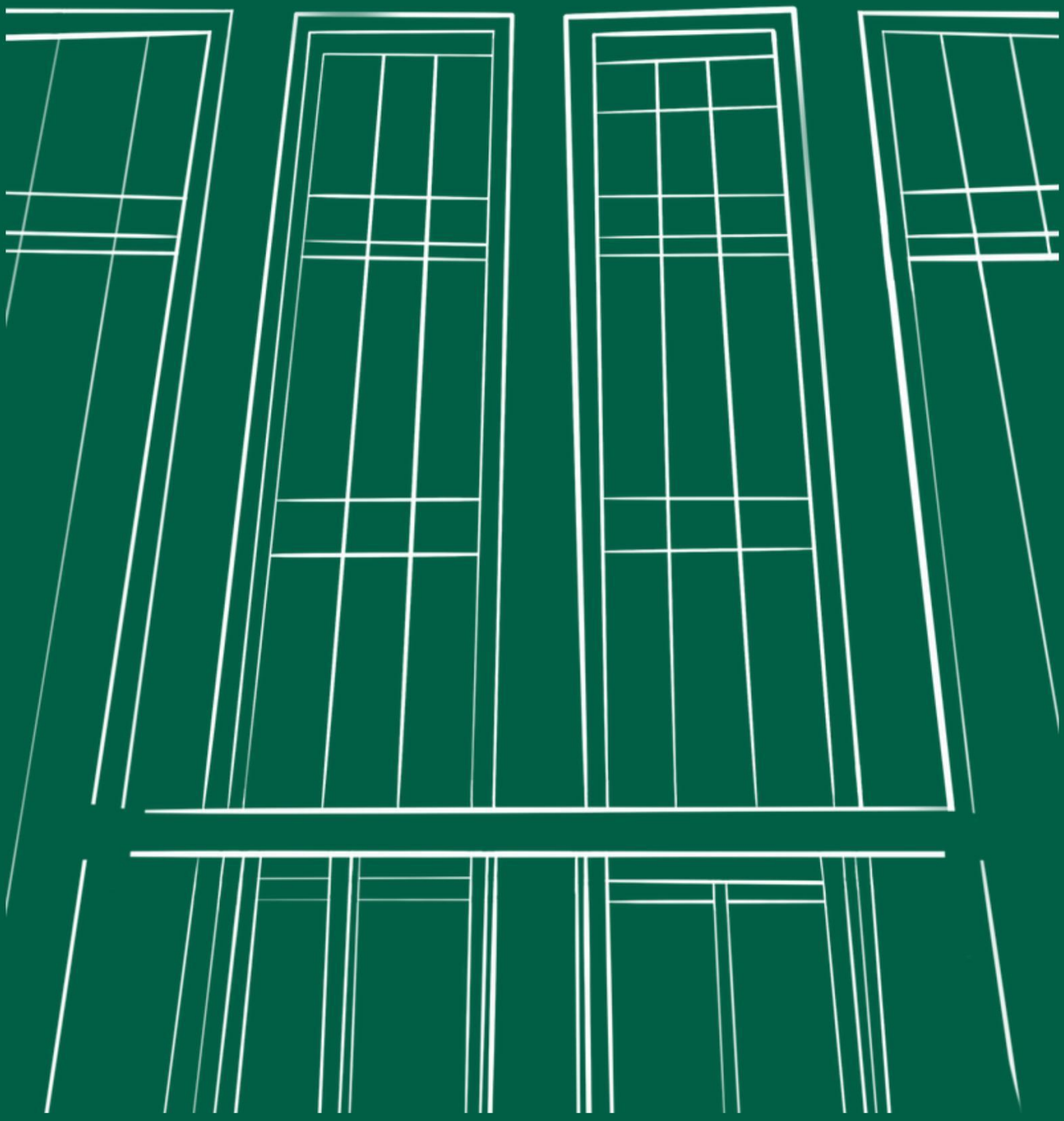

Bulletin TAS
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2026/2

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Bulletin TAS
CAS Bulletin
Boletín del TAS
2026/2

Lausanne 2026

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Editorial

This second edition of the 2026 Bulletin highlights the continued development of the CAS education and training programme. In addition to the CAS seminars and workshops/webinars organized quarterly each year for current CAS arbitrators and mediators, CAS has launched for the first time a new Summer Academy designed to provide students and legal practitioners with a practical and comprehensive introduction to sports arbitration. While no advanced experience in international arbitration or sports law is required, participants must have a foundational legal background to fully benefit from the programme. The CAS Summer Academy is a week-long virtual course during which participants will gain insight into the mechanics of sports dispute resolution, key areas of CAS jurisprudence, and the structure and functioning of major sports institutions. The programme is taught exclusively by CAS Counsel and leading CAS arbitrators, all of whom are widely recognized experts in their respective fields. The inaugural CAS Summer Academy took place online from 6 to 10 July 2026 and required approximately four to five hours of participation per day. Conducted in English, the sessions combined presentations with interactive discussions and exchanges. In the same field, it is worth noting the 10th edition of the International Sport Arbitration seminar, co-organised by the CAS and the Swiss Bar Association which will take place on 25 and 26 September 2026 at the Fairmont Montreux Palace in Montreux, Switzerland. This year's programme will cover a range of topics from human rights and competition law issues in sport, to the development of multi-club ownership in professional football. In line with previous editions, an overview of recent major CAS case law will also be presented.

The Court of Arbitration for Sport (CAS) has launched a new and enhanced version of the e-filing system for Parties to initiate a procedure and submit documents related to arbitration proceedings which is more streamlined and user-friendly. Parties are invited to create a new user account on the platform. It is important to note that the updated e-filing platform will only be available for new procedures since the current e-filing system remains operational for ongoing procedures. This new service forms part of a broader modernization of the CAS website, which commenced in December 2025.

This edition of the Bulletin features six scholarly articles. Annett Rombach and Gabriella Érdi examine the "Geopolitical Conflicts in Recent CAS Jurisprudence", while Mario Flores Chemor and Imen Larabi analyse the implications of the Diarra case for the application of the positive interest principle under the revised Article 17 of the FIFA Regulations on the Status and Transfer of Players (RSTP). Vladimir Novak, Joe Gaffney and Nicholas Phipps explore B-sample attendance rights in CAS jurisprudence. In their article, "The 'Domino Effect' on the Standings and the Necessary Passive Joinder in CAS Arbitration: Direct Impact and Indirect Interest in Sports Sanctions with a Ranking Impact", Roque Caivano and Gustavo Abreu discuss the challenges associated with joinder in such disputes, highlighting the tension between third-party clubs' rights of defense and the principle of procedural efficiency. Miguel Cardenal Carro and Emilio García Silvero deal with the complex phenomenon of multi-club ownership in football. Finally, Ulrich Haas addresses the issue of multi-tier dispute resolution clauses in sport.

The nine CAS Appeal Division awards selected for this issue cover a broad range of sports —including athletics, weightlifting, football, motorcycling, volleyball and skiing— and address a variety of legal issues, including doping, contractual disputes,

eligibility, governance, and the participation of Russian and Belarusian athletes in international competitions.

In football, CAS 2024/A/10949 (C.F. Rayo Majadahonda S.A.D. v. DRC Dnipro, Inter Dnipro, DIUSSH Novomoskovsk & FIFA) is, to date, the only CAS case concerning training compensation in conjunction with Annex 7 of the FIFA RSTP involving a Ukrainian minor who moved to Spain as an amateur due to the war and became a professional player one year later. The award confirmed that training compensation remains payable notwithstanding the exception contained in Annex 7. In volleyball, CAS 2025/A/11672 (Roberto Santilli v. Projekt Warszawa Sp. z o.o.) examines the duty to mitigate under the principles of ex aequo et bono and adopts a narrow interpretation of that duty: the obligation is limited to the application of the general principle of good faith and does not impose a broad, proactive duty to seek alternative employment.

Several notable doping cases are also featured. In CAS 2025/A/11339 (WADA v. Finnish Center for Integrity in Sports & Miro Sihvonen), the Panel applied a differentiated approach to multiple anti-doping rule violations arising from the same event, depending on the athlete's intent. CAS 2025/A/11755 (World Athletics v. ETH-NADO & Diribe Welteji Kejelcha) established clear criteria for distinguishing between a "refusal" and a "failure to submit a sample". In CAS 2024/A/11036 (Óscar Zambrano Preciado v. CONMEBOL), rendered in Spanish, the Panel applied the updated "Cilic" guidelines. The weightlifting case CAS 2024/A/10961 (IWF v. Revaz Davitadze & Georgian Anti-Doping Agency) further clarified that a court judgment does not constitute irrefutable evidence of No Fault or Negligence where it is based on a third party's vague and implausible explanation purporting to exonerate the athlete.

The eligibility cases selected for this issue address the participation of Russian athletes in international sport. CAS 2025/A/11915 v. FIS examined the validity of a FIS statutory rule restricting Russian athletes' eligibility to participate in qualification events for the Milano Cortina 2026 Olympic Winter Games and confirmed that exclusions based on nationality require objective and proportionate justification. In CAS 2025/A/11592 (Russian Luge Federation et al. v. International Luge Federation (FIL)), the Panel concluded that measures adopted by international federations indiscriminately excluding all Russian athletes from international competitions, including the Olympic Games, were disproportionate insofar as they extended beyond athletes who failed to satisfy the IOC's Individual Neutral Athlete (AIN) criteria.

Finally, the governance case CAS 2025/A/11388 (Sophie Bordet v. International School Sport Federation (ISF)) provided an insightful analysis of the ISF's decision to dismiss a member of its Executive Committee, both under Article 65 of the Swiss Civil Code and the relevant provisions of the ISF Statutes.

I wish you a pleasant reading of this new edition of the CAS Bulletin.

Matthieu Reeb
CAS Director General

Articles et commentaires
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Article 17 RSTP after Diarra: Understanding the Doctrine of Full Compensation and Anticipating Future Disputes Through Existing Jurisprudence

Mario Flores Chemor* and Imen Larabi**

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I. Introduction

The Judgement rendered by the Court of Justice of the European Union ("**CJEU**") on 4 October 2024 in case C-650/22 *Fédération Internationale de Football Association (FIFA) v BZ* (the "**Diarra Judgement**") has triggered one of the most consequential re-examinations of Article 17 of the FIFA Regulations on the Status and Transfer of Players ("**RSTP**"). Since its introduction more than 20 years ago, Article 17 RSTP has been the basis of contractual stability in professional football, setting out the framework governing financial compensation, the joint and several liability of the new club, and the imposition of sporting sanctions in cases of breach of contract or termination without just cause. Each of these elements was directly called into question by the Diarra Judgement.

In response, FIFA initiated both short-term and long-term reform processes, including the adoption of an *interim* regulatory framework in January 2025. In parallel, the EU Sectoral Social Dialogue Committee for Professional Football – comprising FIFPRO Europe, European Football Clubs (EFC)[1], and the European Leagues, with UEFA acting as facilitator – developed guiding principles that ultimately formed the foundation of the revised Article 17 RSTP.

This paper examines the new Article 17 RSTP and assesses how the existing jurisprudence under the *interim* regulatory framework already provides a meaningful framework for anticipating how future disputes will be resolved.

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The opinions expressed in this article are those of the authors. They do not purport to reflect the opinions or views of Kellerhals Carrard or the Court of Arbitration for Sport. The designations employed in this publication and the presentation of material therein do not imply the expression of any opinion whatsoever on the part of Kellerhals Carrard or the Court of Arbitration for Sport.

[1] Formerly known as the European Club Association.

II. Background

A. Preamble

Article 17 RSTP emerged from the negotiations between FIFA, UEFA and the European Commission following the Bosman ruling[2] with the specific aim of deterring unilateral and unjustified early terminations of contract. This was to protect contractual stability and, consequently, the stability of clubs' squads.

The provision historically contained three interconnected key components:

- compensation rules (Article 17(1) RSTP);
- joint and several liability of the new club (Article 17(2) RSTP); and
- sporting sanctions on players and clubs who breach contracts within the protected period (Articles 17(3) and 17(4) RSTP).

The issues raised by the Diarra Judgement affected specific components of Articles 17(1), 17(2) and 17(4) RSTP without, however, rejecting their underpinning principles. Likewise, the Diarra Judgement left untouched the system of sporting sanctions on players (Article 17(3) RSTP). Understanding what the CJEU did not address is just as important as what it did.

B. The Original Dispute

During the 2013/14 season, Lassana Diarra was under contract with the Russian club Lokomotiv Moscow. In August 2014, following what the club described as a series of disciplinary breaches, Lokomotiv unilaterally terminated his employment contract. The club subsequently filed a claim before the FIFA Dispute Resolution Chamber ("**DRC**"), seeking compensation for breach of contract. Diarra responded with a counterclaim.

In April 2015, the DRC partially upheld Lokomotiv's claim and ordered Diarra to pay EUR 10,500,000 in compensation for breach of contract under Article 17(1) RSTP.[3] The CAS confirmed the decision in May 2016.[4] Given that Diarra had not found a new club by the time the DRC decision was passed, Article 17(2) RSTP was not applied and thus no new club was found jointly liable.[5]

In parallel to the DRC and CAS proceedings, Diarra faced difficulties finding new employment. From August 2014 to July 2015 (when he signed for Olympique de Marseille), he remained out of contract. He attributed this to clubs being discouraged by the risk of being held jointly and severally liable under Article 17(2) RSTP should compensation ultimately be payable to Lokomotiv. Potential clubs may also have feared the possibility of sporting sanctions.

One concrete example arose in February 2015, when the Belgian club Royal Charleroi Sporting Club offered Diarra a contract. The offer, however, was subject, *inter alia*, to the Belgian Football Association (URBSFA) and FIFA providing express confirmation that Charleroi would not incur joint and several liability for any compensation potentially due to Lokomotiv. Neither governing body agreed to give such assurances. It was claimed that the deal fell apart for that reason.[6]

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[2] C-415/93 Judgement of the Court of 15 December 1995. Union royale belge des sociétés de football association ASBL v Jean-Marc Bosman, Royal club liégeois SA v Jean-Marc Bosman and others and Union des associations européennes de football (UEFA) v Jean-Marc Bosman.

[3] DRC Decision of 10 April 2015. Accessible at: https://digitalhub.fifa.com/m/7a75ab5dd8aa775a/original/xprxizshmjpju6wlby5h-pdf.pdf

[4] CAS 2014/A/4094 *Lassana Diarra v. FC Lokomotiv Moscow*.

[5] During the CAS proceedings, Lokomotiv unsuccessfully attempted to join Olympique de Marseille who had signed a contract with Diarra in July 2015.

[6] See Section II of the Diarra Judgement.

In December 2015, Diarra initiated proceedings before the Tribunal de Commerce du Hainaut seeking damages from FIFA and the URBSFA. On 19 January 2017, the Hainaut Court ordered FIFA and the URBSFA to pay him a provisional sum.[7]

FIFA appealed the decision to the Mons Court of Appeal, which on 19 September 2022 referred several questions to the CJEU for a preliminary ruling related to the compatibility of Article 17 RSTP with EU law.

C. The Judgement and what followed

While the CJEU recognised FIFA's legitimate aim of ensuring *"the maintenance of a certain degree of stability in clubs' player rosters"*[8] (*i.e.,* contractual and squad stability), it found that some mechanisms of Article 17 RSTP went beyond what was necessary to achieve that aim. In particular, the automatic presumption that a new club has induced a breach and the automatic joint and several liability imposed on that club.[9]

The CJEU also took issue with some criteria mentioned in Article 17(1) RSTP relevant for the calculation of the payable compensation, namely the player's subsequent contract and the former club's non-amortised transfer costs. This was mainly on the ground that both criteria lack a sufficient connection to the terminated employment relationship. In the CJEU's view, this mechanism aimed primarily at protecting clubs' financial interests, rather than ensuring the proper conduct of sporting competitions.[10]

However, not all of Article 17 RSTP was rejected. The CJEU expressly accepted the basic principle that a party who breaches a contract may owe compensation, emphasising that *"mechanisms of contract law, such as the right for the club to receive compensation in the event of a breach of contract by one of its players (…) are sufficient to ensure, on the one hand, the ongoing presence of that player in the first club mentioned, in accordance with those terms, and, on the other, the normal application between clubs of market rules, which allow them, on expiry of the normal term of the contract, or earlier if a financial agreement is concluded between clubs, to recruit the player in question"*.[11] The CJEU also recognised that the imposition of sporting sanctions in case of a breach of the rules is permissible.[12]

Immediately after, FIFA acknowledged that amendments to Article 17 RSTP were necessary. FIFA therefore initiated a global dialogue with stakeholders across world football to gather input on possible reforms. FIFA reported receiving substantial feedback from clubs, players' unions, leagues, and national associations worldwide.[13]

Despite the need for long-term reform, FIFA also recognised the urgent necessity for regulatory clarity given the approaching opening of the January 2025 transfer window. As a result, FIFA entered separate consultations with key stakeholders to develop an *interim* regulatory framework to provide stability pending the broader reform process.

This *interim* regulatory framework ("**IRF**") was formally adopted by a decision of the Bureau of the FIFA Council on 22 December 2024 and entered into force in January 2025.[14]

Finally, on 10 June 2026, the Bureau of the FIFA Council adopted the January 2027 edition of the RSTP, introducing, *inter alia*, a fully revised Article 17 RSTP.

[7] See Section II of the Diarra Judgement.

[8] Diarra Judgement, para. 102

[9] Diarra Judgement, para. 108

[10] Diarra Judgement, para. 107

[11] Diarra Judgement, para. 145

[12] Diarra Judgement, para. 143

[13] See https://inside.fifa.com/transfer-system/news/fifa-to-open-global-dialogue-on-article-17-of-the-regulations-on-the-status-and-transfer-of-players

[14] See https://inside.fifa.com/transfer-system/news/bureau-of-the-council-adopts-interim-regulatory-framework-concerning-rstp

III. The new article 17 RSTP and the road ahead

The new Article 17 RSTP is divided into 11 sub-sections, with 14 paragraphs. For the present purposes, the most relevant are:

- Agreed compensation (Article 17(1));
- Calculation of compensation in the absence of agreed compensation (Article 17(2) RSTP);
- Joint and several liability (Articles 17(9) and 17(11)); and
- Sporting sanctions (Articles 17(10), 17(11) and 17(12)).

A. Agreed Compensation

As has consistently been the case, the starting point for the calculation of compensation for breach of contract under the revised Article 17 RSTP remains contractual autonomy. Parties are, in principle, free to determine the financial consequences of a breach through an "*agreed compensation*".

The revised Article 17(1) RSTP does not distinguish between the legal mechanisms through which such compensation may be agreed. While liquidated-damages clauses constitute the most straightforward tool, buy-out clauses – and, in certain instances, penalty clauses – are also commonly used in practice. From a legal standpoint, however, buy-out clauses remain distinct from liquidated-damages clauses or penalty clauses, and FIFA and CAS jurisprudence has consistently held that they cannot serve as a basis for calculating compensation under Article 17 RSTP.[15]

As regards liquidated-damages clauses, these have long been used by clubs and players as contractual tools offering a predictable alternative to the compensation mechanism under Article 17 RSTP. However, both FIFA's and CAS' scrutiny of such clauses have made it less predictable than what parties may have initially anticipated.

FIFA's deciding bodies have traditionally taken a formalistic view of liquidated-damages clauses. According to established FIFA Football Tribunal case law, such clauses are only valid if they are reciprocal, meaning they impose the same consequences on both parties. Non-reciprocal clauses are generally deemed unenforceable.[16]

By contrast, CAS jurisprudence consistently rejects reciprocity as a prerequisite. Instead, CAS analyses liquidated-damages clauses through the lens of Article 163 of the Swiss Code of Obligations ("**SCO**"), treating them as penalty clauses.[17] Under this framework, the question is not whether the clause is reciprocal, but whether it is excessive, and if so, to what extent it should be reduced.

The revised Article 17 RSTP seeks to address this tension by expressly providing that agreed compensation need not be reciprocal.[18] Whether this clarification pertains solely to the consequences of the clause or also to the underlying entitlement to compensation remains open to debate. In any event, the deciding body retains the power to reduce an agreed amount if it is excessively

[15] See, for instance, DRC decision 03171339 of 2 March 2017: *The members of the Chamber noted that said clause only grants the player the right to terminate the contract by paying a predetermined amount to the club, a so-called buy-out clause and therefore cannot be considered as a liquidated damages clause, which provides for an amount of compensation payable by the contractual parties in the event of breach of contract. As such, and in accordance with the longstanding jurisprudence of the DRC in this respect, the Chamber decided that the aforementioned clause cannot be taken into consideration in the determination of the amount of compensation.*

[16] See for instance *FPSD-3717 Bahlul Mustafazade v. Al Ain FC*, decision of 10 March 2022; or *FPSD-7309 Panagiotis Tachtsidis / Al Fayha Club / KhorFakkan*, decision of 4 May 2023.

[17] *CAS 2016/A/4826 Nilmar Honorato da Silva v. El Jaish FC & FIFA*; *CAS 2017/A/5242 Esteghlal Football Club v. Pero Pejic*; *CAS 2022/A/9299 Galatasaray Sportif A.S. v Domenec Torrent Font*; or *CAS 2023/A/9756 Al Fayha Club v. Panagiotis Tachtsidis & Club Khordfakkan FC.*

[18] Article 17(1)(a) RSTP.

high, or to disregard it entirely where it is manifestly unfair.

It follows that the future relevance of liquidated-damages clauses – or indeed of any "*agreed compensation*" in the sense of Article 17(1) RSTP – will depend on the criteria applied to assess their proportionality, excessiveness and fairness.

To the authors' knowledge, there has only been one post-Diarra decision dealing with the validity of liquidated-damages clauses. In *FPSD-16957, Al Merreikh KH vs. Ahmed Hamid Mohamed & Swehly Club* ("**Mohamed**")[19], Article 10 of the relevant employment contract established a payable compensation equal to SDG 500,000,000 in case of an unjustified termination by either party. The FIFA DRC found that the liquidated-damages clause, while being reciprocal, was in fact disproportionate. The FIFA DRC opted to set the clause aside and to refer instead to Article 17(1) RSTP.

In assessing the proportionality of the relevant clause, the FIFA DRC appears to have relied exclusively on the value of the breached contract. In other words, the Chamber seems to have taken the view that a liquidated-damages clause should be disregarded where the stipulated amount does not bear a "reasonable" relationship to the value of the contract. This represents a restrictive approach with potentially far-reaching consequences as in the vast majority of cases, a pre-agreed compensation amount will substantially exceed the player's remuneration, especially where market value, commercial dealings, performance expectations, or sporting relevance form part of the parties' *rationale* at the time of contracting.

It remains unclear whether under the revised Article 17 RSTP a disproportionate amount may only justify a reduction on the basis that it is *"excessively high"*, or whether it may also lead to the complete disregard of the clause as being *"manifestly unfair"*.

In that context, another point that remains unresolved is whether the proportionality of a liquidated-damage clause is also relevant when dealing with low amounts. For instance, if a clause provides that the compensation payable to each party in case of breach of contract is the value of the player's one monthly salary. Historically, the DRC accepted those clauses,[20] recent cases, however, suggest a change of jurisprudence.[21] At CAS level the application of mandatory provisions of Swiss labour law have also affected the enforceability of similar provisions.[22] But still those have been accepted in rare occasions like in *CAS 2022/A/8761 Ratchaburi FC v. Sébastien Wuthrich*[23] in which the CAS Panel did not see an issue with a clause providing for two-months compensation.

The reference in Article 17(1)(b) RSTP to clauses that are *"manifestly unfair"* may be intended to capture such scenarios.

The authors consider that proportionality – or indeed manifest unfairness – should not be assessed exclusively in relation to the player's salary. Rather, it should reflect a broader and more realistic appreciation of value of the player's services for the club in particular and

[19] Decision of 25 September 2025.

[20] See *FPSD-764 Fabien Ceddy Farnolle / Buyuksehir Belediye Erzurumspor / Club Sidama Coffee*, decision of 3 November 2021; *FPSD-3253 Tita Valeriu v. Alhussein*, decision of 26 October 2021; *FPSD-3071 Ziguy Badibanga v. FC Shakhter*, decision of 21 November 2021; *FPSD-9738 Roberto Luiz Bianchi Pelliser v. Vipers SC*, decision of 23 May 2023; *FPSD-2056 Mabrouk Jendli v. Ohod*, decision of 20 May 2021; or *Club A / Player C / Club E*, decision of 21 May 2015.

[21] See *FPSD-7507 Edin Rustemovic / Shakhter / FK Radnik Surdulica*, majority decision of 26 May 2023; *FPSD-18246 Hany Aly Elsayed El Okby v. Altohami club*, decision of 16 April 2025; *or FPSD-18885 Viorel Dinu v. Esperance Sp. De Tunis*, decision of 24 June 2025.

[22] See *CAS 2021/A/8268 Jaime Moreira Pacheco v. Zamalek Sporting Club*; *CAS 2021/A/8471 Al-Hilal Khartoum Club v. Jesi Last*; or *CAS 2024/A/10666 Vedran Naglić v. Al Shabab Football Club*.

[23] At paras. 88-90

overall within the transfer market. This may include, for instance without limitation:

- the time of the breach or unjustified termination (e.g., whether it was during the protected period or at the beginning or end of a transfer window);
- the market value of the player's services objectively determined, for instance, by expert valuation reports;
- the player's specific characteristics such as their age, playing position or injury history;
- the player's impact (or expected impact in cases of new players) on the team's sporting performance;
- the investment made by the club on acquiring or, alternatively, training and educating the player;
- any increases in remuneration of the player's salary; and/or
- the foreseeable complications in replacing the player.

If future FIFA jurisprudence continues to rely exclusively on salary-based comparisons, the practical use of liquidated-damages clauses may be significantly undermined.

Furthermore, the application of mandatory provisions of Swiss labour law may constitute a further obstacle to providing the parties with legal certainty as regards the enforceability of agreed liquidated-damages clauses. In this respect, it is important to note that the new RSTP "*reflect a joint agreement between the representatives of employees (players and their unions) and employers (clubs and leagues). They are based on, and developed through, a social dialogue process under the direction and auspices of FIFA*"[24]

It could be argued that disapplying collectively agreed provisions of the RSTP on the basis of a legal framework entirely foreign to the contractual relationship would run counter to the parties' legitimate expectations. It follows that deciding bodies, and in particular CAS panels, should exercise restraint when assessing the impact of mandatory Swiss labour law on player-club contracts governed by the new RSTP, especially where the contractual relationship lacks any substantive connection to Switzerland and where the parties could not reasonably have anticipated the application of such provisions.

In that respect, it must be recalled that the Swiss Federal Tribunal ("**SFT**") has consistently held that an international arbitral award cannot be challenged solely on the ground that it conflicts with a provision of Swiss law, irrespective of the degree of such conflict. In particular, the fact that a provision forms part of mandatory Swiss law does not, in itself, imply that its violation amounts to a breach of public policy within the meaning of Article 190(2) of the Swiss Private International Law Act.[25]

The above notwithstanding, the revised Article 3 of the Procedural Rules Governing the Football Tribunal now explicitly provides for the subsidiary application of Swiss law. This can be a significant shift in practice as, historically, the FIFA DRC has considered that no national law applies to proceedings before it.[26] It follows that a material tension may arise in cases where the DRC considers that a liquidated-damages clause is neither excessive nor manifestly unfair, yet such clause remains incompatible with mandatory provisions of Swiss labour law.

Two final remarks:

- Where a player earns up to USD 150,000 per year, any agreed compensation in favour of the player must, as a minimum, correspond to the residual value of the contract, unless exceptional circumstances justify a lower amount. This reflects a clear

[24] Article 1(2) RSTP

[25] See SFT Decision 4A_242/2022, consid. 5.3 with further references.

[26] See, for instance, 20-00933 FC Kairat / Ramazan Orazov / FC Daugavpils, decision of 14 January 2021.

intention to safeguard players in weaker bargaining positions.

- It is unclear whether the regulatory penalty in Article 17(6) RSTP of up to six monthly salaries in cases of abusive conduct can be awarded in addition to a valid liquidated-damage clause or if such penalty only applies in cases where the general rule of Article 17 RSTP, which is analysed below, applies.

B. Calculation of compensation

1. Preamble

Players' services constitute a core asset for clubs. They directly determine sporting performance and competitive results, which in turn drive the club's principal revenue streams, including broadcasting, sponsorship, prize money, and matchday income. A player's contribution is therefore intrinsically connected to both the sporting and commercial value of the club. Club success, in turn, directly benefits players by increasing their visibility and professional standing, often enabling access to higher-profile competitions, better contractual and commercial opportunities, and national team selection.

This dynamic is further reinforced by the substantial investments clubs make in player development through training, coaching, medical support, and youth development programmes. At the same time, players benefit directly from these investments, as they enhance their ability to realise their sporting potential and to translate club success into higher-value contracts and broader professional opportunities.

Moreover, it is widely accepted that the transfer market performs a redistributive function that is essential to the sustainability of the football industry as a whole. It has also been argued that transfer fees improve competitive balance.[27]

FIFA and the stakeholders appear to have fully recognised these considerations by implementing a framework that expressly acknowledges the economic value of players' services and the need to compensate fully for their loss. As such, the revised Article 17 RSTP incorporates the doctrine of full compensation – conceptually aligned with the positive interest principle – which constitutes a foundational principle of contract law in both common law and civil law systems. In its most fundamental understanding, the doctrine – same as the positive interest principle – aims to put the injured party in the position it would have been had the contract not been breached by the injuring party.

2. Full Compensation in Common Law Systems

In England & Wales, full compensation (most commonly known as expectation interest) has been part of the common law at least since *Robinson v. Harman (1848)*[28], where Baron Parke held that:

[W]hat damages is the plaintiff entitled to recover? The rule of common law is, that where a party sustains a loss by reason of a breach of contract, he is, so far as money can do it, to be placed in the same situation, with respect to damages, as if the contract had been performed.

For its part, in the USA, the Restatement (Second) of Contracts[29] §344 provides that:

Judicial remedies under the rules stated in this Restatement serve to protect one or more of the following interests of a promise:

[27] See Tsjalle van der Burg, "*Why transfer fee systems improve market competition, and why the Bosman ruling was flawed*". The International Sports Law Journal (2024) 24:177–187

[28] Robinson v Harman [1848] 1 Exch 850, 154 ER 363

[29] The Restatement (Second) of Contracts, published by the American Law Institute, is widely considered the most authoritative summary of contract law in the United States.

a) his "expectation interest", which is his interest in having the benefit of his bargain being put in as good a position as he would have been in had the contract been performed.

3. Full Compensation in Civil Law Systems

Civil law systems express the same idea. German law, for instance, enshrines this through the concept of *Positives Interesse*. Section 249(1) of the German Civil Code provides that a person liable for damages must "*restore the position that would exist if the circumstance obliging them to pay damages had not occurred*".

German law also recognises that "*damage to be compensated also includes lost profit*" (s 252(1) of the German Civil Code) with lost profits being defined as those which "*in the normal course of events or in the special circumstances, particularly due to the measures and precautions taken, could be expected to be attained as a matter of likelihood*" (s 252 of the German Civil Code). Therefore, lost profits (including those "*expected to be attained as a matter of likelihood*") can be claimed as compensation pursuant to ss 249, 252 of the German Civil Code.

Similarly, the French and Spanish civil codes partition the doctrine of full compensation into the recovery of actual losses (*damnum emergens*) and the loss of anticipated profits (*lucrum cessans*).[30] Both legal frameworks also recognise the loss of a chance as a recuperable head of damage.[31] French courts have established, however, that *"compensation for loss of opportunity must be calculated based on the opportunity lost and cannot be equal to the benefit that opportunity would have yielded had it materialised"*.[32]

It is also worth mentioning that Article 163 of the European Contract Code[33] provides as follows:

Damages are recoverable for:

a) the loss sustained, and

b) the profits lost which the creditor could reasonably have expected in the normal course of events given the particular circumstances and measures taken by him. Profits lost shall include loss of the chance of a gain which it can be deemed with reasonable certainty would occur and which must be evaluated with regard to the time of non-performance or delay.

4. Full compensation under Swiss law

By virtue of the regulatory framework applicable to international football (rooted in FIFA's Statutes and the CAS Code), Swiss law operates as the substantive law in the vast majority of appeal cases before the CAS.[34] This applies even when the parties have no connection to Switzerland and even where the underlying contract expressly designates a different governing law.

Swiss law is no exception in aligning contractual damages with the doctrine of full compensation. Under Swiss contract law, compensable damage is defined through the difference theory, which measures the involuntary reduction of net patrimony by comparing the injured party's actual financial situation with the hypothetical one that

[30] Art. 1231-2 of the French Civil Code and Article 1106 of the Spanish Civil Code.

[31] See Medina Alcoz, *La Teoría de la Pérdida de Oportunidad*, p.89; and Thomas Kadner Graziano, "*La «perte d'une chance» en droit privé européen: « tout ou rien» ou réparation partielle du dommage en cas de causalité incertaine*" Christine Chappuis/Bénédict Winiger (Ed.). Genève. Bâle : Helbing & Lichtenhahn, 2007. p. 217–248. (Collection genevoise. Droit de la responsabilité)

[32] Cour de cassation, civile, Chambre civile 3, 29 February 2024, 22-23.082, free translation from French

[33] The European Contract Code is a set of non-binding principles intended to provide uniform rules for contracts across the EU.

[34] In essence, the CAS Code provides that, in appeal proceedings, the dispute is governed by the regulations of the federation that issued the first-instance decision. In turn, the FIFA Statutes stipulate that CAS must apply FIFA's regulations and, subsidiarily, Swiss law. As a result, in CAS appeal proceedings, Swiss law (although incorporated through the regulations of the deciding federation) applies directly and takes precedence over any other law chosen by the parties.

would have existed had the contract been duly performed.[35] In ATF 127 III 543, the Swiss Federal Tribunal set out the well-established formula for calculating damages under Swiss law:[36]

"[J]udicially recognized damage resides in the involuntary diminution of net assets; it corresponds to the difference between the actual amount of the patrimony damaged and the amount which this patrimony would have had if the damaging event had not taken place....The damage may be found in the form of the diminution of assets, the increase of debts, the non-increase of assets or the non-diminution of debts...."

In line with other civil-law systems such as the German, Spanish and French regimes, Swiss jurisprudence recognises the dual categories to fully compensate an injured party, i.e., *damnum emergens* (actual loss) and *lucrum cessans* (loss of profits). However, Swiss law applies these concepts with a comparatively restrictive approach, requiring that any recoverable loss be demonstrably real rather than merely potential. Although Article 42(2) of the SCO allows courts to estimate damages when precise calculation is impossible, the estimation of damage must remain based in objective, verifiable information. Accordingly, while Swiss law is conceptually aligned with other European civil-law frameworks, it is comparatively narrower as it seems to exclude the possibility to recover damages for a lost chance.[37] This position, however, is not unanimous.[38]

5. Full compensation in football-related matters and recognised heads of damage

General remarks

The doctrine of full compensation – in football applied through the lens of the positive interest principle – has emerged as a central concept in CAS jurisprudence when determining compensation for the unjustified termination of contracts. This is particularly evident in professional football, where contractual relationships typically involve significant planning, investment, and opportunity costs for both clubs and players.

Although conceptually straightforward, determining the injured party's hypothetical position in the absence of breach remains a complex exercise. This is particularly the case where the club is the injured party. In this regard, FIFA and CAS panels have identified a number of heads of damage recoverable under the positive interest principle, which, as noted above, is conceptually aligned with the doctrine of full compensation.

Some of these heads of damage are now expressly reflected in the revised Article 17(4) RSTP, including, *inter alia*, the value of the player's services and the loss of a transfer fee or transfer value. However, these elements do not constitute a closed framework. Rather, they operate as guiding criteria within a case-specific assessment of the damage suffered.

Given that the IRF already incorporated the positive interest principle, and that CAS panels have consistently applied it in the context of Article 17 RSTP disputes, the existing jurisprudence offers a meaningful indication of how future disputes under the revised Article 17 RSTP are likely to be resolved.

The "residual value" method

[35] See Vedovatti Marco and Isler Tim, "*Article 17(1) RSTP and recoverability of the loss of a chance under Swiss Law*", in ECA Legal Journal, issue 01 (November 2021). See also Philipp H. Haberbeck, "*The Recoverability of Lost Profits under Swiss Commercial Law*", in Matthias Scherer (ed), ASA Bulletin, (© Association Suisse de l'Arbitrage; Kluwer Law International 2018, Volume 36 Issue 1) p. 79

[36] ATF 127 III 543, judgement of 14 June 2001, consid 2.b)

[37] Vedovatti & Isler *supra*. See also Decision of the Swiss Federal Tribunal in BGE/ATF 133 II 462.

[38] Vedovatti & Isler *supr*a, with further references.

The new Article 17(5) RSTP introduced a mandatory minimum compensation equal to the residual value of the contract. Only in extraordinary circumstances may an award fall beneath this threshold. As such, one of the main ambiguities which existed under the IRF, namely whether the injured party had to demonstrate the existence of a damage, or whether such damage was presumed automatically from the very fact of a contractual breach, has been clarified.

It is now clear that, save exceptional circumstances, the starting point for any compensation to be awarded is the value of the contract that was terminated. The *rationale* is that these earnings form part of the injured party's reasonable expectations. From the player's side, if the contract is terminated early, these future benefits may be lost. Conversely, it is also an objective indicator of the value of the player's services for the injured club.

While it is not possible to anticipate specific exceptional circumstances in which no compensation will be awarded to an injured party, it is worth mentioning the post-Diarra matter *FPSD-19794 SK Spartak Subotica v. Nigel Benjamin Robertha* ("**Robertha**")[39],where the FIFA DRC rejected to award the club the remaining value of the contract as the player had terminated his contract because of retirement from professional football.

Further complexities may arise in situations where the player secures significantly higher remuneration under a subsequent contract, potentially leading to overcompensation if the full residual value of the breached contract were to be awarded. This raises questions as to the interaction between the residual value as a baseline and the principle of mitigation of damages, as reflected in Article 17(7) RSTP, as well as the possible influence of mandatory provisions of Swiss law.

The authors also note that the revised Article 17(3) RSTP provides that players are entitled to the residual value of the contract "*and any other damage caused*". As such, nothing prevents a player from claiming that he has suffered a larger damage than the remaining value of the breached contract. Indeed, this has already been recognised by the FIFA DRC in the matter *FPSD-2470 Christ Remi Lourougnou v. Shabab El Bourj* when it awarded moral damages to a player.[40]

Such additional damage may arise, for instance, in situations where a club deregisters a player, thereby depriving him/her of competitive football for a prolonged period, which in turn adversely affects his/her employment prospects and results in reduced earning opportunities or diminished future salaries. This additional damage may be proven by means of expert reports.

Finally, it is worth noting that this residual value benchmark does not expressly extend to coaches. As such, it remains uncertain whether, in coach–club disputes, the injured party must still demonstrate the existence of damage, or whether such damage may be presumed by virtue of the breach itself.

In that respect, in the matter *FPSD-17867, Ma'an vs. Ameen Alber Philip* ("**Philip**")[41], the Players' Status Committee (the "**PSC**") took a restrictive approach to the residual value. The PSC held that coaches differ from players in ways that are *"legally and economically decisive"*.[42] It explained that players are integrated into a regulated system of transfers, in the context of which it is market practice to pay transfer fees.[43] While acknowledging that the RSTP extend the principle of contractual stability to coaches, the PSC underlined that this was done under

[39] Decision of 26 February 2026.

[40] At CAS level see *TAS 2015/A/3871 Sergio Sebastián Ariosa Moreira c. Club Olimpia* and *TAS 2015/A/3882 Club Olimpia c. Sergio Sebastián Ariosa Moreira*

[41] Decision of 11 September 2025

[42] Philip, para. 158

[43] *Ibid*, para. 159

"different parameters, as their role, the nature of their contractual ties, and their position in the transfer market differs substantially from those of players".[44] The PSC further held that although an unjustified breach of contract by a coach carries a sporting impact, it does not "*deprive clubs of a marketable value or asset*"[45] in the way a player departure would, and that any financial loss arising from the coach's departure would generally be offset by the salary savings the club makes as a result of the termination.[46]

Consequently, the PSC held that awarding the residual value of the contract was neither legally nor factually justified in the circumstances.

It is unclear whether the reasoning in *Philip* that coaches' services are not a *"marketable value or asset"* will still hold under the new Article 6(5) of Annexe 2 RSTP which explicitly provides as head of damage *"the value of the services of the coach"*.

<u>The value of the player's services, including lost transfer fees and lost transfer value</u>

As previously mentioned, players' services have an economic significance for both clubs and players. This is to say that players' services have an inherent financial value within an established market, which may be damaged or lost whenever a contract is breached or terminated without just cause.

From a player's standpoint, future earning capacity is closely linked to the market value of those services. Where a club's unlawful conduct (e.g., by deregistering the player or negligence in treating an injury) leads to a depreciation of that value, the resulting damage may materialise in reduced remuneration or lost employment and commercial opportunities. Conversely, for clubs, the premature and unjustified loss of a player's services constitutes compensable damage, as those services represent an economic asset whose value extends beyond salary costs. Using the formula of positive interest under Swiss law, the unlawful deprivation of that asset (i.e., the player's services) necessarily places the club in a worse patrimonial position than it would have occupied absent the breach.

In that context, CAS jurisprudence recognises that a club may recover a lost transfer fee where the player's unilateral breach deprives the club of a concrete, economically verifiable opportunity to transfer him.[47] This head of *lucrum cessans* emerged after the initial scepticism of the *Webster* matter[48], which rejected reliance on hypothetical transfer values. Subsequent CAS awards (*Matuzalem*[49] in particular) accepted that where evidence exists of a realistic transfer, the resulting lost opportunity constitutes a recoverable loss as long as there is a "*logical nexus*" between the unjustified termination and the lost opportunity.

While there is no post-Diarra CAS jurisprudence addressing the concept of "lost transfer fees", there are already a few FIFA DRC decisions analysing this head of damage.

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[44] *Ibid*, para. 161

[45] *Ibid*, para. 162

[46] Philip, para. 162

[47] See, for instance, CAS 2009/A/1880 *FC Sion v. FIFA & Al-Ahly Sporting Club* and CAS 2009/A/1881 E. *v. FIFA & Al-Ahly Sporting Club*; *CAS 2020/A/6767 Zobahan Cultural & Sport Club v. Reza Shekari & Football Club Rubin Kazan & FIFA*; or *CAS 2024/A/10279 Al Raed Sport Club v. JSC Football Club Rostov CAS 2024/A/10280 JSC Football Club Rostov v. Mathias Antonsen Normann & Al Raed Sport Club & Fédération Internationale de Football Association (FIFA) CAS 2024/A/10281 Mathias Antonsen Normann v. JSC Football Club Rostov.*

[48] *CAS 2007/A/1298 Wigan Athletic FC v/ Heart of Midlothian* and *CAS 2007/A/1299 Heart of Midlothian v/ Webster & Wigan Athletic FC* and *CAS 2007/A/1300 Webster v/ Heart of Midlothian*

[49] *CAS 2008/A/1519 FC Shakhtar Donetsk v/ Mr. Matuzalem Francelino da Silva & Real Zaragoza SAD & FIFA* and *CAS 2008/A/1520 Matuzalem Francelino da Silva & Real Zaragoza SAD and v/ FC Shakhtar Donetsk & FIFA*

In *Massafi Al-Jonob vs. Musa Esenu and Bul Football Club* (**"Esenu"**)[50], the club requested compensation for loss of income derived from its inability to commercialise the Player's image rights. For that purpose, the club had provided a proposal for commercialisation of the Player's image rights, however, it did not provide evidence that it had accepted said proposal nor that there was a *logical nexus* between the breach and the loss of said (potential) commercial opportunity.

In *Philip*, the club failed to provide any evidence demonstrating that it had previously commercialised the Coach's image rights, how the claimed amount was calculated, or that any actual loss was incurred.

In *FPSD-16859, Wesley da Silva v. Qindao West Coast FC / Qindao West Costs FC vs. Wesley da Silva & Always Ready* ("**da Silva**")[51], the club held that it had received an offer for the transfer of the Player. While the offer was not contested, the Chamber considered it lacked *"probative value to quantify, substantiate and prove the damage that the [Club] suffered as a result of the breach"*[52] due to the timing of the offer (received after the termination of the contract).

In *Mohamed*, the club referred to the *"high services value of the Player as a national team star"* to justify the *quantum* of compensation requested. It attempted to demonstrate the market value of the Player by providing his Transfermarkt profile as well as the market value of similar players and an alleged article stating that he was *"the main reason for its qualification to the top six ranked championship"*[53]. However, the Chamber rejected the submission as it did not, in its opinion, prove any further damage allegedly suffered by the Club as a result of the breach of contract.

Finally, the following passage from *FPSD-20117 Tractorsazi v. Ricardo Alves Coelho / Ricardo Alves Coelho v. Tractorsazi* ("**Coelho**")[54] is worth quoting in full:

> *152. The DRC then turned to the Club's reliance on the Player's alleged "market value," which the Club derived solely from the publicly accessible website Transfermarkt. In this respect, the Chamber stressed that Transfermarkt is a crowd-sourced, non-official platform whose valuations are generated through user interactions, unverified contributions, and non-transparent methodologies. As such, the Chamber determined that it cannot be deemed an objective, reliable, or verifiable source in establishing market value for the purpose of calculating compensation under art. 17 of the Regulations, and therefore the Club's submission based on this platform must be disregarded.*
>
> *153. The Chamber wished to stress that, in accordance with art. 13 par. 5 of the Procedural Rules, it is incumbent on the claiming party to provide adequate, objective, and independently verifiable evidence of any alleged market value, such as documented transfer offers, formal negotiations, expert valuations, or other authoritative data. In the absence of such supporting evidence, mere references to Transfermarkt fall far short of the evidentiary threshold consistently applied in FIFA jurisprudence.*

It follows that parties seeking compensation for the loss of a player's services are subject to a demanding evidentiary burden. In this regard, the increasing sophistication of player valuation methodologies is likely to play a central role in disputes under Article 17 RSTP. Tools developed by specialised institutions offer structured, data-driven assessments of the value of players' services. While such tools cannot substitute the legal assessment to be carried out by a deciding body, they may provide a reliable and objective basis for substantiating claims of economic loss.

[50] Decision of 27 March 2025.

[51] Decision of 7 October 2025.

[52] Da Silva, para. 111

[53] Mohamed, para. 110

[54] Decision of 26 February 2026.

CAS has at least on one occasion acknowledged that player valuation tools may be relied upon to establish the value of a player's services and, consequently, the damage suffered by a club deprived of those services against its will.[55] Similarly, in *Coelho*, the FIFA DRC considered that *"expert valuations or other authoritative data" may constitute "independently verifiable evidence of any alleged market value"*.[56]

Moreover, it has been reported that FIFA has explored the introduction of algorithmic player valuation[57], with FIFA President Gianni Infantino explicitly mentioning in 2024 *"the possibility to use an algorithm to estimate the fair value of transfer fees in order to increase transparency in the transfer system and help the football stakeholders"*.[58]

Were FIFA to implement such an algorithm, it would represent a significant shift in the transfer system, depending on the approach FIFA intends to use it for. One possibility would be to make the tool available to the market, allowing clubs and players to rely on it in negotiations – a proposition likely to encounter resistance from stakeholders. Alternatively, the tool could remain internal for instance serving as a benchmark for FIFA's deciding bodies to assess the proportionality of liquidated-damages clauses or to evaluate expert valuation evidence submitted by the parties.

Be that as it may, FIFA's exploration of algorithmic valuation clearly signals a movement towards data-driven assessments of player services' value, further reinforcing the likelihood that expert valuation tools may play a significant role in future Article 17 RSTP disputes

Replacement costs

Replacement costs are generally accepted as a head of damage under positive interest – or indeed full compensation. In *CAS 2010/A/2145 Sevilla FC SAD v. Udinese Calcio S.p.A.CAS 2010/A/2146 Morgan de Sanctis v. Udinese Calcio S.p.A. and CAS 2010/A/2147 Udinese Calcio S.p.A. v. Morgan de Sanctis & Sevilla FC SAD*, the club immediately recruited two goalkeepers after the breach of contract by De Sanctis. The panel held these expenses recoverable because the players occupied the same position and were acquired specifically in response to the breach.[59]

From the post-Diarra FIFA DRC decisions, it results that, while replacement costs is an admissible head of damage, there are strict requirements in order for a claim based on such costs to be accepted. In particular, replacement costs will only be awarded where the claimant can demonstrate: *(i)* similar profile of the concerned players; *(ii)* direct causal link between the replacement and the breach of contract; *(iii)* documentary evidence of the costs incurred; and *(iv)* the reasonableness of the replacement.

In *Esenu*, the DRC deemed that the club had not demonstrated that the new player had a *"sufficiently similar profile"* as the replaced player[60] and noted that the new player had in any event a much lower salary.

