did not impose any sanction with respect to the disqualification of results obtained by the Athlete, in line with Article 10.10 of the POLADA ADR, which provides as follows:

"In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9, 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."

127. The Appellant does not request the strict application of this provision, which would result in the disqualification of all competitive results of the Athlete obtained from the date the Sample was collected, i.e., 26 April 2024, through the date of commencement of the ineligibility period imposed, including forfeiture of any medals, points, prizes and prize money. The Appellant acknowledges the fairness exception enshrined in Article 10.10 of the POLADA ADR due to the the prospective TUE obtained by the Athlete and requests only the disqualification of the Athlete's results from the date the Sample was collected until the effective date of the TUE obtained by the Athlete.

128. The Sole Arbitrator therefore accepts the Appellant's request (supported also by the First Respondent) and decides that the Athlete's results should be disqualified from the date the Sample was collected, i.e., 26 April 2024, until the effective date of the Prospective TUE obtained by the Athlete i.e., 8 June 2024, including forfeiture of any medals, points, prizes and prize money (cf. CAS 2020/O/6759, para. 90).

X. COSTS

(…)

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Fédération Internationale de Volleyball on 22 August 2024 is partially upheld.

2. The Operative Part of the Decision of the Disciplinary Panel of First Instance dated 3 July 2024 is confirmed, except for point II which is amended as follows:

   On the basis of Article 10.6.1.1 of the Anti-Doping Rules of the Polish Anti-Doping Agency 2021 A. is sanctioned with eight (8) months of ineligibility commencing on the date of issuance of the present CAS award; all the competitive results of A. obtained from 26 April until 8 June 2024 are disqualified.

3. (…).

4. (…).

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

Seat of arbitration: Lausanne, Switzerland

Date: 6 May 2025

THE COURT OF ARBITRATION FOR SPORT

Dr. Despina Mavromati
Sole Arbitrator