In *Da Silva*, the DRC concluded that no link had been established between the hiring of

[55] See *CAS 2020/A/7612 Club Atlético Newell's Old v. AS Roma.*

[56] Coelho, para. 153

[57] See https://fcbusiness.co.uk/news/using-algorithms-to-determine-transfer-fees/

[58] See https://www.espn.co.uk/football/story/_/id/39443242/transfer-fees-set-algorithm-fifa-gianni-infantino

[59] See also *CAS 2018/A/5607 SA Royal Sporting Club Anderlecht v. Matías Ezequiel Suárez & Club Atlético Belgrano de Córdoba* and *CAS 2018/A/5608 Matías Ezequiel Suárez & Club Atlético de Belgrano de Córdoba v. SA Royal Sporting Club Anderlecht*

[60] *Ibid*, para. 104.

three alleged replacement players and the replaced player's departure[61].

In *Coelho*, the claim on the basis of replacement costs was rejected as the transfer agreement related to the alleged replacement player was concluded before the termination of the contract. As such, the replacement player *"could not reasonably be regarded as a replacement for the Player, as the latter was still contractually tied to the Club and there was no contemporaneous need —or basis— to recruit a replacement"*.[62]

In *Philip*, the club also claimed replacement costs corresponding to the alleged total value of the contract concluded with its new head coach. The Chamber reiterated that, for compensation to be awarded under this head of damage, a clear and direct causal link must exist between the breach and the replacement costs incurred. *"In other words, the club must demonstrate that the hiring of a replacement coach was a necessary and direct consequence of the breach, and that the costs claimed reflect an actual financial loss"*.[63] While the Chamber recognised that an evident causal nexus existed in principle between the Coach's breach and the need to appoint a successor, it was ultimately unable to uphold the claim. The club's failure to produce the replacement coach's employment contract left the alleged loss insufficiently substantiated, precluding any award under this head.[64]

The only post-Diarra decision where replacement costs were awarded was *FPSD-20074 Arabi SC v. Hasan Hamdan & Al Ahli SC & Kuwait SC* ("**Hamdan**")[65]. The claimant club argued that it had to recruit three new players due to the unjustified termination of contract. The DRC "*found difficult to follow*" the claimant club's claim that *"the Player was replaced by three other players"*[66]. As such, it went to analyse which of the three, if any, was the true replacement. The criteria the FIFA DRC used to answer that question was the respective positions on the pitch, the date when the alleged replacements were registered and the difference of their remuneration with that of the replaced player.

It is worth noting that the DRC awarded as compensation the full salary payable to the new player, without considering the costs that the claimant club had saved because of the termination of contract (i.e., the salary of the replaced player).

Saved costs

A particularity of CAS case law when applying Article 17 RSTP is the reduction to any payable compensation by the costs saved by the club due to the breach of contract. The FIFA DRC has historically been more reluctant to follow this line of reasoning.

For instance, in *CAS 2019/A/6463 Saman Ghoddos v. SD Huesca & Östersunds FC & Amiens Sporting Club & FIFA and CAS 2019/A/6464 Östersunds FK Elitfotboll AB v. SD Huesca & FIFA & Saman Ghoddos & Amiens Sporting Club*, the CAS panel noted that by the player breaching the contract with the club (non-execution of the contract), it had saved not only the player's salaries but also a transfer fee. Eventually, since the club had not specified any other losses the Panel deemed that it had not proven damages suffered due to the player's breach.

The same logic was followed in *CAS 2020/A/7262 Helder Jorge Leal Rodrigues Barbosa & Hatayspor CA v. Akhisar Belediye Genclik ve SK*, or in *CAS 2023/A/9487 Ismaily SC v. Diego Fernando and Club Nea Salamina Famagusta SC* which explicitly detailed the heads of compensation that the club could have received (e.g., unamortised fees and expenses, the value of the employment contract of the player with his new club for the corresponding period) and concluded that since the salaries saved were higher than

[61] Da Silva, para. 121.

[62] Coelho, para. 157

[63] Philip, para. 166.

[64] Philip, paras. 167 and 168.

[65] Decision of 15 January 2026.

[66] Hamdan, para. 148.

those heads of damage, the club should not receive any compensation as their financial savings exceeded their losses.

However, this approach at CAS level is not unanimous and some arbitrators have explicitly disagreed with the "salaries saved – no damages suffered" approach. That was the case in *CAS 2022/A/8574 Marcos Lavin Rodriguez v. FC Voluntari* in which the Sole Arbitrator explained that *"even if the Club could be considered having "saved" the residual amount, the Club was at the same time suffering from not having the Player employed"*[67] and that following this logic of saved costs, would prevent clubs from receiving compensation in case of players leaving their clubs without just cause.

While there is no reference to saved costs in the revised Article 17 RSTP, it is expected that deciding bodies will continue to apply such an approach, particularly when the claim is based on the loss of the player's services or replacement costs (noting that the FIFA DRC did not follow this approach in *Hamdan*).

Non-amortised costs

These recoverable costs were explicitly mentioned in the pre-Diarra version of Article 17 RSTP. However, because of the explicit criticism of the Diarra Judgement particularly as regards non-amortised transfer fees, it appeared that it was no longer possible to recover such costs. However, these costs have been claimed in some post-Diarra decisions, particularly in *Esenu* (reimbursement of flight tickets) and *Da Silva* (reimbursement of advanced payments made to the player and his agent).

What is worth noting in this respect is that in *Da Silva* the DRC rejected the claim for non-amortised agent fees on the basis that the club failed to substantiate that they were actually related to the player's transaction.[68] In other words, the DRC seems to have implied that it was still possible to claim non-amortised costs as part of the compensation. For its part, in *Esenu*, the Chamber *"considered this request as potentially constituting a compensable element of damage, contingent on the Claimant having paid for the tickets"*[69].

It is unlikely, however, that the same *rationale* would apply to non-amortised transfer fees the reference to which, as mentioned, was completely removed from Article 17 RSTP. It remains to be seen, however, what the outcome will be if non-amortised transfer costs are included in an "*agreed compensation*" pursuant to Article 17(1) RSTP.

A Case-Specific Approach Rather Than a Fixed Formula

Despite the guidance provided in the revised Article 17 RSTP, CAS has consistently rejected any notion that compensation should follow a predetermined formula and it is expected that this will continue to be the case. This position is clearly set out in *CAS 2020/A/7443 Mahmoud Abdelmonem Abdelhamid Soltane v. Zamalek Sporting Club* and *CAS 2020/A/7446 Zamalek Sporting Club v. Mahmoud Abdelmonem Abdelhamid Soltane, CD Aves & Al Ahly Sporting Club*, where the tribunal stressed that:

"There is no specific method to determine the amount of compensation… a mechanical application would entail that such compensation could be quantifiable in advance, which would be against the deterrent effect and the core rationale of Article 17…"[70]

In that respect, a key misconception surrounding the Diarra Judgement is the belief that it imposed a requirement of absolute certainty when calculating the

[67] At para. 132.

[68] Da Silva, para. 127

[69] Esenu, para. 101

[70] See also *CAS 2024/A/10279 Al Raed Sport Club v. JSC Football Club Rostov* and *CAS 2024/A/10280 JSC Football Club Rostov v. Mathias Antonsen Normann & Al Raed Sport Club & Fédération Internationale de Football Association (FIFA)* and *CAS 2024/A/10281 Mathias Antonsen Normann v. JSC Football Club Rostov*

damage the injured party suffers due to a breach. In fact, the ruling did not mandate such rigidity. What the Diarra Judgement criticised was the unpredictability generated by vague concepts such as the "specificity of sport",[71] the inapplicability of national law in spite of being explicitly mentioned and, more generally, the combination of all the components of Article 17 RSTP. The authors understand that what the Diarra Judgement requires is that the compensation payable must be objective, transparent, and capable of individualised assessment, rather than fixed by a predetermined formula.

The end of the specificity of sport

When the specificity of sport was raised in disputes governed by the IRF, the Chamber confirmed that such criterion was no longer applicable. It reaffirmed that in any case, specificity of sport was never intended to constitute a standalone head of damage and was only a correcting factor to either increase or decrease the payable compensation. Since such correcting factor is no longer foreseen in the Regulations, it is not applicable[72]. The same must therefore be true as regards the new Article 17 RSTP.

C. Joint and several liability

The question of whether the new club is jointly and severally liable for the player's compensation obligation was fundamentally altered by the IRF. While under the pre-Diarra framework, joint liability was automatic, under the IRF, it was for the claimant to demonstrate that the new club induced the breach. All five post-Diarra decisions where a new club was involved — *Esenu*, *Mohamed*, *Traoré*[73], *Hamdan* and *Da Silva* — resulted in the rejection of joint liability, illustrating how significantly the bar had been raised.

Esenu was factually a bit more complex than the other cases, in the sense that the Player was not registered with the alleged new club. Additionally, it would appear that in any case, the alleged new club could not have been aware that the Player had an employment relationship with the former club when it signed a contract with him[74].

Da Silva emphasised the role of the Transfer Matching System ("TMS") in assessing the new club's state of knowledge. Here, the new club argued that, prior to signing the player, he and his agent had provided it with the original contract with the injured club, which had already expired at that time. The new club provided a copy of said original contract, which was the same copy that was uploaded in TMS as the proof of the Player's "last contract end date". In the Chamber's opinion, it was not possible to determine that the new club had induced the Player considering that it had relied on the TMS information (the original contract end date) and no further evidence of inducement had been provided by the claimant club.

In *Mohamed*, the injured club argued that the new club had induced the player to breach the contract, notably because it had previously employed him on loan. The DRC was unpersuaded by this fact alone and emphasised that the injured club failed to submit sufficient evidence to demonstrate any act of inducement from the new club. Rather, the Chamber considered that the injured club merely established a temporal connection between the expiry of the loan agreement and the date of termination of the breached contract, which, absent further evidence, resulted in nothing more than suspicion.

In *Hamdan* and *Traoré*, the FIFA DRC confirmed its position in *Mohamed* that a *"temporal connection or proximity"* between the termination of the original contract and the

[71] Diarra Judgement, paras. 106 and 135.

[72] Esenu, para. 103. Mohamed, para. 107. Da Silva, para. 129. Philip, paras. 169-171

[73] TP Mazembe vs, Fily Traoré & Sehly Sports Club, ("**Traoré**"), decision of 5 March 2026

[74] Esenu, para. 118

conclusion of the new contract is, in and of itself, insufficient to meet the applicable standard of proof, even if, as in *Traoré*, that happens on the very same day:

> *165. In this context, the Chamber turned to the consideration of the matter of inducement, as it is key for determining any consequences that may apply to Swehly Sports Club. In doing so, the Chamber highlighted that TP Mazembe had the burden of proof to demonstrate that Swehly Sports Club induced the Player to breach the Second Contract.*
>
> *166. With the above principes in mind and considering the individual facts and circumstances of this case as well as the evidence on file, the Chamber concluded that it is not possible to determine that Swehly Sports Club induced the Player to terminate the Second Contract. In particular, the Chamber found that, although it is uncontested that the Player signed an employment contract with Swehly Sports Club on the same day his legal representative sent the Termination Notice does not, in itself, prove inducement by Swehly Sports Club for the Player to terminate the Second Contract.*

The revised Article 17 RSTP has identified a middle ground between the former automatic application of the principle (which was rejected by the Diarra Judgement) and the highly impractical formulation under the IRF. It needs to be recalled that the principle also works in favour of players.

Accordingly, the new Article 17(11) RSTP introduces a rebuttable presumption of inducement in cases where a player signs with a new club within 45 days of the breach. The authors consider that this is a sensible approach by the stakeholders which aims to cover situations where it is reasonable to assume that an inducement has occurred, i.e., when the termination of the old contract and the conclusion of the new contract essentially occur during the same registration period. Indeed, the approach taken in the *Traoré* decision where the termination of the original contract and the conclusion of the new contract occurred on the same day, shows the impracticality of the system under the IRF in situations where it is reasonable to assume that there must have been negotiations between the player and the new club beforehand and, as such, that an inducement did in fact occur.

The new approach is also in line with the most accepted legal justification at the basis of the joint and several liability, i.e., the fact that the new club unjustly enriches itself by acquiring the player's services free of charge, whereas, under ordinary market conditions, it would have been required to pay a transfer fee.[75]

The above notwithstanding, the new club can still rebut the presumption if it demonstrates, to the DRC's comfortable satisfaction, that it did not induce the breach of the contract.

A point that deserves special attention is the fact that the new approach will only apply to disputes submitted after 1 January 2027. As such, it remains to be seen whether in disputes submitted before that date, the DRC will continue to apply its rigid approach under the IRF or, with the knowledge of the new Article 17(11) RSTP, will be more lenient in declaring a new club jointly and severally liable.

In that respect, under the new Article 17(9) RSTP, a new club may still be held jointly and severally liable if it is demonstrated, on a balance of probabilities, that it induced the breach of the contract.

Finally, it is unclear whether the jurisprudence foreseen in *Mutu*[76] and, more recently, in *CAS 2023/A/10241 Istanbul Spor AS v. Club Estoril Praia & Racine Coly; CAS*

[75] See *CAS 2017/A/4977 Smouha SC v. Ismaily SC & Aziz*, paras. 74-84

[76] *CAS 2018/A/5683 Juventus Football Club S.p.A. v. Envigado Football Club S.A. & Fédération Internationale de Football Association (FIFA)*

2023/A/10247 Racine Coly v. Club Estoril Praia, which seems to hold that the joint and several liability principle does not apply in cases where it is the club that decides to put an end to the employment relationship, will apply under the revised Article 17(9) RSTP. For completeness, the authors note that – albeit under the pre-Diarra Article 17 RSTP – there are FIFA DRC precedents declaring the joint liability of the new club when it is the old club who terminated the contract with just cause.[77]

D. Protected period and sporting sanctions

In none of the post-Diarra decisions passed under the IRF was the "new club" sanctioned. Conversely, in four decisions (*Da Silva, Traoré, Hamdan* and *Coelho*), the players were sanctioned with a four-month restriction on their eligibility to play in official matches.

On this issue, the *Esenu* decision was taken by majority, and the Player was consequently not sanctioned *"considering the particularities of the case at hand"*[78]. The same conclusion was reached unanimously by the DRC in *FPSD-21723 Humberto José Acevedo v. Victoria / Victoria v. Humberto José Acevedo*[79]. Interestingly, in *Robertha* (presumably because of the player's supposed retirement) and *Mohamed* (no reasons are mentioned) this was not discussed at all.

While the system of sporting sanctions on players remains the same (Article 17(12) RSTP), under the revised Article 17(10) RSTP, clubs face progressively severe sanctions in the event of repeated breaches within a two-year recidivism window, ranging from warnings and fines to restrictions or bans on registering new players. In cases of inducement, a two-window transfer ban is imposed on the new club. For Players the system remains the same, i.e. a four-month playing restriction.

As regards inducement to breach a contract by the new club, the same system as that governing the declaration of the new club's joint liability applies, i.e. a rebuttable presumption arises where the new contract is signed within 45 days of the breach (subject to a comfortable satisfaction standard), together with the possibility of establishing, outside that period, that inducement did occur (applying a balance of probabilities standard). It is worth noting that inducement cases are not subject to the progressive sanctioning system and instead give rise to a direct two-window registration ban.

A decisive issue will be the manner in which the FIFA DRC applies the revised regime in practice (noting the long-standing debate regarding "*may*" and "*shall*" under the pre-Diarra Articles 17(3) and (4) RSTP)[80]. It must be recalled that, at CAS level, a party lacks standing to request that sporting sanctions be imposed. Therefore, when FIFA declines to impose sanctions on an injuring party, this decision is, for all effects and purposes, final.

One final key aspect in this respect is the change to the definition of "protected period" which now covers (i) four years (or four entire seasons) where a contract is signed by a player prior to their 23rd birthday; (ii) three years (or three entire seasons) where the contract is signed on or after their 23rd birthday and prior to their 28th birthday; (iii) two years (or two entire seasons) where the contract is signed on or after their 28th birthday and prior to their 32nd birthday; and (iv) one year (or one entire season) where the contract is signed after the player's 32nd birthday.

[77] See, *20-00766 Nagoya Grampus v. Joao Alves de Assis Silva & SC Corinthians Paulista*, decision of 24 November 2020.

[78] Esenu, para. 110

[79] Decision of 26 March 2026.

[80] The pre-Diarra Articles 17(3) and 17(4) RSTP provided that the DRC "shall" impose sanctions on a party breaching a contract. However, the DRC consistently held that the imposition of sporting sanctions was not mandatory.

IV. Conclusion

The revised Article 17 RSTP, unanimously agreed upon by the principal football stakeholders following a process of social dialogue, is grounded in the doctrine of full compensation, which is closely aligned with the principle of positive interest. As such, its application should not, in principle, diverge significantly from that of its predecessors (subject to its material differences, such as the introduction of minimum compensation).

The above notwithstanding, several key issues remain unresolved. These include, in particular, the manner in which proportionality will be assessed in the context of liquidated damages clauses, the evidentiary standards required to substantiate the value of a player's services, and the practical operation of the inducement presumption.

The authors anticipate that some preliminary guidance will be provided by FIFA, potentially through an updated Commentary on the RSTP or Explanatory Notes. However, it is only through the development of a consistent body of jurisprudence by the FIFA Football Tribunal and, ultimately, the CAS, that the practical operation and implications of the revised Article 17 will become clear. Until such jurisprudence is established, it remains uncertain to what extent the post-Diarra framework will depart in substance from the pre-existing regime.

Geopolitical Conflicts in Recent CAS Jurisprudence

Annett Rombach* and Gabriella Érdi**

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Abstract

This article analyses recent CAS cases adjudicating measures adopted by sports governing bodies ("SGBs") in response to geopolitical conflicts, with a particular focus on the Russia–Ukraine war. It demonstrates that these decisions cannot be understood as isolated, case-specific judicial reactions. Rather, they reflect a recurring and evolving doctrinal framework grounded in the administrative classification of measures, deference to the autonomy of associations under Swiss law, the use of proportionality as a structured but flexible standard of review, and the framing of the conflict as a force majeure event.

At the same time, the application of this framework is not uniform. While earlier football-related cases display a consistently deferential approach, more recent awards – particularly those concerning individual neutral athlete ("AIN") regimes – focus on an evidence-based proportionality analysis. The jurisprudence thus reveals a shared set of legal concepts applied with varying intensity.

I. Introduction: The Enduring Interplay Between Sports and Politics

The entanglement between sport and geopolitics is neither incidental nor recent. Historical practice demonstrates that sport has long functioned as a stage for political expression, confrontation, and diplomacy, notwithstanding recurring attempts to turn it into an apolitical sphere insulated from external influence. From the ancient Olympic Truce – the purpose of which was to secure safe passage rather than to shield athletics from political dynamics[1]– to the use of mega-events as instruments of state propaganda and legitimacy-building,[2] political forces have

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[1] For further discussion see: Valavanis, P. (2021). Patterns of Politics in Ancient Greek Athletics. *The Oxford Handbook Sport and Spectacle in the Ancient World*, 109–123. https://doi.org/10.1093/OXFORDHB/9780199592081.013.24. All links cited in this article were last retrieved on 26 April 2026).

[2] Paradigmatic examples are the 1936 Berlin Olympic Games (exploited politically by the German Nazi-regime), the 1956 Melbourne Olympic Games (marked by both widespread boycotts and the violent "Blood in the Water" water polo match between Hungary and the Soviet Union), and the 1980 Moscow and 1984 Los Angeles Olympic Games (functioning as symbolic battlegrounds during the Cold War. See

persistently shaped the governance and practice of international sport.

In a similar vein, sport has been employed as a tool of collective sanctions and international pressure, particularly in the context of human rights enforcement. The global sporting boycott of apartheid-era South Africa, implemented across multiple federations, illustrates how coordinated exclusions can contribute to political isolation and normative change.[3] Comparable mechanisms were later used in response to United Nations sanctions against Yugoslavia in the early 1990s, where exclusion from competitions served as an extension of international legal measures.[4]

Furthermore, international sports governance has repeatedly been drawn into questions of recognition, sovereignty, and diplomatic status. Disputes such as the "Chinese Taipei" controversy, the exclusion of states from events for political reasons (e.g. the 1962 Asian Games), and more recent controversies surrounding Kosovo's admission to international federations demonstrate that participation in sport can function as a proxy for international recognition.[5]

Most recently, following the outbreak of the Russia-Ukraine war in 2022, SGBs adopted coordinated measures targeting Russian and Belarusian participation in sporting events,[6] justified by concerns including competition integrity, athlete safety, and the smooth running of events.[7] These measures – implemented across numerous international federations and catalysed by IOC recommendations – generated extensive controversy and produced a significant body of appeals before the CAS.

The resulting CAS jurisprudence has become a central site for understanding how international sports law responds to geopolitical disruption. These disputes raise fundamental legal questions concerning the scope of discretionary powers, the principle of non-discrimination, and the proportionality of broad participation-restricting measures.

Moreover, they also highlight the inherent and recurring tension between two norms embedded in the Olympic Charter: athletes' freedom of expression as a fundamental right,[8] and the principle of political neutrality[9] as a constitutional constraint on sports

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Espy, R. (1979). *The politics of the Olympic Games* (pp. 153–180). University of California Press; Hill, C. R. (1996). Olympic politics. *European Journal of International Relations, 2*(1), 5.

[3] Hain, P. (1971). *Don't play with apartheid: The background to the Stop the Seventy Tour campaign*. Allen & Unwin; Houlihan, B. (1994). *Sport and international politics* (pp. 89–115). Harvester Wheatsheaf.

[4] UN Security Council Resolution: United Nations Security Council. (1992). *Resolution 757* (S/RES/757). https://undocs.org/S/RES/757(1992); see also Nafziger, J. A. R. (2004). *International sports law* (2nd ed., pp. 227–229). Transnational.

[5] International Olympic Committee. (2026). *Olympic Charter* (Rule 30 & Bye-law on NOCs). https://olympics.com/ioc/olympic-charter; Duval, A. (2013). Lex sportiva: A playground for transnational law. *European Law Journal, 19*(6), 822–842. https://doi.org/10.1111/eulj.12067

[6] Similar calls for the implementation of sporting measures against Israel have been raised in response to the pending geopolitical conflict in the Middle East, see e.g. https://www.lemonde.fr/en/sports/article/2025/09/25/why-israel-faces-no-sanctions-from-international-sports-bodies-unlike-russia_6745715_9.html?utm_source=chatgpt.com.

[7] International Olympic Committee. (2022, February 28). *IOC Executive Board recommendation*. https://olympics.com/ioc/news/ioc-eb-recommends-no-participation-of-russian-and-belarusian-athletes-and-officials; FIFA & UEFA. (2022, February 28). *Joint statement.* https://inside.fifa.com/tournaments/mens/worldcup/qatar2022/media-releases/fifa-uefa-suspend-russian-clubs-and-national-teams-from-all-competitions

[8] See Article 40.2 of the Olympic Charter and the Athletes' Expression Guidelines; on the limits of freedom of speech on the field of play see CAS OG 26/09 ("Helmet case").

[9] Olympic Charter, Fundamental Principle No. 5: "*Recognising that sport occurs within the framework of society,*

organisations. The lived reality of contemporary elite sport – characterised by athletes' increasing engagement in social and political discourse – magnifies this tension and places sustained pressure on institutional claims to neutrality.

Against this backdrop, this article examines how CAS has addressed the spillover of geopolitical conflicts into international sport. Focusing on the Russia-Ukraine war, it identifies and analyses the core themes that emerge from CAS jurisprudence when reviewing conflict-related measures adopted by SGBs. The aim is to demonstrate that CAS decisions in this area do not constitute fragmented, case-specific reactions. Rather, the awards reflect a recurring and coherent set of doctrinal principles which will be discussed below.

II. International Sporting Responses to Russia's Invasion of Ukraine

Following the outbreak of the Russia–Ukraine war in February 2022, international SGBs adopted a series of coordinated measures targeting Russian and Belarusian participation in global sport. These measures were largely framed as responses to the breach of the Olympic Truce and justified, *inter alia*, by reference to the integrity of competitions, athlete safety, and the orderly conduct of sporting events.

The International Olympic Committee played a central role in shaping this response. Beginning with its statements of 24 and 25 February 2022, the IOC condemned the actions of Russia and Belarus and issued recommendations to international federations.[10] On 28 February 2022, the IOC Executive Board escalated its position by recommending the exclusion of Russian and Belarusian athletes and officials from international competitions, or, where exclusion was not feasible, their participation under strict neutrality conditions without national symbols.[11] The IOC further recommended that no sporting events be held in Russia or Belarus and later imposed institutional measures, including the suspension of the Russian Olympic Committee in October 2023.[12]

These recommendations were widely implemented by international federations. In football, both FIFA and UEFA adopted far-reaching measures. On 28 February 2022, FIFA suspended Russian teams from all competitions, relying on a need to ensure the smooth organisation of the FIFA World Cup, which became increasingly jeopardized as a result of various member associations' refusal to compete against Russia.[13] UEFA likewise suspended Russian teams and clubs and subsequently excluded them from future competitions and bidding processes, relying on concerns related to competition integrity, security risks, and reputational harm.[14]

Beyond football, a broad range of international federations adopted comparable exclusionary measures. These

sports organisations within the Olympic Movement shall apply political neutrality."

[10] International Olympic Committee. (2022, February 24). *IOC statement on the situation in Ukraine.* https://www.olympics.com/ioc/news/ioc-strongly-condemns-the-breach-of-the-olympic-truce; International Olympic Committee Executive Board. (2022, February 25). *Statement.* https://www.olympics.com/ioc/news/ioc-eb-urges-all-ifs-to-relocate-or-cancel-their-sports-events-currently-planned-in-russia-or-belarus

[11] International Olympic Committee Executive Board. (2022, February 28). *Recommendations following the invasion of Ukraine.* https://static.poder360.com.br/2022/02/COI-olimpiadas-guerra-ucrania-28fev2022.pdf

[12] International Olympic Committee Executive Board. (2023, October 12). *Decision on the suspension of the Russian Olympic Committee.* https://www.olympics.com/ioc/news/ioc-executive-board-suspends-russian-olympic-committee-with-immediate-effect

[13] FIFA. (2022, February 27–28). *Bureau of the FIFA Council decisions*; see also FIFA. (2022, February 28). *Media release: Suspension of Russian teams*.

[14] UEFA Executive Committee. (2022, February 28). *Decision of 28 February 2022*; UEFA. (2022, May 2). *UEFA Circular No. 21/2022*.

actions were reinforced by parallel political developments, including resolutions of the United Nations General Assembly condemning Russia's actions and statements by European and other governmental actors supporting sporting sanctions.[15]

From 2023 onwards, SGBs maintained or extended these measures. While the IOC signalled some openness to the participation of Russian and Belarussian athletes as "individual neutral athletes", it consistently upheld its measures against Russian and Belarusian state involvement in sport.[16] Several federations continued to exclude athletes entirely or declined to implement neutral participation frameworks, particularly in the context of qualification for major international competitions.[17]

Overall, the response of SGBs reflects an unprecedented level of coordination and reliance on regulatory autonomy to address geopolitical conflict. The measures adopted raise significant legal questions, in particular regarding the scope of discretionary powers, the principle of non-discrimination, and the proportionality of collective restrictions imposed on athletes and national associations.

III. Typological Classification of CAS Cases Arising from Geopolitical Conflicts

The CAS jurisprudence generated by geopolitical conflicts can be divided into three distinct categories.

A. Cases Involving Collective Measures Against National Federations

The first category comprises challenges to collective measures adopted by SGBs in response to geopolitical conflicts.[18] These cases involve the suspension or exclusion of national federations, which means that it becomes principally impossible for athletes affiliated with an affected federation to participate in events requiring effective membership of that federation. These measures are the most far-reaching and the most intrusive. They exclude athletes from participation in competitions solely by virtue of their affiliation with a particular national federation, and thus by virtue of their nationality.

B. Cases involving Individual Eligibility of Athletes and Access to Events

A second and increasingly important category encompasses national federations' or individual athletes' challenges to eligibility-related or access-related decisions arising indirectly from geopolitical conflict. They typically include disputes concerning:

- Internation Federations' refusal to implement "AIN" programmes;[19]
- non-inclusion of a specific individual athlete on a list of neutral or "AIN"-

[15] European Parliament. (2022, March 1). *Resolution on the Russian aggression against Ukraine (2022/2564(RSP))*. https://www.europarl.europa.eu/doceo/document/TA-9-2022-0052_EN.html; Sports Ministers. (2022, March 8). *Joint statement of Sports Ministers*. https://www.gov.uk/government/publications/statement-on-russias-war-on-ukraine-and-international-sport/statement-on-russias-war-on-ukraine-and-international-sport

[16] International Olympic Committee Executive Board. (2023, March 28). *IOC's position and recommendations*. https://www.olympics.com/ioc/news/ioc-issues-recommendations-for-international-federations-and-international-sports-event-organisers

[17] See, *i.a.*, Fédération Internationale de Luge de Course. (2025, June 18). *Decision of 18 June 2025*; International Ski and Snowboard Federation. (2025, October 21). *Council resolution*.

[18] See, *i.a.*, CAS 2022/A/8708; CAS 2022/A/8709; CAS 2022/A/8865, 8866, 8867 & 8868; CAS 2022/A/8871.

[19] See, *inter alia,* the CAS cases addressing the refusal of international winter sports federations to implement an AIN programme for Russian and Belarussian athletes for the Milano-Cortina 2026 Winter Games: CAS 2025/A/11592 (Luge); CAS 2025/A/11915 (Ski & Snowboard); CAS 2025/A/11931 (Ski & Snowboard).

eligible competitors within an existing AIN programme;[20]

- visa-related or accreditation-related obstacles traceable to conflict-driven organisational measures.[21]

In these disputes, affected athletes do not contest the legality of the overarching conflict-related policy (e.g. an AIN programme established by a federation to allow for politically "clean" athletes to participate under neutral status) *per se*, but its application in an individual case.

C. Cases Involving Individual Conduct of Athletes Touching Upon Geopolitical Conflicts

The third category, distinct from the first two, concerns cases involving individual athletes who address (directly or indirectly) geopolitical conflicts during or around international competitions. While these cases offer important insights into the obvious tension between the IOC's conflicting fundamental principles of political neutrality and freedom of speech enshrined in the Olympic Charter, they operate within a different legal framework from collective-measures cases and thus remain outside the analysis conducted below.[22] The remainder of this article focuses on the first and second category: collective-measures and individual eligibility cases.

IV. Emergent Principles in CAS Jurisprudence

The body of CAS awards arising from the Russia-Ukraine conflict reveals a set of recurring doctrinal principles that panels deploy when reviewing conflict-related measures adopted by SGBs. The analysis that follows is based on a selection of leading CAS awards addressing the legality of exclusionary and eligibility-related decisions adopted by international federations, including the following:

(i) Collective suspension and exclusion decisions:

- **CAS 2022/A/8708 Football Union of Russia (FUR) v. FIFA *et al.*:**
  Appeal by the Football Union of Russia ("FUR") against the decision of the Bureau of the FIFA Council (28 February 2022) suspending the FUR's national teams from participation in FIFA competitions until further notice. The appeal was dismissed.

- **CAS 2022/A/8709 Football Union of Russia (FUR) v. UEFA *et al.*:**
  Appeal by the FUR against the decision of the UEFA Executive Committee (28 February 2022) suspending all Russian representative teams and clubs from UEFA competitions. The appeal was dismissed

- **CAS 2022/A/8865, 8866, 8867 & 8868 FC Zenit JSC, FC Sochi, PFC CSKA Moscow, FC Dynamo Moscow v. UEFA:**

[20] See, *inter alia*, CAS 2025/A/11478 (refusal by the ISU to grant AIN status to four Belarussian athletes for the Milano-Cortina 2026 Winter Games).

[21] See, *inter alia,* CAS 2025/A/11830, CAS 2025/A/11834, (appeals filed by Israeli athletes following the decision of the Indonesian authorities to deny entry visas to Israeli participants in the 2025 World Gymnastics Championships).

[22] The most recent example concerning the distinct tension between political neutrality and freedom of speech is the case *Heraskevych v. IBSF & IOC*, arising during the Milano-Cortina 2026 Olympic Winter Games (CAS OG 26/09). The Ukrainian skeleton athlete wore a helmet depicting images of Ukrainian athletes killed during Russia's invasion, prompting the IOC to inform him that the helmet was not compliant with the Olympic Charter, the Conditions of Participation, and the IOC's Guidelines on Athlete Expression. After the athlete publicly stated that he intended to compete with the helmet despite the prohibition, the IOC issued a decision barring him from competing with the helmet, which the International Bobsleigh & Skeleton Federation (IBSF) subsequently implemented by withdrawing him from the starting list for the men's skeleton event. See CAS OG 26/09.

Appeal by four Russian clubs against the subsequent decision of the UEFA Executive Committee (2 May 2022) removing Russian clubs from the access list for the 2022/23 season and adjusting coefficient rankings, adopted as a consequence of the earlier suspension decision (which was subject the appeal in CAS 2022/A/8709). All appeals were dismissed.

- **CAS 2022/A/8871 Football Union of Russia (FUR) v. UEFA *et al.***
  Appeal by the FUR against decisions of the UEFA Executive Committee (2 May 2022) excluding Russian national teams and clubs from participation in UEFA competitions in the 2022-23 season and declaring the Russian bid for UEFA EURO 2028/2032 ineligible. The appeal was dismissed.

- **CAS 2022/A/8856 Table Tennis Federation of Russia (TTFR) v. European Table Tennis Union (ETTU):**
  Appeal by the Table Tennis Federation of Russia ("TTFR") against a decision excluding Russian and Belarusian players and clubs from ETTU competitions and prohibiting the use of their national symbols. The appeal was partially upheld.

(ii) AIN (Athletes with Individual Neutral Status) eligibility and exclusion regimes

- **CAS 2025/A/11592:** Appeal by the Russian Luge Federation and six Russian luge athletes against the ILF's decision not to implement an AIN programme for qualification events relating to participation in the Milano-Cortina 2026 Olympic Winter Games. The appeal was partially upheld.

- **CAS 2025/A/11915 & CAS 2025/A/11931:** Appeals by the Russian Ski Association and thirteen Russian ski athletes (Case no. 11915) and the Belarusian Ski Union and five Belarussian ski athletes (Case no. 11931) against the FIS's decision not to implement an AIN programme for qualification events relating to participation in the Milano-Cortina 2026 Olympic Winter Games. The appeals were partially upheld.[23]

- **CAS 2025/A/11478 Skating Union of Belarus v. International Skating Union (ISU):**
  Appeal by the Skating Union of Belarus against the exclusion of four Belarusian athletes from ISU competitions and the subsequent implementation of an AIN regime. The appeal was dismissed on standing grounds, as the affected athletes were not parties to the proceedings.

A. Qualification of the Challenged Measure: Administrative, not Disciplinary

A foundational premise in the CAS jurisprudence is the classification of conflict-related measures as administrative actions rather than disciplinary sanctions.[24] Panels have consistently rejected the argument that exclusions, suspensions, or neutral-participation requirements constitute disciplinary (or sanctioning) measures requiring particular procedural safeguarding:

"The Panel determines that, in the circumstances of the present case, the Appealed Decision may be properly characterised as an administrative decision taken by the UEFA Executive Committee to impose a measure to deal with the consequences of a military conflict for football competitions that it organises. On that basis, the Panel finds that the Appellant's claims that it was denied fundamental procedural rights that apply to a disciplinary process (such as the right to be heard) or that the First Respondent allegedly breached other legal substantive principles that apply to disciplinary decisions (such as non-discrimination) or

[23] The three-member panels in these two cases consisted of different arbitrators.

[24] See, *i.a.*, CAS 2022/A/8856, para. 134; CAS 2022/A/8708, para. 102.

disciplinary sanctions (such as proportionality) are misdirected and have no application."[25]

Instead, they accept that such decisions are grounded in organisational imperatives highlighted by the SGBs – most notably event integrity, safety, and operational viability – rather than in the attribution of wrongdoing.[26]

CAS jurisprudence further distinguishes these measures from geopolitical or economic sanctions adopted by states. Panels have emphasised that exclusion decisions in the sporting context are not imposed to secure compliance with international law or to promote the peaceful settlement of disputes, as *"sanctions adopted by governments are typically imposed to achieve."*[27] Instead, they remain confined to the internal regulatory sphere of sport, reinforcing their administrative character and insulating them from direct comparison with state-driven sanctioning regimes.

B. Scope of Review: Deference to the Autonomy of Sports Associations

The *de novo* review enjoyed by CAS arbitrators under Article R57 of the CAS Code is shaped in substance by a legally required *"*[d]*eference to the autonomy and freedom of the association and the decisions its main bodies freely adopt",* which *"should* […] *be considered a basic principle of sports law."*[28]

Many SGBs are based in Switzerland and operate as an association under the Swiss Civil Code ("SCC"). The autonomy of an international sports federation under Swiss law is grounded in private autonomy and in the statutory freedom granted to associations under Articles 60 et seq. of the SCC, in particular Article 63 SCC, which allows an association to determine its internal organisation in its statutes. This principle has been emphasized in previous CAS jurisprudence as follows:

"Recognized by the Swiss federal Constitution and anchored in the Swiss law of private associations is the principle of autonomy, which provides an association with a very wide degree of self-sufficiency and independence. The right to regulate and to determine its own affairs is considered essential for an association and is at the heart of the principle of autonomy. One of the expressions of private autonomy of associations is the competence to issue rules relating to their own governance, their membership and their own competitions."[29]

The decisions passed by an SGB are, however, not immune to review. Article 75 SCC provides a judicial review vehicle to *"[a]ny member who has not consented to a resolution which infringes the law or the articles of association […] to challenge such resolution in court."* Earlier CAS jurisprudence provided a rather high threshold to overcome the autonomy of an association, as stated in CAS 2020/A/7090 (adopted in CAS 2022/A/8708 in reviewing UEFA's suspension of Russian clubs):

"However, it is also true that this principle of deference and respect to the autonomy of the associations is not absolute – as no legal principle in fact is […] [T]his principle may yield when there are "exceptional circumstances", such as "arbitrariness", a "misuse of its discretionary power", or "discrimination" or "breaches any relevant mandatory legal principle".
There is no doubt in the opinion of this Panel that the bar for determining these "exceptional circumstances" must be set very high, lest it converts itself into a Trojan horse that subverts the principle itself. ***The arbitrariness, discrimination or breach must be blatant and manifest, and offend***

[25] CAS 2022/A/8709, para. 98.

[26] CAS 2022/A/8871, para. 150; CAS 2022/A/8865, 8866, 8867 & 8868, para. 132; CAS 2022/A/8708, para. 137.

[27] CAS 2022/A/8865, 8866, 8867 & 8868, para. 82.

[28] CAS 2020/A/7090, para. 149, expressly adopted, *inter alia*, in CAS 2025/A/11592, para. 112.

[29] CAS 2011/O/2422, para. 55; see also, *inter alia,* CAS 2018/O/5830, para. 118; CAS 2017/O/5264, 5265 & 5266, para. 193; CAS 2014/A/3828, para. 143.

a basic sense of justice.*"*[30] (emphasis added)

The CAS panel reviewing the exclusion of Russian and Belarussian table tennis players found the amount of deference given to the autonomy of associations too large, and felt compelled to downsize it as follows:

"The Panel does not agree that circumstances in which a CAS panel may review a decision of a sports governing body should be "blatant or manifest and offend a basic sense of justice". In the Panel's view that is to overstate the deference to be shown to sports governing bodies in their decision-making and to understate the importance of sports governing bodies being held to account for their decisions. As has been said elsewhere, it is right that tribunals should show deference to sports governing bodies, but this does not mean that a tribunal should show "unthinking servile obeisance". […]
[I]*n the Panel's view therefore a decision of a sports governing body, such as the* R*espondent here, will be afforded deference and respect, and a very wide margin of appreciation, subject however to obligations on the part of the body to behave in the following way: a. to act fairly (in a procedural sense); b. to act in accordance with any applicable mandatory law(s) and with its own rules and regulations; and c. to act in a way that is not irrational, capricious, or arbitrary."*[31]

These clarifications are to be welcomed against the background that CAS awards – in order to "survive" annulment proceedings before the Swiss Federal Tribunal, but also recognition and enforcement proceedings in Europe and worldwide, must comply with universal human rights[32] and (in the latter case) European law.[33]

C. "Framing" the Measure: Discrimination Based on Nationality

Challenges to geopolitical conflict-related measures before CAS have frequently been framed as instances of discrimination on grounds of nationality.[34] In a number of football-related cases, Panels avoided engaging directly with the question of discrimination. For example, it was held that there was *"no evidence that the decision was taken because of the political opinion of the Appellant or that it was taken because of FIFA's view of the military conflict,"* and that *"[w]hether the Appealed Decision discriminated on account of* national origin *was not an issue for consideration before the Panel."*[35]

By contrast, in the table tennis award (CAS 2022/A/8856), the Panel expressly recognised that the exclusion of Russian participants from ETTU events was *prima facie* discriminatory, as it was directed against the appellants because they were Russian.[36] The same position was adopted in CAS 2025/A/11931 and CAS 2025/A/11915.[37]

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[30] CAS 2020/A/7090, para. 150, 151; see also CAS 2022/A/8708, para. 101.

[31] CAS 2022/A/8856, para. 110, 112; the same approach was adopted in CAS 2025/A/11592, para. 113.

[32] On this aspect see the judgment of the Grand Chamber of the ECtHR dated 10 July 2025 in the case of Caster Semenya vs. Switzerland (application no. 10934/21).

[33] On the increasing pressure on the CAS jurisprudential activities provoked by the opinion of the Advocate General in the *Seraing* case see *Haas/Kahlert/Rigozzi*, Sports Arbitration Under Threat, in: Jusletter 19 May 2025. While the ECJ (C-600/23), in its judgement dated 1 August 2025, did not follow the Advocate General's view to have a full review of CAS awards at national level, CAS panels will strengthen the acceptance of the CAS's jurisprudence (and reduce existing mistrust) by applying the broader review concept suggested in CAS 2022/A/8856.

[34] The burden of proof to establish a *prima facie* case of discrimination lies with the party alleging discrimination, see, e.g., CAS 2025/A/11915, para. 94.

[35] CAS 2022/A/8708, para. 143; in the same vein CAS 2025/A/11592, para. 127.

[36] CAS 2022/A/8856, para. 150.

[37] CAS 2025/A/11931, para. 59; CAS 2025/A/11915, para. 107 ("*Indeed, the Challenged Decision is clearly aimed at directly depriving RSF and its members of the right to participate in FIS events. Since the Challenged Decision restricts the participation of Russian athletes and para-athletes in FIS events based only on their nationality, the Panel finds that it is established that the Challenged Decision is, prima facie, discriminatory*.").

The Panels then proceeded to examine whether the differential treatment pursued a legitimate objective and satisfied the requirements of necessity, reasonableness, and proportionality.

Furthermore, equality-based challenges are rejected where panels find that the conflicts at issue are contextually distinct from other geopolitical situations cited for comparison. Panels saw a different treatment justified when the respective countries' involvement in the military conflict differed. Belarus, for instance, has not faced the same degree of backlash as Russia, thereby justifying a distinction.[38]

D. Justification of the Measure: The Proportionality Test

Operating on the well-established premise that suspensory and exclusionary measures adopted in response to the Russia-Ukraine conflict are administrative rather than disciplinary, CAS Panels accept that they remain *"entitled to assess the proportionality of the measure within the scope of its review of the exercise of [an SGB's] discretion, and arguments regarding proportionality are relevant."*[39]

When conducting a proportionality analysis, it must be examined whether the challenged measure pursues a legitimate objective, is suitable to achieve that objective, is necessary in the sense that no less restrictive alternative is available, and strikes a reasonable balance between the interests of the affected party and the interests pursued, without imposing an excessive or disproportionate burden.[40] The burden of establishing that the (discriminatory) measure was necessary, reasonable and proportionate means of attaining a legitimate objective rests on the association which imposed the measure.[41]

(1) Legitimate aim

Turning to the first element, legitimate aim, Panels widely accepted risks of boycotts, security threats, and organisational impracticability as suitable justifications, recognising the SGBs' *"legitimate interest in protecting the integrity and safety of [their] competitions."*[42] Some Panels have abstained from assessing the existence or magnitude of such risks; rather, they have deferred to the autonomy and institutional expertise of SGBs as the entities best placed to evaluate them. In football-related cases specifically, this inquiry is characterised by a markedly deferential posture. One Panel emphasized FIFA's interest in ensuring that its flagship competition ran smoothly, noting in particular the constraints arising from amendments to the international match calendar a few months ahead of the 2022 World Cup and security concerns. This deference is further reinforced by the Panels' recognition that football competitions are particularly susceptible to heightened tensions and crowd-related violence, often driven by nationalism, political sentiment, or broader geopolitical dynamics. As a result, risks are framed not merely as speculative but as inherent to the organisation of international football events under such circumstances.[43]

This deferential acceptance of the measure's aim contrasts with the more searching approach adopted in CAS 2022/A/8856 and CAS 2025/A/11592. In CAS 2022/A/8856, the Panel explicitly interrogated the evidentiary basis of the asserted aim, asking:

"What in particular were the safety concerns? Had there been any statement by any stakeholder […] that brought about a reasonable concern for the conduct of

[38] CAS 2022/A/8871, para. 125; CAS 2022/A/8865, 8866, 8867 & 8868, para. 108.

[39] CAS 2022/A/8865, 8866, 8867 & 8868, para. 141.

[40] See, e.g., CAS 2022/A/8856, para. 155 (referring to CAS 2014/A/3759, CAS 2018/O/5794, CAS 2018/A/5798).

[41] CAS 2022/A/8856, para. 155; CAS 2025/A/11915, para. 96.

[42] CAS 2022/A/8871, para. 150; CAS 2022/A/8865, 8866, 8867 & 8868, para. 143.

[43] CAS 2022/A/8708, para. 158.

any particular event? […] There is nothing in the materials before the Panel that provides an answer to these questions."[44]

In CAS 2025/A/11915, the FIS failed to provide any reasons for the continuation of the blanket ban on Russian athletes, which compelled the Panel to conclude that it "*cannot even begin to assess whether the prima facie case of discrimination by the FIS may have been in pursuit of a legitimate objective in the circumstances, let alone to assess whether less intrusive measures were available that could reasonably have achieved the same legitimate objective*."[45] This reasoning consequently follows the central premise that the federation bears the burden of proof in respect of the justification of the challenged measure.

(2) Suitability

As regards the requirement of suitability, it is rarely subject to independent scrutiny. It is generally accepted, without extensive analysis, that the contested measures are capable of achieving the stated objectives of safeguarding the integrity and safety of competitions.

(3) Necessity

As regards the assessment of the necessity of the measures, Panels accept that the mere participation of Russian teams *"might […] generate protests that escalate into violence,"* particularly in football, which is described as *"particularly prone to extreme crowd reactions that are sourced in racism, nationalism or religious differences."*[46]

Crucially, in the earlier Russia-Ukraine (football) cases, which had to assess the immediate responses by federations to an unprecedented situation, this reasoning tended to proceed with a less rigorous evidentiary substantiation. Panels relied on generalized assumptions about the nature of football crowds and geopolitical context, rather than requiring concrete evidence that the specific measure is necessary. This tendency was reinforced by the recognition that risks extend beyond the stadium itself:

"Football matches do not happen in a vacuum and incidents outside the stadium could not be ruled out. Neither can security situations arising during travel, at the team hotel, outside the stadium and generally in the city our country where the competition is taking place."[47]

With the benefit of the passing of time and concrete experience regarding public reactions to the participation of Russian athletes (in neutral capacity), Panels in more recent cases took a more rigid approach in scrutinizing the necessity of suspension and exclusion measures:

"Was it feasible to hold 'closed door' events […]? Was it feasible to play matches on neutral grounds […]? Would either of those things have alleviated the risk of safety?"[48]

In the absence of such analysis, the Panel concluded that it could not be established that the measure was necessary, reasonable and proportionate means of achieving a legitimate objective.[49]
The Panel in CAS 2025/A/11592 expressly recognized that the benefit of hindsight requires a "fresh" and up to date assessment of necessity, and may even render previous considerations irrelevant:

"The Panel underlines in this respect an important point. The situation in 2025 cannot be compared to the situation existing immediately after the Russia-Ukraine War began. In 2022, in fact, urgent measures were suggested by the necessity to sanction the Russian aggression to a sovereign State. Over the years, then, an international consensus in the sporting world emerged that discriminatory and politically

[44] CAS 2022/A/8856, para. 172.

[45] CAS 2025/A/11915, para. 117.

[46] CAS 2022/A/8865, 8866, 8867 & 8868, para. 143.

[47] CAS 2022/A/8865, 8866, 8867 & 8868, para. 140.

[48] CAS 2022/A/8856, para. 73.

[49] Ibid., para. 74.

motivated measures targeting all Russian athletes were to be avoided, in order to allow the participation, under strict conditions, of those Russian athletes who were not supporting the war. […]

As a result, any consideration as to the original proportionality of the Emergency Resolution (adopted before the IOC AIN Criteria were issued) and of its extension for the years 2023 and 2024 appears to this Panel irrelevant: what is discussed in this arbitration is the continuation for the 2025-2026 season and in particular the 2026 OWG of the effects of measures adopted in 2022. Measures which were proportional when they were adopted can became disproportionate if the context in which they operate evolves."[50]

(4) Proportionality *stricto sensu*

Where a measure pursues a legitimate aim and is suitable and necessary, the Panel has to assess whether such measure is proportionate *stricto sensu*, in view of the significant impact of exclusionary measures, recognizing that denying participation deprives federations and athletes of *"financial incentives, commercial opportunities and prestige"* and that such measures *"should not be taken lightly."*[51]

In the earlier football cases, Panels have concluded that although exclusion may adversely impact Russian football, no proven violation of personality rights occurred. They further confirmed that even if an infringement on an athlete's personality rights was incurred, it would likely still be justified by the SGBs' legitimate security and integrity concerns.[52] In a similar vein, they emphasized that participation rights cannot be absolute and must give way to the wider interests of the football community or a *force majeure* event.[53] The systematic interests of the sport have therefore been afforded decisive weight in the balancing exercise in the football cases.

This approach was further supported by the deference to the autonomy of sports associations that played a significant role in the proportionality analysis conducted in the football cases. The overarching feature of that jurisprudence was that proportionality is consistently mediated through deference to the expertise of SGBs. Sports organisations were described as *"best placed to make decisions that further [their] statutory objectives"*. As explained above, the Panels found that deference to the association's (FIFA's and UEFA's) autonomy would only yield to *"exceptional circumstances,"* such as manifest arbitrariness or blatant breaches that *"offend a basic sense of justice."*[54] As stated in CAS 2022/A/8865, 8866, 8867 & 8868, the Panel is:

"concerned not with the merits or substantive value of the decision […] but with whether the decision […] amounts to an improper use of the association's discretionary power," with *"reasonableness and proportionality […] factors for consideration."*[55]

At first sight, such language may suggest that proportionality is subsumed within a minimalist review of arbitrariness, thereby limiting its capacity to function as an independent constraint. Indeed, Panels repeatedly stress that they will not substitute their own assessment for that of the federation, emphasising that *"it is not for the Panel to decide whether it would have reached the same decision,"* and deferring to the federation's expertise in matters of security, scheduling, and competition integrity.[56]

However, as indicated above, the jurisprudence does not uniformly endorse such a restrictive approach. In CAS

[50] CAS 2025/A/11592, para. 134, 135.

[51] CAS 2022/A/8708, para. 135.

[52] CAS 2022/A/8708, para. 170; CAS 2022/A/8865, 8866, 8867 & 8868, para 136 & 137.

[53] CAS 2022/A/8708, para. 134.

[54] CAS 2022/A/8865, 8866, 8867 & 8868, para. 90; CAS 2022/A/8708, paras. 109-110; CAS 2020/A/7090, para. 150.

[55] CAS 2022/A/8865, 8866, 8867 & 8868, para. 91.

[56] CAS 2022/A/8865, 8866, 8867 & 8868, para. 143; CAS 2022/A/8708, para. 156.

2022/A/8856 the Panel explicitly rejected the proposition that review should be confined to circumstances that are blatant or manifest and offend a basic sense of justice.[57] The Panel found the adopted blanket ban based on nationality to be disproportionate, just as the Panels in CAS 2025/A/11592 did.

Importantly, while the Panels in the football cases emphasized the autonomy of associations in arguing, *inter alia*, that they cannot overturn the informed assessments of UEFA and FIFA, they had – in fact – less reason to endorse a finding of disproportionality, even under a more rigid standard of review. Football is a team and mass spectator sport, in which nationality plays a particularly crucial role during competition. Football matches have repeatedly been a battleground for geopolitical conflicts,[58] and the CAS had indeed no reason to deviate from FIFA's and UEFA's assessment that safety for fans, players and officials would be endangered if Russian teams were to participate in their competitions. A football match involving Russian clubs is different from an individual Russian skier or luge athlete competing before smaller and often less erratic spectator crowds.

The IOC's ("AIN") recommendations on the participation of athletes with a Russian or Belarusian passport in international competitions (effective identically for the 2024 Paris Olympic Summer Games and the 2026 Milano-Cortina Olympic Winter Games) endorses the crucial distinction between individual and team sports by recommending that "[t]*eams of athletes with a Russian or Belarusian passport cannot be considered*" per se.[59] Evidently, the increased risk of disruption of team sport events is the central reason for this distinction.

As a result, while the dogmatic approaches regarding the required deference to the association's autonomy may differ in the (earlier) football cases and the (later) table tennis, luge, and skiing cases, they can be reconciled with each other, also in view of the benefit of hindsight that the more recent decisions (rendered in 2025 and beyond) had over the earlier decisions (rendered in 2022).

The comparison between the earlier and more recent cases connected to the Russia-Ukraine conflict reveals an apparent divergence in the intensity of proportionality review. The football-related cases – CAS 2022/A/8708, 8709, 8865-8868, and 8871 – were decided by the same Panel and exhibit a highly consistent approach, both in structure and outcome, characterised by a deferential application of proportionality. This approach was rightly motivated by the specific features of football as a mass spectator sport, particularly its heightened exposure to crowd-related tensions and security risks, as well as by the immediacy of the decision-making context in the early phase of the conflict, marked by significant uncertainty. In such circumstances, a Panel cannot lightly overturn the assessment of a federation with longstanding experience and expertise in predicting the safety situation in football stadiums.

By contrast, the more recent cases, in particular those concerning the AIN framework, display a more "intrusive" proportionality analysis, with greater emphasis on evidentiary assessment and the consideration of less restrictive alternatives. While this shift may also reflect the fact that these cases arose at a later stage of the conflict – when SGBs operated with greater informational certainty and regulatory experience.

E. Force Majeure and Extraordinary Circumstances

[57] CAS 2022/A/8856, para. 110 (quoted above).

[58] E.g. CAS 2015/A/3874.

[59] https://www.olympics.com/ioc/news/ioc-issues-recommendations-for-international-federations-and-international-sports-event-organisers.

Although, as the Panel in CAS 2022/A/8708 recognised, *force majeure "is most frequently invoked in the context of a contract, in which a party argues that it is unable to perform a contractual obligation"*,[60] the concept assumed a distinct function in the present line of jurisprudence. Rather than operating as a defence to non-performance, it became relevant to the question of whether FIFA possessed a legal basis to adopt the contested decision, namely the suspending of the FUR's national teams from FIFA competitions, including the FIFA World Cup 2022.

In this respect, the regulatory framework was decisive. Article 2 of the FIFA World Cup Regulations establishes an organising committee entrusted with the supervision of the preliminary competition and the adoption of decisions concerning its organisation. Article 31 further provides that FIFA is entitled to decide in *"[m]atters not provided for in [the] Regulations or any cases of force majeure."* Against this background, the characterisation of the Russia-Ukraine conflict – and its consequences – as a force majeure event became directly relevant to the existence of FIFA's regulatory competence. The Appellant argued that such qualification could not justify the suspension decision, whereas FIFA maintained that the notion of force majeure in Article 31 was not confined to the classical contractual doctrine but constituted an autonomous regulatory concept within its statutes.

The Panel ultimately avoided a strict dichotomy between these positions. It concluded that FIFA's competence could be grounded either in the residual clause concerning *"matters not provided for in [the] Regulations"* or, independently, in the existence of a *force majeure* situation. At the same time, the majority accepted that the consequences of the military action in Ukraine did, in fact, constitute a *force majeure* event within the meaning of Article 31.[61]

More broadly, CAS jurisprudence consistently treats military conflict as giving rise to extraordinary circumstances capable of qualifying as *force majeure*.[62] Panels accept that war generates conditions of such gravity and unpredictability that they may justify far-reaching organisational responses, including the temporary exclusion of teams or athletes, the restructuring of competitions, and the adoption of precautionary measures aimed at ensuring safety and integrity. This characterization shifts away from questions of political responsibility or attribution and towards issues of organisational necessity and risk management. It further reinforces the administrative and non-punitive nature of the measures and strengthens the case for deference, as decisions taken under conditions of *force majeure* are framed as urgent, technical, and context-dependent responses to evolving risks.

V. Conclusion

The CAS awards arising from the Russia-Ukraine conflict do not point to a fully consistent approach. Rather, they reflect a shared framework that is applied with varying degrees of intensity. Across the cases, Panels rely on the same doctrinal building blocks – autonomy under Swiss law, deferential review of discretion, and proportionality – but the way in which these elements are applied differs in practice.

Taken together, the case law suggests not uniformity, but a context-dependent approach, in which the same legal concepts are used across cases, yet do not carry the same weight in every instance.

[60] CAS 2022/A/8708, para. 120.

[61] CAS 2022/A/8708, para. 123.

[62] CAS 2022/A/8708, para. 120; See also CAS 2020/A/7065, para. 111; and CAS 2014/A/3463 & 3464, para. 80.

Multi-Club Ownership in Football: A Legal Approach to an Increasingly Complex Phenomenon

Miguel Cardenal Carro* and Emilio Garcia Silvero**

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I. Introduction

The phenomenon known as Multi-Club Ownership (also here referred to as MCO) has become one of the most significant manifestations of the economic and structural transformation of professional football in recent years[1] The gradual influx of investors with simultaneous stakes in several clubs has, to some extent, affected the traditional football structures that have been in place at clubs over the past century and is raising new legal issues, particularly, but not only, regarding the independence of clubs vis-à-vis the integrity of competitions[2].

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[1] An insightful account of the historical origins of this form of investment, drawing on the success of the Pozzo family's ownership of Udinese Calcio, can be found in L. Pastore, "Third-Party Ownership and Multi-Club Ownership: Where Football is Heading", Rivista di diritto ed economia dello sport, Vol. 14, Issue 1, 2018, p. 37 et seq.

[2] The growing prevalence of MCO structures has also attracted the attention of both the European Commission and the European Parliament. In response to a question for written answer submitted by Member of the European Parliament Niels Fuglsang, the Commission acknowledged the increasing prominence of this phenomenon. It clarified that EU competition law does not, *per se*, prohibit multi-club investment strategies, while emphasizing that the preservation of sporting integrity remains a central concern in the assessment of MCO arrangements. The Commission further noted that, although

Despite the growing practical importance of this phenomenon, and the increasing concerns it raises in relation to core principles of the football transfer system as established by the FIFA Regulations on the Status and Transfer of Players (RSTP), its legal treatment remains peculiar. Football regulators have yet to establish a formal legal definition of Multi-Club Ownership[3], instead delineating its scope indirectly through rules aimed at safeguarding the integrity of competitions.

This circumstance shapes the approach and structure of this paper. Indeed, to understand the legal regime governing MCO, it is not possible to begin directly from an analysis of the current legal framework applicable or the most recent CAS cases; rather, one first needs to determine what is legally meant by Multi-Club Ownership and why this phenomenon has been subjected to regulation.

Based on these considerations, this paper begins with a study of the concept of Multi-Club Ownership, starting from the absence of a legal definition by football regulators and analysing how its scope has been constructed on the basis of the notion of the integrity of the competition and the requirement for independence between clubs of the same group. This conceptual analysis is not merely a terminological introduction, but is essential, as it enables us to understand that MCO is, in reality, a functional legal concept, defined by the risks that certain relationships between clubs may pose to the credibility of competitions, and explains why regulation has rightly focused on the idea of influence or control and not exclusively on ownership.

Having defined the phenomenon from a conceptual perspective, we move on to examine the current legal framework developed either by football regulators or instruments of domestic public law. This section primarily analyses FIFA and UEFA's set of rules, as well as the similarities and differences between the regimens established within some football Confederations. The analysis will also show that, despite the apparent uniformity of the rules, there are some differences in how the risk to the integrity of the competition is assessed, the procedural aspects for handling these cases and the severity of the measures adopted by the respective football organisations.

Finally, the focus shifts to the practical application of these rules in the context of the jurisprudence of the Court of Arbitration for Sport (also here referred to as CAS). These CAS decisions have played a key role in delineating the scope, legal character, and boundaries of the powers exercised by competition organisers. The evolution of the CAS jurisprudence will also allow us to see how the legal debate has progressively shifted from the very legitimacy of the regulation towards issues such as the proportionality of the measures, the nature of these rules as eligibility criteria, and the procedural problems arising from their application.

II. Multi-Club Ownership in football

A. First cases and regulations

legislative intervention at EU level is theoretically possible, sports federations are generally better placed to regulate such matters (European Commission, 24 October 2023).

The relevance of this trend has also been underscored by the European Parliament in its recent report on the role of EU policies in shaping the European Sports Model (2025/2035 INI, date 28 July 2025), which expressly refers to the rise of MCO structures, using the following wording "the rising trend of foreign investment and ownership in European sport" (at paragraph 23).

[3] A definition of MCO based on different academic analysis can be found in T. Kweku & C. Breuer, "Multi-club ownerships (MCOs): a critical analysis of transfer dynamics and sports integrity", European Sport Management Quarterly, 2025, p. 4.

Regulations aimed at MCO structures have existed within international football organisations since 1998. In general terms, the legal framework of MCO structures has been confined to one of its aspects: namely its impact on the integrity of the competition, insofar as the link of common ownership potentially compromises the independence of the clubs participating in it.

In this context, the rules have basically defined which actions are prohibited or restricted, although strictly speaking what is defined is simply those factual scenarios in which it is agreed that circumstances exist in the direct or indirect relationships between the clubs that compromise the integrity of the competition[4].

The first CAS case dealing with the phenomenon of MCO was the well-known CAS 98/200 AEK Athens and SK Slavia Prague v. Union of European Football Associations (also referred to as the ENIC case), in which the Panel was invited to determine whether the then new provision adopted by UEFA on MCO was not only compatible with Swiss and EU law, but also proportionate and appropriate for the intended purpose.

Without entering into further detail, in May 1998 the UEFA Executive Committee approved additional regulations to the UEFA club competitions for the season 98/99, in which under the telling heading "Protection of the integrity of competitions. Independence of Clubs"[5], established certain criteria for the first time to be applied in cases of MCO in UEFA competitions. The new rule aimed to regulate the situation of two European clubs under the same owner (AEK Athens and SK Slavia Prague) that had sportingly qualified for the same European competition the following season (the then UEFA Cup 98/99)[6]. The trigger for this regulatory amendment was a blatant MCO situation that arose during the previous European football season (97/98), which exposed the lack of clear rules governing such situations[7].

At the time of the dispute, two key questions were identified. First, whether the integrity of the competition is compromised when two teams under the same ownership compete against each other in a UEFA competition. Second, if so, whether banning their joint participation is the appropriate solution, or if the issue can be resolved through less restrictive alternative measures.

The CAS award in ENIC provides the first, and thus far most authoritative, answer to these two questions. Following a thorough and excellently reasoned analysis, the conclusion reached was,

[4] Linking this descriptive definition technique with the intention of including all possible situations of influence over more than one club, S. Demeulemeester, "Restrictions on (Multiple) Club Ownership in European Football: An EU Law perspective", Football Legal No. 14, p. 87.

[5] On the process of adopting this regulation, see L. Pastore, "Third-Party Ownership and Multi-Club Ownership: Where Football is Heading", Rivista di diritto ed economia dello sport, Vol. 14, Issue I, 2018, pp. 42 et seq.

[6] The Greek club AEK Athens was owned as to 78.4% by ENIC Hellas S.A., a company wholly controlled, through subsidiaries, by the English company ENIC plc. The Czech club SK Slavia Prague was owned as to 53.7% by ENIC Football Management Sarl, a company wholly controlled, through subsidiaries, by ENIC plc.

[7] During 1997 ENIC acquired AEK, Slavia and Vicenza. In the 1997/98 European football season, these three clubs took part in the UEFA Cup Winners' Cup and all qualified for the quarter-final. At this stage, the three ENIC-owned clubs were not drawn to play against each other and only one of them reached the semi-finals (AEK lost to the Russian club Lokomotiv Moscow, Slavia lost to the German club VfB Stuttgart, whereas Vicenza defeated the Dutch club Roda JC). See, CAS 98/200 AEK Athens and SK Slavia Prague v. Union of European Football Associations, at p. 2.

firstly, that it was inevitable that a situation in which one party could control more than one club participating in the same competition would raise suspicions regarding the balance between participants and the ability to compete for sporting success on a level playing field; and that these inevitable and reasonable doubts undermine one of the essential components of sport.

In essence, allowing clubs with potential connections to participate in the same competition undermines a core value that football organisers must protect: the integrity and perceived fairness of the results[8] .

B. MCO in 2026: available data

Although the first manifestations of the MCO phenomenon date back almost half a century, it is a reality whose growth over the past decade has been both significant and sustained in professional football[9].

In recent years, MCO structures in football have commonly been associated with groups such as City Football Group, Red Bull GmbH, Eagle Football, 777 Partners, and Grupo Pachuca, among others. At the same time, individual investors who exercise control over multiple clubs are also frequently highlighted. Notable examples include the Greek businessman Evangelos Marinakis, as well as the American investors John Textor and David Blitzer, among other examples. The defining feature across these entities, whether corporate groups or individual investors, is their ownership of equity stakes in multiple clubs, often accompanied by decisive influence over their day-to-day operations[10].

As highlighted in a recent CAS case, the core business model of a MCO structure is to create formal contractual links between multiple clubs. This framework enables the central coordination of operations and resources, allowing the group to benefit from economies of scale. As a result, the collective entity can generate greater value than the sum of its individual clubs, through mechanisms such as tax optimization, centralized debt management, and potential regulatory advantages, among others[11].

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[8] Indeed, more than twenty-five years later, largely the same considerations underlying the ratio of MCO provisions were highlighted in CAS 2025/A/1134, 1135,1136 Club de Fútbol Pachuca & Club León v. FIFA, at para. 222.

An authoritative summary of this complex balance between appearances and credibility can be found in M. Coccia, "The Multi-Club Ownership Issue: When and How it All Started", Football Legal No. 14, pp. 72 and 73.

The same concept of appearances related to the admission criteria in UEFA competitions in the context of match-fixing offences is analysed in, E. Garcia Silvero, "The match-fixing eligibility criteria in UEFA competitions: an overview of CAS case law", CAS Bulletin 2018/1, pag. 6 et seq.

[9] A detailed account of the origins of these early groups can be found in J. E. Coutinho Filho, Futebol Globalizado, ed. D'Placido, 2021, pp. 143 et seq.

In the context of North American professional sports, early 1990s investments by organisations like Kroenke Sports & Entertainment are regarded by scholars as foundational to the emergence of Multi-Club Ownership models in the industry; see, Tommy Kweku & Christoph Breuer, "Multi-club ownerships (MCOs): a critical analysis of transfer dynamics and sports integrity", European Sport Management Quarterly, 2025, pag. 3.

[10] A comprehensive financial analysis of the MCO phenomenon is provided by Swiss Ramble in Multi-Club Ownership – Is The Model Viable? (16 March 2026), which examines the economic rationale, advantages, and risks associated with the model within modern football (https://swissramble.substack.com).

[11] CAS 2025/A/11495 Drogheda United FC v. UEFA, at paragraph 15. This CAS award also highlights additional potential benefits of the MCO structure, including the ability to facilitate internal player transfers between affiliated clubs, the use of centralized teams to manage commercial and operational activities off the pitch, and the implementation of data-driven recruitment strategies, at paragraph 14.

According to the most recent studies published by multiple private research centres, sports institutions or consultancy companies[12], the growth of the MCO structures in football has increased exponentially, with data showing 64 such groups in 2014 and almost 400 over ten years later (2025).

For instance, in CAS 2025/A/11566 DAC 1904, A.S. v. Union des Associations Européennes de Football, UEFA acknowledged that it had reviewed the situation of 258 clubs in the context of the 2025/2026 season for its club competitions[13], figures that are consistent with those reported in its most recent studies on MCO structures in European football[14].

Penetration into the five major leagues is also growing, now reaching almost half of their clubs, although in the last two years, the trend has been towards lower divisions, where valuations are more accessible and the potential for appreciation is greater, whilst there is a boom in minority shareholdings, as what was previously considered a less attractive strategy is now becoming the standard route into the MCO ecosystem without assuming full operational control, particularly in the face of high valuations[15]. Paraphrasing UEFA's most recent report: "Multi-club ownership remains firmly established in the Big 5 leagues and reached a similar scale in several other European leagues in 2025, including Belgium, Denmark, Portugal, Scotland and Switzerland, where over one third of top-division clubs are part of a multi-club ownership network"[16].

An equally significant finding relates to the predominantly US origin of these investments. For instance, in the 2023 financial year specifically, 77% of private equity transactions in European clubs originated in the US, a figure that rises to 87% when analysing 2023 alone. US investors accounted for 55% of all investment activity in sport by transaction volume in 2024, and football accounted for 50% of total transactions involving sports rights that year[17].

Moreover, and according to the available data, 55% of the 128 foreign direct investments recorded between 2019 and 2023 in the 10 countries in the sample were attributable to private equity.

Finally, until very recently, the MCO phenomenon was primarily associated with men's professional football clubs. However, the recent emergence of other funds demonstrates that this phenomenon is no longer confined to men's football, but is increasingly extending to the women's game[18] .

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[12] For the purposes of this paper, the following data sources have been used: CIES Sports Intelligence (2024). Club Ownership in European Football: Foreign Investments, Private Capital & Multi-Club Ownership. International Centre for Sports Studies - The European Club Finance and Investment Landscape Report 2024 and 2025. Union of European Football Associations - Deloitte Sports Business Group (2024 and 2025). Annual Review of Football Finance 2024 , 33rd and 34th eds – and, Deloitte Sports Business Group (2025). Sports Investment Outlook 2025. Deloitte Global. Data on investment activity in 2024.

[13] At paragraphs 124 and 134.

[14] Cfr. The European Club Finance and Investment Landscape Report, edition 2025, pp. 65 et seq.

[15] Cfr. The European Club Finance and Investment Landscape Report, edition 2025, pp. 69 to 71.

[16] Cfr. The European Club Finance and Investment Landscape Report, edition 2025, p. 71.

[17] CIES Sports Intelligence (2024). Club Ownership in European Football: Foreign Investments, Private Capital & Multi-Club Ownership. International Centre for Sports Studies.

[18] The MCO has begun to make inroads into women's football, with dedicated groups such as Mercury/13 (Como Women, Bristol City Women)

III. The legal framework on MCO

A. National level and state legislation

It is worth noting that this concern for the integrity and credibility of competitions is also present in state legislation, particularly in those countries where the public institutions deal extensively with the sporting phenomenon.

A clear example is Spain, where since 1990 sports legislation has required clubs to be incorporated as public limited companies in order to participate in professional competitions, whilst at the same time prohibiting the acquisition of a stake exceeding 5% in more than two sports public limited companies, enforcing this prohibition through the requirement to obtain public authorisation for the transfer of shareholdings in these so-called sports public limited companies.

Another example is Brazil, where the law introducing Sports Limited Companies has established certain limits on the control of these companies by the same individuals or legal entities[19]. In the same vein, Portuguese legislation also provides for limitations on the multiple control of sports companies[20], similar to the approach adopted by the Greek legislator[21].

In principle, these regulations have primarily focused on multiple ownership at the level of national competitions, as there has traditionally been little concern on the part of public authorities regarding the entry of an investor holding a stake in a club in another country, something that has little impact on competition[22] . However, this assessment has been changing in recent times, and legislative initiatives at national level are beginning to address the impact of cross-border investments that create such structures. For example, in Chile, the process of enacting new, highly restrictive legislation on this matter is nearing completion[23]. In France, a similarly inspired legislative initiative has also been tabled a few months ago[24] , and, in a way, the reform of English football, which delves deeper into the design and application of the owner's and director's test, also addresses this concern[25], just as it has empowered supporters, who must be consulted on significant decisions for the club, such as a change of venue or ticket prices, and

and Monarch Collective (Angel City FC, San Diego Wave). In 2024, investment funds dedicated exclusively to women's football emerged (Deloitte Sports Investment Outlook, 2025).

19 Cfr. Lei 14.193, de 6 de agosto de 2021. In the same context, Lei 14.597, de 14 de junho de 2023, particularly article 62.

20 Cfr. Article 16 Lei n.º 39/2023, de 4 de agosto.

21 Cfr. Article 69.9 Law 2725/1999.

22 See, for example, the description of the French competition authority's analysis of the takeover of Nice by the INEOS Group in "Takeover of OGC Nice by INEOS Group: An Analysis by the French Competition Authority", Football Legal, No. 14, pp. 90–91. A similar analysis was carried out by the relevant UK authority regarding the acquisition of Manchester United by Red Football Ltd (see Soiron, O. Cavéizan and A. Burgensis, "Multi-Club Ownership / Multi-Club Investment", Football Legal 20, 2024, p. 164).

23 Cfr. Ley de Sociedades Anónimas Deportivas Profesionales (SADP), adopted on 25 March 2026 (pending publication in the Official Gazette).

24 Cfr. Proposition de Loi pour lutter contre les dérives de la multipropriété dans le secteur du football professionnel (Enregistré à la Présidence de l'Assemblée nationale le 16 septembre 2025).

25 The report led by T. Crouch, Fan-Led Review of Football Governance (2021), included this as one of its key recommendations, which was adopted in the White Paper: A Sustainable Future – Reforming Club Football Governance (2023), which proposed a strengthened owners' and directors' test, ultimately incorporated into the Football Governance Act, whose sections 30 to 36 deal with the regime for Owners, Directors and Senior Executives (ODSE).

which therefore extends to a potential change of ownership[26] .

In any case, it should be added that these regulations often fall within the scope of public law, and the context of these prohibitions means that the consequences lie within the sphere of administrative sanctions, which are an expression of the state's right to impose penalties, and therefore a very different framework from that of the admissibility or eligibility criteria specific to the rules on access to competitions approved by FIFA or the Confederations[27] .

The complex interplay between private federation rules and state regulations present in such cases also arises on occasion when a national federation rule is invoked; this must be considered to take precedence even if it does not incorporate what its affiliation with a confederation or membership of FIFA would require[28].

B. FIFA legal framework

The first regulatory framework at FIFA level addressing the MCO phenomenon dated 1 January 2004, when the FIFA Statutes adopted at the Extraordinary Congress in Doha on 19 October 2003 incorporated the then new Article 18.2:

> *"Every Member shall ensure that its affiliated clubs can take all decisions on any matters regarding membership independently of any external body. This obligation applies regardless of an affiliated club's corporate structure. In any case, the Member shall ensure that neither a natural nor a legal person (including holding companies and subsidiaries) exercises control over more than one club whenever the integrity of any match or competition could be jeopardized".*

Since then, the FIFA Statutes have not evolved significantly, although certain amendments have been introduced over the past twenty years without altering the core principles established in 2003[29].

Over this period, the only issue concerning the interpretation of this provision was addressed in CAS 2014/A/3523 Club de Fútbol Atlante S.A. de C.V. v. Federación Mexicana de Fútbol & Club Atlas FC. In that case, the Panel was asked to consider the alleged direct application of the relevant FIFA statutory

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[26] A detailed analysis of the new legislation can be found in C. A. Flanagan, "The Football Governance Act, the Independent Football Regulator, and the Regulation of Football Finance in England: Legal, Regulatory, and Policy Considerations", The International Sports Law Journal, 2025.

[27] An example of the application of this type of regulation can be found in CAS 2020/A/7019 Olympiacos Football Club (Olympiacos) v. Hellenic Football Federation (HFF) & Club Panthessalonkeios Athlitikos Omilos Konstantinoupoliton PAOK (PAOK) & "Xanthi" Athletic Group Football Club (Xanthi FC) & CAS 2020/A/7035 PAOK v. HFF.

[28] See CAS 2014/A/3523 Club de Fútbol Atlante S.A. de C.V. v. Federación Mexicana de Futbol & Club Atlas FC. & Club Atlas F.C., at paragraph 81. A detailed explanation of the unique situation in Mexican football regarding MCO structures, and its relevance to this case, in O. Villaseñor, "Comments on the decision of the Court of Arbitration for Sport No. CAS 2014/A/3523. A missed opportunity to eliminate multiple ownership in Mexican football", Revista Aranzadi de Derecho de Deporte y Entretenimiento, No. 59, 2018.

[29] The current version of this provision, now article 20.2 of the FIFA Statutes (edition 2024), reads as follows: "Every member association shall ensure that its affiliated clubs can take all decisions on any matters regarding membership independently of any external body. This obligation applies regardless of an affiliated club's corporate structure. In any case, the member association shall ensure that neither a natural nor a legal person (including holding companies and subsidiaries) exercises control in any manner whatsoever (in particular through a majority shareholding, a majority of voting rights, a majority of seats on the board of directors or any other form of economic dependence or control, etc.) over more than one club whenever the integrity of any match or competition could be jeopardized".

provision in a domestic dispute. The Panel concluded that the question of whether FIFA's MCO provision must be applied by a body of a different legal entity cannot be determined solely by reference to the FIFA provision itself. Rather, the regulations of the other legal entity, despite being an affiliated member of FIFA, must expressly incorporate an obligation to that effect[30].

The recent establishment of the FIFA Club World Cup 2025 has reinforced this general provision adopted by FIFA more than twenty years ago and, for the first time in the history of FIFA club competitions, extended the application of these statutory principles to the specific regulations of the tournament. In this context, Article 10 of the Regulations of FIFA Club World Cup 2025 (Regulations FCWC) established a detailed framework for MCO, with the primary objective of safeguarding this new global tournament from the inherent risks associated with this phenomenon [31].

C. UEFA regulations

1. Basics

As already introduced before with reference to CAS 98/200 AEK Athens and SK Slavia Prague v. Union of European Football Associations, UEFA was the first Confederation to have regulated the MCO phenomenon within competition regulations[32], and it has since then been the benchmark for other football institutions when it comes to safeguarding the independence of the clubs participating in their respective competitions[33].

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[30] At paragraph 83 et seq. As an additional factor, the alleged direct application in this case arose in the context of an indirect FIFA member, namely the Mexican league, Liga MX.

[31] Paragraph one of this provision reads as follows: "10.1 To ensure the integrity of the Competition, participating clubs shall meet the below criteria when submitting the Participation Agreement and shall continue to comply with the criteria until the end of the Competition: a) No club participating in the Competition may, either directly or indirectly: i) hold or deal in the securities or shares of any other club participating in the Competition; ii) be a member of any other club participating in the Competition; iii) be involved in any capacity whatsoever in the management, administration and/or sporting performance of any other club participating in the Competition; or iv) have any power whatsoever in the management, administration and/or sporting performance of any other club participating in the Competition. b) No one may simultaneously be involved, either directly or indirectly, in any capacity whatsoever in the management, administration and/or sporting performance of more than one club participating in the Competition. c) No individual or legal entity may have control or influence over more than one club participating in the Competition, such control or influence being defined in this context as: i) holding a majority of the shareholders' voting rights; ii) having the right to appoint or remove a majority of the members of the administrative, management or supervisory body of the club; iii) being a shareholder and alone controlling a majority of the shareholders' voting rights pursuant to an agreement entered into with other shareholders of the club; or iv) being able to exercise by any means a decisive influence in the decision-making of the club".

[32] UEFA only introduced specific provisions on MCO in its statutes in the 2007 edition, when Article 7bis.5 was added as an obligation for its member associations. This statutory amendment followed the publication of the April 2005 document "Vision Europe: The Direction and Development of European Football over the Next Decade," in which the European confederation set out, among its general principles for the future of football in its territory, that "no multiple control of clubs playing in, or qualifying for, the same competitions" (paragraph 3.1.4, p. 10).

Originally, the MCO requirements were contained in an annex to the UEFA competition regulations, under the heading "Regulations concerning the Integrity of the UEFA Club Competitions – Independence of Clubs."

[33] Early examples of regulatory responses to issues comparable to modern Multi-Club Ownership, albeit in a slightly different context, namely cross-ownership restrictions between leagues, can be found in the 1980s, notably in the dispute between the NFL and the NASL; see National Football League v. North American Soccer League, 459 U.S. 1074 (1982).

The current version of the Regulations of the UEFA Champions League, Europa League, Conference League (Regulations UCC) for the season 2025/2026 represent an evolution of those that came into force a quarter of a century earlier; however, there have been no fundamental change over the last twenty-five years, merely a refinement and/or expansion of the fundamental concepts. The current version of Article 5.01 of the aforementioned regulations reads as follows[34]:

> *"To ensure the integrity of the UEFA club competitions (i.e. UEFA Champions League, UEFA Europa League and UEFA Conference League), the club must be able to prove that as at 1 March 2025 the below multi-club ownership criteria were met and the club must continue to comply with the below criteria from that date until the end of the competition season:*
>
> *a) No club participating in a UEFA club competition may, either directly or indirectly:*
>
> *i) hold or deal in the securities or shares of any other club participating in a UEFA club competition;*
>
> *ii) be a member of any other club participating in a UEFA club competition;*
>
> *iii) be involved in any capacity whatsoever in the management, administration and/or sporting performance of any other club participating in a UEFA club competition; or*
>
> *iv) have any power whatsoever in the management, administration and/or sporting performance of any other club participating in a UEFA club competition.*
>
> *b) No one may simultaneously be involved, either directly or indirectly, in any capacity whatsoever in the management, administration and/or sporting performance of more than one club participating in a UEFA club competition.*
>
> *c) No individual or legal entity may have control or influence over more than one club participating in a UEFA club competition, such control or influence being defined in this context as:*
>
> *i) holding a majority of the shareholders' voting rights;*
>
> *ii) having the right to appoint or remove a majority of the members of the club's administrative, management or supervisory body;*
>
> *iii) being a shareholder and, acting alone, controlling a majority of the shareholders' voting rights pursuant to an agreement entered into with other shareholders of the club; or*
>
> *iv) being able to exert a decisive influence, by any means, on the club's decision-making".*

The main alteration from the initial UEFA MCO regulations issued in the context of the ENIC case is the addition of the closing clause in section (c), which acknowledges the fluid nature of the phenomenon it seeks to prevent. Whilst the three sections of rule 5.01 describe in detail possible cases of a club's lack of independence, it should be admitted that it is almost impossible to encompass all possible forms of relationship that would compromise such independence.

Several reasons may have contributed to these provisions becoming a benchmark for other football competition organisers. UEFA was the first Confederation to face

[34] The same provision is reproduced in Article 5 of the Regulations of the UEFA Women's Champions League (2025/2026).

this issue; it is by far the territory with the greatest prevalence of such structures linking clubs, and statistically its competitions are the most affected by conflicts arising from attempts to prevent linked clubs from being rivals at the same time.

In any case, it is beyond question that UEFA's stance is accepted as the most suitable one until now when it comes to MCO regulations and the integrity of the competition[35]. It is as illustrative as it is telling that FIFA itself, for the already mentioned FIFA Club World Cup competition held in 2025, adopted exactly the same approach, with virtually identical wording regarding the scope and legal framework to regulate the phenomenon, with the only significant differences appearing in the procedure for applying the regulations[36].

2. The three categories of MCO criteria

UEFA regulations classify potential interference that may affect the independence between clubs into three levels. The occurrence of any of the three situations set out in Article 5.01 of the Regulations UCC is sufficient to establish the existence of a Multi-Club Ownership situation and to trigger the corresponding consequences, namely the non-admission of a club to the respective UEFA competition[37].

The "club-club MCO test" constitutes the first category under which an MCO situation may be considered contrary to Article 5.01 of the UCC Regulations. It essentially concerns cases of direct or indirect involvement of one club in the activities of another club that also participates in a UEFA competition.

In principle, this represents the most evident scenario among the three levels of MCO situations, and it may be regarded as the most intrusive in relation to the objective pursued by the rule. To date, no cases involving this situation have been identified in CAS jurisprudence.

The "personal MCO test" constitutes the second category under which an MCO situation may violate Article 5.01 of the Regulations UCC. Essentially, these rules are designed with the primary objective of preventing individuals from being simultaneously involved, whether directly or indirectly and in any capacity, in the management, administration, and/or sporting performance of more than one participating club.

The key element of this provision lies in the interpretation of the concept of "involvement" which CAS jurisprudence has defined as "the mere fact of being part of something," thereby excluding the need for actual or active participation of the individual within a club[38]. This broad and strict interpretation, deliberately adopted by the European confederation in its regulations, aligns with the considerations established in the ENIC case, where the significance of public perception, together with the mere existence of a potential

[35] A framework that will not undergo significant changes for the 2026/2027 season, as communicated by the European Confederation in Circular Letter No. 69/2025 dated 8 December 2025, titled "Decision of the UEFA Executive Committee regarding Article 5 of the UEFA Club Competition Regulations – Confirmation of Assessment Date".

[36] Cfr. Article 10 of the FIFA Regulations for the FIFA Club World Cup 2025. A general regulatory overview of the MCO phenomenon in, A. Alvarez-Cascos Ruiz, ¨Analisis de la construction legal del marco regulation del multi-club ownership en el futbol Europeo¨, Derecho Deportivo 2023, pp. 304 et seq.

[37] CAS 2025/A/11604 Crystal Palace Football Club v. Union des Associations Européennes de Football, Nottingham Forest Football Club & Olympique Lyonnais, at paragraph 93 and 95.

[38] CAS 2025/A/11604 Crystal Palace Football Club v. Union des Associations Européennes de Football, Nottingham Forest Football Club & Olympique Lyonnais, at paragraphs 102 et seq.

conflict of interest, was regarded as a decisive factor.

The "influence MCO test" constitutes the third and final category under which a club may be found in breach of Article 5.01 of the UCC Regulations. In a nutshell, this provision prohibits both legal entities and individuals from exercising control or influence over more than one club participating in UEFA competitions, combining elements of both personal and corporate restrictions.

In this case, the fundamental factor to be considered when interpreting the provision is the concept of decisive influence[39]. CAS jurisprudence has provided an indication that the mere situation in which a legal entity or an individual is in a position to exercise such decisive influence, regardless of whether it is actually exercised, is sufficient to constitute a violation of the provision[40].

3. The concept of decisive influence

Although the concept of decisive influence has been part of UEFA's DNA since the 2007/2008 season[41], it was not until May 2024 when this particular antitrust concept was formally developed and explained in a Circular Letter signed by the Club Financial Control Body First Chamber (CFCB First Chamber)[42].

By means of this formal communication, the European confederation codified the four indicators that have been used by the CFCB First Chamber since 2021 when interpreting the notion of decisive influence, namely through shareholders' or members' rights, financial support, governance, and player transfers[43]. The specific considerations adopted by this UEFA body read as follows:

> *"a) Decisive influence through shareholders' or members' rights*
>
> *i) If a party holds 30% or more of the club's total shares, the shareholders' or members' voting or economic rights.*
>
> *ii) If a party holds 10% or more of the club's total shares, the shareholders' or members' voting or economic rights and is also the largest shareholder of the club.*
>
> *b) Decisive influence through financial support:*
>
> *i) If a party accounts for 30% or more of the club's total operating revenue.*
>
> *ii) If a party lends to the club an amount equivalent to 30% or more of the club's*

[39] The concept of decisive influence originates in EU competition law and has been consistently developed since the Judgment of the Court of Justice of the European Union of 14 July 1972 in Imperial Chemical Industries Ltd v Commission of the European Communities. It is likely that UEFA drew inspiration from Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) when introducing this more precise concept into its regulations a few years later.

[40] CAS 2025/A/11604 Crystal Palace Football Club v. Union des Associations Européennes de Football, Nottingham Forest Football Club & Olympique Lyonnais, at paragraph 117.

[41] The first competition regulations to incorporate what is now paragraph (c) of the Regulations UCC, introducing the concept of decisive influence into the MCO requirements, were those applicable to the UEFA Champions League and UEFA Europa League for the 2007/2008 season.

[42] Circular Letter of 14 May 2024, Admission procedure to the 2024/25 UEFA men's club competitions Multi-Club Ownership rule and related interpretation of "decisive influence".

[43] The concept of decisive influence had already been considered by the UEFA CFCB, albeit within a different internal structure, in the first case handled by the European confederation following ENIC. In its decision of 16 June 2017, the then CFCB Adjudicatory Chamber examined a potential breach of Article 5 of the UEFA Club Competitions Regulations in relation to the clubs RasenBallsport Leipzig GmbH and FC Red Bull Salzburg GmbH.

*total borrowings from related parties** (including accounts payable to related parties, shareholder loans, convertible loans).*

iii) If a party provides financial support to the club in the form of additional paid-in capital, through share premium reserves, up to an amount equivalent to 30% or more of the premium reserve.

iv) If a party provides financial security for the club's borrowings.

v) If a party (excluding banks) provides financing to the club which is secured by a pledge of the club's shares, an assignment of the club's receivables or a charge over the club's assets.

c) Decisive influence through governance:

i) If a party holds any position in the club's governing bodies (i.e. any administrative, executive, management and supervisory bodies of the club) or a key executive position within the club (such as President, CEO/General Director, CFO/Finance Director, Sporting/Football Director).

ii) If a party has the ability to appoint or remove 30% or more of the members, or holds 30% or more of the voting or economic rights, in the club's governing bodies.

iii) If a party has the ability to appoint or remove the club's key executives or the first-team head coach.

iv) If a party has the ability to influence key executive decisions (such as player transfers, budget approval, key commercial contracts), or benefits from specific contractual or statutory privileged rights with respect to the club's governance, through veto rights or any other privileged rights.

d) Decisive influence through player transfers:

i) If a club has transferred, permanently or temporarily, three or more players to the other club, directly or indirectly via related parties, during the season.

For the avoidance of doubt, clubs subject to MCO proceedings before the CFCB First Chamber shall not be entitled to transfer, permanently or temporarily, any new players between each other, directly or indirectly via related parties, during the competition season nor during the first transfer window immediately thereafter.

ii) If a party enters into a contract, such as player scouting or software/database arrangements, with the club, whereby it acquires the ability to influence the club's decision-making regarding player employment and transfer-related matters".

However, the concept of decisive influence and its contours in the context of the MCO phenomenon are not limited to these four indicators. The Circular Letter deliberately leaves the door open, doing so in terms as broad as those that existed prior to its attempt at clarification[44]:

"In situations where the above-mentioned indicators are not triggered, a detailed multi-criteria assessment will still be performed to

[44] Since the UEFA CFCB decision on Red Bull, several authors have called for a more precise definition of the concept of "decisive influence" in order to enhance legal certainty (see L. Pastore, "Third-Party Ownership and Multi-Club Ownership: Where Football Is Heading", Rivista di diritto ed economia dello sport, Vol. 14, No. 1, 2018, pp. 55–56). However, the competing interest in avoiding regulatory loopholes capable of accommodating unforeseen or circumvention structures appears to carry greater weight, and is better served by maintaining an open-ended formulation. The increasing proliferation of quasi-equity instruments, convertible debt, mezzanine financing, and indirect investments through parent companies further adds layers of complexity to governance and regulatory oversight (CIES Sports Intelligence, 2024). In this context, the adoption of a flexible, open definition of "decisive influence" appears particularly well suited to addressing these evolving market practices.

determine whether or not a party has the capacity to exercise a decisive influence, taking into account the substance and not merely the form. The development of new forms of cooperation and influence between clubs and third parties suggests a broad interpretation of the concept; indeed, even if a club, individual or legal entity does not have de jure decisive influence over a club, it may still be able to exercise de facto decisive influence over such a club".

The legality of this crucial UEFA Circular Letter was challenged before the CAS, with the main argument being that the CFCB First Chamber acted beyond its competence by amending the content of the Regulations UCC (a sort of *ultra vires*). In CAS 2025/A/11604 Crystal Palace Football Club v. Union des Associations Européennes de Football, Nottingham Forest Football Club & Olympique Lyonnais, the Panel rejected this argument and fully endorsed the use of this instrument to clarify such an important concept:

"The Panel agrees with the Appellant that the guidance contained in the May 2024 Circular cannot alter the provisions of the UEL Regulations. The Panel, however, finds that the May 2024 Circular did not amend the UEL Regulations and constitutes merely a useful interpretative tool designed to clarify, in the interests of predictability, the approach that would be followed by the UEFA body (the First Chamber) called upon to apply the MCO Rule in determining the meaning of the provision in the UEL Regulations establishing the existence of an MCO situation where an individual or legal entity is 'able to exercise by any means a decisive influence in the decision-making' process of more than one club. Furthermore, the Panel finds no indication in the May 2024 Circular that would suggest that, should any of the criteria set out therein be met, there would not be "decisive influence", and that no individual assessment (based on those or other criteria) would be required. On the contrary, the Panel agrees that the criteria set out in the May 2024 Circular are sufficient to prove (at least prima facie) the existence of such "decisive influence", it being understood, however, that a "decisive influence", which can be exercised "by any means", could also be found even if those criteria were not met"[45] .

4. Integrity comes first, but proportionality is key

A review of the MCO regulatory framework since the ENIC case shows that it has remained largely stable, especially in its conceptual definition. But, this is less evident when examining football organisers' approach to the participation of investors in different clubs.

The initial reaction to ENIC clearly generated significant opposition. The prevailing view was that MCO posed a threat to the integrity of the competition, and that football authorities should be prepared to prevent such situations through appropriate regulation. In the public's perception, these measures would help to safeguard the value of integrity, which is essential to any competition.

The fact that the original UEFA regulations sought to immediately prevent what had happened in the 1998/1999 UEFA Cup from happening again in the future is a clear example.

Over the last thirty years, the rise of entities driven exclusively by financial interests in football presents a problem that is qualitatively different from the traditional economic interests resulting from the sport's development as a wealth-generating activity.

Historically, FIFA and UEFA have started from a clear premise: the financial dimension of football is an undeniable

[45] Paragraph 119.

reality that their regulatory frameworks must accommodate, but it cannot become the guiding principle of the phenomenon as a whole. Football is not just any economic activity; it is also a cultural expression and a central element of collective identity in many societies, and that multifaceted nature deserves regulatory protection[46].

For instance, this philosophy underlies the rules on third-party influence that FIFA has adopted more than ten years ago. The current Articles 18 bis) and 18 ter) of the FIFA RSTP, which prohibit third parties from influencing clubs' sporting policy or investing in players' economic rights, serve precisely this purpose: to prevent financial logic, when operating from outside the sport's own structures, from ultimately subordinating sporting reality to itself, as it has historically taken shape.

In this context, it is worth noting the slightly new approach adopted by the 2024/2025 cycle of Regulations UCC by means of which if two or more teams fall under any of the MCO scenarios prohibited in Article 5, only one of them may play in European competitions, stipulating the new paragraphs 04 and 05 stipulating certain exceptions which were not regulated in the previous editions of the regulations[47].

This approach to the MCO phenomenon and its implications for the overall framework of club competitions may be interpreted as not reflecting an inherently negative view of this type of investment model, beyond the need to prevent participation in the same competition. This line is fully justified from a policy standpoint and strikes an appropriate balance between safeguarding integrity and ensuring proportionality, after the initial reservations in the ENIC case[48].

D. MCO in other Confederations

The fact that UEFA's regulations are regarded as the standard does not mean that the similarities observed with FIFA's regulations, for example, are a universal phenomenon. The different circumstances applicable to FIFA or each Confederation mean that the specific details are not exactly the same[49].

Firstly, a process such as that applied by UEFA requires the allocation of intense resources. Monitoring corporate matters and complex commercial links requires

[46] Cfr. Judgment of the Court (Grand Chamber) of 21 December 2023, European Superleague Company, SL v Fédération internationale de football association (FIFA) and Union of European Football Associations (UEFA), at paragraphs 234 and 235.

[47] These exceptions were subsequently incorporated in the 2021/2022 and 2024/2025 version of the Regulations UCC. The current version of both paragraphs reads as follows: "'04. Exceptionally, provided that the relevant principles of Paragraph 5.01 are respected throughout, a club that was not admitted in application of Paragraph 5.02, and which is replaced in the competition in application of Paragraph 4.10, may still be admitted to another UEFA club competition (i.e. in descending order: UEFA Europa League or UEFA Conference League) to which the relevant national association has access, respecting the scenarios foreseen by Paragraph 5.05. The access of the respective association is adjusted accordingly.

5.05. 05. This article is not applicable if any of the cases listed under Paragraph 5.01 happens between: a club qualifying (in accordance with Article 3) for the UEFA Champions League and entering the league phase directly and a club qualifying for the UEFA Europa League or UEFA Conference League (see Annex A);b. club qualifying (in accordance with Article 3) for the UEFA Champions League and entering the playoffs (champions path or league path) or the third qualifying round of the league path directly or for the UEFA Europa League and entering the league phase directly and a club qualifying for the UEFA Conference League (see Annex A).

[48] See in particular at paragraphs 35 to 38.

[49] Indeed, in CAS 2025/A/1134, 1135 & 1136 Club de Fútbol Pachuca & Club León v. FIFA, at para. 227, the Panel expressly held that each football governing body retains autonomy to determine the MCO regulations applicable to its own competitions.

the intensive use of highly specialised staff[50], bearing in mind, moreover, that decisions detrimental to the interests of the teams concerned are likely to pave the way for litigation before the CAS, with the added cost of such complex legal proceedings. Furthermore, whilst the protection of integrity is non-negotiable for football organisers, other geographical regions outside Europe could seek a balance by establishing a more proactive approach towards investors[51] .

In any event, the confederations are also addressing the MCO phenomenon seriously from a regulatory standpoint.

The Confederación Sudamericana de Fútbol (CONMEBOL) has included in its regulations among the provisions governing the granting of licences to clubs, and thus, under the heading 'Ownership and Control of Clubs', Article 100.J.03, stipulates that[52]:

> *"The licence applicant must submit a legally valid declaration describing the club's ownership structure and control mechanism and confirming that no natural or legal person involved in the management, administration and/or sporting activities of the club, either directly or indirectly:*
>
> *a) Owns or trades in shares or securities of any other club participating in the same competition; or*
>
> *b) holds the majority of the voting rights of the shareholders of any other club participating in the same competition; or*
>
> *c) Has the right to appoint or dismiss a majority of the members of the administrative, management or supervisory bodies of any other club participating in the same competition; or*
>
> *d) Is a shareholder and controls a majority of the voting rights of the shareholders of any other club participating in the same competition in accordance with an agreement signed with other shareholders of the club in question; or*
>
> *e) Is a member of any other club participating in the same competition; or*
>
> *f) Is involved in any capacity whatsoever in the management, administration and/or sporting activities of any other club participating in the same competition; or*
>
> *g) Holds any authority whatsoever in the management, administration and/or sporting activities of any other club participating in the same competition.*
>
> *This declaration must be made by an authorised signatory no more than three months before the deadline for submitting the licence to the licensing authority".*

Although the regulation bears a significant resemblance to the UEFA framework already described in terms of its objectives and the way it defines the points where friction with the independence of clubs may arise, rather than involving verification and control by the Confederation, the regulation requires a declaration of responsibility from the clubs concerned, thereby reducing the administrative workload.

The Asian Football Confederation (AFC) system is similar, as it is initially based, at least in part, on a declaration of responsibility in accordance with Article

[50] The extent of this workload can be seen in CAS 2025/A/11566 DAC 1904, A.S. v. Union des Associations Européennes de Football, at paragraph 134: "UEFA confirmed at the Hearing that 258 clubs are in MCO structures and 100 of these were clubs that may qualify on the pitch for the UCCs". See also our reference in chapter II.b.

[51] M. Jiménez Granda, "Conmebol regulatory framework", Football Legal 14, p. 94.

[52] Reglamento de Licencia de Clubes de la CONMEBOL, edition 2016. The CONMEBOL Statutes also contain a general provision requiring its members to implement "Provisions ensuring that no natural or legal person controls more than one club" (Article 7.I.iv, edition 2020).

19.L.03 of its club licensing regulations, which provides that[53]:

> *"1. To safeguard the integrity of national matches and competitions, Licence Applicants must be committed to ensuring that they conform to the highest ethical and sporting standards regarding matters of ownership and Control.*
> *In this regard, the Licence Applicant must comply with the following criteria:*
>
> *a) the Licence Applicant shall not, either directly or indirectly:*
>
> *i. hold or deal in the securities or shares of any other participating club(s) in the same national competition;*
>
> *ii. be a member of any other participating club(s) in the same national competition;*
>
> *iii. be involved in any capacity whatsoever in the management, administration and/or sporting performance of any other participating club(s) in the same national competition; and/or*
>
> *iv. have any power whatsoever in the management, administration and/or sporting performance of any other participating club(s) in the same national competition, if there is a material risk that this would actually or potentially jeopardise the integrity of the national competition.*
>
> *b) No one connected to the Licence Applicant shall simultaneously be involved, either directly or indirectly , in any capacity whatsoever in the management, administration and/or sporting performance of the Licence Applicant and any other participating club(s) in the same national competition, if there is a material risk that this would actually or potentially jeopardise the integrity of the national competition.*
>
> *c) No individual or legal entity connected to the Licence Applicant shall have Control or influence over any other participating club(s) in the same national competition, if there is a material risk that this would actually or potentially jeopardise the integrity of the national competition. In assessing whether or not Control or influence exists*
>
> *in this context, the following factors shall be taken into account:*
>
> *i. holding a majority of the shareholders' voting rights in the relevant clubs;*
>
> *ii. having the right to appoint or remove a majority of the members of the administrative, management, or supervisory body of the relevant clubs;*
>
> *iii. being a shareholder and alone controlling a majority of the shareholders' voting rights pursuant to an agreement entered into with other shareholders of the relevant clubs; and/or*
>
> *iv. being able to exercise by any means a decisive influence in the decision-making of the relevant clubs.*
>
> *2. The Licence Applicant shall submit a legally valid and binding declaration outlining the ownership structure and Control mechanism of the club, and confirming its compliance with the criteria set out above. If the Licence Applicant considers that it may contravene any of the criteria, this should be explained in the declaration (with evidence). The declaration must be executed by an authorised signatory no more than three (3) months prior to the corresponding deadline for its submission to the Licensor".*

In addition, and very similar to the FIFA and UEFA system, in Article 8 of the AFC Club Competitions-Entry Regulations it is required that[54]:

[53] AFC Club Licensing Regulations, edition 2024. In addition, the regulations set out a detailed definition of the concept of 'Significant Influence' (see the Definitions section, p. 9). The AFC Statutes also contain a general provision aimed at regulating the basic aspects of the MCO phenomenon (Article 16.3, edition 2025).

See also a similar provision in Article 55 L.03 of the Confederation Africaine de Footbal (CAF) Men's Club Licensing Regulations, edition 2022.

[54] Edition 2025.

"8.4. No club participating in an AFC Club Competition may, either directly or indirectly:
8.4.1. hold or deal in the securities or shares of any other club participating in the same AFC Club Competition;
8.4.2. be a member of any other club participating in the same AFC Club Competition;
8.4.3. be involved in any capacity whatsoever in the management, administration and/ or sporting performance of any other club participating in the same AFC Club Competition; and/or
8.4.4. have any power whatsoever in the management, administration and/or sporting performance of any other club participating in the same AFC Club Competition, if there is a material risk that such circumstance(s) would actually or potentially jeopardise the integrity of the relevant AFC Club Competition and/or any match in the relevant AFC Club Competition.
8.5. No individual or legal entity may simultaneously be involved, either directly or indirectly, in any capacity whatsoever in the management, administration and/or sporting performance of more than one (1) club participating in the same AFC Club Competition if there is a material risk that this would actually or potentially jeopardise the integrity of the relevant AFC Club Competition and/or any match in the relevant AFC Club Competition.

8.6 No individual or legal entity may have control or influence over more than one (1) club participating in the same AFC Club Competition if there is a material risk that this would actually or potentially jeopardise the integrity of the relevant AFC Club Competition and/ or any match in the relevant AFC Club Competition.

In assessing whether control or influence exists for the purposes of this Article 8.6, the following factors shall be taken into account:
8.6.1holding a majority of the shareholders' voting rights in the relevant clubs;
8.6.2. having the right to appoint or remove a majority of the members of the administrative, management, or supervisory body of the relevant clubs;
8.6.3. being a shareholder and alone controlling a majority of the shareholders' voting rights in the relevant clubs pursuant to an agreement entered into with other shareholders of the relevant clubs; and/or
8.6.4 being able to exercise by any means a decisive influence in the decision-making of the relevant clubs".

Despite this similarity in wording, the minor differences result in a significant change, as the finding that a situation equivalent to those triggering the application of Article 5.01 of the Regulations UCC has arisen is not sufficient to trigger the mechanism prohibiting simultaneous participation in the competition. Under the AFC regime, this is subject to the further finding of a "material risk that this would actually or potentially jeopardise the integrity of the relevant AFC Club Competition and/or any match in the relevant AFC Club Competition", which is therefore not deemed to be present in itself merely by virtue of the constituent circumstance of an MCO situation.

In our view, whilst the ENIC case noted that the mere existence of the situation gave rise to public speculation regarding the integrity of the result, and therefore the measure was proportionate and appropriate to the aim pursued, in the tradition and culture of certain territories, where some States or sovereign wealth funds have owned various clubs without this affecting the appearance of the competition's integrity, this allows for a more comprehensive and open approach. This is also reflected in the applicable regulations, where a potential process of dialogue between the Confederation and the clubs concerned is expressly accepted in order to attempt to resolve any conflict with measures less invasive than the exclusion of the club from the

competition in question[55], an approach that appears to be both valid and practical.

Indeed, this Confederation's approach to the organisation of its club competitions views the significant investments made over the past decade in various territories as an opportunity[56]. The phenomenon of club independence is considered as just one of several factors in the licensing process, on the understanding that its audience is accustomed to competitions in which such situations have not been exceptional. This familiarity mitigates the level of concern the phenomenon might otherwise generate, unlike in Europe, where the ENIC case was assessed as a novel and unprecedented situation[57].

IV. CAS and MCO. From ENIC to "summer" 2025[58]

A. Cases and disputes

1. Direct and indirect CAS awards

Since the landmark CAS 98/200 AEK Athens and SK Slavia Prague v. Union of European Football Associations, various CAS panels have addressed issues related to Multi-Club Ownership, both directly and indirectly.

Only in the summer of 2025, four important disputes within the context of admission into leading international club competitions (the FIFA Club World Cup and UEFA Europa League and/or Conference League) led to the non-admission of different football clubs that had qualified for those competitions, prompting the CAS to review FIFA and UEFA's regulatory framework in this area since the first dispute in 1998. These cases were as follows:

- CAS 2025/A/11314, 11315, 11316 Club de Futbol Pachuca & Club León c. FIFA[59].
- CAS 2025/A/11495 Drogheda United FC v. UEFA.
- CAS 2025/A/11566 DAC 1904, A.S. v. Union des Associations Européennes de Football.
- CAS 2025/A/11604 Crystal Palace Football Club v. Union des Associations Européennes de Football, Nottingham Forest Football Club & Olympique Lyonnais.

A review of CAS jurisprudence also reveals additional cases in which the MCO phenomenon has been assessed and

[55] In accordance with Article 8.8.1, of the AFC Club Competition – Entry Regulations (edition 2025), if the Confederation finds a breach of the established requirements, one of the options available to it is to "provided that timing permits and at its sole discretion, have the opportunity to enter into discussions with the relevant club(s) in order to reach an agreement to resolve the matter(s) of non-compliance (requiring the immediate implementation of changes, safeguards and/or other mechanisms at the relevant club(s) to avoid non-compliance)". In any event, examples can be found in CAS jurisprudence concerning AFC cases where the Confederation has taken into account concerns related to MCO structures in its competitions, given the circumstances of the case. See, for instance, CAS 2022/A/8603, Esteghlal FC v. Asian Football Confederation, particularly at paragraph129(b).

[56] The current version of the CONCACAF Statutes also includes a general provision on MCO, similar to that of the FIFA, UEFA and AFC (Article 17.2, edition 2025).

[57] For an overview of this approach, see A. Mercer and M. Vasudevan Nair, "AFC Regulatory Framework", Football Legal No. 14, pp. 92–93.

[58] For the purpose of this analysis, summer is reference to this period of the year in the northern hemisphere.

[59] The correct reference to these CAS awards is as follows: CAS 2025/A/11314 Club de Futbol Pachuca c. FIFA, CAS 2025/A/11315 Club León c. FIFA, CAS 2025/A/11316 Club León c. FIFA. For the sole purposes of this paper, a consolidated version of all references has been used, as indicated above.

analysed, albeit in some cases in relation to different aspects[60]:

- CAS 2014/A/3523 Club de Fútbol Atlante S.A. de C.V. v. Federación Mexicana de Futbol & Club Atlas FC.
- CAS 2020/A/7019 Olympiacos Football Club (Olympiacos) v. Hellenic Football Federation (HFF) & Club Panthessalonkeios Athlitikos Omilos Konstantinoupoliton PAOK (PAOK) & "Xanthi" Athletic Group Football Club (Xanthi FC) &
- CAS 2020/A/7035 PAOK v. Hellenic Football Federation (HFF).
- CAS 2022/A/8603, Esteghlal FC v. Asian Football Confederation.
- CAS 2025/A/11162 Asociación Liga Deportiva Alajuelense v. Club León, Club de Fútbol Pachuca & FIFA

The common ground across these recent 2025 summer cases concerns whether clubs qualified for the same sporting competition fail to meet the applicable integrity requirements due to issues arising from Multi-Club Ownership, as defined in the Regulations FCWC and the Regulations UCC.

As previously noted, both sets of rules are largely identical. Accordingly, the reasoning developed in the relevant CAS awards assumes particular importance, as it is likely to play a significant role in shaping future international disputes concerning these relevant club competitions.

In essence, all these cases declare a situation of non-compliance of the clubs with the respective provisions of the Regulations FCWC or the Regulations UCC. While each case has its own concrete particularities, there are at least four fundamental principles relating to the specific merits of the MCO dispute that can be extracted from these summer 2025 awards.

- The *ratio* of the rule is legitimate: Sports regulators have a legitimate interest in restricting MCO within the competitions they organise, both for practical reasons (including inter-team transfers, unequal resource allocation, and potential match-fixing) and to safeguard the public's perception of the integrity of those competitions[61].

- Alternative legal structures can be used: In principle, there is nothing preventing clubs from resorting to alternative legal mechanisms (such as trusts or other forms of legal arrangements) capable of ensuring that a new structure aligns with the sporting provisions governing MCO[62]. The identification and implementation of such alternative legal mechanisms lies with the clubs concerned, and football governing bodies are not responsible for proposing or developing solutions when assessing compliance with the relevant eligibility criteria for participation in their competitions[63].

[60] The authors wish to express their gratitude to Mr. Antonio de Quesada, CAS Head of Arbitration Services, for his assistance in identifying all relevant MCO cases in CAS jurisprudence.

[61] Cfr. CAS 2025/A/11314, 11315, 11316 Club de Futbol Pachuca & Club León c. FIFA, at paragraph 225, or CAS 2025/A/11566 DAC 1904, A.S. v. Union des Associations Européennes de Football, at paragraph 121.

[62] Cfr. CAS 2025/A/11314, 11315, 11316 Club de Futbol Pachuca & Club León c. FIFA, at paragraph 286 et seq, or CAS 2025/A/11495 Drogheda United FC v. UEFA, at paragraph 138.

[63] Cfr. CAS 2025/A/11314, 11315, 11316 Club de Futbol Pachuca & Club León c. FIFA, at paragraph 217.

- Deadlines are essential: As a fundamental principle to ensure the proper administration of competitions, clubs cannot reinterpret deadlines or rely on expectations derived from previous situations [64]. Under Swiss law, once rules and regulations are validly adopted and duly communicated, they become binding on the parties and must be respected[65].

- Substance over form: This is a key factor when evaluating the specific case, and this consideration has been consistently emphasized by the panels without reservation. While the overall picture presented by the club(s) may, in general terms, appear to comply with the MCO requirements of the rules, the assessment must focus on the substance of the facts, where the concepts of control, involvement or influence play an important role[66].

2. A matter of eligibility, not a disciplinary offence

Although certain expressions used in the regulations, as well as the potential involvement of the so-called "judicial bodies" or "organs for the administration of justice"[67], may suggest that the admission of clubs into competitions under the MCO regulations is of a disciplinary nature[68], it is in fact a system strictly based on eligibility, as has been recognized in the CAS awards assessing the legal nature of such regulations[69].

The starting point of this reasoning rests on the assumption that sporting qualification entails a guaranteed right to participate in the relevant competition. In this view, sporting results would confer a vested right to qualification, and any "exclusion" or declaration of non-compliance with the rules would therefore amount to a sanction imposed by the organiser. However, this premise is incorrect. Sporting qualification and eligibility are distinct: clubs must not only achieve qualification on the pitch, but must also satisfy all applicable eligibility

[64] See, CAS 2025/A/11604 Crystal Palace Football Club v. Union des Associations Européennes de Football, Nottingham Forest Football Club & Olympique Lyonnais, at paragraphs 144 et seq. Also, CAS 2025/A/11566 DAC 1904, A.S. v. Union des Associations Européennes de Football, at paragraph 134, or CAS 2025/A/11495 Drogheda United FC v. UEFA, at paragraph 91 et seq.

[65] See, CAS 2025/A/11566 DAC 1904, A.S. v. Union des Associations Européennes de Football, at paragraph 112.3.

[66] Among others, CAS 2025/A/11314, 11315, 11316 Club de Futbol Pachuca & Club León c. FIFA, at paragraph 286 et seq, or CAS 2025/A/11566 DAC 1904, A.S. v. Union des Associations Européennes de Football, at paragraph 155 et seq. In particular, the concept of "being involved" under the UEFA regulations is thoroughly analysed in CAS 2025/A/11604 Crystal Palace Football Club v. Union des Associations Européennes de Football, Nottingham Forest Football Club & Olympique Lyonnais, at paragraphs 97 et seq.

[67] The tension between "eligibility" and "disciplinary" frameworks in MCO cases has been described as a "signal of ambiguity" in CAS 2025/A/11162, Asociación Liga Deportiva Alajuelense v. Club León, Club de Fútbol Pachuca & FIFA, at paragraph 159.

[68] See, for instance, the competence conferred upon the FIFA Disciplinary Committee pursuant to Article 10 of the Regulations FCWC to assess compliance with MCO requirements within the competition. In a similar vein, the UEFA Club Financial Control Body, designated under Article 34ter as an Organ for the Administration of Justice, is the competent body to undertake the same assessment in UEFA competitions.

[69] Among others, CAS 2025/A/11314, 11315, 11316 Club de Futbol Pachuca & Club León c. FIFA, at paragraphs 147 to 148 and 188 to 198. It is also considered an eligibility criterion in CAS 2025/A/11495, Drogheda United FC v. UEFA, at paragraph 85, and in CAS 2025/A/11162 Asociación Liga Deportiva Alajuelense v. Club León, Club de Fútbol Pachuca & FIFA, at paragraph 158.

criteria in order to be admitted to the competition[70].

The best example of this approach is contained in CAS 2025/A/11162 Asociación Liga Deportiva Alajuelense v. Club León, Club de Fútbol Pachuca & FIFA. In that case, which concerned MCO-related issues but did not directly assess the MCO requirements, the Panel expressly distinguished between disciplinary and eligibility matters. It held that disciplinary matters, in principle, relate to issues of "infringements" of rules and the consequent imposition of "sanctions", whereas eligibility matters concern the conditions for participation in a competition[71].

The legal nature of these procedures (eligibility vs. disciplinary) is significant in these type of cases for several reasons. The first key issue concerns the applicable legal framework; however, one of the most prominent consequences arising from this distinction, far from being merely semantic, is the potential application of the principle of proportionality.

As confirmed by the Panel in CAS 2025/A/11566 FK DAC 1904, A.S. v. UEFA, a clear distinction must be drawn between sanctioning rules, which are subject to a kind of proportionality review, and rules governing eligibility for participation in competitions. In the latter context, review is limited to cases where the rule is arbitrary or discriminatory, and the principle of proportionality does not apply *per se*[72]. In other words, decisions concerning non-compliance with eligibility requirements are subject to limited review by CAS panels, which will generally intervene only in the presence of procedural defects or violations of fundamental principles, such as equal treatment or the prohibition of arbitrariness, an approach that remains considerably more open in the context of disciplinary proceedings[73].

An additional angle when dealing with non-compliance proceedings concerning MCO requirements relates to the role of potential interested parties in the decision-making process leading to the final outcome. While the conclusions are generally clearer in typical disciplinary proceedings, where CAS jurisprudence has consistently adopted a rather strict approach[74], the same considerations appear more flexible in the context of eligibility proceedings, such as those involving MCO requirements. In such cases, the notion of affected or interested parties tends to be interpreted more broadly, allowing for a less rigid

[70] Cfr. CAS 2025/A/11162 Asociación Liga Deportiva Alajuelense v. Club León, Club de Fútbol Pachuca & FIFA, at paragraph 203 et seq, or CAS 2025/A/11314, 11315, 11316 Club de Futbol Pachuca & Club León c. FIFA, at paragraphs 229.i.

[71] See at paragraph 203 et seq.

[72] CAS 2025/A/11566 FK DAC 1904, A.S. v. Union des Associations Européennes de Football, at paragraph 112.5. See also CAS 2025/A/1134, 1135, 1136, Club de Futbol Pachuca & Club León c. FIFA, at paragraphs 187 et seq.

[73] About the CAS boundaries to review disciplinary decisions of sports governing bodies see, among multiple awards, CAS 201A/A/3875 Football Association of Serbia v. UEFA, at paragraph 108 et seq.

[74] See, among others, CAS 2008/A/1583 Sport Lisboa e Benfica Futebol SAD v. UEFA & FC Porto Futebol SAD & CAS 2008/A/1584 Vitória Sport Clube de Guimarães v. UEFA & FC Porto Futebol SAD, CAS 2015/A/4151, Panathinaikos FC v. UEFA & Olympiakos FC, TAS 2019/A/6635 , CD Unión Comercio c. FPF & San Martín or CAS 2020/A/6713, Nilmar Honorato da Silva v. FIFA.

An extensive analysis of this topic can be found, among other, in CAS 2020/A/6921 & CAS 2020/A/7297 Vladimir Simunovic & Sindikat Profesionalnih Fudbalera Nezavsinost v. FIFA, at 156 et seq.

assessment compared to classical disciplinary frameworks[75].

3. Standing to be sued: a challenging topic

A further consideration in proceedings relating to admission to competitions under MCO eligibility requirements concerns the proper identification of the parties and the delineation of their respective rights within the procedural framework. The correct constitution of the *litis* becomes something relevant in this context.

In decisions taken by competition organisers that affect the sporting outcome of a match, admission to a competition, the imposition of sanctions with an impact on the final standings, or other resolutions producing comparable competitive effects, the standing to be sued is something to be carefully considered. A club that considers itself aggrieved cannot simply challenge the decision before the competent body; rather, it should bring all clubs affected by that decision into the proceedings. The rationale is straightforward: if the challenge were to succeed, those clubs would lose a benefit indirectly derived from the contested decision, and it would be impossible to remedy the alleged prejudice without directly affecting their legal and sporting position[76].

For instance, in the case of the FIFA Club World Cup 2025, the decision on which club should replace the one that does not meet the eligibility criteria is not automatic, since, in accordance with Article 10.4 of the Regulations FCWC:

> *"If the FIFA Disciplinary Committee decides that two or more clubs fail to meet the criteria set out in paragraph 1 above, the FIFA General Secretariat shall decide which club may be admitted to the Competition and how a club that is not admitted shall be replaced in accordance with the following principles, taking into account, in particular, the respective ranking(s) of the club(s) concerned and the applicable quota per confederation and/or member association to which the club(s) concerned is/are affiliated".*

Insofar as this process is conducted in two stages, namely, first the determination as to whether a situation of MCO exists that should result in a club's non-eligibility, and secondly, where applicable, the determination by the FIFA General Secretariat of how the resulting vacancy is to be filled, in the appeal against exclusion, a team seeking to fill that vacancy is not accepted[77] .

Similarly, a request to FIFA to be part of the process to decide on the possible existence of a situation that compromises a club's eligibility is also not viable if, at the same time, the club demands to be included in the competition[78], but if it is accepted that there could be a legitimate interest in taking part in the discussion regarding the existence of grounds for exclusion, this would open the door to the participation of a third club, provided that

[75] See, for instance, the interpretation given in CAS 2025/A/11162 Asociación Liga Deportiva Alajuelense v. Club León, Club de Fútbol Pachuca & FIFA, at paragraph 159.

[76] See, CAS 2011/A/2551 Fenerbahçe SK v. UEFA & Turkish Football Federation (Order on Request for Provisional Measures), at paragraph 6.8. On this topic and more in general, among others, P. Pellaux & Matthieu Reeb: La désignation de la partie défenderesse devant le Tribunal Arbitral du Sport (TAS), CAS Bulletin, 2021/2. pp. 25 et seq.

[77] CAS 2025/A/1134, 1135, 1136, Club de Futbol Pachuca & Club León c. FIFA, at paragraphs 115 to 129. Specifically, in the FIFA proceedings, the Panel identifies at paragraph 219 three distinct steps: the determination of the MCO status, the identification of the team excluded from the competition, and, finally, the determination of who is to replace it.

[78] CAS 2025/A/11162 Asociación Liga Deportiva Alajuelense v. Club León, Club de Fútbol Pachuca & FIFA, at paragraphs 216 et seq.

the discussion is considered a matter of eligibility and not a disciplinary procedure[79] .

In the case of the Regulations UCC, however, there appears to be no margin of discretion whatsoever in determining the replacement, meaning that such a legitimate interest could hardly be denied; indeed, in some of the cases to which we have already referred of 2025, the club that benefited from the exclusion has also been summoned to the appeal[80] .

The declaration of ineligibility of a club under the rules designed to prevent MCO situations, given that they require a choice to be made between clubs sharing ownership, places the excluded club in an awkward position: it must decide whether, in challenging the competition organiser's decision, it wishes to assert a superior right over the "sibling club" that has benefited from the rules governing that choice. The appellant's cautious approach in its challenges has on several occasions been the subject of counter-arguments seeking the dismissal of the appeal on the grounds of a defective constitution of the case, or because a claim that does not include such a substitution would render even an upholding decision practically ineffective.

In CAS 2025/A/11314, 11315, 11316 Club de Futbol Pachuca & Club León c. FIFA, the excluded club challenged the decision finding grounds for exclusion, as well as FIFA's decision to select the other club from the MCO structure. FIFA argued that, by failing to include the club awarded the designation in the second appeal, the appeal itself had lost its purpose, as the selection could not be reversed. However, the CAS accepted that the exclusion of the club already accepted should not be sought under any circumstances, and that in challenging the existence of an MCO situation incompatible with the participation of both teams, its effect on the appellant's ineligibility must also be challenged, but limiting the effects of the challenge to the acceptance that no MCO situation exists, so that the second appeal would be a consequence of that finding[81] .

It is also possible to question whether the club that has been selected to participate in the competition, to the detriment of its 'sibling' club within the same MCO structure, has the right to participate in the appeal, given that the annulment of the exclusion will have no impact on it. However, the Panel in the above-mentioned case has accepted the reputational damage caused by the expulsion as sufficient interest to also request, on its own behalf, the reversal of the exclusion[82] .

4. Acceptance of the rules as "appropriate" and "proportionate"

The increase in MCO cases brought before the CAS in recent times appears to be linked to the exponential expansion of this model. As a result, it is more likely than not that such disputes will continue in the near future, including cases in some other football jurisdictions. However, the clubs recently affected by these rules have also attributed this rise to short-term

[79] CAS 2025/A/11162 Asociación Liga Deportiva Alajuelense v. Club León, Club de Fútbol Pachuca & FIFA, at paragraph 214.

[80] CAS 2025/A/11604 Crystal Palace Football Club v. Union des Associations Européennes de Football, Nottingham Forest Football Club & Olympique Lyonnais.

[81] At paragraphs 154 to 165.

[82] CAS 2025/A/11314, 11315, 11316 Club de Futbol Pachuca & Club León c. FIFA, at paragraphs 144 et seq. However, a detailed reading of the reasoning, which invokes even entirely contingent factors, such as the fact that this is the first time the competition for which he was declared ineligible has been organized, suggests that in an identical case in the future, or one in which other ancillary issues such as the "appearance" of a disciplinary procedure are not present, the decision might well have been the opposite.

factors, such as a sudden tightening in the application of FIFA or UEFA regulations[83], as well as the advancement of the deadline for demonstrating compliance with those requirements[84]. If that is the case, it stands to reason that, in the future, those affected will be better able to adapt to the new enforcement environment and the revised compliance deadline.

In any case, it is significant to note that in all the 2025 summer cases, the challenges questioning the rules have failed. It has not been found to be contrary to EU competition law, nor does the severity of the consequences render the provision arbitrary.

Indeed, regarding the former, in the ENIC case an exhaustive study was carried out on the compatibility between European Union law and the rule approved by the UEFA Executive Committee at that time[85]. As the Award itself highlighted, the parties, by mutual agreement when ruling on the applicable law, wished to include this reference[86]. ENIC also lodged a complaint with the European Commission, which was dismissed[87]. The argument was used again during the CAS cases of summer 2025 to challenge UEFA's regulations, but ENIC's analysis has continued to be regarded as valid[88] .

But, as confirmed by the most recent MCO awards, the analysis in ENIC remains valid not only as regards the rationale of the principle, namely, the protection of the integrity of competitions, but also in determining what constitutes a proportionate, appropriate, and necessary response:

> *"UEFA did not adopt the Contested Rule with the purpose of protecting its monopoly power over the organisation of pan-European football competitions (see supra, paras. 110–113 and 143), and finds that the Contested Rule is not arbitrary nor unreasonable (see supra, paras. 48 and 125–136). Therefore, with regard to the substantive content of the Contested Rule, the Panel holds that UEFA did not abuse its regulatory power and did not violate any general principle of law"*[89] .

It is also important to emphasise that ENIC's position, that a theoretical risk to the integrity of the competition is sufficient to justify the adoption of such regulations, has been endorsed by CAS awards in 2025. Arguments seeking to demonstrate that no actual interference between the clubs was taking place have likewise been unsuccessful. What continues to be relevant is the mere possibility of such interference, without the need to establish that the conditions set out in Article 5.01(b) are in fact being

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[83] For example, CAS 2025/A/11495 Drogheda United FC v. UEFA, at paragraphs 91 et seq. See also the dispute in this regard in CAS 2025/A/1134, 1135, 1136, Club de Futbol Pachuca & Club León c. FIFA, at paragraphs 199 et seq.

[84] In the case of the European confederation, from 3rd June to 1st March.

[85] See at paragraphs 73 to 154.

[86] See paragraph 8: "Pursuant to Article R45 of the Code, the dispute must be decided *'in accordance with the rules of law chosen by the parties or, in the absence of such a choice, in accordance with Swiss law*". The parties agreed at the hearing on 15 July 1998 and confirmed in their written submissions that Swiss law governs all issues of association law arising in this arbitration, and that the Panel should apply EC competition law and Swiss competition law if the dispute falls within the scope of these laws".

[87] Case COMP/37 806: ENIC/UEFA.

[88] Cfr. CAS 2025/A/11604 Crystal Palace Football Club v. Union des Associations Européennes de Football, Nottingham Forest Football Club & Olympique Lyonnais, at paragraph 162.

[89] At paragraph 157.

exercised[90], or that the potential control or decisive influence is effective in practice[91]

B. The battle over the 'one-off exception': The "blind trusts"

One of the key issues likely to be assessed in future MCO cases before the CAS is the use of alternative legal structures designed to align club ownership arrangements with MCO regulations of FIFA, UEFA or other Confederations.

Currently in the context of the UEFA framework, in the very same circular in which the CFCB First Chamber sets out the criteria it has been applying in defining the concept of decisive influence in 2024, it addresses this fact for the first time, which in that case was linked with some temporary aspects of the rule. Said Circular Letter openly refer to this matter as follows:

> *"The CFCB First Chamber recognises that the short timeframe between the approval of the Competition Regulations on 20 March 2024 and the deadline of 3 June 2024 may prove difficult for certain clubs to comply with the MCO rule, given the aforementioned indicators.*
>
> *Indeed, the CFCB First Chamber is aware that compliance with the MCO rule may necessitate the sale of shares in a club, which may not be feasible given the short timeframe set out in the new Competition Regulations.*
>
> *For this reason, and provided that (i) as at 20 March 2024, the clubs were already facing potential non-compliance with the MCO rule and (ii) as at 3 June 2024, the clubs do not trigger any of the indicators listed in points (b), (c) and (d) above, the CFCB First Chamber considers it appropriate to provide the concerned party with a temporary alternative.*
>
> *Such alternative shall consist of the transfer or assignment of all its shares in a club to an independent third party, such as a blind trust, whereby all decision-making regarding the club will rest solely under the control of the third party/trustee, who will be bound by a fiduciary duty to act exclusively in the best interests of the club. It is understood that, in such cases, the CFCB First Chamber will oversee the establishment of the independent structure to ensure it complies with the MCO rule.*
>
> *For the avoidance of doubt, this temporary alternative is granted by the CFCB First Chamber on an exceptional basis for the 2024/25 UEFA competitions. As such, the CFCB First Chamber will not be bound by this alternative when assessing clubs' compliance with the MCO rule for participation in UEFA competitions in subsequent seasons"*[92]

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[90] CAS 2025/A/11604 Crystal Palace Football Club v. Union des Associations Européennes de Football, Nottingham Forest Football Club & Olympique Lyonnais, at paragraphs 103 and 104: "In this context, the Panel is not convinced by the Appellant's position that the provision requires an actual involvement of the relevant person in a club. It is the view of the Panel that, if the legislator, in this case UEFA, had wanted the involvement under Article 5.01(b) to be actual, it would have drafted the provision in that explicit way (…) What is more, the use of the wording *"directly or* indirectly" and *"in any capacity* whatsoever" reinforces the view that Article 5.01(b) is meant to have a wide scope of application".

[91] CAS 2025/A/11566 FK DAC 1904, A.S. v. Union des Associations Européennes de Football, at paragraph 160: " (…) Any director has responsibilities. (…) He claims that he was not actually fulfilling the role. The fact is he had taken on the role and, with that, the responsibility to manage and run the company. Even if he delegated his role, he would know that he had not delegated the responsibilities that come with it. The Panel would not expect UEFA to have to assess whether every single director at every club being assessed for the UCCs was doing their job properly".

[92] Based on this temporary regime and following on from the specific arrangements implemented over the corporate structure of the clubs, the CFCB First Chamber admitted Girona FC and Manchester City to the UEFA Champions League for the 2024/2025 season, alongside Manchester United FC and OGC Nice in the UEFA Europa League for the 2024/2025 season.

While this temporary alternative solution, as described by the European confederation, was intended to apply solely to the 2024/2025 UEFA competitions and arose from a highly specific situation, mechanisms such as "blind trusts," "Chinese walls" and similar arrangements were also considered in certain cases during the summer of 2025[93]. However, all of these ultimately resulted in negative outcomes for the clubs involved, albeit for different reasons[94].

In any event, the recent CAS jurisprudence on MCO issued in summer 2025, tends to conclude that a "blind trust" may constitute a potential alternative solution in MCO cases, provided that, through such an alternative legal structure, the clubs are able to demonstrate that only one participating club remains under their direct control or influence[95].

V. Conclusions

What clearly emerges in the current context of the MCO phenomenon in football is that, far from declining, it continues to expand at an exponential rate year after year. It is not a passing trend, but rather the consolidation of a structural reality that is here to stay.

To date, the main football governing bodies, FIFA, the confederations, and certain national associations, have implemented specific rules primarily aimed at safeguarding the integrity of their competitions. In particular, these rules prohibit the simultaneous participation of clubs belonging to the same MCO structure where there is even the slightest risk that the integrity, or the perception of integrity, of the competition could be compromised. Several states have also introduced regulatory provisions aimed at addressing the same issue.

Looking ahead, the legal treatment of MCO may evolve not only towards reinforcing this fundamental aspect, namely, the unpredictability of results and the guarantee of unaltered competitions, but also towards addressing the connections that MCO structures may have with other relevant areas within the industry, such as some of the basic principles enshrined in the FIFA RSTP or the strict financial control provisions applicable in some continental competitions[96].

[93] In any event, what does not appear to be negotiable for the establishment of a potential "blind trust" are the respective deadlines set by the relevant competition organisers for meeting the eligibility criteria (late cure of the situation). See, for instance, CAS 2025/A/11604 Crystal Palace Football Club v. Union des Associations Européennes de Football, Nottingham Forest Football Club & Olympique Lyonnais, at paragraphs 144 to 154.

[94] See, CAS 2025/A/11314, 11315, 11316 Club de Futbol Pachuca & Club León c. FIFA, at paragraph 265 et seq, or CAS 2025/A/11604 Crystal Palace Football Club v. Union des Associations Européennes de Football, Nottingham Forest Football Club & Olympique Lyonnais, at paragraph 155 et seq.

[95] CAS 2025/A/11314, 11315, 11316 Club de Futbol Pachuca & Club León c. FIFA, at paragraph 226.

[96] For instance, this is the case with matters arising under the FIFA RSTP including, among others, issues relating to bridge transfers, the international transfer of minors, the payment and distribution of training rewards (namely the solidarity mechanism and training compensation), as well as the enforcement of decisions. Some preliminary indications in this area are identified in CAS 2025/A/11566 DAC 1904, A.S. v. Union des Associations Européennes de Football, at paragraph 121.

Multi-tiered dispute resolution clauses in sport

Ulrich Haas*

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I. Introduction

International sports federations usually provide for arbitration as a means of resolving disputes between them and their stakeholders, i.e. the national federations, event organisers, clubs and athletes. There are a number of reasons for excluding the jurisdiction of state courts through arbitration in sport[1]First and foremost is the desire to de-nationalise disputes away from state courts and state law in order to establish a level playing field, i.e. to ensure the worldwide uniform application of the law for all parties subject to the rules and regulations. A closer look at the dispute resolution mechanism in organised sport, however, quickly reveals that arbitration is usually only the final escalation stage of a complex dispute resolution mechanism. Typically, other alternative dispute resolution mechanisms precede the resolution of disputes by an arbitral tribunal. However, this is not unique to sports arbitration. The phenomenon of escalation clauses also exists in commercial arbitration.[2] These types of clauses are sometimes also referred to as "integrated dispute resolution systems" or "multi-tiered" clauses.[3]

In sports, association tribunals are often provided for in the pre-arbitral stage. However, this is by no means mandatory. Sometimes, arbitration at the final stage is also combined with other forms of alternative dispute resolution (ADR). For example, the rules of a sports federation may require the parties to try to reach an amicable settlement through good faith negotiation before the matter is referred to arbitration. In some cases, the rules and regulations also require the parties to engage in mediation or conciliation before the arbitral tribunal can be seized. These complex multi-stage dispute resolution mechanisms raise a number of questions, some of which will be briefly discussed here from a Swiss law perspective,

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[1] GIRSBERGER/VOSER, International Arbitration, 5th ed. 2023, no. 2351; HAAS, The Court of Arbitration for Sport in the Case law of the German Courts, Int. S.L.R 2015 (Vol. 4) 71, 74 seq.

[2] BERGER, Law and Practice of Escalation Clauses, Arbitration International, Vol. 22 (2006) issue 1, 1 et seq.; BIRCHER, Eskalationsklauseln – mehrstufige Streitbeilegungsklauseln nach Schweizer Recht, Diss. Zurich, 2023; KRAUSS, The Enforceability of Escalation Clauses Providing for Negotiations in Good Faith Under English law, McGill Journal of Dispute Resolution, Vol. 2 (2015-2016), 142 et seq.

[3] WAINCYMER, Procedure and Evidence in International Arbitration, 2012, p. 160 et seq.; MITROVIC, Dealing with the consequences of non-compliance with mandatory pre-arbitral requirements in multi-tiered dispute resolution clauses, Bull. ASA 2019, 559 et seq.

as in most instances the final stage of a multi-tiered dispute resolution process, i.e. arbitration, generally takes place in Switzerland, namely before the Court of Arbitration for Sport (CAS) in Lausanne.

II. The types of pre-arbitral proceedings to be considered

It is up to the parties to agree how they want to structure the preliminary stage prior to arbitration. The parties may, for example, involve a third party at the first stage. If this is the case, it must be further examined which mandate the parties have given to such third party, whether the third party should merely help the parties to find a solution to the dispute (then the third party will act as a mediator or conciliator) or whether the third party is mandated to (provisionally or finally) decide the dispute itself. The parties' intent must be determined in each individual case through interpretation of the relevant dispute resolution clause.[4] The Swiss Federal Tribunal applies the principles of contract interpretation when assessing the validity and/or the contents of a dispute resolution mechanism.[5]

If the parties want the third party to decide the dispute authoritatively, such third party may be qualified depending on the circumstances of the case either as an association tribunal or as an arbitral tribunal. It is perfectly possible to have two arbitration proceedings in succession.[6] The latter – e.g. – is provided for in Article R47(2) of the CAS Code of Sports-related Arbitration and Mediation ("CAS Code"), which provides that an "*appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned*".

It is not always easy to determine whether the parties intended the first-instance adjudicatory body to act as an association tribunal or an arbitral tribunal.[7] The name of the adjudicatory body or the name of the decision issued by it are – at best – an indication of the tasks that the parties wanted to entrust to this body.[8] Ultimately, it is not the name that is decisive, but the specific competences transferred to the adjudicatory body.[9] Only if the latter is to decide the legal dispute instead of the state courts is it an arbitral tribunal.[10] However, even if the parties have entrusted the third party with the task of a (genuine) arbitral tribunal, Swiss law will only uphold such an agreement to arbitrate, if the arbitral tribunal as such is sufficiently independent from the parties.[11]

III. The relationship between the different instances

Whether a preliminary procedure must be completed before a claim can be filed with the arbitral tribunal at the second stage depends on the parties' agreement. The "first instance" will only qualify as a genuine preliminary stage if it is "binding" according to the will of the parties. In such case the second instance, i.e. the arbitral tribunal can only be seized, if the "first instance proceedings" were completed. Whether the

[4] SFT 142 III 296, consid. 2.4.

[5] Cf. HAAS/NEUMAYER, Die Tätigkeit von Vereinsgerichten - Rechtsprechung zwischen materiellem und Prozessrecht, NZG 2017, 881, 883 et seq.,

[6] SFT 4A_222/2015, consid. 3.2.3.1; cf. also GOKSU, Schiedsgerichtlicher Instanzenzug - Welches Verfahren bei Rechtsmitteln an ein Oberschiedsgericht?, ASA Bull 2016, p. 606 et seq.

[7] STRUB, Vereinsgerichtsbarkeit im Sport, 2025, no. 149 et seq. and no. 197 et seq.

[8] SFT 148 III 427, consid. 5.9.3.

[9] SFT 142 III 296, consid. 2.4.1.1.

[10] SFT 148 III 427, consid. 5.2.2: "*The arbitral award ... is a decision rendered, on the basis of an arbitration agreement, by a non-state tribunal to which the parties have entrusted the task of deciding a case ..*".; cf. also SFT 4A_374/2014, consid. 4.3.2.1.

[11] SFT 148 III 427, consid. 5.2.2; "*According to the case law of the Swiss Federal Tribunal, a genuine award, comparable to the judgment of a state court, presupposes that the arbitral tribunal that renders it offers sufficient guarantees of impartiality and independence*".; cf. also STRUB, Vereinsgerichtsbarkeit im Sport, 2025, no. 210; HAAS, The Court of Arbitration for Sport in the Case Law of the German Courts, Int. S.L.R 2015 (Vol. 4) 71 seq.

first instance proceedings are binding within the above meaning must be determined by interpreting the relevant provisions to which the parties have agreed. [12]

An important indication whether the parties intended the first instance proceedings to be binding is the latter's level of regulatory detail. The more structured the "first instance proceedings" are, i.e. the more detailed the individual phases (e.g. initiation or end) of the preliminary stage and their effects are regulated, the more clearly this speaks for a binding and therefore mandatory nature of the "first instance proceedings". Thus, procedural formalism is typically an indication that the parties wish the individual phases of the preliminary stage to be completed, before resorting to arbitration at the final stage.[13] In such case the preliminary proceedings are a condition precedent for initiating the arbitral procedure at the second stage. This approach is also taken by the Swiss Federal Tribunal according to which in case the parties have regulated the "first instance proceedings" in detail "[l]*ogic* … [dictates] *that the parties, who had undertaken to abide by these rules, should comply with them before submitting their case to arbitration. In other words, they should wait until they had gone through all the stages of the conciliation process imposed by the ADR Rules".*[14] If, on the contrary, the preliminary proceedings are not formally structured, in particular in case it is unclear when and how these are to be initiated and under what conditions they end or are deemed to have failed, then this speaks against the mandatory nature of the preliminary proceedings.

The Swiss Federal Tribunal in a case reviewed the finding of an arbitral tribunal that had denied the mandatory character of a pre-mediation clause (in Art. 10.2 of the contract) because – according to the arbitral tribunal – [15]

> *"art. 10.2 of the license agreements ... could not constitute an impediment to referral to the arbitral tribunal. Furthermore, the clause in question is silent as to the time limit within which the mediation procedure was to be initiated; in this respect, it departs from the practice of international contracts, which consists of not resorting to prior mediation without setting a time limit within which the procedure must be initiated or even completed. The fact that the parties wished to restrict themselves in the referral of the case to the arbitral tribunal seems all the more surprising to the arbitrators given that they expressly asked them, in art. 10.5 of the license agreements, to act with diligence and to rule as quickly as possible. In the Arbitral Tribunal's view, art. 10.2 of the license agreements should therefore be interpreted as simply referring to an arbitral tribunal all disputes that cannot be settled amicably, and as defining what is meant by this, without imposing a legal duty to conduct settlement talks, including a mediation procedure".*

The Swiss Federal Tribunal upheld the above reasoning and stated as follows:[16]

> *"For the rest, ... it does not appear that the Arbitral Tribunal disregarded the principles governing the interpretation of expressions of intent by accepting that this clause did not provide for a mandatory conciliation prerequisite. ... Moreover, it is quite clear from reading the first sentence of art. 10.2 of the licence agreements, whether in terms of its structure or the terms used (in particular, the verb 'shall'), that the parties wished above all to emphasize the fact that disputes not resolved amicably would be submitted, not to the ordinary courts, but to an arbitral tribunal, even though they also expressed their desire to favour an amicable settlement of any disputes, with or without the assistance of a mediator.* ***This impression is further reinforced by the absence of any indication of a time limit within which the mediation procedure was to be initiated or even completed, even though such a time limit is customary in the field of international contracts, according to a sovereign finding by***

[12] SFT 4A_18/2007, consid. 4.3.1.

[13] SFT 142 III 296, consid. 2.4.1.2 seq.

[14] SFT 142 III 296, consid. 2.4.2.

[15] SFT 4A_18/2007, consid. 4.1.1.

[16] SFT 4A_18/2007 , consid. 4.3.2.

> ***the Arbitral Tribunal***. *The ad hoc clauses recommended by WIPO specify the time limit within which the arbitration proceedings must be initiated if the mediation fails or if a party refuses to submit to it (see the above-mentioned website, under 'Recommended clauses')".* (emphasis added)

If one applies the above principles, then first instance arbitral proceedings will – failing any indications to the contrary – almost always be qualified as binding or mandatory according to the will of the parties. The legal rules applicable to arbitration, more particularly the statutory framework is sufficiently detailed and structured so that any reference by the parties to such a dispute resolution mechanism is a clear indication of its mandatory character. In contrast, the proceedings before an association tribunal are not regulated by Swiss law unlike – e.g. – in Austrian law[17]. If the parties have agreed on an association tribunal as a first instance, such adjudicatory proceedings will qualify as binding only, if they are regulated in sufficient detail in the association's rules and regulations.[18] In practice, this is usually the case, as the statutes of the sports associations generally provide clear guidance in relation to the initiation (when and where) and the object of such proceedings, the applicable procedural principles, the powers of the adjudicatory body and the conditions under which the proceedings before the association tribunal come to an end.

Preliminary proceedings in the form of conciliation, mediation or a parties' obligation to negotiate in good faith an amicable settlement are more problematic to qualify. There is no statutory legal framework that structures these alternative dispute resolution mechanisms, i.e. specifies deadlines for the individual procedural steps or specifies the individual procedural stages and the obligations incumbent on the parties and/or the third party. However, all of this is necessary in order to be able to determine when the first stage of the dispute resolution mechanism has been completed and the subsequent path to the arbitral tribunal becomes accessible.[19] If the parties have not agreed such a framework, the first instance proceedings lack a mandatory character. In case of doubt, the parties do not want to hinder, delay or jeopardize the effective settlement of the dispute by an arbitral tribunal, which is envisaged at the final stage. The effect of these non-mandatory clauses is thus ultimately limited to stating that the arbitral tribunal has jurisdiction over all disputes that the parties were previously unable to settle.

Whether the preliminary proceedings are sufficiently structured to be qualified as mandatory depends on the individual circumstances of the case. Sometimes, it may be difficult to draw the line. However, in my opinion, the threshold above which the first-instance procedure is to be considered binding should not be set too high. For example, the statutes of the European Olympic Committee (EOC), to which all European National Olympic Committees belong, provide for the following dispute resolution mechanism (in Article 24):

> *"(1) Any dispute relating to the Articles, resolutions of the general Assembly, the EOC Executive Committee ... shall in the first instance be submitted to the Executive Committee for an amicable resolution in good faith.*
>
> *(2) If, within a maximum period of 4 months after the receipt of a claim, the EOC Executive Committee is unable to agree on a solution that satisfies the parties, the parties may submit the dispute to the CAS in Lausanne".*

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[17] HAAS/NEUMAYER, Vereinsgerichte - eine rechtsvergleichende Untersuchung zum deutschen, österreichischen und schweizerischen Recht, in Festschrift Vedder, 2017, p. 842, 844 seq.

[18] For a comprehensive examination of the jurisdiction of associations in sport from a Swiss perspective, see STRUB, Vereinsgerichtsbarkeit im Sport, 2025, no. 136 et seq..

[19] Cf. GEORGE, in Geisinger/Müller et al (eds) ASA Special series No. 49, Good Faith and Pre-arbitral Alternative Dispute resolution Requirements, p. 117, 124 seq.

There are good arguments to conclude, that Article 24 of the EOC Statutes provides for a binding, i.e. mandatory, preliminary procedure. The provision clearly refers to a "*first and second instance*". In addition, the provision regulates how the preliminary proceedings ("*amicable resolution in good faith*") are to be initiated, namely by submitting the claimant's dispute or claim to the EOC Executive Committee ("*receipt of the claim*"). Finally, Article 24 also defines when the preliminary proceedings have failed and legal recourse to the CAS is available, i.e. no later than four months after the initiation of the first phase if the parties have not previously found a mutually satisfactory solution to the dispute.

IV. Multi-tiered clauses and the CAS Code

The CAS Code expressly addresses multi-tiered dispute resolution clauses in the context of "Appeals Arbitration proceedings". Statistically, Appeals Arbitration proceedings constitute the vast majority of the proceedings before the CAS.[20]

Article R47(1) of the CAS Code reads as follows:

> *"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)

It is questionable what is meant by "legal remedies" in the aforementioned sense. The legal literature rightly points out that the obligation to exhaust other legal remedies only applies if the legal remedies in question are mandatory, i.e. binding on the parties. In this respect, the commentary by *Rigozzi/Hasler* on Article R47 CAS Code rightly states the following:[21]

> *"The requirement of the exhaustion of internal remedies only applies to remedies that are mandatory under the applicable regulations: discretionary, optional or extraordinary remedies, such as, for instance, application for early reinstatement in case of exceptional circumstances, need not be exhausted for the purposes of Art. R47(1)".*

A distinction is also sometimes made in the legal literature between ordinary and extraordinary legal remedies. For example, the commentary by *Mavromati/Reeb* states the following:[22]

> *"The obligation to exhaust internal remedies according to Article R47 only concerns the prior judicial instances foreseen by the applicable regulations. Therefore, it is not necessary to exhaust all legal remedies but only the legal remedies available to the appellant under the regulations prior to the CAS appeal. The wording of Article R47 of the Code* ***has been interpreted as encompassing ordinary remedies only and not extraordinary remedies. The SFT has confirmed the view*** *that the obligation to exhaust internal legal remedies applies only to ordinary - and not to extraordinary or incomplete legal remedies (e.g., the request for revision)".* (emphasis added)

However, this differentiation between "ordinary" and "extraordinary" legal remedies conceals nothing other than the distinction between binding and non-binding preliminary proceedings. This becomes clear when reading the decision of the Swiss Federal Tribunal referred to in the above commentary. The decision states the following:[23]

> *"The obligation to exhaust prior instances, set out in art. R47 para. 1 of the Code,* ***applies***

[20] https://www.tas-cas.org/fileadmin/user_upload/CAS_statistics_2024.pdf.

[21] RIGOZZI/HASLER, in Arroyo (ed.) Arbitration in Switzerland, 2nd ed. 2018, Art. R47 CAS Code no. 32.

[22] MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, 2nd ed. 2025, Article R47 no. 33.

[23] SFT 4A_682/2012, consid. 4.4.3.2.

> ***only to the internal body whose implementation the sports federation concerned prescribes before any referral to CAS****, to the exclusion of the body to which the appellant has the choice of referring or not the decision that does not satisfy him (Antonio Rigozzi, L'arbitrage international en matière de sport, 2005, no. 1024, p. 526). Moreover, as the respondent rightly points out (reply, n. 34 et seq.), it is hardly conceivable that such an obligation could also apply to an extraordinary and incomplete legal remedy, such as revision".* (emphasis added)

The "legal remedies available" within the meaning of Article R47(1) CAS Code, therefore, only include the binding, i.e. the mandatory preliminary proceedings, but not those legal remedies to which a party is optionally entitled or in which the entire subject matter of the dispute is not at issue in legal or factual terms.

It also follows from the wording "legal remedies available" that Article R47 CAS Code is not limited to one specific type of preliminary proceedings. Rather, the broad wording covers all forms of ADR. Thus, the parties' (mandatory) obligation to negotiate an amicable settlement in good faith is equally covered, as are mediation or conciliation proceedings at first instance. Of course, all of this only applies if these forms of ADR have been "bindingly" agreed upon by the parties. Article R47(1) CAS Code is by no means intended to reduce multi-tiered dispute resolution mechanisms only to those in which arbitration is combined with proceedings before an association tribunal. This also follows from Article R47(2) CAS Code. The provision reads as follows:

> *"An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned*

This provision is rightly understood to mean that CAS arbitration proceedings can be combined not only with (further) prior CAS proceedings, but also with any arbitration proceedings at first instance.[24] The latter follows from the fact that the distinction between a (genuine) arbitral tribunal and an association tribunal varies considerably in the various legal systems.[25] The comparatively high requirements for institutional independence that Swiss law places on a genuine arbitral tribunal are often not known abroad.[26] For this reason alone, the term "sports-related body" in R47(1) CAS Code should be interpreted broadly and also include arbitration proceedings at first instance in order to exclude jurisdictional problems of the CAS from the outset. It is true that Article R47(2) CAS Code only mentions CAS proceedings at first instance. However, the purpose of this provision is merely to clarify that no further appeal is possible before the CAS against an award that has been rendered in CAS appeals arbitration proceedings (within the meaning of Article R47 et seq. of the CAS Code). Thus, an appeal against a CAS award is only possible if the CAS has decided at first instance in a procedure other than an appeals arbitration procedure.

Finally, CAS case law also supports the broad interpretation of the term "sports-related body" advocated here. A representative quote from a CAS decision is given here, which reads as follows:[27]

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[24] This is also the constant practice before the CAS, see only appeals against arbitration awards by Sports Resolution (an English institutional sports arbitration tribunal - https://www.sportresolutions.com/about/sport-resolutions), CAS 2023/A/10025 & 10227.

[25] HAAS/NEUMAYER, Vereinsgerichte - eine rechtsvergleichende Untersuchung zum deutschen, österreichischen und schweizerischen Recht, in Festschrift Vedder, 2017, p. 842, 846 et seq.; HAAS/KAHLERT, in Weigand/Baumann (ed.) Practioner's Handbook on International Commercial Arbitration, 3rd ed. 2019, no. 21.112 seq.; HAAS, The Court of Arbitration for Sport in the Case law of the German Courts, Int. S.L.R 2015 (Vol. 4) 71, 72.

[26] Cf. HAAS/KAHLERT, in Weigand/Baumann (ed.) Practioner's Handbook on International Commercial Arbitration, 3rd ed. 2019, no. 21.113.

[27] CAS 2020/A/7129 & 7130.

"282 The Panel does not accept the suggestion that the CAS appeal provisions do not apply to arbitral awards. The appeal provisions of the CAS Code are applicable irrespective of whether the first instance proceeding is an arbitration procedure or a procedure before an association tribunal. Under the TACP, commission of offenses alleged by the PTIOs are referred to an AHO for decision. The AHO's decision, issued in the form of an award, constitutes a final disposition of the offenses charged and binds all the parties, including the Player and the Tennis Governing Bodies, represented by the PTIOs, subject to appeals under the CAS Code. As such, the AHO's decision is, for the purposes of Article R47 of the CAS Code, the decision of the relevant federation, association, or sports-related body (i.e. the ATP, ITF, WTA, GSB). Pursuant to the TACP, these decisions are subject to appeal to the CAS. Article R47(2) of the CAS Code also covers cases in which an appeal (to the CAS) is filed against a first instance award rendered by the CAS.

283 This type of two-tier arbitration system was first set up by the Australian Olympic Committee's Anti-Doping Policy (cf. RIGOZZI/HASLER, in Arroyo (ed.) Arbitration in Switzerland, 2nd. Ed. 2018, Article R47 para 46). The same approach was then adopted by the US Anti-Doping Agency ("USADA"). Thus, US athletes are afforded a first hearing in the so-called North American Court of Arbitration for Sport under the aegis of the American Arbitration Association ("AAA"). Furthermore, the CAS Anti-Doping Division ("ADD") rules provide that appeals against decisions of the CAS ADD can - under certain conditions - be lodged before the CAS under Articles R47 et seq. of the CAS Code.

284 The Panel concludes that two-tier arbitration proceedings are a common feature before the CAS and specifically admitted under the CAS Code. Further, the relevant rules on appeal proceedings in the CAS Code do not differentiate depending on the nature of the first instance decision. Irrespective of the latter, Article R57 of the CAS Code and the de novo principle apply. In exercising the discretion accorded to it under Article R57 (1) of the CAS Code, the Panel decides to issue a new decision, which replaces the Appealed Decision if the latter is found to be flawed. The Panel is convinced that doing so serves procedural efficiency and justice at the same time".

V. The legal consequences in the event of a breach of the mandatory obligation to carry out a preliminary procedure

It sometimes happens that a party breaches the mandatory obligation to initiate proceedings at the first stage and instead immediately brings an action before the arbitral tribunal. The question then arises as to whether and what legal consequences such a breach triggers.

A. The legal consequences model developed by the Swiss Federal Tribunal

The Swiss Federal Tribunal had to decide a case in which the parties had combined binding (i.e. mandatory) mediation/conciliation at the first stage with an arbitration clause at the second stage. One of the parties had – without initiating the mediation/conciliation proceedings – immediately brought an action before the arbitral tribunal in breach of its duty. The Swiss Federal Tribunal considered various legal consequences[28] as a result of the breach and then ruled as follows:[29]

2.4.4.1 As the Swiss Federal Supreme Court already noted in its first ruling on the subject, the way in which a breach of a mediation agreement requiring the parties not to proceed before an arbitral tribunal without first having recourse to this alternative dispute resolution method should be sanctioned is a highly controversial issue, which can be formulated in the following terms: Does a party who breaches a mediation agreement only have to pay damages to the opposing party, or does

[28] The proposed solutions in the various legal systems sometimes vary considerably, cf. LAL/CASEY/KAIDING/DEFRANCHI, Multi-tiered Dispute resolution Clauses in Inernational Arbitration - The Need for Coherence, ASA Bull. 2020, 796 et seq.

[29] SFT 142 III 296, consid.

it run the risk of its claim being declared inadmissible or even rejected (as it stands) by the arbitrator? (judgment 4A_18/2007, cited above, para. 4.3.1). ...

The principle that the breach of a contractual mechanism constituting a mandatory prerequisite to arbitration must be sanctioned has already been established in the three above-mentioned judgments and can therefore be taken for granted. ... This being the case, sanctioning with damages the party who refuses to submit to the obligation to have recourse to a mandatory prerequisite to arbitration or to pursue to the end the specific procedure in progress aimed at favoring an amicable settlement of the dispute is not a satisfactory solution. ... Declaring the claim inadmissible, or even rejecting it as it stands, and terminating the arbitration proceedings is undoubtedly not the most appropriate solution for a number of reasons: first and foremost, terminating the proceedings puts an end to the arbitrators' mission, so that the arbitral tribunal will have to be reconstituted in the event that the preliminary conciliation proceedings, which will have to be initiated or continued, do not result in the conclusion of an agreement; secondly, the question could arise as to whether the arbitrators initially appointed by the parties are still eligible to hear the dispute between them; moreover, bringing the original proceedings to an end will lengthen the proceedings and increase costs, to the potential detriment of both parties. ...

It must therefore be admitted that the preferable solution is to suspend the arbitration while setting a time limit that will allow the parties to proceed to conciliation, if the claimant party had initiated the arbitration proceedings without respecting this prerequisite, or to resume and complete conciliation proceedings that were validly initiated but had been terminated unduly. As we have seen, this is also the majority opinion in the legal literature ... It goes without saying that the suspension must be requested in limine litis ... . Moreover, when ordering a stay, the arbitral tribunal must indicate the conditions under which the proceedings pending before it will be resumed and set the parties a deadline by which the conciliation process must be completed, barring exceptional circumstances. Otherwise, a recalcitrant party may deprive its opponent of its right to obtain an arbitral award on the merits within a reasonable period of time without any justification, by prolonging the conciliation proceedings as long as possible (BOOG, ibid.). ..".

These legal consequences ordered by the Swiss Federal Tribunal in the event of a breach of the mandatory dispute resolution mechanism apply not only to the case in which (binding) mediation/conciliation is combined with arbitration, but also if arbitration is preceded by a (binding) duty of the parties to negotiate in good faith to settle the dispute amicably.[30] However, it is questionable whether the solution of the Swiss Federal Tribunal also serves as a model if the first stage is a binding procedure before an association tribunal. In this case too, the arguments of procedural economy speak in favor of suspending the arbitration proceedings in order to preserve the advantages associated with the *lis pendens* of the arbitration (blocking effect, appointment of the arbitral tribunal, interruption of the limitation period, etc.). The literature has not yet addressed the question of whether and to what extent the above decision of the Swiss Federal Tribunal also applies if arbitration is preceded by mandatory proceedings before an association tribunal.

It is to be noted in this context that if a state court rather than an arbitral tribunal would have jurisdiction at a final stage and the matter would brought before the court prematurely, i.e. without exhausting the legal remedies before the association tribunal, state courts would not suspend the proceedings, but dismiss the claim on the merits.[31] However, despite of this, I am of the opinion that when combined with

[30] Cf. GEORGE, in Geisinger/Müller et al (eds) ASA Special series No. 49, Good Faith and Pre-arbitral Alternative Dispute resolution Requirements, p. 117, 123 et seq.; BIRCHER, Eskalationsklauseln - mehrstufige Streitbeilegungsklauseln nach Schweizer Recht, Diss Uni Zürich, 2023.

[31] BezGer ZH causa sport 2005/3, 254, 257 seq.; HAAS/NEUMAYER, Vereinsgerichte - eine rechtsvergleichende Untersuchung zum deutschen,

arbitration, mandatory proceedings before an association tribunal should not be treated any differently from other forms of ADR. Thus, the better reasons speak for applying the model of legal consequences developed by the Swiss Federal Tribunal also in such circumstances.

B. The autonomy of the parties

Of course, the parties can deviate from the model of legal consequences developed by the Swiss Federal Tribunal and reach a different agreement. This is also expressed in the above decision of the Swiss Federal Tribunal when it states:[32]

> *"The principle of procedural economy therefore precludes the violation by the respondent of the mandatory prerequisite to arbitration from being sanctioned, in the present case, by a decision of inadmissibility on the grounds of lack of jurisdiction ratione temporis of the Arbitral Tribunal, since such a decision would put an end to the lis pendens and force the parties to repeat the process of appointing the arbitrators called upon to rule on the merits of the dispute between them. Consequently, suspending the arbitration proceedings until the conciliation proceedings have been completed is the appropriate solution to adopt here, and one that is also possible, as already indicated.* ***For the rest, since arbitration is a form of private justice in which the intervention of the State is only intended to provide a framework for the implementation of the autonomy of the parties, the role of the State court responsible for ensuring the proper functioning of such justice is to let it take its course as far as possible****. From this point of view, it seems more expedient to leave it to the Arbitral Tribunal, which is in control of the pending arbitration proceedings and has a better knowledge than anyone else of all the ins and outs of the case submitted to it for consideration, to decide on the terms of the suspension and then the resumption of the arbitration proceedings and, in particular, to set an appropriate time limit for this suspension. For this purpose, it may, for example, be inspired by the provisions contained in the ADR clauses proposed by ICC (see brochure p. 5 et seq. and the 'Mediation Clauses' published on the ICC website)".* (emphasis added)

If – e.g. – the parties have agreed to CAS arbitration at the final stage, then they have – by party agreement – deviated from the legal consequences model of the Swiss Federal Tribunal; for Article R47(1) CAS Code expressly provides that recourse to the CAS is only available "*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*". In view of this clear wording, a CAS panel is not authorized to suspend the arbitration proceedings in the event of a premature appeal. Rather, it follows from the above provision that CAS arbitration is not available as long as the mandatory legal remedies have not been exhausted. However, it is disputed whether the arbitral tribunal must then dismiss the premature arbitration claim for lack of jurisdiction or whether the claim must be declared inadmissible. The case law of the CAS is inconsistent in this regard as evidenced by the following CAS award:[33]

> *"77 It is debated in legal doctrine whether exhausting internal legal remedies is an admissibility requirement (pro: RIGOZZI/HASLER, Article R47 CAS Code, in: Arroyo (Ed.), Arbitration in Switzerland, Vol. II, 2018, p. 1583) or a matter of jurisdiction (pro: MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, 2015, p. 391). According to Rigozzi/Hasler "[i]t must be emphasized that although the "exhaustion of internal remedies rule" constitutes a mere admissibility requirement, it is treated as a precondition for CAS jurisdiction in the context of actions to set aside CAS awards based on Art. 190(2) (b) PILS, meaning that the issue can be*

österreichischen und schweizerischen Recht, in Festschrift Vedder, 2017, p. 842, 862; cf. also BELOFF/NETZLE/HAAS, in Lewis/Taylor (eds) Sport: Law and practice, 4th ed. 2021, D.2.97.

[32] SFT 142 III 269, consid. 2.4.4.2.

[33] CAS 2019/A/6298, no. 77 seq.

reviewed with unfettered powers by the Swiss Supreme Court". (RIGOZZI/HASLER, Article R47 CAS Code, in: Arroyo (Ed.), Arbitration in Switzerland, Vol. II, 2018, p. 1584).

78 The Panel favors considering the issue as an admissibility requirement. First, this is in line with the Parties' written and oral submissions that considered it to be an issue of admissibility. Second, because the requirement does not serve to distinguish the Panel's mandate from the Parties' access to justice before state courts. By submitting to CAS jurisdiction, the Parties wanted to exclude any kind of recourse to state courts. In particular, they did not want to enable a party to file an appeal before state courts in all matters, in which a CAS panel finds that the requirements for a "decision" within the meaning of Article R47 CAS Code are not fulfilled. Consequently, the issue whether or not a decision is appealable (within the meaning of Article R47 of the CAS Code) is not aimed at limiting the CAS jurisdiction vis-à-vis state courts. Instead, it is an admissibility issue, since - at the end of the day - the response to the question at stake is dictated by procedural principles such as procedural efficiency. This Panel finds itself comforted in its view by a comparison with the procedural rules regulating appeals before state courts. In such context whether or not a (preliminary) decision from a previous instance is appealable or not to a higher instance is a procedural matter of admissibility

C. Exceptions to the obligation to exhaust legal remedies

The Swiss Federal Tribunal provides for exceptions to its model of legal consequences, if the respondent's objection that the appellant has failed to exhaust the legal remedies is contrary to good faith. In this respect, the Swiss Federal Tribunal has stated the following:[34]

"Under art. 2 para. 2 of the Swiss Civil Code, manifest abuse of a right is not protected by law. This principle also applies to procedural matters. Abuse of rights may occur, for example, when the exercise of a right serves no useful purpose. Furthermore, the principle of good faith precludes a party who discovers an alleged procedural defect from not pointing it out immediately, at a time when it could still be corrected if necessary, but waiting until the end of the proceedings to invoke it at a later date if the proceedings have been unfavorable to him. A party who invokes the non-exhaustion of the mandatory conciliation prerequisite in its appeal against the award, even though it had not proposed this to the other party prior to the arbitration, is therefore acting in an abusive manner".

The CAS case law also provides for exceptions to the obligation to exhaust the mandatory legal remedies. Accordingly, a premature appeal to the CAS is not inadmissible if the mandatory legal remedies are "ineffective"[35] or do not serve a "useful purpose"[36]. For example, a CAS decision has stated the following:[37]

"For, only if the association's internal instances are willing and in a position to grant effective legal protection do the Appellants have to accept a restriction in their right to have recourse to the courts (or arbitral tribunals)".

Similarly, another CAS award stated:[38]

"In this vein, indeed, the CAS precedents that have dealt with the issue of the exhaustion of legal remedies have indicated that "the internal remedy must be readily and effectively available to the aggrieved party and it must give access to a definite procedure" (CAS 2007/A/1373, § 9.3, and CAS 2003/O/466, § 6.12, in International Sports Law Review, 2004, p. SLR-48; see also the awards in CAS 2008/A/1468; CAS 2008/A/1494; CAS 2008/A/1495; CAS 2008/A/1699; and the order in CAS 2007/A/1347)".

The literature predominantly follows this case law and does not sanction a premature filing

[34] SFT 142 III 269, consid. 2.4.3.1; cf. also STRUB, Vereinsgerichtsbarkeit im Sport, 2025, no. 663.

[35] CAS 2010/A/2243, 2358, 2385 & 2411, no. 15.

[36] CAS 2016/A/4812, no. 137.

[37] CAS 2008/A/1583 & 1584, no.5.3.2.4.

[38] CAS 2010/A/2243, 2358, 2385 & 2411, no. 14.

with the arbitral tribunal if the legal remedies at first instance *"do not exist or are illusory ... only if the association's internal instances are willing and able to grant effective legal protection does the respondent have the right to impose the exhaustion of internal remedies prior to the appeal to the CAS"*[39] or if *"... for instance, the internal hearing body deliberately delays the proceedings or refuses to deal with the case, or has made comments about the matter which make it clear that it will not be able to act with the necessary impartiality*"[40].

Multi-tiered dispute resolution clauses that provide for arbitration at the final stage are neither "ineffective" in the aforementioned sense, nor do they lack a "useful purpose". This is true irrespective of whether the first step provides for a proceeding before an association tribunal or some kind of non-authoritative dispute resolution mechanism (e.g. good faith negotiation, mediation or conciliation). Much has been said about the advantages of non-authoritative versus authoritative ADR.[41] In any event, fact is that escalation clauses providing for mandatory good faith negotiation, mediation or conciliation as an initial step prior to any arbitration are widely used in the commercial world because the parties consider them effective and useful. It will not be possible to decide otherwise for the world of sports and for sports arbitration more particularly. Only in case the various forms of alternative dispute resolution are combined with the aim of hindering the claimant's right to access to justice, the threshold of an abuse of rights is reached. However, this is not the case with a typical or classic multi-tiered dispute resolution clause.

D. Questions on the applicable law

In principle, the dispute resolution mechanism on the first and second tier are independent of each other. The formation and validity of the clauses at the first and second level must, therefore, be examined independently of each other in formal and substantive terms. Furthermore, the invalidity of the clause at the first stage does not affect the validity of the arbitration agreement at the second stage. Nevertheless, both stages are interdependent insofar as the route to arbitration is only available, once the binding procedure at the first stage have been completed. This interdependence of the two procedural stages causes particular difficulties, if different laws govern the various stages. The question then arises as to which law is to be used to assess whether the conditions to access the arbitral tribunal have been fulfilled. The law applicable to the arbitration proceedings or the law applicable to ADR mechanism at the first instance may be considered. The Swiss Federal Tribunal has decided that, for reasons of practicality, the *lex arbitri* governs both these issues:[42]

> *"In fact, it seems artificial to seek to treat separately, in the context under consideration, the arbitration procedure proper, on the one hand, and the mediation procedure lato sensu which precedes it, on the other, especially when it is a question of determining whether the latter is a mandatory prerequisite to the initiation of the former. Moreover, the case law and the legal literature do not distinguish between these two procedures, as far as the application of the aforementioned provision is concerned ... Subjecting the preliminary phase and subsequent arbitration to two separate laws would undoubtedly be inappropriate, and might even unnecessarily complicate the resolution of disputes between the parties, insofar as the arbitral tribunal would lose the benefit of the choice provided for in art. 178 para. 2 PILA if it were forced to take into account, when ruling on its own jurisdiction, mandatory procedural provisions of the lex causae relating to the*

[39] MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, 2015, Article R47 no. 34; cf. also BELOFF/NETZLE/HAAS, in Lewis/Taylor (eds) Sport: Law and practice, 4th ed. 2021, D.2.97.

[40] RIGOZZI/HASLER, in Arroyo (ed.) Arbitration in Switzerland, 2nd ed. 2018, Art. R47 CAS Code no. 34.

[41] GIRSBERGER/VOSER, International Arbitration, 5th ed. 2023, no. 32; GIRSBERGER/PETER, Aussergerichtliche Streitbeilegung, 2019; GUILLEMIN, in Ingen-Housz (ed.) ADR in Business: Practice and Issues across Countries and Cultures I, 2016, pp. 21 et seq.

[42] SFT 4A_124/2914, consid. 3.3.

preliminary phase of mediation. To do so would be all the more questionable when, as in the present case, the arbitral tribunal is forced to apply a provision taken from the code of civil procedure of the country whose law governs the subject-matter of the dispute - a country which, moreover, is the one in which one of the parties has its registered office - in order to decide on the mandatory or optional nature of a universally applicable alternative dispute resolution method established by an international federation. We will therefore give up".

Not only the question of whether the first-instance mechanism is mandatory, but also the question of whether the first-instance mechanism was dutifully followed (or not followed in breach of duty) is – if the arbitral tribunal has its seat in Switzerland – to be assessed in accordance with Swiss law.

E. The review of the arbitral tribunal's decision by the Swiss Federal Tribunal

It appears questionable at first sight, whether an award (at the second level) ignoring a fist instance binding ADR procedure may be appealed to the Swiss Federal Tribunal pursuant to Article 190(1) of the Swiss Private International Law Act (PILA). The provision exhaustively lists the grounds for setting aside an arbitral award. The failure of the arbitral tribunal to implement a mandatory first-instance alternative dispute resolution clause is not explicitly mentioned as a ground for annulment in Article 190 PILA. Nevertheless, the Swiss Federal Tribunal considers the premature acceptance of the arbitral tribunal's jurisdiction to be a ground for setting aside the award and argues as follows:[43]

"The Swiss Federal Supreme Court has considered the objection that a contractual mechanism that is a mandatory prerequisite to arbitration (attempted conciliation, appointment of an expert, mediation, etc.) has been breached under art. 190 para. 2 let. b of the PILA (RS 291) on the jurisdiction of the arbitral tribunal. It does so by default, as it is unable to link such a grievance to another ground for appeal within the meaning of this provision, thus implicitly admitting that such a violation is certainly not sufficiently serious to fall within the scope of the procedural public policy referred to in art. 190 para. 2 let. e PILA ... , but that it must nevertheless be sanctioned in one way or another.".

Consequently, the Swiss Federal Tribunal may review an arbitral award whether the multi-tiered dispute resolution clause agreed upon between the parties was complied with and, if necessary, set the award aside pursuant to Article 190(1) lit. b PILA.

VI. Summary

- Multi-tiered dispute resolution clauses are frequently encountered in sports arbitration. In most instances, preliminary proceedings before an association tribunal are combined with arbitration before the CAS. However, there are also other combinations in which the parties provide for good faith negotiation obligations, mediation or arbitration at the first stage.

- Whether the first stage must be completed before the arbitral tribunal can be seized depends on whether the parties have bindingly agreed to the first stage. Whether this is the case must be determined by interpretation. As a rule of thumb, a first instance procedure is mandatory in nature if it is placed within a legal framework providing for time limits within which certain procedural steps must be taken, referring to specific rules or if the framework sets out a clear process for discussions, defining when one step has failed and the next begun and how the next step can be started and by whom.

- The CAS Code deals with multi-tiered dispute resolution clauses in Article R47 CAS Code applicable to Appeals

[43] SFT 142 III 269, consid. 2.2.

Arbitration proceedings. Accordingly, a claim may be filed with the CAS in an appeals arbitration proceedings only, if the appellant has first exhausted the available legal remedies. The term "legal remedies" is to be understood broadly. It includes all mandatory or compulsory preliminary proceedings. These may consist of good faith negotiation obligations, mediation or conciliation, proceedings before an association tribunal or arbitration proceedings at first instance.

- If an appellant fails to conduct the mandatory preliminary proceedings before seizing the CAS, the question arises as to how such breach can be sanctioned. According to the Swiss Federal Tribunal, the arbitral tribunal must - in principle - suspend the arbitration proceedings in such a case and set a reasonable deadline for the parties to complete the preliminary proceedings at first instance.

- However, the parties may deviate from the above model of legal consequences by agreement. If the parties have agreed to arbitration before the CAS (in Appeals Arbitration proceedings), then such a deviating agreement exists, as Article R47 of the CAS Code stipulates that the arbitral tribunal is only mandated if the preliminary proceedings have been concluded beforehand. CAS panels therefore dismiss the claim either for lack of jurisdiction or inadmissibility in the event the appellant fails to exhaust the legal remedies.

- Exceptionally, the appellant is exempted from exhausting the mandatory preliminary proceedings if these preliminary proceedings would constitute an abuse of rights. According to CAS case law, this is the case if the conduct of the preliminary proceedings does not serve a "useful purpose" or does not offer "effective legal protection". If the parties have provided for good faith negotiation obligations, mediation or arbitration at the first stage, this threshold is by no means reached, as such escalation clauses are widespread in commercial practice because they are considered effective and useful. Nothing else applies to sports arbitration.

- Whether the parties have provided for mandatory or binding firs instance proceedings and whether the appellant has duly gone through the preliminary proceedings is to be assessed according to the law governing the arbitration proceedings.

- The decision of the arbitral tribunal as to whether the appellant in the case of a multi-tiered dispute resolution clause has duly complied with the first stage can be reviewed by the Swiss Federal Tribunal in the context of an action for annulment of the arbitral award pursuant to Article 190(1) lit. b PILA.

The "domino effect" on the standings and the necessary passive joinder in CAS arbitration: direct impact and indirect interest in sports sanctions with a ranking impact

Roque Caivano and Gustavo Abreu*

I. Introduction: From bilateral litigation to the complex integration of litigation in disciplinary sports law
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VII. Procedural burdens of the appellant, institutional duties of the federation and powers of the Panel in the integration of the litigation
VIII. Conclusions

Summary: I. Introduction: From bilateral litigation to complex joinder of parties in sports disciplinary law; II. The role of the sanction as a classifying criterion: restorative and disciplinary sanctions in sports law; III. 'Direct harm' and 'indirect interest': determining criteria for necessary passive joinder before the CAS; IV. The distinction between restorative and disciplinary sanctions in transnational sports law: AFA, CONMEBOL, and FIFA; V. Jurisprudential evolution of the CAS: from bilateralism to complex joinder of parties; VI. The regime of Article R41 of the CAS Code: normative prerequisites for joinder and third-party intervention; VII. Procedural burdens of the appellant, institutional duties of the federation, and powers of the Panel in joinder of parties; VIII. Conclusions.

I. Introduction: From bilateral litigation to the complex integration of litigation in disciplinary sports law

In the contemporary sports law system of football, the resolution of disciplinary disputes is no longer a strictly bilateral matter between a federation and an affiliated club or between a confederation and a national federation. The complexity of modern

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competitions, where the final standings determine not only sporting glory but also multimillion-dollar economic rights derived from promotions, relegations, and access to international tournaments, has transformed the legal landscape.

In this scenario, the disciplinary sanction of "point deduction" [1]stands out as one of the most disruptive measures: a decision that, although directed at a specific individual, inexorably alters the legal sphere of other competitors who often remain uninvolved in the arbitration process. The "domino effect" phenomenon in the standings thus poses a fundamental challenge to the notion of effective judicial protection.

When the Court of Arbitration for Sport (CAS) rules on an appeal regarding the legality of a points deduction or qualification for an international tournament, the resulting award not only affects the appellant but can also indirectly determine the sporting fate of other clubs or federations in the same category. This raises a critical procedural question: to what extent should these third parties be included in the *proceedings* to guarantee their right to be heard without hindering the speed required by the competition?

The central focus of this legal debate lies in Article R41 of the CAS Code, which governs the joinder and intervention of third parties under the premise of a "direct legal interest[2]." However, the practical application of this criterion in mass disciplinary proceedings has generated considerable uncertainty, highlighting the imperative need to clarify the procedural nature of such litigation and determine the actual scope of participation by parties not involved in the original dispute.

In this context, it is crucial to recognize that the third-party intervention regime is not isolated within the Appeal Procedure. On the contrary, Article R54 of the CAS Code acts as an essential normative bridge by expressly stipulating that the rules on joinder and intervention contained in Article R41 are fully applicable to appeals, thereby ensuring procedural consistency in the resolution of these disputes.[3]

This 'normative bridge' allows the Panel, despite being a review of a previous decision—where the *litigation* is usually closed

[1] The *"point deduction"* (or its equivalent expressions such as point removal, loss of match, point deduction, forfeit, or determination of result) is a disciplinary measure of a coercive or restorative nature imposed by a sports jurisdictional body, which consists of the deprivation, extinction or reassignment of the points obtained or to be obtained by a club or association, in order to sanction a serious breach of the regulations or restore the integrity of the competition.

[2] Art. R41.3 CAS Code provides that a third party wishing to participate must file an application "together with the reasons therefor." Art. R41.4 further establishes that participation requires being bound by the arbitration agreement or written consent of all parties, and that the President of the Division or the Panel shall decide on participation taking into account, in particular, the prima facie existence of an arbitration agreement. The requirement of a "direct legal interest" as a substantive threshold for such participation has been developed through CAS jurisprudence, notably CAS 2008/A/1583, Sport Lisboa e Benfica Futebol SAD v. UEFA & FC Porto Futebol SAD & CAS 2008/A/1584, Vitória Sport Clube de Guimarães v. UEFA & FC Porto Futebol SAD, award of 15 July 2008.

[3]The provisions of Article R41 are equally applicable to the appeal arbitration procedure by express reference in Article R54 of the same Code. Indeed, the latter establishes that "Article R41 applies *mutatis mutandis* to the appeal arbitration procedure," with the sole exception relating to the appointment of the Team Chairperson . Since challenges against point deductions are typically channeled through the appeal procedure before the CAS, the rules on third-party intervention and joinder are fully operative in this type of dispute. Regarding the general operation of multi-party arbitration before the CAS and the regime for intervention in both ordinary and appeal proceedings, see SANTIAGO SANTIAGO , Nicole A. and PINTÓ SALA, José Juan, *"Intervention and Multiple Arbitrations at the CAS* ," in PÉREZ TRIVIÑO, José Luis; FERRER DE ROBLES, Lucas; GARCÍA ALCARAZ, Antonio; GARCÍA SILVERO, Emilio and BERNASCONI, Michel (coords .), *Arbitration in the CAS: operation, procedure and most relevant practical issues* , Ed. Aranzadi, Pamplona, 2021, pp. 209-222.

between the sanctioning entity and the sanctioned party—to retain the power to integrate third parties whose direct legal interests may be affected by the resolution of the appeal, as happens in cases of point deduction with an impact on the overall classification.

This article aims to analyze the challenges of joining disputes *in* these cases, exploring the tension between the right to a defense for third-party clubs and the principle of procedural efficiency. Through an examination of the CAS regulations and Swiss *arbitration law* , we will seek to determine whether the summons criteria should aim for universality among the members of the category or for a technical specificity that identifies those directly affected. Ultimately, the objective is to propose clear criteria that provide legal certainty to a system where, at times, the most important matches are played in the arbitration tribunal and not on the field.

II. The function of the sanction as a classifying criterion: restorative sanctions and disciplinary sanctions in sports law

As a starting point, it is necessary to distinguish between restorative sporting sanctions and punitive disciplinary sanctions, both manifestations of sports disciplinary law. In short, the difference can be stated as follows: restorative sanctions aim to re-establish the regulatory order of the competition by rectifying a sporting result obtained in violation of the rules of the game, regardless of the subjective culpability of the offending entity.

Typical examples of this category include the deduction of points or the forfeiture of a match due to infractions that directly affect a specific game, such as fielding ineligible players, failure to appear or abandonment of the match, the suspension of a match due to a club's negligence, or the use of players with false identities or irregular documentation, among other situations. [4]In these cases, the legal consequence is not intended to punish reprehensible conduct in a disciplinary sense, but rather to reconstruct the result in accordance with the competition rules.[5]

In contrast, disciplinary sanctions aim to punish and deter conduct that violates the regulations and is considered reprehensible from a disciplinary perspective. These sanctions are based on a judgment of responsibility and culpability of the offending club and follow a strict punitive logic. [6]Examples of this category include the deduction of points imposed for serious breaches of *fair play rules. Financial play* , the repetition of serious incidents linked to violence or racism, match-fixing, or serious and repeated non-compliance with referee or disciplinary decisions, among others.[7]

This paper argues that both restorative sports sanctions and punitive disciplinary sanctions can be conceptualized as species of the same

[4]In this type of restorative sanctions, referred to interchangeably as "Loss of Match" or "Defeat by Withdrawal", the terminology used by the AFA's Regulations on Transgressions and Penalties is "Loss of match" (Art. 106); CONMEBOL uses the expression "Determination of the result" in its Disciplinary Code (Art. 7.3.e); and FIFA, in its Disciplinary Code, refers to it as "Defeat by withdrawal/ *forfeit* " (Art. 28).

[5]The legal effect produced, in most cases, is that the score is fixed administratively (usually 3-0 or 1-0) and the points are reassigned to the opponent, creating a direct impact and a subjective right for the rival.

[6]Its nature is strictly punitive: it is imposed as punishment for infractions that do not alter a specific sporting result but do affect the general integrity of the competition (e.g., financial debts, incidents of racism, disobedience).

[7]In this type of disciplinary sanction, the terminology used by the AFA's Regulations on Transgressions and Penalties is "Deduction of points" (Art. 109); CONMEBOL, in its Disciplinary Code, uses the expression "Reduction of points" (Art. 7.3.f); and FIFA "Deduction of points" (Art. 6.3.j). The legal effect is that the points are removed from the overall standings without benefiting any specific third party. The impact on other competitors is purely indirect or "reflective."

genus—Sports Disciplinary Law—provided that this is understood in a functional and systemic sense, and not exclusively as a strict sanction.[8]

From this perspective, the defining element of restorative sanctions is not the punitive nature of the consequence, but rather its function within the sporting regulatory system: to ensure the regularity, integrity, and credibility of the competition. This restorative function operates by reinstating the regulatory order of the competition, not by punishing reprehensible conduct in disciplinary terms, but by correcting a result obtained in violation of the competition rules.

Its main characteristics include: its automatic or objective application; the irrelevance of the subjective element (fault or intent); and its function of restoring competitive equilibrium. In these cases, the legal consequence does not respond to a punitive logic, but rather to the need to reconstruct the legally valid outcome in accordance with the rules of competition.

In contrast, disciplinary sanctions in the strict sense aim to punish unlawful or unsportsmanlike conduct and prevent its recurrence. They are characterized by: a punitive and deterrent nature; the need for a disciplinary procedure; the requirement of culpability; the existence of discretionary powers in imposing sanctions; and their inclusion in disciplinary codes. This category includes sanctions such as fines, suspensions, registration bans, and, in certain cases, the deduction of points as a disciplinary penalty.

From a systematic perspective, both categories can be traced back to sports disciplinary law in its broadest sense, as they constitute institutionalized normative responses to breaches of sports rules. However, they present substantial structural differences in terms of their foundation, purpose, and legal framework.

From a didactic point of view, a general rule with systematic, though not absolute, value can be outlined: in restorative sports sanctions, the deduction of points or the loss of the match usually implies awarding the result or the points to the opponent, because the aim is to reconstruct the legally valid result of the specific match. The infractions that give rise to this type of sanction refer to those that affect a specific match, with the central issue being not culpability but the legal validity of the result.

The typical consequences usually include, among others, point deductions, administrative forfeiture, an annulled result, a rescinded result, and the awarding of points to the opponent. Here, the points don't "disappear" but are reassigned according to the competition rules. The logic is restorative: the opponent acquires a positive and concrete sporting right.

In contrast, in disciplinary sanctions of a punitive nature, the deduction of points operates—unless otherwise stipulated by regulations—as an independent subtraction from the sanctioned entity, without automatic transfer of points to a rival, since the purpose is to punish conduct and not to correct a specific sporting result. Therefore, they require an assessment of culpability and

[8]Indeed, sports disciplinary law is not limited to the imposition of punishments: it also encompasses a restorative or restitutive function, aimed at rebuilding the competitive order disrupted by an infraction; a preventive and deterrent function, designed to discourage future anti-regulatory conduct through the threat of legal consequences; an organizational or regulatory function, which establishes the conditions for access to and continued participation in the competitive system, regardless of the offender's culpability; and a function of guaranteeing public order in sports, aimed at preserving the integrity, credibility, and level playing field of competition as a collective legal good. It is precisely this functional plurality that allows for the integration, under a single conceptual framework, of two categories of measures that, although structurally different in their foundation and effects, respond to the same institutional need: to ensure that the competitive sports system functions according to its own rules.

proportionality, and the typical consequence is the deduction of points from the overall standings without direct allocation to another club. Here, the points are legally forfeited because the punitive logic is one of punishment and deterrence, not the correction of a result.

III. 'Direct impact' and 'reflective interest': determining criteria for necessary passive joinder before the CAS

The fact that the deduction of points or the modification of the sporting result presents, in most cases, a double normative source — disciplinary codes and competition regulations— is not decisive, in itself, for the purposes of determining the correct subjective integration of the *litigation* before the CAS.

Indeed, what is truly decisive is neither the normative source of the measure nor its formal classification as a restorative or disciplinary sanction, but the concrete legal effect that said decision produces in the competition: in particular, whether the deduction of points or the loss of the match entails the attribution of a specific sporting benefit to one or more specific rivals, or whether, on the contrary, the points are limited to being deducted from the sanctioned club without direct reassignment to third parties.

In competitions organized under league or cumulative classification systems, the standings operate as a relational system in which the positions of the participants are necessarily interdependent. In this sense, any point deduction for a club generates a structural impact on the overall standings, insofar as it alters the relative position of the other competitors. This relational nature allows us to affirm that the competition functions, from a classification standpoint, as a zero-sum system, in which the loss of points by one club translates correspondingly into the relative improvement of others.

However, this impact is not uniform nor automatically equivalent to a direct legal infringement of the rights of all other participants. Only in those cases where the deduction of points entails the specific reassignment of results, the awarding of points to a particular opponent, or the direct modification of individual sporting rights, does the measure transcend the systemic level and project direct legal effects on third parties.

In other cases, the impact on the remaining clubs remains merely a reflection of the competitive logic, without in itself generating an immediate legal effect that would trigger specific procedural requirements. From this perspective, the third clubs not only have a sporting or economic interest, but also a potential legal interest, since their regulatory position depends on the same sanctioning act and their rights to compete, be promoted, relegated, or qualify are directly affected.

This configuration explains why, in certain scenarios, point deductions cannot be analyzed solely as a bilateral disciplinary sanction, but rather as a measure to restore the regulatory order of the competition. In such cases, the referee's decision that confirms or modifies a sporting result, or that overturns the point deduction, directly affects the legal sphere of third parties; the risk is not only theoretical, but concrete: modification of quotas, changes in promotions or relegations, alteration of international rankings.

Hence, the arbitration system must resolve the tension between the speed required by the competition and the guarantees demanded by the law. The practical significance of this distinction has been highlighted by specialized legal scholars, who have pointed out that in this type of dispute with the potential impact on third parties, "when filing an appeal before the CAS, it is almost inevitable that doubts will arise regarding passive standing *to sue* ," given that "there is no simple or unequivocal answer to the question" and that each case must be

examined in light of its specific circumstances.[9]

However, the jurisprudential analysis allows us to reach guiding conclusions that this work systematizes through the distinction between 'direct impact' and 'reflective interest' as determining criteria for the integration of the *litigation.*

IV. The distinction between restorative and disciplinary sanctions in transnational sports law: AFA, CONMEBOL and FIFA

A. The AFA regime: the Regulations on Transgressions and Penalties

The Argentine Football Association's (AFA) Regulations on Transgressions and Penalties (RTP) employ two distinct normative logics under the same term, "point deduction." On the one hand, there is the deduction of points as a restorative sporting consequence, aimed at reinstating the result in accordance with the competition rules; on the other hand, there is the deduction of points as a punitive disciplinary sanction, intended to punish unlawful conduct attributable to the club.
This distinction is central to the analysis of passive joinder in arbitration proceedings, since not all point deductions generate the same type of legal impact on third parties. For the purposes of this paper, we will take the Argentine national regulatory framework (AFA) as our point of reference, extending the analysis internationally to the provisions of the South American Football Confederation (CONMEBOL) and the International Federation of Association Football (FIFA). This triangulation of regulations will allow us to observe how the distinction between restorative and disciplinary sanctions is a standard of convergence in transnational sports justice.

A first category of cases can be identified in which the deduction of points from the offending entity is accompanied by the direct awarding of a sporting advantage to a specific third party, usually the opponent in the match. In these cases, the sanction entails awarding the match to the opposing team and granting them points, producing an immediate legal impact on the beneficiary. This change in the administrative outcome transforms the mere expectations of the third party into a vested subjective right, the potential reversal of which in higher courts would require their active participation in the proceedings.

The typical scenarios foreseen in the RTP include: improper lineup, i.e., inclusion of suspended or disqualified players [10]; non-appearance or abandonment, i.e., non-attendance at the match or withdrawal from the field of play [11]; and suspension due to the responsibility of the club, i.e., incidents that prevent the completion of the match due to the fault of one of the parties.[12]

In these scenarios, the match is forfeited by the offending party, and the opposing team acquires a positive and individualized sporting right. The procedural consequence is clear: a third party is directly affected, since any revocation of the sanction would imply the loss of a benefit already granted. This

[9]Cf. FERRER, Lucas and BELLVER, Reyes, "Disputes with affected third parties", in PÉREZ TRIVIÑO, José Luis; FERRER DE ROBLES, Lucas; GARCÍA ALCARAZ, Antonio; GARCÍA SILVERO, Emilio and BERNASCONI, Michel (coords .), *Arbitration in the CAS: operation, procedure and most relevant practical issues* , Ed. Aranzadi, Pamplona, 2021, p. 158.

[10]Article 91 of the RTP specifically sanctions the use of players who do not meet the eligibility requirements or are suspended.

[11]Articles 152 and 85 of the RTP regulate the loss of points for failure to appear at the stadium or leaving the field of play before the referee ends the match.

[12]Article 72 of the RTP determines the responsibility of a club in the suspension of a match (for example, aggression against the referee or lack of guarantees), which triggers the loss of the match under the terms of Article 106.

constitutes a necessary passive joinder of parties under Article R41 of the CAS Code.

A second category comprises situations where the point deduction does not entail the transfer of those points to a specific rival, but rather only affects the sanctioned club in the overall standings. In this scenario, the improvement in the relative position of the other competitors does not stem from an allocation of rights, but from the very mechanics of a zero-sum competition.

Therefore, the benefit to third parties is purely indirect or consequential, which negates their claim to be considered a necessary party in the process, as no individual legal sphere is affected. [13]Within the RTP, this category includes: administrative breaches, such as non-payment of debts or filing false declarations [14]; independent disciplinary sanctions, that is, deductions imposed for contempt or serious breaches of sporting order [15]; and cumulative penalties, such as increased sentences for recidivism or serious acts of bias.[16]

Here, the penalty is applied to the standings without the other clubs receiving any additional points. The relative improvement of third parties stems solely from the functioning of the competitive system (zero-sum) and not from the attribution of a right. From a procedural standpoint, the other clubs are indirect or consequential beneficiaries, and therefore there is no situation of legal defenselessness that would require their inclusion in the arbitration process, as their interest does not reach the level of subjective right.

B. The CONMEBOL and FIFA regimes: transnational convergence

The distinction developed from the AFA's Regulations on Transgressions and Penalties finds a clear correlation in the regulations of CONMEBOL and FIFA, which allows us to affirm the existence of a common structural pattern in international sports disciplinary law.

CONMEBOL's regulatory architecture is based on a structural distinction between its Disciplinary Code and the specific regulations of each competition. While the Code formally defines the measures of annulment, determination of result, and point deduction as tools of jurisdictional control, [17]the Club Manuals establish the specific operational obligations regarding the registration and eligibility of athletes through the COMET system.

Under this framework, non-compliance with eligibility rules triggers sanctions of an eminently restorative nature, the purpose of which is to reconstruct a legally valid outcome. [18]By awarding the score and points to the opposing team, the effect on the standings is configured as a restitution of sporting integrity and not as a mere institutional penalty, transforming the opponent's expectation into a vested right.

For its part, FIFA's Disciplinary Code provides similar provisions for both point

[13]For example, Article 18 of the RTP empowers the Disciplinary Tribunal to impose a deduction of 1 to 15 points from the standings table as an autonomous sanction for serious offenses.

[14]Articles 11 and 12 of the RTP establish sanctions for financial debts with other clubs, players or the AFA itself, as well as for falsification in institutional documentation.

[15]Articles 32 and 33 of the RTP govern recidivism, allowing the Court to apply additional point deductions as a strict disciplinary measure.

[16]Article 80 of the RTP provides, beyond the outcome of a specific match, for the deduction of points at the end of the competition for acts of violence or serious disturbances by members or supporters.

[17]The CONMEBOL Disciplinary Code (2021), Art. 7.3 (e) and (f), defines the determination of the result and the reduction of points as disciplinary measures applicable to member associations and clubs.

[18]The CONMEBOL Disciplinary Code (2021), Art. 19, establishes that in case of improper line-up the offending team will be declared defeated by 3-0, awarding the points to the rival.

deductions and result determinations. [19]Point deductions are conceived as an exceptional disciplinary sanction for particularly serious cases, such as non-compliance with financial decisions or serious acts of discrimination. [20]On the other hand, forfeiture (loss by withdrawal) serves as the legal consequence for infractions that directly affect the fairness of the match, such as fielding an ineligible player. [21]In these cases, the function is primarily restorative: to reinstate the official result, thus reinforcing the opposing team's position as the holder of a subjective right to the points in dispute.

This distinction is crucial for analyzing passive joinder in arbitration proceedings. When the regulations—whether FIFA or CONMEBOL—award points to a specific opponent, [22]that third party acquires an individualized sporting right that requires its participation in the proceedings. In contrast, when the deduction of points is a disciplinary sanction that only affects the sanctioned party's position (for debts or administrative offenses), the other competitors only have a vested interest that does not require their mandatory participation in the *litigation* .

C. Synthesis: the function of the sanction as a criterion for integrating the litigation

This systemic convergence reinforces the need for a functional analysis of joint litigation before the CAS. The court must consider the existence of an affected subjective right and not only the legal source of the measure. Ultimately, while each regulation may provide for specific configurations, the general rule indicates that if there is a transfer of issues (restorative function), the participation of the third party is a requirement for procedural validity.

Conversely, when a points deduction is applied (a punitive disciplinary measure), the federation or governing body is—generally—the only entity authorized to defend the sanction. In these cases, the other clubs only have a secondary economic or sporting interest, subject to the authority of the governing body, unless the specific rule exceptionally grants them a subjective right to challenge said deduction.

V. Jurisprudential evolution of the CAS: from bilateralism towards the complex integration of the litigation

Analysis of the jurisprudence of the Court of Arbitration for Sport allows us to verify that the issue of the integration of the *litigation* in proceedings on the deduction of points has not been resolved by means of a general and abstract rule, but through a process of case-by-case elaboration that, over more than a decade, has been distilling two clearly differentiated doctrines: the doctrine of direct impact and the doctrine of indirect interest.

A chronological examination of the relevant rulings reveals a progressive sophistication of arbitral reasoning, which has evolved from relatively simple formulations regarding third-party status to increasingly precise technical distinctions concerning the nature of the required legal interest. For the purposes of this analysis, the awards are arranged chronologically and grouped into three lines of jurisprudence: one that consolidates the doctrine of direct impact as a prerequisite for necessary joinder of parties;

[19]The FIFA Disciplinary Code (2025), Art. 6.3 (g) and (j), lists point deduction and forfeit as sanctions applicable to legal entities.

[20]The FIFA Disciplinary Code (2025), Arts. 21 and 15.6, establish the deduction of points for non-compliance with decisions (debts) and for serious incidents of discrimination, respectively.

[21]The FIFA Disciplinary Code (2025), Art. 19, regulates the improper line-up of players as a cause of automatic loss of the match by withdrawal (3-0), in accordance with the criteria of Art. 28.

[22]In such cases, the Competition Regulations of both FIFA and CONMEBOL must be analyzed, especially the specific provisions of the respective tournaments (e.g., World Cup Qualifiers or Copa Libertadores) that operate the automatic modification of the classification after a restorative sanction of result.

one that negatively defines the scope of indirect interest as a category that does not trigger joinder of parties *;* and one that addresses issues of passive standing and the distribution of procedural burdens.

A. The doctrine of direct impact: from the injured competitor to the holder of a consolidated sporting right

The first line of jurisprudence stems from a structural premise: not every impact on a club's ranking in a competition constitutes, in itself, a legal injury justifying its inclusion in the arbitration proceedings. For the obligation—or the right—to join the *dispute* under Article R41 of the CAS Code to be triggered, the challenged decision must produce direct, concrete, and individualized legal effects on the third party's sphere of rights.

1. CAS 2008/A/1583 & 1584 — SL Benfica v. UEFA & FC Porto: the starting point

The award in the case of *Benfica v. UEFA & FC Porto* constitutes the foundational precedent for the CAS jurisprudence regarding the standing of third parties in disciplinary proceedings with a ranking impact. The facts revolved around Benfica's challenge to a UEFA decision related to FC Porto's situation. Benfica argued that, as a competing club in the same league, it had sufficient legal interest to intervene in the proceedings, given that any modification of the sanction applied to Porto would affect the standings and, consequently, its own ranking.

The Panel rejected this reasoning with a formulation that would become a *leading case* in the matter: the mere status of a competing club is not sufficient grounds for legitimizing Article R41. The benefit that Benfica could obtain from a sanction against Porto—an improvement in the standings resulting from the rival's loss of points—is not a legal right to those points, but rather an indirect consequence of the functioning of the competitive system. The standings, as a zero-sum structure, produce automatic redistributive effects upon any change in the points of one of its members, but this does not make all the other participants holders of individualized subjective rights with respect to each of those changes.[23]

The relevance of this award to the thesis of this paper is twofold. On the one hand, it establishes the fundamental conceptual distinction between factual interest—or indirect interest—and direct legal interest as distinct procedural categories. On the other hand, it lays the groundwork for the question that underpins all subsequent case law: when does the position of a third party in a competition cease to be a mere factual interest and acquire the status of a protectable subjective right?

2. TAS 2019/A/6635 — CD Unión Comercio v. FPF & San Martín: the transfer of points as a defining milestone

The award in *CD Unión Comercio v. Peruvian Football Federation & Club Deportivo San Martín* is the most relevant ruling in this line of jurisprudence for the purposes of this paper, as it directly addresses the distinction between pure point deduction and the transfer of points to the opponent as the determining criterion for joinder of parties. The case involved a sanction for fielding an ineligible player, which entailed not only the deduction of points from the offending club but also the awarding of the result and the corresponding points to the opponent of the match. Club San Martín, the beneficiary of this transfer, had acquired a position in the standings based on those points. When the sanctioned club appealed to the Court of

[23]CAS 2008/A/1583 & 1584, paras. [31-32]. The arbitral panel held that the mere status of being a competing club in the same league does not, in itself, confer a direct legal interest within the meaning of Article R41 of the CAS Code. For such an interest to exist, it is necessary that the contested decision directly and personally affect the subjective rights of the third party.

Arbitration for Sport (CAS), San Martín intervened in the proceedings to defend its right to retain the points that had been awarded to it.

The Panel admitted the intervention and formulated the criterion that encapsulates and summarizes the thesis of this work: the transfer of points—unlike a mere deduction—produces a bilateral modification of positions in the standings. It not only subtracts points from the offending player but also positively attributes them to the opponent, generating a specific and individualized subjective right for the latter. Any arbitral decision that reverses this allocation directly affects the legal sphere of the beneficiary, who cannot be deprived of that position without having been heard.[24]

The forcefulness of this ruling was highlighted by authoritative legal scholars, who quoted the Panel's formulation verbatim: the appeal did not include as appellees the clubs that would be the most affected by the award that might be issued should the appeal be upheld. This raised the question of whether it is possible to issue a decision that, while granting a request from a particular club that affects its own interests, could simultaneously cause the relegation of another club without the latter having been previously notified of the proceedings. The Panel's response was, in its own words, categorically negative, based on the general principle of due process, which guarantees that every person has the right to access certain minimum guarantees, aimed at allowing them the opportunity to be heard and to assert their legitimate claims before a judge so that a fair and equitable outcome can be ensured within the process. [25]This same line was confirmed in the CAS 2016/A/4443 & 4444 and CAS 2019/A/6140 awards.

3. CAS 2020/A/7356 — ŠK Slovan Bratislava v. UEFA & KÍ Klaksvík : the forfeit and the administrative victory

ŠK Slovan Bratislava v. UEFA & KÍ Klaksvík award extended the doctrine of direct impact to the specific case of *forfeit* or administrative defeat. The case involved a UEFA decision that administratively awarded the result of a match to KÍ Klaksvík as a consequence of Slovan Bratislava 's failure to comply with regulatory obligations. The Panel confirmed that a *forfeit* or administrative defeat produces the same legal effects as a sporting result obtained on the field of play: the favored club acquires a specific right to the points and the resulting league position.[26]

This right is legally equivalent to that arising from a genuine result: its eventual elimination through an arbitral decision that reverses the *forfeit* deprives the beneficiary club of an already consolidated position, making it a necessary co-litigant whose participation is indispensable for the validity of the award. This award also introduces a relevant nuance that authoritative legal scholars call the "balance of interests theory": not every exclusion of a club from a competition automatically makes all other participants necessary co-litigants. The sole arbitrator held that clubs that derive their rights in the competition "solely and exclusively" from the organizing federation "will only be indirectly affected by the decision," with the federation being "best positioned to defend the common interests of the participants in said competition."[27]

This distinction complements and clarifies the direct impact criterion: when the rights of third parties are adequately represented by the federation—because they derive directly from its role as organizer—their individual participation in the proceedings is not necessary. Necessary joinder arises only when the third party holds a distinct and

[24]CAS 2019/A/6635, paras. [71-83]

[25]Cf. FERRER, Lucas and BELLVER, Reyes, *ob. cit.* , p. 158.

[26]CAS 2020/A/7356, para. [65]

[27]Cf. FERRER, Lucas and BELLVER, Reyes, *ob. cit.* , p. 159.

individualized right that the federation cannot represent on its behalf.

B. The doctrine of reflective interest: the limits of the standing of third parties

In parallel with the development of the doctrine of direct impact, the Court of Arbitration for Sport (CAS) constructed its counterpart: the category of indirect or consequential interest, which describes the situation of clubs that benefit from a sanction against a third party not through the awarding of a specific right, but simply through the redistributive effect of the competitive system. This second line of jurisprudence negatively defines the cases in which the intervention of third parties is not appropriate.

4. CAS 2016/A/4924 & 2017/A/4943 — Paolo Barelli v. FINA: ethical interest is not legal interest

The consolidated awards in *Barelli v. FINA* provided a crucial conceptual clarification: an interest in the correct application of sports rules—however legitimate from an ethical or institutional perspective—does not constitute a legal interest within the meaning of Article R41 of the CAS Code. The case involved a sports official who sought to intervene in a disciplinary proceeding, arguing that he had an interest in the correct application of the rules and in ensuring that violations did not go unpunished. The Panel rejected this claim: Article R41 requires a personal, current, and concrete legal interest; that is, that the decision to be adopted directly affects the rights of the petitioning third party.[28]

The significance of this award lies in the fact that it excludes from the scope of direct impact those who, without holding rights modified by the challenged decision, invoke general reasons—application of regulations, protection of the integrity of sport—to justify their participation. Only the holder of a directly affected subjective right has standing under Article R41.

5. CAS 2015/A/4151 — Panathinaikos FC v. UEFA & Olympiakos FC: the automatic replacement rule as a condition for the acquired right

The *Panathinaikos v. UEFA & Olympiakos* award constitutes a landmark ruling for the doctrine of reflective interest because it establishes, by way of negation, the precise conditions under which a club's position in the standings ceases to be a mere expectation and acquires the status of a protectable subjective right in replacement scenarios.

Olympiakos had qualified for the 2015/16 UEFA Champions League by winning the Greek Super League, but its eligibility was called into question by ongoing match-fixing investigations against its president, Mr. Marinakis. The UEFA Appeals Body provisionally admitted Olympiakos to the competition pending the outcome of those investigations. Panathinaikos, which had finished second in the Super League, appealed that decision before the CAS, arguing that it should replace Olympiakos if the latter were declared ineligible, and that it was therefore directly affected by the Appeals Body's decision.

The Panel dismissed the appeal for lack of standing to sue. While acknowledging that Panathinaikos occupied a unique position compared to other competitors by virtue of having finished as runner-up, the Panel held that this positional advantage was insufficient to establish a direct legal interest within the meaning of Article 62.2 of the UEFA Statutes. The Panel established a decisive distinction: for a club to be considered directly affected in a replacement scenario, it must demonstrate that its inclusion in the competition would be automatic and direct under the applicable competition rules, not

[28]CAS 2016/A/4924 & 2017/A/4943 paras. [97-105 and 115]

merely possible or contingent upon a discretionary decision by the Emergency Panel.

Since Panathinaikos could not establish that it would automatically replace Olympiakos under Article 4.08 of the UEFA Champions League Regulations—particularly given that the competition had already commenced and any replacement would fall within the discretionary jurisdiction of the Emergency Panel under Article 81.01—the Panel concluded that its position remained a mere expectation, not a consolidated right. Panathinaikos therefore lacked the necessary standing to sue[29].

The systematic contribution of this award is of great practical importance: it introduces the automaticity criterion as the dividing line between expectation and acquired right in replacement scenarios. A club's positional advantage in the standings—even when based on a specific regulatory provision—does not generate a protectable subjective right unless the regulatory mechanism operates automatically and without the intervention of any discretionary body. When the replacement depends on a decision by an emergency panel or any other body exercising discretionary judgment, the beneficiary's position remains in the domain of indirect interest, regardless of the statistical probability of the replacement occurring.

This criterion connects directly with the propositions established in *San Martín de Tucumán v. AFA* (CAS 2020/A/7096): the aspiration to benefit from the exclusion of a rival, although grounded in an actual ranking position, is an expectation conditioned on the normal or exceptional course of the competition, not a right whose ownership is determined by merit already achieved.

6. CAS 2020/A/7096 — San Martín de Tucumán v. AFA: the expectation of promotion as a non-protectable interest

The arbitration award *in Club Atlético San Martín de Tucumán v. Argentine Football Association (AFA)* applied the doctrine of vested interest to the specific context of Argentine football, with facts of particular relevance to this paper due to their connection with the AFA's promotion and relegation system. The case involved a dispute over the early termination of a tournament and the determination of the promotion system. San Martín argued that it had a legal interest in the outcome of the proceedings, given that its chances of promotion depended on the decision adopted by the Court of Arbitration for Sport (CAS).

The Panel rejected this claim, distinguishing between the acquired right to compete—which arises from accomplished sporting merit and is legally enforceable—and the expectation of participating in a competition, which depends on future organizational decisions by the federation and does not, in itself, constitute a vested subjective right. The aspiration to be promoted , although based on an actual ranking position, is an expectation conditioned on the normal course of the competition, not a right whose ownership is determined by merit already achieved.[30]

This award introduces a distinction of great practical use: not every favorable position in the standings generates vested rights. Specific sporting rights arise when the qualifying merit translates into a legally guaranteed position, not before. While the competition is underway and the final result is uncertain, clubs seeking to benefit from sanctions against third parties only have expectations, not rights. Along the same lines, the

[29] CAS 2015/A/4151, paras. 134-136 and 146. For the contrasting proposition that clubs acquire a specific and individualized right to a vacant place when the competition rules operate automatically in their favor—without the intervention of any discretionary body—see CAS 2008/A/1583 & CAS 2008/A/1584, paras. 31-32.

[30] CAS 2020/A/7096, paras. [68-80]

UAEERF & Ismail Mohd v. FEI award (CAS 2022/A/9018) confirmed that the same standard applies to national federations: the mere status of a supervisory body does not confer standing to intervene; it is necessary to demonstrate that the challenged decision directly affects the powers of the requesting body and not merely its abstract interest in the correct application of the rules.[31]

The significance of this award transcends the context of Argentine football. Legal scholars have highlighted that the Panel, in analyzing the lack of proper joinder of necessary parties, referred not only to Swiss law but also to Argentine law, concluding that the appellant club "did not properly join the necessary passive parties as it was not the only team with the possibility of competing for promotion." The Panel emphasized that "a decision in favor of the Appellant without the inclusion of Club X as a necessary passive party would entail a violation of the right to due process," relying on the precedent CAS 2004/A/594, where the CAS stated that " the Panel cannot make declarations which may Purport to affect the rights of absent parties ."[32]

This precedent from 2004, even earlier than the *leading case Benfica v. Porto* confirms that the rule of the unavailability of the necessary co-litigant is a structural principle of the CAS arbitration system that precedes and transcends any subsequent doctrinal elaboration.

C. Passive standing and procedural burdens: who is a party and who should be

The third line of jurisprudence deals with procedural issues related to the integration of the *litigation* : the correct identification of the passive subject of the appeal, the effects of disciplinary decisions on third parties in contexts of sporting succession, the scope of the control of the CAS on measures of an organizational nature, and the interaction between the categories of direct impact and indirect interest in complex cases.

7. CAS 2020/A/6713 — Nilmar Honorato da Silva v. FIFA: the absence of the necessary co-litigant as grounds for dismissal of the appeal

Nilmar Honorato da Silva v. FIFA award constitutes the most illustrative pronouncement of the CAS jurisprudence on the procedural consequences of the omission of the necessary co-litigant in disciplinary proceedings with patrimonial impact and also offers a relevant elaboration on the legitimacy of the creditor within the framework of art. 64 of the FIFA Disciplinary Code (FDC).
The events unfolded as follows: Brazilian player Nilmar Honorato da Silva had obtained a favorable ruling from the Court of Arbitration for Sport (CAS) in 2017, ordering *El Jaish FC* —a club affiliated with the Qatar Football Association—to pay him €400,000 in unpaid bonuses and compensation for contract termination. The debtor club failed to comply with the ruling and was subsequently removed from the Qatari commercial register and expelled from the QFA. In its place existed *Al Duhail SC,* which, according to the player, was the legal and sporting successor to El Jaish, the result of a merger publicly announced in April 2017.

The FIFA Disciplinary Committee, acting at the player's request, rejected the enforcement action and closed the case, considering that Al Duhail was neither El Jaish's legal nor sporting successor. Nilmar appealed this decision to the Court of Arbitration for Sport (CAS), suing only FIFA, without including Al Duhail as a party to the arbitration.

The Panel addressed two issues in successive order. The first was the player's standing to appeal a disciplinary decision in which he was

[31]CAS 2022/A/9018, paras. [68-72]

[32]Cf. FERRER, Lucas and BELLVER, Reyes, *ob. cit.* , p. 160.

not formally a party. The Panel recognized this standing based on established case law: while the procedures under Article 64 of the Disciplinary Disciplinary Rules are disciplinary in nature and primarily protect FIFA's interest in enforcing its decisions, the rule also serves the creditor, since the proceedings are only initiated at their request and the fine imposed on the debtor acts as an incentive for payment.

Consequently, when the Disciplinary Committee does not limit itself to punitive measures but resolves a substantive issue—such as legal succession between clubs, the creditor has a legally protected interest in that decision and is entitled to challenge it. The second issue was the determining factor in the outcome: the Panel noted that all of the players' claims declaring Al Duhail guilty of breach of contract, ordering payment, imposing fines and *transfer bans* , and referring the case to the Disciplinary Committee for sanctions—directly affected the rights and interests of that club.

Having not been summoned as a necessary defendant, Al Duhail was deprived of his right to be heard, to present evidence, and to make arguments in proceedings that undeniably affected his legal rights. The Court of Arbitration for Sport (CAS) concluded by majority vote that it lacked the power to grant any of the claims made and dismissed the appeal, upholding the Disciplinary Committee's decision.[33]

The contribution of this award is of paramount importance: the Panel precisely established a principle that operates as a structural rule: when an appellant's claims directly affect the legal position of a third party—whether expressly or as a necessary consequence of the requested ruling—that third party must be included in the proceedings as a necessary defendant. The omission of this requirement cannot be remedied by the mere presence of the federation as a party, since it cannot represent the specific interests of the absent club.

The correct subjective configuration of the *litigation* is not a formal requirement but a condition for the exercise of the CAS's jurisdictional power: without the necessary co-litigant, the Panel cannot rule on the merits, regardless of the merits of the appellant's claims. Along these same lines, the awards in *Bursaspor v. FIFA* (CAS 2020/A/6694) and *Van den Broek v. FIFA* (CAS 2020/A/6873) confirmed, respectively, that the correct identification of the respondent is a prerequisite for the admissibility of the appeal, and that sporting succession does not operate automatically but requires an express legal basis for the disciplinary consequences to be attributable to the successor.[34]

8. CAS 2020/A/7061 — Athletic Club v. UEFA: the probable impact as a criterion for integrating the litigation and the limits of the CAS's de novo power

Athletic Club v. UEFA award enriches the CAS jurisprudence on party joinder *with* a contribution of particular relevance to cases involving changes in rankings: the obligation to join the affected third party is triggered by a reasonable probability of harm, and not only by the certainty of an already established right. Furthermore, the award precisely defines the limits of the CAS's power *to introduce new* legislation regarding regulatory decisions adopted by sports bodies.

Athletic Club had qualified for the 2019/2020 Copa del Rey final, scheduled to face Real Sociedad on April 18, 2020. The COVID-19 pandemic led to the indefinite postponement of the final, agreed upon by both clubs and the RFEF (Royal Spanish Football Federation). Faced with this uncertainty, the RFEF unilaterally adopted a selection criterion that would give the Copa del Rey finalists a realistic chance of qualifying for the 2020/2021 UEFA Europa

[33]CAS 2020/A/6713, para. [65-68]

[34]CAS 2020/A/6694, paras. [79-83]

League (UEL). However, on April 30, 2020, the UEFA Executive Committee issued the contested decision, stipulating that, given the impossibility of determining a cup champion, the highest-placed club in the league that had not yet qualified through another route would qualify for the UEL—that is, the seventh-placed team in La Liga. Athletics, then in tenth place, was thus excluded from any possibility of accessing European competition via this route.

The Panel first addressed the scope of the CAS's power *of novo.* Athletic Bilbao requested that the Panel not only overturn UEFA's decision but also establish a new eligibility rule guaranteeing their qualification for the Europa League. The Panel rejected this request: the power *of novo* under Article R57 of the CAS Code authorizes the review of facts and law and the substitution of the contested decision with another, but not the amendment of sporting regulations. UEFA's decision was a general and abstract regulatory provision—not an act of individual application—the modification of which is the exclusive prerogative of the governing body. The CAS is a judicial, not a regulatory, body and lacks the power to replace the regulatory discretion of federations with its own.[35]

Second, the Panel introduced a procedurally decisive distinction between the appellant's various claims. The main claim—the mere annulment of UEFA's decision—has *erga omnes effects* and does not require the inclusion of third parties in the proceedings, because it restores all affected parties to their previous position without creating individualized advantages at the expense of any particular club. In contrast, the alternative claim—that the CAS declare Athletic eligible for the Europa League under certain conditions—directly affected the La Liga clubs with a chance of finishing seventh, who would lose that place. Without their inclusion as co-defendants, the CAS could not rule on that point.

The Panel adopted a broader position than that held in some previous precedents: no ruling can be issued if it directly affects the rights or legitimate interests of absent third parties, regardless of the merits of the claim. This formulation broadens the threshold of relevant impact: the procedural protection of the third party is not limited to their formally recognized subjective rights but extends to their legitimate interests directly compromised by the award.

The most original contribution of the award lies in the solution it offers to the problem of the indeterminacy of the affected third party. At the time the appeal was filed, no club had yet established a vested right to finish seventh in La Liga. The Panel ruled that this uncertainty does not relieve the appellant of its burden of proof: it should have issued an abstract summons to all clubs with a reasonable probability of finishing in that position. The burden of proof to include all parties in the *dispute* arises from a probable impact, not just a certain one. The indeterminacy of the third party is not an obstacle to its summons; what cannot be done is to issue an award that affects it without having given it the opportunity to be heard.

9. CAS 2022/A/8901 & 8902 — Lefkimmis & Kozani v. HFF: the synthesis of the two doctrines

The consolidated awards in *Lefkimmis & Kozani v. Hellenic Football Federation* represent the Court of Arbitration for Sport's most explicit attempt to integrate the two legal doctrines—direct impact and indirect interest—into a unified line of reasoning applicable to cases involving the modification of league standings. The Panel declared the claim to modify the standings inadmissible because the club that would be adversely affected by the change—the one that would be relegated as a result of the reclassification—had not been summoned to

[35]CAS 2020/A/7061, paras. [113-128]

court. However, the award itself acknowledged that the mere aspiration of another competing club to be promoted did not, in itself, generate sufficient standing to intervene, given that this aspiration remained an expectation and not an established right.[36]

The systematic contribution of this award is of the highest order: it establishes that both categories can coexist in the same case. The club, whose position would worsen as a direct consequence of the table correction has a direct legal interest that requires its inclusion in the proceedings. The club that hopes to improve its position through the same effect, on the other hand, has an expectation that does not reach that level. Including parties in the *litigation* requires identifying, for each potentially affected third party, whether their position constitutes an acquired right or a mere expectation.

10. CAS 2021/A/8225 — Hulubei v. RFF: differentiated passive legitimation according to the nature of each claim

The *Hulubei v. Romanian Football Federation award* introduces a remarkably precise distinction into the CAS case law: the passive standing of a third party is not a binary issue applicable to the case as a whole but rather depends on the nature of each claim considered individually. The same challenged decision may generate, with respect to the same absent third parties, a necessary joinder of parties regarding substantive issues without generating such joinder regarding strictly formal or procedural matters.

The sole arbitrator had to rule on the validity of two decisions by the Executive Committee of the Romanian Football Federation (RFF) approving transfers of participation rights in federation competitions. The appellant filed its appeal exclusively against the RFF, without including the four directly involved clubs as co-defendants. The sole arbitrator drew a crucial distinction: regarding procedural defects, the RFF could be sued alone, as it is best positioned to defend the regularity of its own internal procedures, and the impact on the clubs would be merely indirect. Regarding substantive issues, however, the federation could not be sued alone, because the substantive analysis required examining the specific legal situation of each absent club, which only they could defend.[37]

This award introduces a refined rule of procedural economy: the requirement for joinder of *parties* must be assessed on a claim-by-claim basis. When the ruling requires the arbitrator to rule on the individual legal status of a third party, that third party must be present. When the ruling only affects the institutional regularity of the federation's decision-making process, the federation can defend that aspect alone without infringing on the right to a defense of third parties.

D. Synthesis: the consolidated jurisprudential standard and its projection on the analysis of joint litigation

From the chronological examination of the analyzed awards, a consolidated jurisprudential standard emerges that can be formulated as follows: the integration of the *litigation* in proceedings on deduction of points before the CAS depends on the legal nature of the effect that the challenged decision produces on the sphere of rights of identifiable third parties, and not on the formal qualification of the sanction nor on the intensity of the factual impact on their classificatory position.

From the *leading case From Benfica v. Porto* (2008) to the *Lefkimmis & Kozani award* (2022), the CAS has refined the contours of this standard through four interrelated propositions.

[36]CAS 2022/A/8901 & 8902 paras. [175-179]

[37]CAS 2021/A/8225, CAS Bulletin 2022/02, sections 4 and 5

First: the status of a competing club in the same division does not, in itself, confer direct legal interest within the meaning of Article R41; the impact on the league position resulting from the operation of the zero-sum system is a secondary effect that does not trigger the obligation to join the *litigation*.

Second: when the sanction results in a transfer of points to the opponent, whether through the awarding of the result of a specific match, the application of a forfeit, or the administrative determination of the score, the beneficiary acquires a specific and individualized sporting right that makes it a necessary passive co-litigant. Conversely, when the replacement of an excluded participant depends on a discretionary decision rather than on the automatic operation of a regulatory provision, the beneficiary's position remains a mere expectation and does not trigger the obligation to join the litigation, as established in CAS 2015/A/4151, Panathinaikos FC v. UEFA & Olympiakos FC.

Third: When the sanction operates as an independent deduction of points, without transfer to a specific third party, the other competitors only have a vested interest, even if the improvement in their relative position is certain and quantifiable. In these cases, the federation adequately represents the collective interest of the competition without the need for third-party involvement.

Fourth: The distinction between acquired right and expectation is a decisive element in determining whether a third party has standing to sue or be sued. The former arises when the qualifying merit translates into a position guaranteed by the regulations; the latter exists while the competitive result is still subject to unfulfilled conditions.

This four-part standard aligns with the dogmatic distinction developed at the normative level, allowing us to assert that both are merely complementary expressions of the same structural need within the transnational sports justice system. Its most eloquent procedural confirmation is offered by the CAS 2017/A/5001 & 5002 *Bolivian Football Federation v. FIFA award,* where the CAS simultaneously applied both categories in the same proceeding, admitting federations with a direct legal interest as full parties and federations with a merely indirect interest as interested parties.[38]

The distinction between these two categories of procedural participation merely reflects, in the context of adversarial proceedings, the substantive distinction between direct impact and indirect interest that underpins the jurisprudence analyzed in this chapter. This fourfold standard incorporates and confirms in arbitral proceedings the distinction that this work has developed from a dogmatic perspective: the difference between restorative sanctions—which generate necessary joinder of parties—and punitive disciplinary sanctions—which do not—is simply the regulatory expression of the criterion that the Court of Arbitration for Sport (CAS) has refined from its own case law.

VI. The regime of Art. R41 of the CAS Code: normative prerequisites for accumulation and third-party intervention

The CAS Code is based on a fundamental principle of arbitration: no one may be incorporated into the arbitral proceedings without being bound by the arbitration agreement or without their express consent (Art. R41.4). Consequently, joinder *and* intervention are not mechanisms to artificially expand the adversarial process, but rather exceptional instruments designed to ensure the consistency of the award and prevent decisions with *ultra partes effects,* provided the legal requirements are met.[39]

[38]CAS 2017/A/5001 & 5002,. Cfr. SANTIAGO SANTIAGO and PINTÓ SALA, *op. cit.* , p. 221.

[39]COCCIA argues in this regard that "the rules on joinder and intervention cannot be used to circumvent the main condition of all arbitration: that all parties

From this perspective, both joinder and intervention share two essential prerequisites: (i) the existence of a common arbitral agreement or written consent; and (ii) the standing of the third party, understood as the demonstration of a clear, concrete, and legally relevant interest in the outcome of the dispute. [40]According to a judgment of the Swiss Federal Court (SFC), intervention is the act by which a third party who was not originally a party to the proceedings requests to participate in them, and the expression "intervention of a third party" must be interpreted according to the principle of reliance, that is, in accordance with the objective and good-faith meaning attributed to it by the arbitrators.[41]

However, from the perspective of permissible forms of participation, joinder and intervention are not symmetrical. As authoritative legal scholars point out, Article R41.2 — concerning the joinder of additional parties at the request of the appellee — is broadly worded with respect to the forms of third-party participation, granting the Arbitral Panel discretion in determining the third party's status and rights in the proceedings. Article R41.3, concerning voluntary third-party intervention — in contrast, expressly requires that the third party wishes to participate "as a party," thus imposing a higher standard.[42]

This asymmetry explains why, in practice, a third party whose interest does not reach the level of a direct subjective right may be admitted under Article R41.2 with a limited procedural status, without this implying full passive standing. As discussed in the preceding sections, the practical application of these requirements in point deduction proceedings depends on the legal nature of the challenged measure: when the sanction results in a transfer of points to a specific rival, the direct impact on individualized subjective rights justifies—and sometimes requires—joining the *litigation* through the mechanisms of Article R41.

When, on the other hand, the points deduction operates as an independent disciplinary sanction without reassignment to third parties, the impact on the other clubs is merely indirect and does not trigger the obligation to join the *dispute*. The CAS Code itself offers a flexible solution for intermediate scenarios through the concept of "interested parties," allowing the limited participation of third parties who, without having full passive standing, may be affected by the outcome of the award.

This mechanism, developed by the CAS jurisprudence through the fifth paragraph of Article R41.4, has been characterized by the Court itself as a way to allow, "in the interests of justice," parties without formal *locus standi* but whose interests could be substantially

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have agreed that their dispute will be resolved by a specific arbitral tribunal": "a third party may participate as a party in an arbitration already pending between other parties in two situations, joinder or intervention, but subject to a common condition: that it is bound by the same arbitration agreement that binds the original parties to the dispute or that it accepts such participation in writing" (CAS 2006/A/1155, *Giovanella v. FIFA* , para. 54). See COCCIA, Massimo, "International Sports Justice: the Court of Arbitration for Sport", *International and Comparative Sports Justice* , European Sports Law and Policy Bulletin , Issue I-2013, ISSN 2039-0416, p. 50.

[40]Similarly, "participation in pending arbitration proceedings as a party can only occur in two ways, namely: joinder *or* intervention, both requiring the existence of an arbitration agreement" (CAS 2009/A/1870, *AMA v. J. Hardy & USADA* , Award of 21 May 2010, para. 23; CAS 2006/A/1155, *Giovanella v. FIFA* , para. 54, cited in COCCIA, *International Sports Justice* , p. 50). Cf. NOTH and HAAS, *Commentary on the CAS Procedural Rules* , in: *Arbitration in Switzerland — The Practitioner's Guide* (M. Arroyo ed.), Wolters Kluwer, 2013, p. 1526.

[41]Cf. MAVROMATI, Despina and REEB, Mathieu, *The Code of the Court of Arbitration for Sport. Commentary , Cases and Materials* , Wolters Kluwer, The Netherlands , 2015, p. 294, citing the precedent of the Swiss Federal Court 4P.176.2001 of 16 October 2001, *Societé X.* (ATF 128 III 50, Bull. ASA 2002, p. 97, note Scherrer); see also KNOEPFLER, F. and SCHWEIZER, Ph ., *Arbitrage International* , Schulthess, Basel, 2003, p. 615.

[42]Cfr. SANTIAGO SANTIAGO , Nicole A. and PINTÓ SALA, José Juan, *op. cit.* , p. 210.

affected by the outcome of the arbitration to contribute to the factual and legal information available to the Panel before it reaches a decision. [43]This tool allows for a balance between protecting the right to a defense and ensuring procedural efficiency, preventing both a lack of due process and the unnecessary proliferation of parties.

Its most relevant application for the purposes of this work is that which arises from the CAS award 2017/A/5001 & 5002 *Bolivian Football Federation v. FIFA*. In that procedure, the CAS expressly distinguished between two categories of federations requesting intervention: the Chilean Football Federation and the Peruvian Football Federation — direct adversaries in the matches subject to sanction— were admitted as full intervening parties, as they hold a direct legal interest derived from the transfer of points produced by the sanction.

In contrast, the Argentine Football Association, the Colombian Football Federation, the Paraguayan Football Association, and the Uruguayan Football Association—competitors in the same qualifying phase whose scores would not change directly based on the CAS decisions—only participated as interested parties with limited procedural rights, due to their merely indirect legal interest. [44]This distinction confirms, in concrete procedural terms, the central doctrinal criterion of this work: the transfer of points to the opponent generates a direct legal interest that requires full participation in the *litigation;* the qualifying impact on the other competitors generates only a vicarious interest that allows, at most, limited participation as an interested party.

It is also essential to remember that the provisions of Article R41 are not limited to ordinary arbitration proceedings. Article R54 of the CAS Code expressly states that the rules on joinder and intervention contained in Article R41 are fully applicable to appeal proceedings *mutatis mutandis,* with the sole exception of the appointment of the Team Chairman. Since challenges against point deductions are typically channeled through appeal proceedings, this regulatory bridge guarantees the procedural consistency of the system and ensures that the requirements for joinder of *parties* operate with equal force in both proceedings.

In short, the provisions of Article R41 confirm that the joinder of *parties* does not depend on an abstract logic of potential impact, but rather on the specific legal nature of the challenged measure and the type of impact it has on identifiable third parties. The correct classification of the points deduction—as a punitive disciplinary sanction or as a measure to restore the regulatory order of the competition—is therefore crucial not only on a substantive level, but also in defining the scope of the adversarial process and preventing decisions with effects *beyond the parties involved.*

VII. Procedural burdens of the appellant, institutional duties of the federation and powers of the Panel in the integration of the litigation

The configuration of point deductions as a measure that, in certain cases, produces direct legal effects on third parties necessarily raises the question of who assumes the procedural burden of joining the *litigation* when a federation decision is challenged before the CAS. From a technical perspective based on

[43] Cf. SANTIAGO SANTIAGO and PINTÓ SALA, *op. cit.* , p. 220, citing CAS 2011/O/2574, *UEFA v. Olympique des Alpes SA/FC Sion* .

[44]CAS 2017/A/5001 & 5002, Bolivian Football Federation v. FIFA, analyzed in SANTIAGO SANTIAGO and PINTÓ SALA, *op. cit.* , p. 221. The Arbitral Panel highlighted that the federations with an indirect interest "would be affected by the results of the proceedings before the CAS, which would have an impact on the final ranking of the preliminary phase of the 2018 World Cup", but that "the score of the teams, except for the FFC and the FPF, would not change based on the decisions of the CAS, this being therefore an indirect legal interest that did not meet the requirements of an intervention under articles R41.3 and R41.4 of the CAS Code".

the CAS Code of Procedure—specifically Articles R41.2 and R41.3—and general procedural doctrine, the difference between "joining" and "intervention" lies not in the outcome, because both result in a third party entering the proceedings, but rather in the direction of the procedural impetus and the nature of standing.

In joinder (Art . R41.2), the procedural impetus comes from one of the original parties—usually the appellee, such as the AFA, CONMEBOL, or FIFA—who requests the inclusion of a third party not included in the initial claim. For example, a club appeals a points deduction to the CAS, and the Federation requests the joinder of the opposing club that benefited from those points, so that it can defend itself and the award will be binding on both parties. In intervention (Art. R41.3), on the other hand, the impetus is voluntary: it is the third party who, on its own initiative, appears before the CAS requesting to participate because it believes that the outcome of the proceedings affects its interests.

Joinder of parties seeks to consolidate the *litigation* when the award cannot be effectively rendered without the participation of a third party, that is, when a necessary passive joinder of parties is established. The objective is to ensure the effectiveness of the award and avoid contradictory decisions. Intervention, on the other hand, seeks to protect an interest: the third party must demonstrate a "relevant legal interest," and while their presence is not always essential for the proceedings to move forward, they are allowed to participate so that their rights are not violated without being heard.

Regarding joinder, the requesting party has the burden of convincing the Arbitration Panel of the necessity of the third party's presence, usually arguing that the third party is bound by the same arbitration agreement pursuant to Article R41.4. In contrast, in intervention, it is the third party itself that must prove its standing, demonstrating a direct and current legal interest that enables it to join the federative entity in the passive position of the process.

Regarding procedural opportunity, the appellee must request consolidation in its response; otherwise, its right to compel the third party to appear is forfeited, unless the parties unanimously agree. In intervening, the third party has ten days from the date it became aware of the arbitration to request to join, provided this is before the end of the written phase or the hearing.

It should be noted that a request for joinder must necessarily originate from an appellee, not an appellant, since the latter had the opportunity to designate as many appellees as they wished to involve in the proceedings when filing the request for arbitration or the appeal brief. [45]Article R41 of the CAS Code does not, in the abstract, impose an automatic or general obligation to summon potentially affected third parties. The CAS procedural model is structured, in principle, on a vertical and bilateral logic: the appeal is directed against the association or federation that issued the contested decision, which appears as the appellee in defense of the legality and validity of its own act.

However, this bilateral logic is not sufficient in those cases where the contested sanction—in particular, a point deduction of a restorative nature—transcends the

[45]SANTIAGO SANTIAGO and PINTÓ SALA clarify that only a defendant or appellee may request the inclusion of a third party pursuant to Article R41.2. This request must be submitted with the response to the claim or the brief in appeal, and may be made at a later time only if the other parties do not object, and in no case after the hearing. A third party wishing to intervene voluntarily has ten days from the date they became aware of the arbitration to submit their request, always before the hearing or the close of the written phase. This asymmetry in deadlines reflects the different nature of the procedural impetus in each case: in joinder, it is the appellee who summons the third party; in intervention, it is the third party who appears. See SANTIAGO SANTIAGO and PINTÓ SALA, *op. cit.* , pp. 212-215.

federation-sanctioned club relationship and generates direct, concrete and individualized legal effects on identifiable third parties, as occurs when the deduction of points results in the awarding of a result, the allocation of points to a rival club or the modification of already consolidated sporting rights.

In such cases, although the CAS Code does not establish an automatic formal obligation, the Federation assumes a functional procedural responsibility in the integration of the *dispute*. This is because it is the Federation that issued the decision generating the complex legal effect; that has full knowledge of the competition's regulatory framework; and that acts as the institutional guarantor of competitive order and the correct application of the regulations.

From this perspective, the Federation cannot rely on a purely bilateral conception of the dispute nor subsequently invoke a supposed lack of protection for third parties when it itself has created, through its decision, a legal situation that directly affects the subjective rights of other clubs. The failure to promote intervention mechanisms, or at least to alert the Court about the existence of third parties with compromised individual rights, cannot operate to its procedural advantage.

This does not imply improperly transferring a rigid civil joinder logic to the arbitration procedure, but rather recognizing that, in the CAS system, the distribution of procedural burdens is functional and purposeful. The appellant has the burden of not seeking a remedy that affects the rights of absent third parties; the Federation has the institutional duty not to conceal or minimize the *ultra partes effects* of its own decision; and the CAS ultimately retains the power to order the intervention of third parties (Art. R41.3), limit the scope of the award, or reject the appeal.

In contrast, when points are deducted solely as a disciplinary sanction without transferring points or altering specific results, the impact on other clubs is merely indirect, stemming from the competitive nature of the league system as a zero-sum game. In these cases, there is no individualized subjective right held by third parties, no risk of legal defenselessness arises, and the Federation adequately represents the collective interest of the competition, without the need to involve other clubs in the *dispute*.

This distinction reinforces the central idea of this paper: not every points deduction requires the same procedural solution. Ultimately, the deciding factor for the tribunal is not the formal name of the sanction, but its material effect: it is crucial to establish whether there is a transfer of points to the opponent or whether the change in the situation of the offending entity directly and individually affects the sporting ranking of another entity. It is this concrete impact on the legal sphere of a third party, and not the theoretical classification of the measure—whether punitive disciplinary or restorative—that defines the need for their participation in the arbitration before the CAS.

From a practical perspective, legal doctrine has formulated a highly useful guiding principle that complements the preceding analysis: when faced with uncertainty or doubt regarding the procedure, it is advisable to include all parties who could be affected by the decision. As this doctrine points out, "the consequence of naming an appellee or defendant who is not entitled to participate in the case will normally be their exclusion and the possible imposition of administrative and legal costs arising from their participation, which seems, a priori, much more reasonable than the disastrous consequence of failing to name a party who should have been included, leading to the complete dismissal of our claim."[46]

[46]Cf. FERRER, Lucas and BELLVER, Reyes, *ob. cit.* , p. 160.

This practical rule accurately summarizes the asymmetry of consequences that characterizes the necessary passive joinder in the TAS system: including too many is remediable; omitting the necessary joinder is not.

VIII. Conclusions

This paper has addressed the integration of *litigation* before the Court of Arbitration for Sport in proceedings concerning sports sanctions with a ranking impact, with particular reference to point deductions. The following conclusions can be drawn from a joint examination of the applicable regulations and the CAS case law.

First. The distinction between restorative and disciplinary sanctions is not merely dogmatic but functionally operational.

Sports disciplinary law encompasses under the same name —point deduction or point removal— two structurally different categories: restorative sanctions, which restore the legally valid result of a match and positively transfer points to the opponent, and punitive disciplinary sanctions, which extinguish points from the offender without awarding them to any specific third party.

This distinction is not a theoretical artifice but the axis on which the determination of the necessary passive joinder in arbitration proceedings rests and finds its basis in the functional plurality of sports disciplinary law, which is not exhausted in the imposition of punishments but also includes restorative, preventive, organizational and public order guarantee functions in sports.[47]

The comparative analysis of the regulations of the AFA, CONMEBOL and FIFA confirms that the three systems incorporate this functional duality with structural coherence, which allows us to affirm their status as a transnational standard of sports disciplinary law.

Second. The determining criterion of passive joinder is the concrete legal effect of the sanction on the sphere of rights of identifiable third parties, and not its formal name or its normative source.

What triggers the obligation to integrate the *litigation* is not that the sanction comes from a disciplinary code or a competition regulation, nor that it is formally classified as restorative or disciplinary, but that its legal effect produces a direct, individualized and concrete modification in the position of a specific third party.

When the sanction transfers points to a rival — through the awarding of the match result, the application of the *forfeit* or the administrative determination of the score — , that rival acquires a consolidated subjective sporting right that requires its incorporation into the process as a necessary defendant.

When, on the other hand, the sanction operates as an autonomous deduction without reassignment, the other competitors only experience a relative improvement derived from the functioning of the competitive system as a zero-sum game, which constitutes a mere reflex interest that does not activate joint litigation.

Third. The CAS jurisprudence has built, over fifteen years, a consolidated standard that confirms and enriches the functional criterion.

From the *leading case From Benfica v. Porto* (CAS 2008/A/1583) to the most recent awards analyzed, the CAS has been refining the contours of the direct impact criterion through four interrelated propositions that today form a firm jurisprudential standard: (i) the mere status of competitor in the same

[47] On the functional plurality of sports disciplinary law, see *above* note [7], where the distinction between the restorative or restitutive function, the preventive and deterrent function, the organizational or regulatory function and the function of guaranteeing public order in sports as manifestations of sports disciplinary law in a broad sense is developed at length.

category does not confer direct legal interest; (ii) the transfer of points to the rival generates necessary passive joinder; (iii) the autonomous deduction of points without transfer only produces indirect interest; and (iv) the distinction between acquired right and expectation is decisive to determine whether the third party has standing.

This four-part standard aligns with the dogmatic distinction developed at the normative level, allowing us to assert that both are merely complementary expressions of the same structural need within the transnational sports justice system. Its most eloquent procedural confirmation is offered by the CAS 2017/A/5001 & 5002 *Bolivian Football Federation v. FIFA award,* where the CAS simultaneously applied both categories in the same proceeding, admitting federations with a direct legal interest as full parties and federations with a merely indirect interest as interested parties.

Fourth. The CAS jurisprudence has broadened and refined the standard in dimensions that previous normative analyses had not anticipated.

Beyond the basic dichotomy of transfer/extinction, the awards analyzed have incorporated into the standard a series of clarifications that significantly increase its capacity to resolve complex situations.

The first of these developments, elaborated in *Athletic Club v. UEFA* (CAS 2020/A/7061), extends the burden of integration to cases where the right of the third party has not yet been consolidated but the impact is probabilistically certain: uncertainty about the identity of the third party does not exempt the appellant from his obligation to cite him, the reasonable probability of impact being sufficient to activate that burden.

The second, formulated in *Hulubei v. RFF* (CAS 2021/A/8225), introduces a distinction of remarkable technical precision: the same challenged decision may require the presence of third parties with respect to substantive issues without requiring it with respect to procedural defects, which makes it necessary to calibrate the requirement of integration claim by claim.

The last two developments complete the picture. On the one hand, a purely annulment claim—unlike a positive constitutive claim—produces *erga omnes effects,* restoring all those affected to their previous situation without creating individualized advantages, and therefore does not necessarily require the inclusion of third parties in the proceedings. On the other hand, the CAS's power *of de novo* has an insurmountable structural limit: the court cannot replace the regulatory discretion of the federations nor issue sporting rules in place of the governing bodies.

Fifth. The integration of the litigation in the CAS does not follow a logic of rigid civil joint litigation but a functional and finalistic model, with differentiated roles for the appellant, the federation and the Panel.

The CAS Code does not impose an automatic obligation to summon all clubs potentially affected by the outcome of the proceedings. The model is selective and purposeful: the appellant bears the burden of not requesting rulings that affect the rights of absent third parties and of identifying—even abstractly, based on the reasonable probability of impact—those who should be summoned as co-defendants.

The federation, as the author of the decision generating the complex legal effect, assumes a functional procedural responsibility: it cannot invoke the bilateral nature of the process when it itself created a legal situation that affects the rights of individualized third parties, and it has the duty to warn the court about its existence.

The Panel, for its part, retains the power to order the intervention of third parties, limit the scope of the award or reject claims that

cannot be decided without the presence of those directly affected.

From a practical perspective, and as authoritative doctrine points out, [48]given the uncertainty about who should be cited as co-defendants, it is advisable to include any party that could be affected by the decision, since the consequences of omitting a necessary co-litigant are structurally more serious and irreparable than those of including an appellee without standing, whose subsequent exclusion is procedurally possible.

Sixth. The omission of the necessary co-litigant is not a remediable defect and produces definitive procedural consequences.

As demonstrated by the *Nilmar v. FIFA award* (CAS 2020/A/6713), the absence of the directly affected third party deprives the Panel of the power to rule on the merits, regardless of the merits of the appellant's claims. This rule admits no exceptions for reasons of procedural economy or sporting urgency.

The CAS cannot issue an award that modifies the legal position of someone who was not heard, because that would violate the fundamental principle of *due process. alteram partem* and the Swiss guarantee of the right to a defense that informs the applicable *lex arbitri* . The presence of the necessary co-litigant is therefore not a formal requirement but a condition for the exercise of the court's jurisdictional power.

Seventh. The system presents an unresolved tension between the right of access to justice of the creditor of an award and the requirements of the adversarial process.

The analysis of sports succession cases — in particular *Nilmar v. FIFA* and *Van den Broek v. FIFA* — reveals a tension that the CAS jurisprudence has not yet resolved satisfactorily: when the debtor club has disappeared and its successor was not summoned, the creditor is left without effective protection despite having obtained a favorable award.

This tension is not new or circumstantial but structural to the system: already in 2004, the CAS stated in case CAS 2004/A/594 that *" the Panel cannot make declarations which may Purport to affect the rights of absent " parties "* , a formulation that demonstrates that the impossibility of ruling on the rights of absent parties is a foundational principle of the sports arbitration system that precedes and transcends any subsequent jurisprudential elaboration.

What cases of sporting succession reveal is that this principle, when combined with the disappearance of the original defendant, creates a legal vacuum that the system has yet to resolve. The Court of Arbitration for Sport (CAS) has not ruled on whether it could join the *proceedings* ex officio in such cases, nor whether it has a duty to notify the appellant of this omission before dismissing the appeal.

This gap represents the current limit of the system and constitutes the boundary on which future jurisprudence must rule, either by recognizing a duty of warning on the part of the Panel or by developing mechanisms that preserve the effective protection of the creditor without sacrificing the guarantees of the opposing party.

Eighth. The system requires greater regulatory precision and greater institutional proactivity from the federations.

Legal certainty in this area would require that the regulations of the federations — particularly the AFA, CONMEBOL, and FIFA — explicitly identify, in each

[48]Cf. FERRER, Lucas and BELLVER, Reyes, *ob. cit.* , pp. 133-161.

sanctioning rule, whether the consequence operates as a transfer of points to a specific third party or as an independent termination of the contract. This regulatory precision would eliminate the need for the Court of Arbitration for Sport (CAS) to conduct a functional analysis of the measure in each case and would reduce the risk of ineffective awards due to the omission of a co-litigant.

Similarly, federations should include in their disciplinary decision notification protocols the identification of third parties whose rights are directly affected, in order to facilitate their eventual incorporation into the arbitration process and reduce the risk of ineffective awards due to the omission of the necessary co-litigant.

These eight conclusions organically close the itinerary outlined from the introduction: the citation criterion should not tend towards the universality of the members of the category nor be reduced to the original bilaterality of the disciplinary process, but towards a technical specificity that identifies those who are holders of subjective rights directly modified by the requested pronouncement.

This criterion exists, is well-established in the CAS jurisprudence, and is consistently aligned with the regulatory framework of the main international football rules. Its correct application is, ultimately, what allows the transnational sports justice system to reconcile the efficiency demanded by competition with the fairness required by law.

B Sample Attendance Rights in CAS Jurisprudence

Vladimir Novak, Joe Gaffney and Nicholas Phipps*

I. Executive Summary
II. Background
III. CAS Case Law Trends
IV. CAS Case Law Analysis
V. Conclusion

I. Executive Summary

1. An athlete's right to request and attend a B Sample analysis, as set out in International Standards, has historically been treated by Court of Arbitration for Sport ("CAS") jurisprudence as 'fundamental', meaning that its breach automatically invalidated adverse analytical findings ("AAF") from a positive A Sample test.

2. Due to iterative changes to the World Anti-Doping Code ("WADC"), and CAS case law developments, the notion of a fundamental departure from the International Standards is no longer consistent with the current regulatory framework. A recent CAS case has settled the question -- athletes now need to establish that a breach of their B Sample attendance rights *"could reasonably have caused"* an anti-doping rule violation ("ADRV") based on an AAF.

3. To do so, an athlete needs to substantiate a plausible indication of error in the B sample process that, while not observed due to the exclusion, is plausible based on other (documentary) evidence, or broader circumstances raising doubts about the specific B sample process. This standard remains demanding insofar as the athlete is effectively prevented from observing one or more steps where an error might have occurred. Accordingly, CAS has shown willingness to adopt a more lenient approach towards an athlete in assessing the degree of plausibility of an error depending on the circumstances of the case, although mere speculation or hypothesis without a "plus factor" raising doubts would be insufficient.

II. Background

4. An athlete's sample is collected during doping control. The sample will typically be split into two containers: the A Sample and the B Sample.[1]

5. The World Anti-Doping Agency ("WADA") has established a rigorous framework governing the collection, storage, and analysis of athletes' samples:

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The views expressed are the authors' own, and they bear sole responsibility for any error or omission.

[1] This is not necessary for samples collected for the purposes of an Athlete Biological Passport ("ABP") profile.

- The A Sample is analysed first. A positive result triggers a notification process to the athlete but is not conclusive of any ADRV unless the athlete waives analysis of the B Sample.[2]

- The B Sample is the second portion of the sample, which is to remain sealed and maintained in accordance with numerous International Standards pending analysis of the A Sample. If a B Sample is negative, it invalidates a positive A Sample.[3] If a B Sample is positive, it confirms an ADRV.

Current regulatory framework

6. The following provisions apply to athletes' rights to attend the opening and analysis of B Samples:

   - The International Standard for Results Management 2023 ("ISRM 2023"), Article 5.1.2.1:[4]

     "[…] *the Results Management Authority shall promptly notify the Athlete of:*

     […]

     d) The opportunity for the Athlete and/or the Athlete's representative to attend the "B" Sample opening and analysis in accordance with the International Standard for Laboratories".

   - The ISL 2021, Article 5.3.6.2.3:

     "[…] *If the Athlete declines to be present in person and/or through a representative, or does not indicate whether he or she requests the "B" Sample analysis, or if the Athlete will not attend (in person and/or through a representative) once a date and time for the analysis has been proposed or if the Athlete or the Athlete's representative claims not to be available on the date or at the time of the opening of the "B" Sample, despite reasonable attempts to find an alternative date and time convenient both to the Athlete and to the Laboratory, the Testing Authority or Results Management Authority or WADA, as applicable, shall instruct the Laboratory to proceed regardless. The Laboratory, in consultation with the Testing Authority, the Results Management Authority or WADA, as applicable, shall appoint an Independent Witness to verify that the "B" Sample container shows no signs of Tampering and that the identifying numbers match that on the Sample collection documentation. An Independent Witness may be appointed even if the Athlete has indicated that he/she will be present and/or represented.*

   - *Authorization of non-Laboratory Persons to attend the "B" Confirmation Procedure*

     The following non-Laboratory Persons shall be authorized to attend the "B" Confirmation Procedure:

     - *"The Athlete and/or representative(s) of the Athlete or, in the absence of the Athlete and/or representative(s), an Independent Witness:*

       - *The Athlete and a maximum of two (2) representatives, and/or the Independent Witness, have the right to attend the "B" Sample*

[2] *See* World Anti-Doping Code 2021 ("WADC 2021"), Article 2.1.2 ("*Sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analyzed; or, where the Athlete's B Sample is analyzed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample*").

[3] *See* International Standard for Laboratories 2021 ("ISL 2021"), Article 5.3.6.2.3 ("*If the final "B" confirmation results are negative, the Analytical Testing result shall be considered a Negative Finding*").

[4] Available here.

opening, aliquoting and resealing procedures;

- *The Athlete and/or one (1) representative may also have reasonable opportunity to observe other steps of the "B" Confirmation Procedure, as long as their presence in the Laboratory does not interfere with the Laboratory's routine operations or Laboratory safety or security requirements.*

[Comment: An Independent Witness may also attend even if the Athlete is present and/or represented.]"

- The WADC 2021, Articles 3.2.2 – 3.2.3:

"*3.2.2 WADA-accredited laboratories, and other laboratories approved by WADA, are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for Laboratories. The Athlete or other Person may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding.*

If the Athlete or other Person rebuts the preceding presumption by showing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding, then the Anti-Doping Organization shall have the burden to establish that such departure did not cause the Adverse Analytical Finding.

3.2.3 Departures from any other International Standard or other anti-doping rule or policy set forth in the Code or in an Anti-Doping Organization's rules shall not invalidate analytical results or other evidence of an anti-doping rule violation, and shall not constitute a defense to an anti-doping rule violation; provided, however, if the Athlete or other Person establishes that a departure from one of the specific International Standard provisions listed below could reasonably have caused an anti-doping rule violation based on an Adverse Analytical Finding or whereabouts failure, then the Anti-Doping Organization shall have the burden to establish that such departure did not cause the Adverse Analytical Finding or whereabouts failure:

[…]

(iii) a departure from the International Standard for Results Management related to the requirement to provide notice to the Athlete of the B Sample opening which could reasonably have caused an anti-doping rule violation based on an Adverse Analytical Finding, in which case the Anti-Doping Organization shall have the burden to establish that such departure did not cause the Adverse Analytical Finding;"

7. In summary, the ISL confers upon the athlete and/or their representative(s) the *right* to attend the B Sample opening, aliquoting and resealing procedures, and a *reasonable opportunity* to attend the other steps of the B Sample analysis. Under the ISRM, the athlete should be notified of these entitlements. It follows that a breach of this provision of the ISRM would result in a corresponding breach of the ISL: if an athlete is not notified of their opportunity to attend the B Sample analysis, their right to such an opportunity is also breached.

8. The WADC sets out the standard of review of a breach of these International Standards, and the corresponding burdens on the athlete and the relevant Anti-Doping Organization required to, respectively, annul an AAF as a result of such a breach or confirm an AAF notwithstanding such a breach.

WADC developments

9. The evolution between the WADC 2003 and the WADC 2021 of the wording concerning the treatment of alleged departures from International Standards is as follows:

WADC 2003[5]	WADC 2009[6]	WADC 2015[7]	WADC 2021
3.2.1 WADA-accredited laboratories are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for laboratory analysis. The Athlete may rebut this presumption by establishing that a departure from the International Standard occurred. *[…]* *3.2.2 Departures from the International Standard for Testing which did not cause an Adverse Analytical Finding or other anti-doping rule violation shall not invalidate such results. If the Athlete establishes that departures from the International Standard occurred during Testing then the Anti-Doping Organization shall have the burden to establish that such departures did not cause the Adverse Analytical Finding or the factual basis for the*	*3.2.1 WADA-accredited laboratories are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for Laboratories. The Athlete or other Person may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred* ***which could reasonably have caused the Adverse Analytical Finding****.* *[…]* *3.2.2 Departures from any other International Standard or other anti-doping rule or policy which did not cause an Adverse Analytical Finding or other anti-doping rule violation shall not invalidate such results. If the Athlete or other Person establishes that a departure from another International Standard or other anti-doping rule or policy* ***which could reasonably have caused the Adverse Analytical Finding***	*3.2.2 WADA-accredited laboratories, and other laboratories approved by WADA, are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for Laboratories. The Athlete or other Person may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred* ***which could reasonably have caused the Adverse Analytical Finding****.* *[…]* *3.2.3 Departures from any other International Standard or other anti-doping rule or policy set forth in the Code or Anti-Doping Organization rules which did not cause an Adverse Analytical Finding or other anti-doping rule violation shall not invalidate such evidence or results. If the Athlete or other Person establishes a departure from another International Standard*	*3.2.2 WADA-accredited laboratories, and other laboratories approved by WADA, are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for Laboratories. The Athlete or other Person may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred* ***which could reasonably have caused the Adverse Analytical Finding****.* *[…]* *3.2.3 Departures from any other International Standard or other anti-doping rule or policy set forth in the Code or in an Anti-Doping Organization's rules shall not invalidate analytical results or other evidence of an anti-doping rule violation, and shall not constitute a defense to an anti-doping rule violation; provided, however, if the Athlete or other Person establishes that a departure from one*

[5] Available here.

[6] Available here.

[7] Available here.

anti-doping rule violation.	***or other anti-doping rule violation occurred**, then the Anti-Doping Organization shall have the burden to establish that such departure did not cause the Adverse Analytical Finding or the factual basis for the anti-doping rule violation.*	*or other anti-doping rule or policy* ***which could reasonably have caused an anti-doping rule violation based on an Adverse Analytical Finding or other anti-doping rule violation**, then the Anti-Doping Organization shall have the burden to establish that such departure did not cause the Adverse Analytical Finding or the factual basis for the anti-doping rule violation.*	*of the specific International Standard provisions listed below* ***could reasonably have caused an anti-doping rule violation based on an Adverse Analytical Finding or whereabouts failure**, then the Anti-Doping Organization shall have the burden to establish that such departure did not cause the Adverse Analytical Finding or whereabouts failure:* […] *(iii) a departure from the International Standard for Results Management related to the requirement to provide notice to the Athlete of the B Sample opening* ***which could reasonably have caused an anti-doping rule violation based on an Adverse Analytical Finding**, in which case the Anti-Doping Organization shall have the burden to establish that such departure did not cause the Adverse Analytical Finding;*

10. Accordingly, the WADC 2009 introduced a standard of review requiring a "*two-pronged approach*" (discussed in detail later in this article), where the athlete must first establish that a departure from International Standards occurred and, if so, must then prove that the departure *"could reasonably have caused"* the AAF. Importantly, the addition of Article 3.2.3(iii) to the WADC 2021 clarified beyond doubt that this *"two-pronged approach"* applies to breaches of the athlete's right to be notified of the opportunity to attend the B Sample opening under the ISRM, the first edition of which came into force at the same time as the WADC 2021.[8]

11. This addition to the WADC 2021 also coincides with amendments to the ISL between its 2019 and 2021 iterations. Specifically, footnote 47 to the ISL 2019 provided that:[9]

> *"The Athlete and/or one (1) designated representative, and/or the Independent Witness have the* ***fundamental right to attend the "B" Sample opening, aliquoting and resealing procedures****. These Persons may also have reasonable opportunity to observe other steps of the "B" Sample Confirmation Procedure, as long as their presence in the Laboratory does not interfere with the Laboratory's routine operations or Laboratory safety or security requirements. The Athlete may however be represented or assisted by a maximum of two (2) representatives during the initial phase of the "B" Sample opening procedure".* (Emphasis added).

12. This reference to a "*fundamental right*" was removed from the ISL, with the 2021 iteration having been amended to align with the foregoing addition of Article 3.2.3(iii) to the WADC 2021 (which itself implements the ISL).[10]

III. CAS Case Law Trends

13. The authors have analysed 19 published CAS awards between 2009 and 2026 dealing with B Sample analysis attendance rights.[11] The following trends are notable.

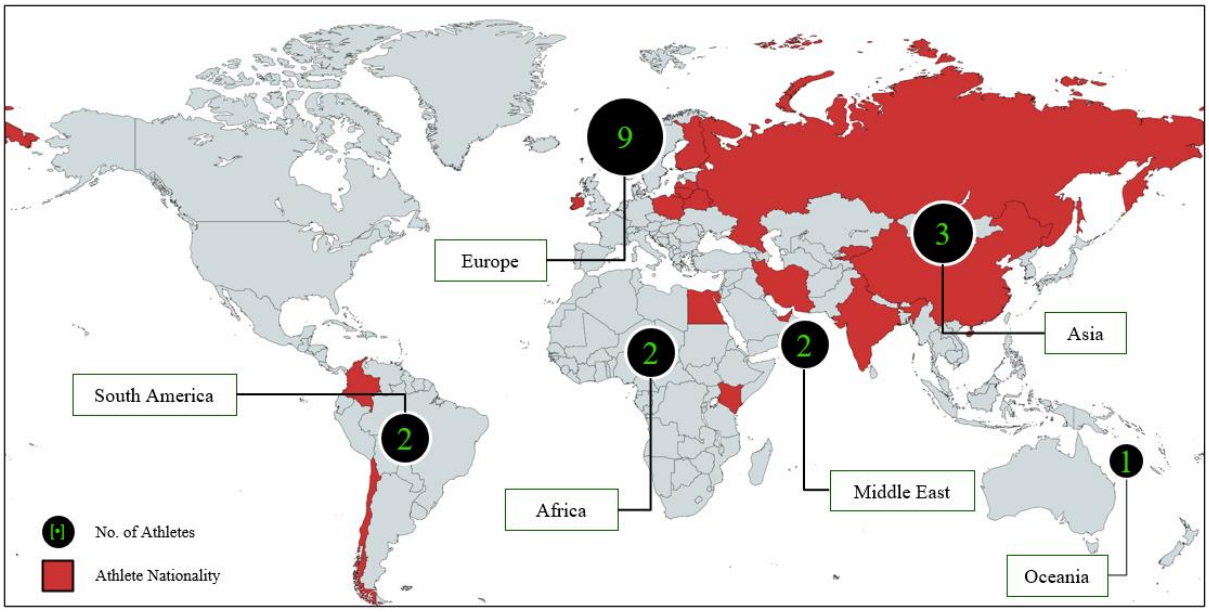
14. **The analysed cases covered 17 countries.** Cases most frequently involved European athletes.

[8] WADC 2021, Article 3.2.3(iii); *see also* ISRM 2021, Article 5.1.2.1(d), which appears to have had limited practical impact on CAS jurisprudence since its introduction. This is likely in part because, as explained at paragraph 7 above, it is difficult to envisage a standalone breach of this provision; its breach would inevitably result in a breach of the ISL.

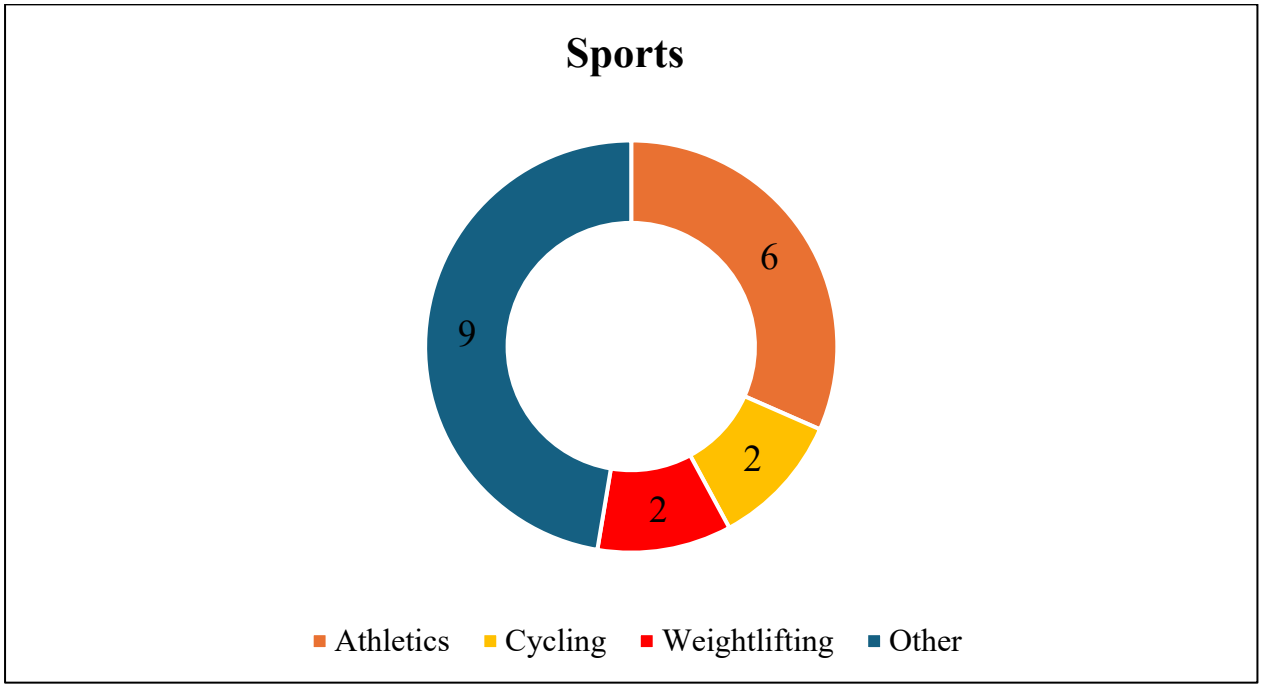
[9] Available here.

[10] ISL 2021, Article 5.3.6.2.3.

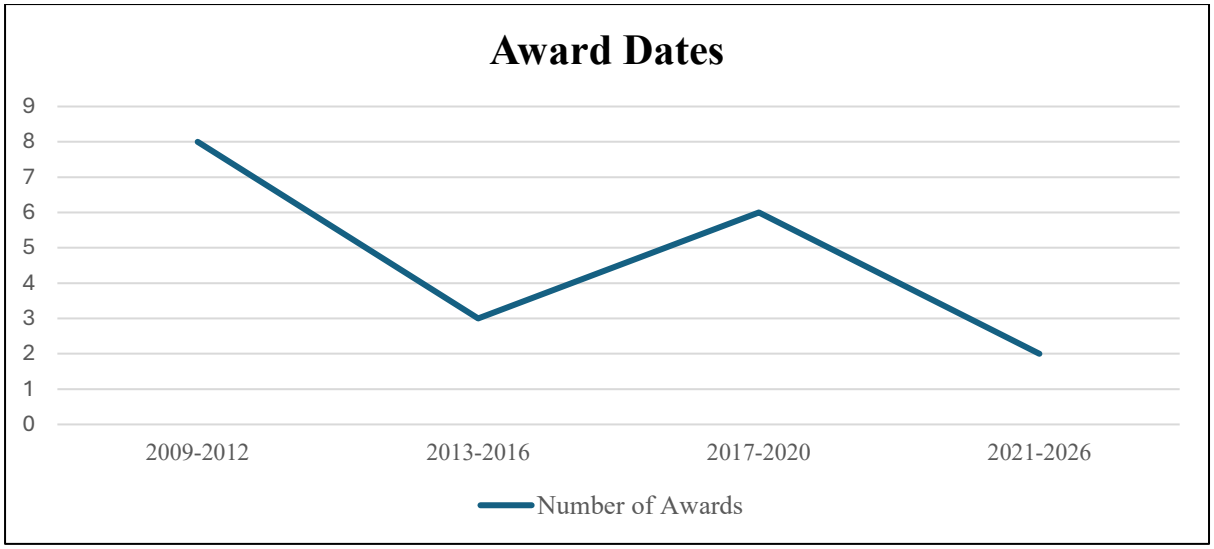
[11] *CAS 2008 A/1569 Jessica Kürten v. FEI*; *CAS 2008/A/1607 Varis v. IBU*; *CAS 2009/A/1755 Adam Seroczynski v. IOC*; *CAS 2008/A/1718-1724 IAAF v. ARAF & Olga Yegorova et al.*; *CAS 2010/A/2046 Samir Ibrahim Ali Hassan v. NADO UAE*; *CAS 2010/A/2161 Wen Tong v. IJF*; *CAS 2010/A/2293 Saeid Ali-Hosseini v. IWF*; *CAS 2011/A/2414 Zivile Balciunaite v. LAF & IAAF*; *CAS 2014/A/3604 Ralfs Freibergs v. IOC*; *CAS 2014/A/3639 Amar Muralidharan v. NADA, Indian National Dope Testing Laboratory, Ministry of Youth Affairs & Sports*; *CAS 2015/A/3977 WADA v. BAF & Vadim Devyatovskiy*; *CAS 2016/A/4777 Izzat Artykov v. IOC*; *CAS 2016/A/4828 Carlos Iván Oyarzun Guiñez v. UCI, UCI-ADT, PASO & CNOC*; *CAS 2016/A/4839 Anna Chicherova v. IOC*; *CAS 2017/A/5016 Ihab Abdelrahman v. EGY-NADO & CAS 2017/A/5036 WADA v. Ihab Abdelrahman & EGY-NADO (Joined cases)*; *CAS 2017/A/5175 IAAF v. ADAK, AK & Benjamin Ngandu Ndegwa*; *CAS 2018/O/5754 Sergey Fedorovtsev v. RUSADA, WADA & FISA*; *CAS 2022/A/9113 Nairo Alexander Quintana Rojas v. UCI*; and *CAS 2025/A/[11391]*.



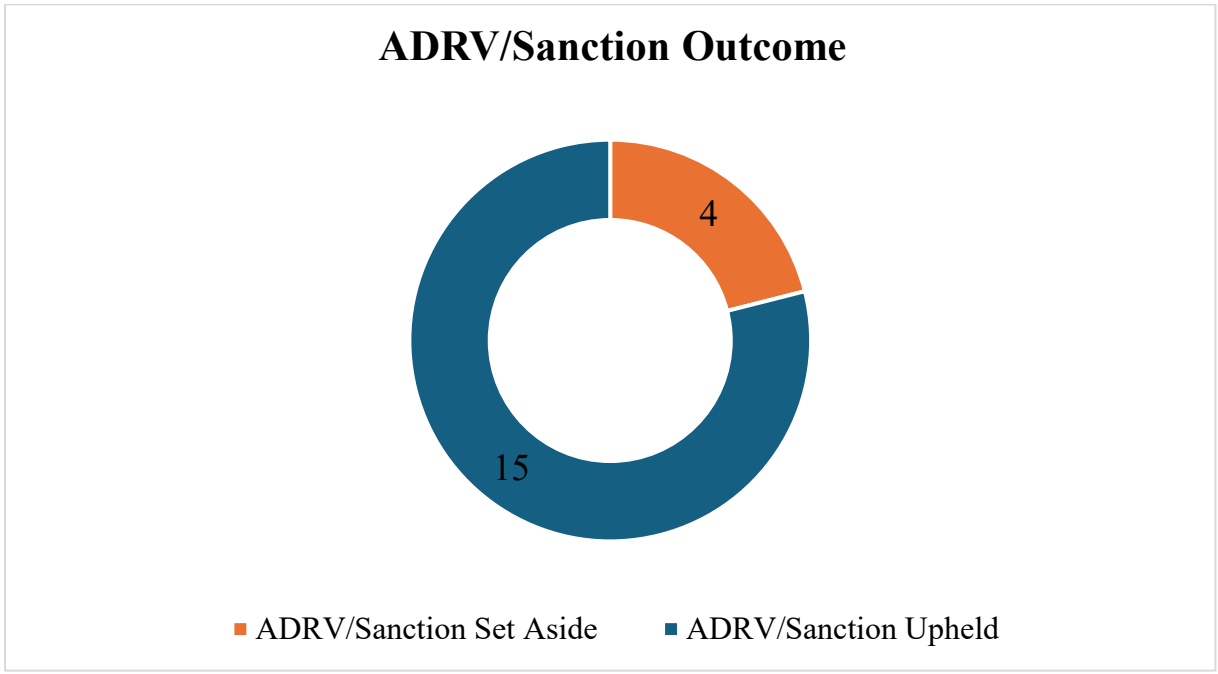
15. **The analysed cases most frequently involved track and field athletes.** While the analysed cases covered a wide range of sports, track and field athletics was by far the most frequent.



16. **Cases spiked between 2009-2012 (8 awards) and 2017-2020 (6 awards).** Cases have significantly decreased in frequency since 2020 (two case between 2021 and 2026). This trend coincides with regulatory developments discussed in this article.



17. **Athletes rarely prevailed.** Since 2009, athletes have avoided findings of ADRVs (or other sanctions) on the basis that their B Sample attendance rights were breached on only four occasions.[12]



[12] *CAS 2008/A/1607 Varis v. IBU*; *CAS 2010/A/2046 Samir Ibrahim Ali Hassan v. NADO UAE*; *CAS 2010/A/2161 Wen Tong v. IJF*; and *CAS 2015/A/3977 WADA v. BAF & Vadim Devyatovskiy*.

IV. CAS Case Law Analysis

Is B Sample attendance a fundamental right?

18. The notion of B Sample attendance as a fundamental right, the breach of which automatically invalidates the B Sample results (and therefore any AAF), was developed by CAS panels.[13] In *CAS 2008/A/1607 Varis v. IBU*, the panel annulled the IBU's finding of an ADRV (for which a sanction of lifetime ineligibility was imposed) because the IBU *"failed to make any efforts to reasonably accommodate the Appellant's request to have her "B" Sample opened and tested in the presence of her technical representative"*.[14] The panel noted that *"*[i]*n coming to this conclusion we are of the view that an athlete's right to be given a reasonable opportunity to observe the opening and testing of a "B" sample is of sufficient importance that it needs to be enforced even in situations where all of the other evidence available indicates that the Appellant committed an anti-doping rule violation"*.

19. This approach appeared – at first – to have survived some tightening of the WADC in 2009 – which *prima facie* required an athlete to show not only a departure from the International Standards but also that such departure could reasonably have caused the AAF:

    - In *CAS 2010/A/2046 Samir Ibrahim Ali Hassan v. NADO UAE*, the Sole Arbitrator set aside the decision to impose an ADRV on the basis that the athlete had not been informed of the date of the opening of the B Sample, and its analysis, and had therefore *"been deprived of his right to be present or to be represented by another person"*.[15] Endorsing the doctrine of B sample attendance amounting to a fundamental right, the Sole Arbitrator found that *"this fact alone would be sufficient to make the whole urine test invalid"*.[16]

    - In *CAS 2010/A/2161 Wen Tong v. IJF*, the panel found that the *"fundamental"* right to be present for the opening and analysis of the B Sample applied *"regardless of whether it is the athlete or the* [applicable Anti-Doping Organization] *who requests testing of the B sample"*.[17] The panel therefore annulled the decision to impose an ADRV *"*[e]*ven assuming arguendo that Appellant's waiver* [of her right to have the B Sample analysed] *was valid"* after the IJF had elected to have the B Sample analysed and did not inform the athlete, thereby depriving the athlete of her right to attend the *"opening and testing of her B sample"*.[18]

    - In *CAS 2015/A/3977 WADA v. BAF & Vadim Devyatovskiy*, the panel upheld a decision clearing the

[13] For example, *T. v. FIG CAS 2002/A/385*, paras. 26 ("*As a matter of principle, the Panel is of the opinion that, even if a procedural error is unlikely to affect the result of a B-sample analysis, such error can be so serious as to lead to the invalidity of the entire testing procedure*"), 34 ("*In conclusion, the Panel is inclined to view the procedural error committed in this case as compromising the limited rights of an athlete to such an extent that the results of the analysis of the B-sample and thus the entire urine test must be disregarded.*").

[14] *CAS 2008/A/1607 Varis v. IBU*, para. 29. The panel further noted that "*This case arises under the 2003* [World Anti-Doping] *Code, which provides for the "right" of the Athlete or the Athlete's representative to be present for the testing of the "B" sample. It is not necessary for this Panel to consider whether the language of the 2009 Code which provides for the "opportunity" to be present has changed the nature and quality of the Athlete's entitlement.*" (footnote 1).

[15] *CAS 2010/A/2046 Samir Ibrahim Ali Hassan v. NADO UAE*, para. 23.

[16] *Ibid.*, para. 24.

[17] *CAS 2010/A/2161 Wen Tong v. IJF*, para. 15.

[18] *Ibid.*, paras. 19, 28; in contrast, *see CAS 2010/A/2293 Saeid Ali-Hosseini v. IWF*, where the athlete requested that the B Sample analysis take place but waived his right of attendance. The panel found that "[t]*he Respondent therefore did not violate the Appellant's rights in failing to inform him of the date, time and place of the B-sample analysis because there was no reason for the Respondent to do so*" (para. 20).

athlete of doping charges brought against him by the International Association of Athletic Federations on the basis that the *"fundamental"* right to be present at the opening and splitting of the B Sample *"is respected only if the athlete is actually put in a position where he can effectively be present or represented by the person of his choosing at the B sample test"*.[19] The athlete was given only two hours to indicate whether he and/or his representative intended to attend the B Sample opening, which was scheduled the following morning in a different country. The panel therefore found that the athlete was effectively *"acting under duress"* when he selected as his representative an individual whom he did not know and who just happened to be at the relevant laboratory on behalf of another athlete. The athlete's *"fundamental"* right had therefore been breached.[20]

- In *CAS 2017/A/5016 Ihab Abdelrahman v. EGY-NADO & CAS 2017/A/5036 WADA v. Ihab Abdelrahman & EGY-NADO (Joined cases)*, the athlete alleged that the seal of his B Sample was broken before he was given the opportunity to verify its integrity, and therefore that his fundamental right had been breached. The CAS Panel held that *"visual inspection of the verification process by the athlete and/or his/her representative fulfils the requirement of 'attendance' in the opening of the sample, provided that the integrity of the seal or other device can be sufficiently verified by vision"*.[21] As the athlete and his representative were present when the identity of the sample and the integrity of its seal were verified, when the sample bottle was opened, and when the analytical procedures were initiated, there had been no *"fundamental"* breach of his attendance rights, and any departure from the ISL therefore *"has to be evaluated according to Article 3.2.2 of the ADR"*.[22]

20. However, the CAS case law subsequently adopted a *"two-pronged approach"* requiring the athlete first to establish a departure from ISL and then how that departure could reasonably have caused the AAF.[23] This effectively moved away from treating B Sample attendance as a fundamental right.

21. In *CAS 2018/A/5584 Adrian Zieliński v. Polish Anti-Doping Agency*, the Sole Arbitrator held that Article 3.2.2 of the WADC 2015 *"provides explicitly that, where departures from the international standards occur, the athlete must demonstrate a plausible causative link with the AAF and only then the burden shifts to the Anti-Doping Organization to demonstrate that the departure did not in fact cause the AAF"*.[24]

22. Importantly, the WADC 2021 also introduced what is now Article 3.2.3(iii), which specifically provides that a departure from the ISRM related to the requirement to provide notice to the athlete of the B Sample opening may only potentially invalidate the AAF if the athlete establishes that the

[19] *CAS 2015/A/3977 WADA v. BAF & Vadim Devyatovskiy*, para. 162.

[20] *Ibid.*, para. 164.

[21] *CAS 2017/A/5016 Ihab Abdelrahman v. EGY-NADO & CAS 2017/A/5036 WADA v. Ihab Abdelrahman & EGY-NADO (Joined cases)*, para. 105.

[22] *Ibid.*, para. 110.

[23] *See CAS 2013/A/3112 WADA v. Lada Chernova & RUSADA*, in which the panel explained that "*a mere reference to a departure from the ISL* [is] *insufficient, in the absence of a credible link of such departure to a resulting Adverse Analytical Finding.*" *See also CAS 2014/A/3561 & 3614 IAAF & WADA v. Marta Domínguez Azpeleta & RFEA.*

[24] *CAS 2018/A/5584 Adrian Zieliński v. Polish Anti-Doping Agency*, para. 130.

departure *"could reasonably have caused"* the AAF, whereupon the burden shifts to the Anti-Doping Organization to establish that the departure did not cause the AAF.

23. The significance of Article 3.2.3(iii) WADC 2021 extends beyond the specific scenario of a failure to notify. If even a total failure to notify the athlete of the B Sample opening (which necessarily deprives the athlete of the opportunity to attend the entirety of the B Confirmation Procedure) does not automatically invalidate the AAF but instead requires the athlete to establish causation, it follows *a fortiori* that alleged infringements of the secondary entitlement to observe specific analytical steps cannot attract greater consequences.

24. These developments suggest that the concept of a *"fundamental breach"* operating as a *per se* rule to invalidate a B Sample result and therefore an AAF, without any requirement to establish a causative link between the departure and the AAF, is now – without any ambiguity – no longer consistent with the applicable regulatory framework set out in the WADC 2021.

25. This approach was endorsed by the panel in *CAS 2025/A/11391*, the most recent of the CAS awards analysed by the authors. The athlete claimed that his *"fundamental right"* to attend the entirety of the B Sample analysis was breached when his representative *"was excluded from critical stages of that analysis"*, and disputed that Articles 3.2.2 and 3.2.3 of the WADC 2021 applied to 'fundamental' procedural breaches.[25] The panel disagreed, concluding that the *"causation gateway"* set out in the WADC 2021 *"applies to all alleged departures relating to B Sample attendance rights"*.[26] The panel then assessed the alleged exclusions from the B Sample analysis and found that none of them *"could reasonably have caused the AAF"*, therefore dismissing the athlete's arguments on this point.[27]

Scope of B Sample attendance rights

26. The scope of the B Sample attendance rights is set out in ISL Article 5.3.6.2.3:

> *"The Athlete and a maximum of two (2) representatives, and/or the Independent Witness, have the right to attend the "B" Sample opening, aliquoting and resealing procedures;*
>
> *The Athlete and/or one (1) representative may also have reasonable opportunity to observe other steps of the "B" Confirmation Procedure, as long as their presence in the Laboratory does not interfere with the Laboratory's routine operations or Laboratory safety or security requirements".*

27. ISL Article 5.3.6.2.3 draws a clear distinction between two categories of attendance entitlement. This distinction was introduced in the ISL 2019 (which came into effect on 1 November 2019); previous editions of the ISL only stated that the athlete and/or their representative *"shall be authorized to attend the "B" confirmation"*.[28]

28. The first category confers a *"right to attend"* the B Sample opening, aliquoting (*i.e.*, extraction of a sub-

[25] *CAS 2025/A/[11391]*, paras. [88], [90].

[26] *Ibid.*, para. [107].

[27] *Ibid.*, para. [145].

[28] ISL 2016, Article 5.2.4.3.2.6. Of the cases analysed by the authors, only two (*CAS 2022/A/9113 Nairo Alexander Quintana Rojas v. UCI* and *CAS 2025/A/11391*) concerned events occurring after the coming into effect of the ISL 2019. The distinction between categories of attendance entitlement was not relevant to the panel's deliberations in the former case, while the panel's discussion of this distinction in the latter case is summarised in detail later in this article.

sample of the B Sample to be tested), and resealing procedures. As noted above, this entitlement was described by the ISL 2019 as a *"fundamental right"* a description which was then removed from the ISL 2021.

29. The rationale for this right was explained in *CAS 2002/A/385 T. v. FIG*, in which the panel held that the purpose of attendance at the B Sample opening is to enable the athlete to confirm that *"the correct container with the number of the athlete's* […] *sample is being opened and that at the time of opening the seal was intact,"* and to check the state of the sample. If *"variations or irregularities are apparent then these can be noted and can be used later to challenge the test results"*.[29]

30. The second category provides that the athlete and/or one representative *"may also have reasonable opportunity to observe other steps"* of the B Confirmation Procedure, subject to the condition that their presence does not interfere with the laboratory's routine operations or safety or security requirements.

31. The shift from *"right"* on the one hand, to *"reasonable opportunity"* on the other, and from *"attend"* to *"observe,"* must be deliberate and treated with significance.

32. The *"other steps"* of the B Sample analysis are, in principle, retrievable from the Laboratory Documentation Package ("LDP") (the material produced by a laboratory to support an analytical result such as an AAF) and, accordingly, no mandatory right of attendance is conferred.

33. This practice is reflected in the final draft of the ISL 2027 (effective as of 1 January 2027), which provides at Article 5.3.4.1.4(e)(i) that *"[t]he observation by the Athlete and/or their representative of the 'B' CP process shall not involve the interpretation of the Analytical Data, which is a sole responsibility of the Laboratory*".[30]

34. Whether a laboratory has complied with the provision in excluding an athlete and/or representative from observing *"other steps"* requires a two-step assessment: first, whether the athlete and/or their representative was given a reasonable opportunity to observe the relevant step; and second, whether the non-interference condition was met.

35. Much of the CAS jurisprudence on B Sample attendance rights predates the distinction between the *"right to attend"* the B Sample opening, aliquoting, and resealing procedures and a *"reasonable opportunity to observe other steps"* of the B Sample analysis. However, past cases can be categorised based on which standard they would now fall under.

36. Of the cases analysed by the authors, those where the athletes successfully avoided ADRVs would under the current ISL be found to involve a breach of the first attendance entitlement - a *"right to attend"* (fundamental or otherwise) the B Sample opening, aliquoting, and resealing procedures. As other cases demonstrate, however, a finding that such a right has been breached generally requires a high threshold of misfeasance in practice:

    - In *CAS 2009/A/1755 Adam Seroczynski v. IOC*, the athlete alleged that the IOC did not inform him of his positive A Sample test immediately, with the consequence that he left Beijing before being informed and so was unable to attend the opening of the B Sample.

[29] *T. v. FIG CAS 2002/A/385*, para. 28.

[30] ISL 2027, Article 5.3.4.1.4.

The panel dismissed this argument, noting that the Athlete had been represented at the B Sample analysis, and *"did not request a postponement of the B sample opening, which he could have done if he absolutely wanted to be personally present"*.[31]

- In *CAS 2016/A/4777 Izzat Artykov v. IOC*, the athlete alleged that he gave no authorisation to the Secretary General of the National Olympic Committee of the Kyrgyz Republic to represent him at the B Sample opening, which should therefore be invalidated. The panel concluded that the athlete had been sufficiently notified by his coach of the AAF and the *"opportunity of and the conditions for the B sample analysis"* and had not disagreed, meaning that he had *"at least implicitly or even openly authorized the opening of the B sample in the presence of the* [representative]*"*.[32]

37. Arguments that the athlete and/or their representative were unable to observe the remaining steps of the B Sample analysis, the second category of the athlete's attendance rights under ISL Article 5.3.6.2.3, have generally been unsuccessful, even prior to the first codification of this distinction in the ISL 2019:

    - In *CAS 2008/A/1569 Jessica Kürten v. FEI*, the B Sample subject to testing was that of the athlete's horse. The athlete's chosen representative was only admitted to the opening of the B Sample and seals verification but was not allowed to witness the B Sample analysis itself as he was not a fellow of the Association of Official Racing Chemists. The panel found that as the *"FEI gave an early warning of the laboratory requirements, thereby giving the Appellant the opportunity to choose another expert, being a member of the AORC, to follow the whole analysis* […] *no violation of the athlete's right to be heard can be reasonably argued"*.[33]

    - In *CAS 2011/A/2414 Zivile Balciunaite v. LAF & IAAF*, the B Sample was opened in the presence of the athlete and her doctor, but both then left the laboratory and did not witness the conclusion of the analysis. The panel held that although there was *"possibly a misunderstanding"* as to the laboratory's communication about the time by which the analysis would be complete, *"the Appellant was not sent away from the laboratory in any moment"*, and there was *"no reasonable doubt that any violation of the Appellant's fundamental rights to be present at the B sample opening and analysis had occurred"*.[34]

    - In *CAS 2018/O/5754 Sergey Fedorovtsev v. RUSADA, WADA & FISA*, the athlete and his representative were present at the opening of the B Sample but left (allegedly involuntarily) during its analysis. The panel found that the athlete and his representative in fact left the laboratory with no plan to

[31] *CAS 2009/A/1755 Adam Seroczynski v. IOC*, para. 11.

[32] *CAS 2016/A/4777 Izzat Artykov v. IOC*, paras. 146, 149; *see also CAS 2017/A/5175 IAAF v. ADAK, AK & Benjamin Ngandu Ndegwa*, where the CAS Panel briefly addressed the athlete's argument that the IAAF had failed to notify him of the opening or testing of his B Sample. The CAS Panel dismissed this allegation as "*completely misplaced*" (para. 74), as there was ample evidence to the contrary, including correspondence between the IAAF and the athlete; *see also CAS 2014/A/3604 Ralfs Freibergs v. IOC*, where the CAS Panel briefly dismissed the athlete's contention that he had not consented to the opening of the B Sample on the basis that, among other reasons, "*the Appellant himself has confirmed that he "consented" to the opening and analysis of his B-sample in the presence of his personal representative albeit in his own absence*" (para. 65(ii)).

[33] *CAS 2008/A/1569 Jessica Kürten v. FEI*, para. 17.

[34] *CAS 2011/A/2414 Zivile Balciunaite v. LAF & IAAF*, para. 6.6 *et seq.*

return until after the final results of the analysis were ready, and therefore did not need to resolve the issue of whether the concept of a *"fundamental"* breach had *"survived the coming into force of WADA 2017"*, and whether *"if it does it requires a refusal to permit the athlete or his or her representative to attend the B sample analysis at all or a total exclusion therefrom, or whether* […] *partial exclusion* […] *could amount to such breach"*.[35]

38. In *CAS 2025/A/11391*, by which the time the ISL 2019 had entered into force, the athlete's representative was not present at (i) the initial injection of the B Sample into the liquid chromatography instrument, (ii) the chromatographic data review, and (iii) the laboratory's re-analysis of one of the fractions of the B Sample. The panel considered each of these analytical steps to be *"other steps of the "B" Confirmation Procedure"*, and therefore undertook a two-step assessment to consider whether (i) the athlete's representative was given a reasonable opportunity to observe these steps, and (ii) the non-interference condition was met.[36] The panel found that the exclusion of the athlete's representative from these steps constituted breaches of the ISL, but that *"none of the alleged B Sample attendance exclusions, while highly regrettable, could reasonably have caused the AAF"*, and so the B Sample results were not invalidated.[37]

Calibrating the causation threshold

39. A key practical question is how an athlete who has been excluded from the B sample process (or a part thereof) can demonstrate that the exclusion has caused the ADRV finding. Indeed, the panel in case *CAS 2025/A/11391* cautioned *"against setting a causation standard that is impossible to meet, to avoid rendering the B sample attendance rights a pure fiction"*. That panel proposed the following guidance:[38]

> *"*[A]*n athlete needs to substantiate a plausible indication of error in the B sample process that, while not observed due to the exclusion, is plausible based on other (documentary) evidence, or broader circumstances raising doubts about the specific B sample process. The Panel recognizes that this standard remains demanding insofar as the athlete is effectively prevented from observing one or more steps where an error might have occurred. Accordingly, the Panel considers it appropriate to adopt a more lenient approach towards the Athlete in assessing the degree of plausibility of an error depending on the circumstances of the case. In any event, mere speculation or hypothesis without a "plus factor" raising doubts would be insufficient".*

40. Accordingly, to meet this standard, an athlete must marshal available evidence, including expert analysis of the documented data, comparison with standard procedures, and any other relevant circumstances, to substantiate a plausible error in the B Sample analysis process.

Other notable findings

41. The four cases in which ADRVs were invalidated due to a breach of B

[35] *CAS 2018/O/5754 Sergey Fedorovtsev v. RUSADA, WADA & FISA*, para. 120.

[36] *CAS 2025/A/11391*, paras. [111], [120].

[37] *Ibid.*, paras. [129], [135], [142], [145].

[38] *Ibid.*, para. [108]; *see also CAS 2014/A/3487 Veronica Campbell-Brown v. JAAA & IAAF*, where the panel found in relation to an identically worded causation standard ("*it would be reasonable to conclude that the IST departure could have caused the Adverse Analytical Finding*") that "*the athlete must establish facts from which a reviewing panel could rationally infer a possible causative link between the IST departure and the presence of a prohibited substance in the athlete's sample. For these purposes, the suggested causative link must be more than merely hypothetical, but need not be likely, as long as it is plausible*" (para. 155).

Sample attendance rights all involved 'Presence' violations (WADC Article 2.1), rather than 'Use' violations (WADC Article 2.2). The CAS has found that even if the athlete's B Sample attendance rights were breached, the B Sample analytical results can still be used to establish an ADRV for 'Use', provided that there is other evidence.[39]

42. For example, in *CAS 2016/A/4828 Carlos Iván Oyarzun Guiñez v. UCI, UCI-ADT, PASO & CNOC*, the CAS Panel highlighted that *"according to well-established CAS jurisprudence, the athlete's right to attend the opening and analysis of the B Sample is of fundamental importance"*, and that *"in the present case, it is not proven that the Appellant ever received notification of his right to attend the opening of the urine B Sample"*.[40] However, any failure to notify the athlete, while affecting the admissibility of the A and B Samples for establishing an ADRV for "Presence", did not *"preclude the competent authorities to take this sample into account for a "Use" violation"* when viewed in combination with other reliable evidence (in this case, reliable evidence that variations in the athlete's blood profile were consistent with the use of the prohibited substance).[41]

43. Finally, the CAS found there to be no B Sample attendance rights:

- when the B Sample is opened and split into a B1 Sample and B2 Sample and, subsequently, when the B1 Sample is tested.[42]
- in respect of an ADRV which is <u>not</u> based on an adverse AAF;[43] or
- where the relevant test is not anti-doping in nature.[44]

V. Conclusion

44. The CAS-developed concept of a *"fundamental breach"* of B Sample attendance rights operating as a *per se* rule automatically invalidating the AAF without any requirement to establish a causative link is no longer consistent with the evolution of the applicable regulatory framework and case law. All such breaches are now subject to the causation requirement set out in the WADC, the latest iteration of which (effective as of 1 January 2027) settles this question beyond doubt.[45]

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[39] *See CAS 2015/A/3977 WADA v. BAF & Vadim Devyatovskiy*, para. 149 ("*The "use" violation however requires "only" that the deciding body is comfortably satisfied that the Athlete used or attempted to use a prohibited substance, bearing in mind the seriousness of the allegation which is made*"), 173 ("*The Panel is ready to accept that the results of the B1 and B2 samples n°691793 could be taken into account for a Use Violation even though they have been obtained in an irregular manner*").

[40] *CAS 2016/A/4828 Carlos Iván Oyarzun Guiñez v. UCI, UCI-ADT, PASO & CNOC*, paras. 122-123.

[41] *Ibid.*, paras. 124, 132.

[42] *See CAS 2016/A/4839 Anna Chicherova v. IOC*, where the CAS Panel found that "*the presence of the Athlete or her representative was not a pre-requisite for the IOC to conduct the B-Sample opening and splitting procedure*" (para. 359).

[43] *See CAS 2008/A/1718-1724 IAAF v. ARAF & Olga Yegorova et al.*, where the CAS Panel held that "[a] *distinction must be made between the results management process applicable to the case of an anti-doping rule violation detected through an Adverse Analytical Finding and one where there is no such finding*" (para. 49);

[44] *See CAS 2022/A/9113 Nairo Alexander Quintana Rojas v. UCI*, where the rule under which the athlete was sanctioned was a "*medical control process and not anti-doping*", and so the CAS Panel found that there was "*no obligation on the Respondent to provide for a B Sample analysis*" (para. 65).

[45] WADC 2027, footnote 24 ("*[Comment to Article 3.2.3: For the avoidance of doubt, an Athlete's assertion of an alleged "fundamental" breach of any International Standard or other anti-doping rule or policy set forth in the Code or in an Anti-Doping Organization's rules cannot invalidate an Adverse Analytical Finding or anti-doping rule violation unless the Athlete can also establish that the breach could reasonably have caused the Adverse Analytical Finding or anti-doping rule violation.]*").

45. The decisional practice of CAS panels in this area underscores the enduring importance of the underlying principle that *"The fight against doping is arduous, and it may require strict rules. But the rule-makers and the rule-appliers must begin by being strict with themselves"*.[46] This principle is reflected in the recent CAS endorsement of a more lenient approach towards an athlete attempting to demonstrate the plausibility of errors in a B Sample analysis that they were prevented from attending. To this effect, laboratories would be well-advised to follow B Sample testing standards strictly, to avoid questions about the integrity or reliability of the process.

[46] *CAS 94/129 USA Shooting & Q. v. UIT*, para. 34.

Jurisprudence notable*
Cases of interest
Casos de interés

* Nous attirons votre attention sur le fait que la jurisprudence qui suit a été sélectionnée et résumée par le Greffe du TAS afin de mettre l'accent sur des questions juridiques récentes qui contribuent au développement de la jurisprudence du TAS.
We draw your attention to the fact that the following case law has been selected and summarised by the CAS Court Office in order to highlight recent legal issues which have arisen, and which contribute to the development of CAS jurisprudence.
Llamamos su atención sobre el hecho de que la siguiente jurisprudencia ha sido seleccionada y resumida por la Secretaría del TAS con el fin de poner de relieve las recientes cuestiones jurídicas que han surgido y que contribuyen al desarrollo de la jurisprudencia del TAS.

CAS 2024/A/10949
C.F. Rayo Majadahonda S.A.D. v. MEE DSSC DRC Dnipro (DRC Dnipro) & DIUSC Inter Dnipro (Inter Dnipro) & DIUSSH Novomoskovsk & Fédération Internationale de Football Association (FIFA)
award of 20 February 2026

Football; Transfer – training compensation; Concept of registration of a player under the FIFA RSTP; International transfer of an amateur minor player; Principle of contra proferentem; Annex 7 of the FIFA RSTP and Training compensation; Procedural requirements for a valid waiver

Panel
Prof. Martin Schimke (Germany), Sole Arbitrator

1. **Formal player registration for the purposes of the FIFA Regulations on the Status and Transfer of Players (RSTP) falls within the exclusive competence of FIFA's member associations. In the case of a transfer between different member associations, the new association confirms registration in FIFA's Transfer Matching System (TMS) upon receipt of an International Transfer Certificate (ITC).**

2. **Article 19.1 FIFA RSTP provides a general rule that international transfers of players are only permitted if the player is over the age of 18 with article 19.2 FIFA RSTP providing a number of specific exceptions to this rule. In addition, Article 19.7 FIFA RSTP provides the possibility for a member association to apply to the Players' Status Chamber of the FIFA Football Tribunal for a limited minor exemption (LME) which if granted relieves an association, under specific terms and conditions and solely for amateur minor players who are to be registered with purely amateur clubs, from the application obligations set out in article 19 RSTP.**

3. **The principle of *contra proferentem*, means that any remaining ambiguity in the wording of a regulation may be resolved against the party who drafted it. However, the application of this principle is only required when there is an objective unclarity or ambiguity of the rule, which cannot be solved on the basis of the general interpretation methods mentioned above. Therefore, it only applies in case there is a provision/regulation in dispute, the meaning of which cannot be understood on the basis of its (a) literal meaning; and (b) systematic, teleological and historical meaning.**

4. **FIFA's legislative intent behind Annexe 7 was not to create an exemption broad enough to deny training compensation to clubs in Ukraine and Russia except on a strictly limited basis. A wider interpretation would unfairly favour professional clubs outside those countries seeking to sign players long after their humanitarian departure, at the expense of the smaller clubs that invested in their development and would also create a significant risk of circumvention, allowing clubs or agents to strategically route players through amateur clubs to avoid training compensation obligations,**

undermining the system as a whole. This is particularly significant given FIFA's stated aim in its June 2024 Explanatory Note on Annexe 7 to strike a balance between all the interests at stake through proportionate, reasonable and necessary regulatory measures in response to the crisis.

5. Article 9.7 of the FIFA Clearing House Regulations (CHR) provides that *"[w]here a training club has waived its right to receive training rewards, proof of a valid waiver shall be uploaded in TMS by the new club"*. This procedural obligation is mandatory for a waiver to be valid and serves the legitimate purpose of enabling FIFA to process training rewards efficiently and to maintain the integrity of the transfer system. In any case, for a waiver to be valid, (i) the person renouncing a right must have the capacity and authority to do so; (ii) the waiver must be clear and unequivocal; and (iii) the person must have the right which he is renouncing. As a further general principle of Swiss law, rights may be waived voluntarily unless the waiver is contrary to law, public policy or good morals.

I. PARTIES

1. C.F. Rayo Majadahonda S.A.D. (the "Appellant") is a Spanish football club affiliated with the Real Federación Española de Fútbol ("RFEF").

2. MEE DSSC DRC Dnipro ("DRC Dnipro") is a Ukrainian football club affiliated with the Ukrainian Association of Football ("UAF").

3. DIUSC Inter Dnipro ("Inter Dnipro") is a Ukrainian football club affiliated with the UAF.

4. DIUSSH Novomoskovsk ("Novomoskovsk") is a Ukrainian football club affiliated with the UAF.

5. The Fédération Internationale de Football Association ("FIFA") is the international governing body of football. FIFA is an association under Articles 60 *et seq.* of the Swiss Civil Code ("SCC") with its headquarters in Zurich, Switzerland.

II. INTRODUCTION

6. These proceedings concern a dispute over the compensation payable with respect to the transfer of Mr Illia Voloshyn, a football player of Ukrainian nationality (the "Player").

7. Following an Electronic Players' Passport ("EPP") review process and a decision of the FIFA Dispute Resolution Chamber (the "FIFA DRC Decision"), the FIFA General Secretariat issued its Determination on the Player's EPP (the "EPP Decision") and a corresponding Allocation Statement (the "Allocation Statement"). The ultimate consequence of the EPP Decision and the Allocation Statement (hereinafter jointly referred to as the "Appealed Decisions") is that the Appellant was thereby required to pay training compensation to three other previous clubs of the Player, as follows:

- *DIUSSH Novomoskovsk: EUR 4,958.90;*

- *DIUSC Inter Dnipro: EUR 15,068.49;*

- *MEE DSSC DRC Dnipro: EUR 12,876.71.*

8. In the present appeal arbitration proceedings before the Court of Arbitration for Sport ("CAS"), the Appellant is challenging the Appealed Decisions, requesting, *inter alia*, a decision confirming that no training compensation is payable to any of the aforementioned clubs. FIFA requests the Appealed Decisions to be confirmed.

III. FACTUAL BACKGROUND

9. Below is a summary of the main relevant facts and allegations based on the Parties' oral and written submissions on the file and relevant documentation produced in these proceedings. Additional facts and allegations may be set out, where relevant, in connection with the further legal discussion. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in this award only to the submissions and evidence he considers necessary to explain his reasoning.

A. Background Facts

10. The Player Illia Voloshyn is a Ukrainian national, born on 15 January 2007. During his childhood in Ukraine the Player had, at various times, been registered as an amateur football player with the First, Second and Third Respondents.

11. The Player was living in Ukraine until April 2022 when he left Ukraine (while still a minor) shortly after Russia's invasion of Ukraine and travelled to Novelda, Spain.

12. On 26 July 2022, the Player applied to the relevant Spanish authorities to obtain temporary residence in Spain due to the ongoing war in Ukraine, and his application was approved on the same date.

13. With this temporary residence, the Player was granted access to the rights established by Chapter IV of the Royal Decree 1325/2003, of 24 October 2003 ("Royal Decree"), including *inter alia* the rights of free movement within Spain, residence, reception and a work permit under the terms established by applicable legislation.

14. On 29 September 2022, the Player (who was 15 years old at that time) was registered with the Spanish amateur club Novelda Uniòn C.F. ("Novelda FC"). The nature and details of his registration with Novelda FC is a matter of dispute between the Appellant and the Fourth Respondent.

15. On 27 January 2023, the Player obtained a temporary residence permit (so called NIE) that authorized him to work in Spain – as he was already 16 years old at that time – with a duration until 4 March 2024, which was subsequently extended until 4 March 2025.

16. On 1 July 2023, the Appellant offered the Player a contract with a duration of three (3) seasons (the "Contract").

17. The Player was 16 years old at that time and it was his first professional contract.

18. Under clause I. of the Contract, the Player was entitled to the following annual remuneration:

a) Season 2023/2024: EUR 4,000 gross, divided in 10 (ten) equal monthly instalments of EUR 400 gross;

b) Season 2024/2025: EUR 6,000 gross, divided in 10 (ten) equal monthly instalments of EUR 600 gross, or EUR 8,000 annually if registered with the second team.

c) Season 2025/2026: EUR 10,000 gross, divided in 10 (ten) equal monthly instalments of EUR 1,000 gross, or EUR 22,500 gross annually if registered with the first team.

19. The Player was registered for the first time as a professional player with the Appellant on 10 October 2023.

20. On 16 October 2023, FIFA started the procedure for the generation of the Electronic Player Passport of the Player ("EPP").

21. The Third Respondent uploaded in the FIFA Transfer Matching System ("TMS") under the "waiver section" a document stating that they *"have no financial claims against football player: ILLIA VOLOSHYN"* and *"do not object to his transfer to another football club"*.

B. Proceedings before the FIFA DRC

22. By virtue of Article 10 (3) of the FIFA Clearing House Regulations (the "FIFA CHR") (providing that in situations of legal of factual complexity the FIFA DRC will decide on the final EPP), the FIFA General Secretariat referred the matter to the FIFA DRC.

23. On 24 September 2024, and with reference to the FIFA Regulations on the Status and Transfer of Players ("FIFA RSTP"), a Single Judge of the FIFA DRC issued the FIFA DRC Decision, which provided, *inter alia*, as follows:

"9. Upon review of the player registration information, it was acknowledged that there was no issue pertaining to the career history of the player (cf. point 7 of the Determination on EPP 3121).

10. Nevertheless, the Single Judge acknowledged that C.F. Rayo Majadahonda argued that training compensation is not due to the Ukrainian clubs MEE DSSC DRC Dnipro, DIUSC Inter Dnipro and DIUSSH Novomoskovsk based on Annexe 7 to the FIFA RSTP.

11. On the other hand, the Single Judge noted that the aforementioned clubs claimed their entitlement to receive training compensation.

12. On 9 March 2022, FIFA Circular 1787 announced the publication of the new Annexe 7 of the RSTP containing temporary rules addressing the exceptional situation deriving from the war in Ukraine.

13. The said Annexe 7 of the May 2023 edition of the RSTP inter alia considered that:

> *I. No training compensation is payable by the new club for any player whose previous registration was in the UAF or FUR and whose contract has been suspended in order to be registered with a new club in accordance with this Annexe (cf. article 7 paragraph 1);*
>
> *II. No entitlement to training compensation will arise for any club not affiliated to the UAF or FUR who has registered a player following the suspension of the player's contract in accordance with this annexe (cf. article 7 paragraph 2);*

III. No training compensation is payable by the new club for a player being registered for the first time as a professional if:

a) the player is registered with a club not affiliated to the UAF or FUR after having left the territory of Ukraine or Russia subsequently to 7 March 2022 and was allowed to be registered with a new club under the exception provided in article 19 paragraph 2 a) or d) of these regulations;

b) the player left the territory of Ukraine or Russia subsequently to 7 March 2022 and now wishes to be registered for the first time as a professional with a club affiliated to the UAF or FUR (cf. article 7 paragraph 3).

14. In this regard, the Single Judge observed that the FIFA Explanatory Note on Annexe 7 to the RSTP stipulates that the exceptions in Article 7 paragraph 3 of the RSTP facilitate the possible return of players to clubs affiliated with the UAF or FUR, should they wish to do so.

15. According to the registration information contained in the EPP 33121, on 29 September 2022, the player transferred from MEE DSSC DRC Dnipro (Ukraine) to Novelda Unión C.F. (Spain) as an amateur player.

16. Furthermore, the player was subsequently registered as a professional for the first time with C.F. Rayo Majadahonda (Spain) on 10 October 2023.

17. Evidence on file indicates that the player was always registered as an amateur in Ukraine.

18. Furthermore, according to the evidence on file, the RFEF confirmed that the player was registered with Novelda Unión C.F. under the minor exception provided in article 19 paragraph 2 d) of the RSTP.

19. Given the legal and factual context outlined above, the Single Judge identified 7 paragraph 3 a) of Annexe 7 of the RSTP as potentially applicable to this case.

20. This provision suggests that no training compensation is due for a club registering a player as a professional if the player was previously allowed to leave Ukraine under the minor exceptions established in article 19 paragraph 2 a) or d) of the RSTP.

21. In this context, the Single Judge noted that: (i) the player was always registered as an amateur in Ukraine; (ii) he was registered as an amateur with the Spanish club Novelda Unión C.F. under the minor exception outlined in Article 19 paragraph 2 d) of the RSTP; and (iii) he subsequently became a professional with another Spanish club, C.F. Rayo Majadahonda.

22. The Single Judge emphasized that, in this case, the new club, as outlined in in article 7 paragraph 3 a) of Annexe 7 of the RSTP Annex 7, should be considered Novelda Unión C.F.

23. The Single Judge clarified that Annexe 7 of the RSTP ceases to apply once the player leaves Ukraine under the minor exception and is registered in Spain with Novelda Unión C.F.

24. In other words, since the player was already registered with Novelda Unión C.F.in Spain and there was no suspended contract tying him to Ukraine, Annexe 7 of the RSTP is no longer applicable. This would be the same for any Ukrainian player properly registered with another club without a suspended contract.

25. Therefore, the Single Judge determined that the conditions outlined in article 7 of Annexe of the RSTP are not met. Consequently, training

compensation is due to the Ukrainian clubs MEE DSSC DRC Dnipro, DIUSC Inter Dnipro, and DIUSSH Novomoskovsk for the player's first professional registration with C.F. Rayo Majadahonda.

26. The Single Judge concluded its deliberations by confirming that the above constitutes its decision in the sense of article 10 paragraph 3 and 5 of the FCHR in relation to this EPP, the conclusions of which are reflected in the EPP determination to which this decision is enclosed as Annexe".

24. On 1 October 2024 based on the FIFA DRC Decision, the FIFA General Secretariat issued the EPP Decision, which provides, inter alia, as follows:

"The FIFA general secretariat hereby determines the registration history of the player from the start of the calendar year of the player's 12th birthday until the aforementioned training rewards trigger. This registration history is considered true and accurate for the period in question, in accordance with the information provided by the member associations that participated in the generation and review of the EPP, in accordance with article 10 of the FCHR. The registration history as determined by the FIFA general secretariat is as follows:

Club and member association	Start of registration	End of registration	Status	Nature of registration
C.F. Rayo Majadahonda RFEF, Spain FIFA ID: 145LAWA Status: Affiliated Training category: 3	10/10/2023	Currently registered	Professional	Permanent
Novelda Unión C.F. RFEF, Spain FIFA ID: 145LV6B Status: Affiliated Training category: 4	30/09/2022	30/06/2023	Amateur	Permanent
Novelda Unión C.F. RFEF, Spain FIFA ID: 145LV6B Status: Affiliated Training category: 4	29/09/2022	29/09/2022	Amateur	Permanent
MEE DSSC DRC Dnipro UAF, Ukraine FIFA ID: 14CD1JG Status: Affiliated Training category: 4	18/03/2021	30/06/2022	Amateur	Permanent
DIUSC Inter Dnipro UAF, Ukraine FIFA ID: 144LH8C Status: Affiliated Training category: 4	13/09/2019	16/03/2021	Amateur	Permanent
DIUSSH Novomoskovsk UAF, Ukraine FIFA ID: 14BU50G Status: Affiliated Training category: 4	01/01/2019	30/06/2019	Amateur	Permanent

The EPP Decision further provided as follows:

> *"Conclusion*
>
> *13. In consideration of the above and in accordance with the FCHR and annexes 4 and 5 to the RSTP, the FIFA general secretariat has determined the entitlement of clubs to training rewards for the above trigger as follows.*
>
> *14. MEE DSSC DRC Dnipro is entitled to training compensation for having registered the player at some point in time between the start of the calendar year of the player's 12th birthday and the end of the calendar year of the player's 21st birthday.*
>
> *15. DIUSC Inter Dnipro is entitled to training compensation for having registered the player at some point in time between the start of the calendar year of the player's 12th birthday and the end of the calendar year of the player's 21st birthday.*

16. DIUSSH Novomoskovsk is entitled to training compensation for having registered the player at some point in time between the start of the calendar year of the player's 12th birthday and the end of the calendar year of the player's 21st birthday.

17. No other club is entitled to training compensation.

18. All of the above determinations and decisions are reflected in the EPP in question and/or will be considered in the generation of any Allocation Statement from this EPP for the calculation and distribution of training rewards in accordance with article 13 of the FCHR.

19. Pursuant to article 57 paragraph 1 of the FIFA Statutes and in accordance with article 10 of the FCHR, this decision and the corresponding allocation statements(s) TC-11652 may be jointly appealed before the Court of Arbitration for Sport within 21 days of notification. The final EPP will remain available in TMS".

25. On the same date, 1 October 2024, and based on the EPP Decision, the FIFA General Secretariat issued the Allocation Statement, which provided, *inter alia*, as follows:

"Conclusion

8. The new club C.F. Rayo Majadahonda (RFEF) shall pay training compensation to the training club(s) of the player in the total amount of EUR 32,904.10.

9. The following training club(s) shall receive the following payment(s).

9.1. The training club DIUSSH Novomoskovsk (UAF) shall receive training compensation payments from the new club of the player in the amount of EUR 4,958.90.

9.2. The training club DIUSC Inter Dnipro (UAF) shall receive training compensation payments from the new club of the player in the amount of EUR 15,068.49.

9.3. The training club MEE DSSC DRC Dnipro (UAF) shall receive training compensation payments from the new club of the player in the amount of EUR 12,876.71.

10. The payments defined in this Allocation Statement shall be made through the FIFA Clearing House entity (FCH), in accordance with articles 12, 13 and 14 of the FCHR. The FCH will contact the new club, the relevant training clubs and the relevant member associations to process these payments.

11. According to the relevant provisions of RSTP and FCHR, it is the new club that will be required to pay training rewards due to the training clubs concerned, and the new club may not assign responsibility to pay the amount requested to any other party.

12. Pursuant to article 57 paragraph 1 of the FIFA Statutes and in accordance with article 10 of the FCHR, this decision and its corresponding EPP may be jointly appealed before the Court of Arbitration for Sport within 21 days of notification. The final EPP will remain available in TMS".

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

26. On 18 October 2024, the Appellant filed a Statement of Appeal with CAS, challenging the Appealed Decisions, in accordance with Articles R47 and R48 of the 2023 edition of the Code of Sports-related Arbitration (the "CAS Code"). In this submission, the Appellant named MEE DSSC DRC Dnipro as First

Respondent, DIUSC Inter Dnipro as Second Respondent, DIUSSH Novomoskovsk as Third Respondent and FIFA as Fourth Respondent and requested that the case be submitted to a sole arbitrator.

27. On 23 October 2024, the Appellant requested, in accordance with Article R32 (2) of the CAS Code, an extension of 20 (twenty) days to file the Appeal Brief.

28. On 24 October 2024, FIFA informed the CAS Court Office that it agreed (i) to establish English as the language of the proceedings; (ii) with the appointment of a sole arbitrator, provided that the sole arbitrator be selected from the football list; and (iii) with the 20-day extension requested by the Appellant.

29. On 8 November 2024, the CAS Court Office informed the parties that the Appellant's request for a 20-day extension to the deadline to file its Appeal Brief, until 21 November 2024, was granted.

30. On 18 November 2024, the Appellant requested CAS, in accordance with Article R32 (2) of the CAS Code, to grant an additional extension of three (3) workings days, until 26 November 2024, to file its Appeal Brief. On the same date, the CAS Court Office confirmed that, failing any objection, this request would be automatically granted.

31. On 26 November 2024, the Appellant filed its Appeal Brief, in accordance with Article R51 of the CAS Code.

32. On 27 November 2024, FIFA requested, in accordance with Article R55 (3) of the CAS Code, that the time limit for the filing of the answer be set aside and fixed after the payment of the advance of the costs by the Appellant. On 2 December 2024, the CAS Court Office granted FIFA's request.

33. On 4 February 2025, the CAS Court Office informed the Parties, that the First, Second and Third Respondents did not file any Answer within the time limit and consequently, Article R55(2) of the Code shall apply. It also informed the Parties, that since the full amount of the advance of costs had been paid by the Appellant, FIFA shall file, within twenty (20) days upon receipt of the letter by email, an Answer.

34. Over the course of the following months, FIFA requested, in accordance with Article R32 (2) CAS Code, several extensions to its deadline to file an Answer as follows:

- On 7 February 2025 FIFA requested a 20-day extension.
- On 13 March 2025 FIFA requested a 15-day extension.
- On 26 March 2025 FIFA requested a 20-day extension.
- On 15 April 2025 FIFA requested a 20-day extension.
- On 8 May 2025 FIFA requested a 20-day extension.
- On 30 May 2025 FIFA requested a 20-day extension.
- On 20 June 2025 FIFA requested an extension until 31 July 2025.
- On 29 July 2025 FIFA requested an extension until 15 August 2025.

- On 12 August 2025 FIFA requested an extension until 5 September 2025.

- On 4 September 2025 FIFA requested an extension until 25 September 2025.

- On 24 September 2025 FIFA requested an extension until 6 October 2025.

35. Each of these requests were consented to by the Appellant and granted by CAS.

36. On 2 October 2025, FIFA filed its Answer in accordance with Article R55 of the CAS Code.

37. On 6 October 2025, the CAS Court Office informed the Parties that, pursuant to Article R54 of the CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the arbitral tribunal appointed to hear the appeal was constituted as follows:

    Sole Arbitrator: Prof. Dr Martin Schimke, Attorney-at-law in Dusseldorf, Germany

38. On the same date, 6 October 2025, the CAS Court Office invited the Parties to express their position regarding their preference for a hearing to be held or for the Sole Arbitrator to issue an Award based solely on the Parties' written submissions. Furthermore, the Parties were invited to inform the CAS Court Office whether they requested a case management conference to be held.

39. On 10 October 2025, both the Appellant and FIFA indicated their respective views that the dispute could be resolved based on the basis of the Parties' written submissions alone, without a hearing and without a case management conference.

40. On 23 October 2025, the CAS Court Office informed the Parties that, pursuant to Article R57 of the CAS Code, the Sole Arbitrator deemed himself to be sufficiently well informed to decide the case based solely on the basis of the Parties' written submissions, without the need to hold a hearing. Furthermore, the Parties were informed that, in accordance with Article R59 of the CAS Code, the evidentiary proceedings were now closed.

41. On 30 October 2025, both the Appellant and FIFA returned duly signed copies of the Order of Procedure. By signing the Order of Procedure, the Parties, *inter alia*, confirmed that the Sole Arbitrator could decide this matter based on the Parties' written submissions and that their right to be heard had been respected. The First, Second and Third Respondents did not return signed copies of the Order of Procedure, despite an extension of the deadline for them to do so.

42. On 12 November 2025, the Appellant requested FIFA to confirm the "existence and registration" of the First, Second and Third Respondents, considering their lack of engagement in the present proceedings.

43. On 1 December 2025, FIFA confirmed the existence and registration of the First, Second and Third Respondents, and stated that, according to the information in TMS, all three clubs appear as "Active", meaning that they exist and are affiliated with the UAF.

V. SUBMISSIONS OF THE PARTIES AND REQUEST FOR RELIEF

44. The Sole Arbitrator confirms that he carefully heard and considered in his decision all the submissions, evidence, and arguments presented by the Parties, even if they have not been specifically summarised or referred to in the present arbitral Award.

A. The Appellant

45. The Appellant's submissions, in essence, may be summarised as follows:

The Appellant was not properly registered with FC Novelda pursuant to the FIFA RSTP procedure

- The Appellant was the first club where the Player was registered as a professional according to the FIFA RSTP procedure, and is therefore the "new club" for the purposes of Article 7.3, Annexe 7 FIFA RSTP

- The Appellant, rather than Novelda FC, is the "new club" for the purposes of Article 7.3, Annexe 7 of the FIFA RSTP, meaning that no training compensation is payable by the Appellant for the Player.

- The Player was first registered as an amateur in Ukraine, then he was registered as an amateur with the Spanish club Novelda FC under the minor exception outlined in Article 19 paragraph 2 d) of the RSTP:

  "2. (…) d) (…) ii. (…) If the minor has been formally recognised as a refugee or a protected person, they may be registered with a professional club or purely amateur club. There are no restrictions on any subsequent national transfer of the minor prior to their turning 18. If the minor has been formally recognised as asylum seeker or has been recognised by the competent state authorities as vulnerable in accordance with article 19 paragraph d) above, they may only be registered with a purely amateur club. They may be the subject of a subsequent national transfer, but are not permitted to register with a professional club until they turn 18. (…)"

- Novelda FC is a purely amateur club with no link to any professional club. Its senior team is currently playing in a regional amateur category in Spain - Liga Primera FFCV - being the seventh level of Spanish football.

- Novelda FC only registered the Player as an amateur, without passing through the regulatory path of FIFA but merely using the Spanish Royal Decree. In other words, as the Player was a refugee in Spain, he was granted the right to be registered with the amateur club Novelda FC to play among friends.

- It is at any rate confirmed by the evidence filed that Novelda FC never undertook the procedural steps to register the Player with the procedure according to Article 19 FIFA RSTP via a Minor Application by the FIFA TMS. That is why neither Novelda FC, nor RFEF at that time, has ever received the Player's International Transfer Certificate ("ITC").

- This is why the Appellant, in order to register the Player, followed the

rules of Article 19 FIFA RSTP, and filed a Minor Application according to Article 19.2 (d) FIFA RSTP, and in so doing became the first club where the Player was registered according to the FIFA RSTP procedure (as a professional). The Appellant is therefore the "new club" for the purposes of Article 7.3, Annexe 7 FIFA RSTP and thus is not required to pay any training compensation for the Player.

- When the Appellant registered the Player as a *"first registration"* and not as a *"subsequent transfer",* it relied upon the assurances given by RFEF, after the latter had consulted FIFA and thus understood that no training compensation was due to previous clubs in accordance with Article 7.3, Annexe 7 of the FIFA RSTP.

- The Single Judge of FIFA DRC made an evident mistake in the FIFA DRC Decision when he deemed that Novelda FC was the "new club" for which the Player had been registered for after having left Ukraine.

- Under Swiss law, the principle of legitimate trust in authorities derives from article 9 of Swiss Constitution whereby *"everyone has the right to be treated by the organs of the state without arbitrariness and in accordance with the rules of good faith"*. More particularly, the Swiss Federal Tribunal ruled that *"The principle of good faith, which is directly derived from Art. 9 of the Constitution and applies to all state activity, protects the citizen's legitimate trust in the assurances received from the authorities, when he has regulated his conduct on the basis of decisions, statements or specific conduct of the administration"* (ATF 141 V 530; ATF 131 II 627, §6.1).

- Various CAS Panels used this principle to apply it to the member – sport association relationship by using the *venire contra factum proprium* principle and the duty to behave in good faith, for example CAS 2010/A/2056 and CAS 2014/A/3785.

- In CAS 2020/A/7353-7354, where a minor player was not registered via the FIFA/RFEF's regulatory path by a Spanish club, FIFA opposed itself to recognise such a prior registration (like the one of Novelda FC in this case) acceptable and binding for regulatory consequences. The previous registration of the Player for Novelda FC is therefore completely irrelevant and inoperative (if not a "circumvention" of the FIFA rules) and shall not be recognised because it was made by a civil instrument and not via the competent FIFA procedure and bodies.

- Therefore, as the Appellant is the "new club" the Player was registered for in accordance with Article 19 FIFA RSTP and Article 7.3, Annexe 7 FIFA RSTP, the Appellant must not pay training compensation and the Appealed Decisions must be annulled and set aside.

The application of Article 7.3, Annexe 7 FIFA RSTP

- Even if Novelda FC was the club where the Player first registered after having left Ukraine, the Appellant can still be the "new club" registering him as professional for the purposes of Article 7.3, Annexe 7 FIFA RSTP and is thus not obliged to pay any training compensation.

- The rule at the centre of this dispute, Article 7.3, Annexe 7 FIFA RSTP reads as follows, in its applicable version:

"7. Training Compensation

(…)

3. No training compensation is payable by the new club for a player being registered for the first time as a professional if:

a) the player is registered with a club not affiliated to the UAF or FUR after having left the territory of Ukraine or Russia subsequently to 7 March 2022 and was allowed to be registered with a new club under the exception provided in article 19 paragraph 2 a) or d) of these regulations;

b) the player left the territory of Ukraine or Russia subsequently to 7 March 2022 and now wishes to be registered for the first time as a professional with a club affiliated to the UAF or FUR".

- By carefully reading the provision it appears that, even if Novelda FC is deemed to be the club which actually first registered the Player outside Ukraine, the Appellant can still be deemed the "new club" signing him as a professional but not bound to pay training compensation applying either (a) a literal interpretation of the rule and/or (b) a systematic, teleological and historical interpretation of the same rule.

(a) the literal interpretation of Article 7.3, Annexe 7 FIFA RSTP

- As per the jurisprudence of CAS, the interpretation of the statutes and rules of a sports association shall be objective and always start with the wording of the rules (literal interpretation), since there is no reason to depart from the plain text, unless there are objective reasons to think that it does not reflect the core meaning of the provision under review (CAS 2009/A/1810 & 1811, CAS 2021/A/8054, CAS 2022/A/8915). In this matter, the wording of the rule is clear and consistent.

- When reading Article 7.3, Annexe 7 FIFA RSTP, it can be easily observed that the provision refers on the one hand to "the new club" as the club signing the first professional contract. It then opens a double condition to be respected for this new club not to pay training compensation: (i) the player was registered with "a club" after having left Ukraine; and (ii) "the new club" registered him using the exception of Article 19.2(a) or (d) FIFA RSTP.

- In other words, it can be logically and objectively assumed that: (i) if

the Player was registered with "a club" not affiliated to UAF after leaving the territory of Ukraine after 7 March 2022 (Novelda FC *in casu)* and then, (ii) he registers with a "new club" for the first time as professional under the exception in Article 19 (2) (d) FIFA RSTP (the Appellant *in casu*), such "new club" does not need to pay training compensation.

- The fact that this provision differentiates between two types of clubs (which can be the same but also differ) is also corroborated by the FIFA Explanatory Note to Article 7.3, Annexe 7 FIFA RSTP.

- FIFA, as an experienced legislative body, if it would have actually intended to apply the exception to payment of training compensation under Article 7.3 (a), Annexe 7 FIFA RSTP only to the first club with whom the Player was registered after leaving Ukraine after March 2022 (regardless as amateur or professional), would and could have easily specified so. However, FIFA did not and this cannot be presumed from the wording of the rule.

- The use of generic expressions (if any) must be interpreted narrowly and *contra preferentum*[1] in the sense that the doubts which may arise from the reading of such wording must run contrary to FIFA's position (CAS 2014/A/3544).

- In this sense, when the Single Judge determined at paras. 22-23 of the FIFA DRC Decision that, from his point of view: (i) Novelda FC had to be considered the *"new club"* as per this exception and; that (ii) Annexe 7 *"ceases to apply once the player leaves Ukraine under the minor exception and is registered in Spain with Novelda Unión C.F".,* he did not explain or gave a legal reasoning on how he reached these conclusions against the literal meaning of the provision.

- Even assuming that the "new club" and "the club" appearing in the provision are the same club, this same club can only be the "new club" which signed the first professional contract with the player.

- First, because this is only an exception for professional clubs such as the Appellant, and would not apply to amateur clubs that cannot be asked to pay training compensation. Secondly, because the new club is cited twice and – most importantly – in the sentence which introduces the two subcategories (the club the Player joined after leaving Ukraine and the club which used the exception of Article 19.2 (d) FIFA RSTP).

(b) the systematic, teleological and historical interpretation of Article 7.3, Annexe 7 FIFA RSTP

- On a subsidiary basis, in case the CAS eventually considers that the meaning of Article 7.3 (a), Annexe 7 FIFA RSTP is not clear and that it can be subject to a different

[1] *recte*: *contra proferentem* - ed. note].

interpretation to the literal one exposed above, *quod non*, it is specified that when the matter relates to the interpretation of the rules of a sports association and text is unclear, the true scope of the provision will need to be narrowed by taking into account pertinent factors: (i) its relationship with other legal provisions and its context (systematic interpretation); (ii) the goal pursued, especially the protected interest (teleological interpretation); and (iii) the intent of the legislator as it is reflected, among others, from the drafting history of the piece of legislation in question (historical interpretation) (CAS 2009/A/1810 & 1811, CAS 2022/A/8915).

- In this matter the systematic interpretation derives from the whole analysis of Annexe 7 FIFA RSTP in which the provision is inserted: this Annexe was set up to face with an urgent and problematic situation and was visibly drafted to grant Ukrainian (and Russian) players freedom of movement to flee from war zones. Therefore, Article 7.3 must be approached as a provision not limiting the chance of a minor player to sign outside Ukraine his first professional contract but rather the contrary.

- As to the teleological interpretation, emphasis needs to be added to the concept of protection of minors and its purpose of safeguarding players' rights. Specifically, Article 19 FIFA RSTP (protection of minors), on the one hand, as per its paragraph 2 (b) aims at protecting minors' basic rights (guarantee that they receive proper academic education, living standards, or football education), while subsequent provisions, such as Article 19.2 (d), focus on ensuring that their fundamental rights are well protected in case of humanitarian reasons. The intention of FIFA with such rules is to make it easier for minors who had to emigrate from their countries without their parents (the Player *in casu*) due to unfortunate and dangerous events (e.g. wars, epidemies etc.) and had to establish themselves in third countries to protect their safety and own lives, to be able to play football to use it as distraction and as a tool to integrate faster and more deeply into a new environment.

- With this in mind, reading Article 7.3 (a), Annexe 7 FIFA RSTP following the Appellant's view, its application would facilitate the first registration as professionals to those minors like the Player who (i) had to leave Ukraine after March 2022, and (ii) fall under the exceptions of Article 19.2 (d) FIFA RSTP, meaning that they cannot (or should not) return to their countries of origin due to the situations in such countries and that FIFA recognized to be subject to humanitarian reasons. Otherwise, if the new clubs where these minors sign their first professional contract would have to pay training compensation, as

the Single Judge wrongly stated in the FIFA DRC Decision, their chances to sign their first professional contract abroad would be significantly reduced or even be null, due to the high burden that would be imposed on those new clubs as a result of the payment of these training compensations (for a minor).

- Asking the Appellant to pay training compensation under these premises is not only legally flawed but also against the entire spirit of the rules. The Appellant would have never, or at least very unlikely, signed a first professional contract with the Player if it knew that it would have to pay an amount of circa EUR 33,000 net as training compensation, for a Player who was 16 years old at that time, had only played amateur football with schools in Ukraine and one (1) season as amateur – not properly registered at RFEF level - with the U-16 team of Novelda FC, whose senior team plays in the seventh category of Spanish football.

- Finally, as to the historical interpretation of the provision, it must be recalled that the new exceptions to the duty to pay training compensation were specifically added in the version at stake issued in 2023 when the first version of Annexe 7 did not include the provision of Article 7.3. This is a further clear indication of the FIFA's will to ease the departure of (minor) players from Ukraine and their chance to sign professional contracts abroad, erasing the duty for those clubs giving these players a chance to pay training compensation.

The Third Respondent waived its training compensation for the Player

- Although the wording of this waiver does not expressly mention that it waives training compensation, the fact that the Third Respondent uploaded this document - which was actually not needed for the constitution of the EPP – under the section *"waivers",* evidently shows the intention of this party to renounce its possible entitlement to any compensation.

- The fact that the same club in the document points out that *"we have no financial claims against football player"* for a minor amateur, and thus not for a player who terminated a professional contract at the time, shows that the intention of the waiver was to waive the only financial entitlement of the club in the form of training compensation.

- Consequently, in case the Sole Arbitrator deems that the Appellant should pay any training compensation, *quod non,* the Appellant requests that the duty to pay the Third Respondent according to the Appealed Decisions is annulled.

46. On this basis, the Appellant submits the following prayers for relief in its Appeal Brief:

"i. The appeal filed by C.F Rayo Majadahonda S.A.D is upheld;

ii. The Challenged Decisions are annulled and/or set aside;

On a principal basis,

iii. The Challenged Decisions are replaced in full by a ruling from the CAS stating that C.F. Rayo Majadahonda S.A.D. does not have to pay any training compensation to the First, Second and Third Respondents for the player Illia Voloshyn;

iv. FIFA is obliged to modify the Electronic Player Passport 33121 of the player Illia Voloshyn, if necessary, and/or to issue a new corresponding Allocation Statement reflecting the point iii. above.

On a subsidiary basis,

v. The Challenged Decisions are replaced in part by a ruling from the CAS stating that C.F. Rayo Majadahonda S.A.D. does not have to pay any training compensation to the Third Respondent (DIUSSH Novomoskovsk) for the player Illia Voloshyn;

vi. FIFA is obliged to modify the Electronic Player Passport 33121 of the player Illia Voloshyn, if necessary, and/or to issue a new corresponding Allocation Statement reflecting the point v. above.

In any case,

vii. FIFA and MEE DSSC DRC Dnipro, DIUSC Inter Dnipro and DIUSSH Novomoskovsk shall jointly or autonomously bear all the procedural costs of this arbitration procedure;

viii. FIFA and MEE DSSC DRC Dnipro, DIUSC Inter Dnipro and DIUSSH Novomoskovsk shall jointly compensate C.F. Rayo Majadahonda S.A.D. for all the legal fees and other costs incurred in connection with this arbitration in an amount to be determined at the discretion of the Panel or Sole Arbitrator".

B. The Fourth Respondent

47. FIFA's submissions, in essence, may be summarised as follows:

The Player was registered with the RFEF when he played with Novelda FC

- Novelda FC, the RFEF (Royal Spanish Football Federation), DRC Dnipro and the UAF completed the transfer of the Player using FIFA's regulatory framework, the TMS system, and the ITC was issued on 27 September 2022.

- The Player was registered by the RFEF upon his transfer to Novelda FC as an amateur according to Article 19 RSTP using the applicable Limited Minor Exemption ("LME") and therefore Novelda, the RFEF, DRC Dnipro, and the UAF completed the transfer of the Player using FIFA's regulatory framework, the TMS system, and the relevant ITC was indeed issued on 27 September 2022.

- The FIFA Players' Status Chamber ("FIFA PSC")'s authorisation for a transfer or first registration of a minor in another country can be relieved if the association has a valid LME with FIFA. This was the case here.

- In light of the above, the following assertions of the Appellant are incorrect, as it is simply untrue that

the Player (as argued by the Appellant):

- was registered with Novelda *"merely using the Spanish Royal Decree"*; or that;
- "Novelda FC never undertook the procedural steps to register the Player with the procedure according to Article 19 FIFA RSTP via an LME by the FIFA TMS"; or that
- "the RFEF at that time, has never received the Player's ITC contrary to Rayo when the Appellant registered the Player".

- The FIFA DRC rightly concluded that *"(i) the player was always registered as an amateur in Ukraine; (ii) he was registered as an amateur with the Spanish club Novelda Unión C.F. under the minor exception outlined in Article 19 paragraph 2 d) of the RSTP; and (iii) he subsequently became a professional with another Spanish club, C.F. Rayo Majadahonda"*.

The interpretation of Article 7.3 Annexe FIFA RSTP

(a) the literal interpretation of Article 7.3, Annexe 7 FIFA RSTP

- Article 7.3 of Annexe 7 RSTP establishes an allowance where no training compensation is due under specific circumstances related to the conflict between Ukraine and Russia if all the following cumulative conditions are met:
  - the player is being registered as a professional for the first time;
  - the player has just left the territory of Ukraine or Russia (the phrase "after having left" implies a direct and immediate temporal link between the player's departure from Ukraine or Russia and his first professional registration with a club outside those countries);
  - the player is joining a club that is not affiliated with either the UAF or FUR; and,
  - the registration is being carried out in accordance with Article 19 (2) (a) or (d) FIFA RSTP.

- The Player was transferred to Novelda FC in September 2022 under amateur status, not as a professional. This initial transfer did not trigger any training rewards at that time, as the condition to register him "for the first time as a professional" was not met. By the time of this professional registration with the Appellant, the Player had already been residing in Spain and had been registered with a Spanish club for a full year. Therefore, the Player's professional registration did not coincide with his departure from Ukraine. As such, the specific conditions set forth in Article 7.3 (a) Annexe 7 of the RSTP were not fulfilled – specifically the condition

regarding his immediate departure from Ukraine – and the obligation to pay training compensation was accordingly triggered.

- In other words, Novelda FC - as the Player's "new club" - could have qualified for the exemption; however, since it did not register the Player as a professional, no training compensation (to be waived) was triggered. Once the Player arrived in Spain, the potential exemption ceased to be applicable. Therefore, the Appellant's attempt to apply this provision one year after the Player's departure from Ukraine is unfounded, as the Player *"had not left"* Ukraine as required by the provision.

(b) the systematic, teleological and historical interpretation of Article 7.3, Annexe 7 FIFA RSTP

- The Appellant's interpretation of Article 7.3 FIFA RSTP is far-fetched and difficult to support in view of the historic, teleological and systematic interpretation. In fact, FIFA will prove that the terms "club" and "new club" used in the different legal frameworks, should be interpreted and understood as the same entity, namely, the (first) club that registered the player following his departure from Ukraine.

- The measures adopted in Annexe 7 of the FIFA RSTP in March 2022 in the context of the war and urgent humanitarian crisis in Ukraine were not intended to be permanent. As expressly stated in FIFA Circular 1787, the temporary amendments of the RSTP would be *"periodically reviewed and removed accordingly"* as circumstances evolve.

- The exceptions of Article 7.3 were intended to ease the possible return players to Ukraine or Russia. If the sole purpose of this provision is to ease the return of players to Ukraine/Russia, the first exception should only apply immediately after the (minor) player departs Ukraine/Russia. If this exception were to remain valid or applicable without any temporary limit and until the player becomes professional, the consequence would contradict the legislator's intent: the player's return would be less feasible because foreign clubs would be interested in registering a player as a first-time professional without having the burden of paying training compensation. FIFA's Explanatory Note June 2024 again establishes that the exceptions of Article 7.3 were intended to ease the possible return players to Ukraine or Russia.

- If the exception were to apply as the Appellant intends (i.e., as a permanent exception that remains valid until a third club registers the player as a professional), the potential return of players to the UAF or FUR would become very difficult. This is because clubs seeking professional players would likely prefer Ukrainian or Russian players over others, as they would benefit from registering them for the first time as professionals

without incurring in training compensation.

- Therefore, taking into account the historic, systematic and teleological interpretation, along with common sense and logic, the *"new club"* and the *"club"* referred to in the Article, Interpretative Note, the Commentary and the Explanatory Note are the same entity.

- This interpretation of Article 7.3 (a) aligns with its humanitarian intent to help Ukrainian/Russian players relocate quickly and safely but not to provide indefinite financial exemptions and, at the same time, facilitate the players' return to Ukraine/Russia if they wish to do so.

- In light of the above, and based upon the historic, systematic and teleological interpretation of Article 7.3 (a), it is clear that the exception of this provision ceased to apply once the Player left Ukraine and was registered with Novelda FC. Considering that the first registration of the Player as a professional was made one year after the Player's departure from Ukraine, the exception cannot apply in the Appellant's favour, since the conditions of the relevant article were not met.

Regarding the waiver allegedly signed by Novomoskovsk

- Given the paramount importance of rewarding (often small) clubs which train football players, the Football Tribunal's jurisprudence requires for a waiver to be valid a clear and unequivocal declaration by the party concerned and an unambiguous language that reflects such party's intention to renounce its rights.

- For its part and from a general point of view, CAS has underlined the following on the matter of valid waivers of training compensation (see CAS 2021/A/8392, CAS 2023/A/9975-9976).

- In the present matter, the document filed by Novomoskovsk states that *"we have no financial claims against the football player"*. Evidently, this statement does not reflect Novomoskovsk's waiver to training compensation as it does not refer to "training rewards" or "training compensation". In fact, it does not even refer to any financial debt against the Appellant. The uploaded document merely affirms that Novomoskovsk does not hold any financial claims against the player himself.

- The waiver allegedly signed by Novomoskovsk does not reflect in a clear or unequivocal manner that Novomoskovsk wanted to renounce its entitlement to training compensation.

48. On this basis, FIFA submits the following prayers for relief in its Answer:

"FIFA respectfully requests the Sole Arbitrator to issue an award:

(a) rejecting the requests for relief sought by the Appellant;

(b) confirming the Appealed Decision;

(c) ordering the Appellant to bear the full costs of these arbitration proceedings".

VI. JURISDICTION

49. The jurisdiction of CAS derives from Article 57 (1) FIFA Statutes (May 2022 edition), as it determines that *"[a]ppeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question"*, and Article R47 of the CAS Code.

50. The jurisdiction of CAS is not contested by the Parties and is further confirmed by the Order of Procedure, duly signed by the Appellant and FIFA.

51. Moreover, Article 10.5 (b) FIFA CHR provides as follows:

"The FIFA general secretariat will notify the final EPP and the Allocation Statement to all parties in the EPP review process.

[…]

b) This notification shall be considered a final decision by the FIFA general secretariat for the purposes of article 57 paragraph 1 of the FIFA Statutes and may be appealed to the Court of Arbitration for Sport (CAS)".

52. It follows that CAS has jurisdiction to adjudicate and decide on the present dispute.

VII. ADMISSIBILITY

53. The Appealed Decisions were notified to the Appellant on 1 October 2024 via the FIFA TMS.

54. Pursuant to Article R47 of the CAS Code and Article 57 (1) of the FIFA Statutes, the time limit for lodging an appeal to CAS against the Appealed Decisions is 21 days after receipt of the decision issued by FIFA.

55. The Appellant filed its Statement of Appeal to CAS om 18 October 2024. It follows that the Statement of Appeal was filed in due time.

56. The Appellant has paid the minimum CAS Court Office fee of CHF 1,000.

57. The Statement of Appeal further complies with all the other requirements of Article R48 of the CAS Code and is therefore admissible.

VIII. APPLICABLE LAW

58. In accordance with Article R58 of the Code, the Sole Arbitrator shall decide the dispute according to the applicable regulations and, subsidiarily, 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 Sole Arbitrator deems appropriate.

59. Article 56 (2) of the FIFA Statutes provides as follows:

"The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".

60. Both the Appellant and FIFA submit that the FIFA Statutes and regulations –

namely the FIFA RSTP and FIFA CHR - constitute the applicable law to the matter at hand, and that subsidiarily Swiss law shall be applied should the need arise to fill a possible gap in the FIFA regulations.

61. The Sole Arbitrator accepts the primary application of the various regulations of FIFA, in particular the FIFA RSTP and FIFA CHR and, subsidiarily, Swiss law, should the need arise to fill a possible gap in the various regulations of FIFA.

IX. MERITS

62. Based on the submissions of the Parties and all the facts of the case, the Sole Arbitrator identifies three primary issues to be resolved in this case:

    a. Was the Player registered with Novelda FC for the purposes of the FIFA RSTP?

    b. How are the provisions of Article 7.3, Annexe 7 FIFA RSTP to be interpreted and applied in the present case?

    c. If relevant, did the Third Respondent waive its entitlement to training compensation for the Player?

A. Was the Player registered by the RFEF with Novelda FC for the purposes of the FIFA RSTP?

63. In accordance with consistent CAS jurisprudence and basic Swiss law principles, the interpretation of the statutes and rules of a sporting association must be objective and always start with the wording of the rule which falls to be interpreted (see, for example CAS 2009/A/1810 & 1811, CAS 2021/A/8054, CAS 2022/A/8915).

64. In respect of the question at hand, formal player registration for the purposes of the FIFA RSTP falls within the exclusive competence of FIFA's member associations. In accordance with Article 5 (1) FIFA RSTP, *"only electronically registered players with a FIFA ID are eligible for organised football"*. In the case of a transfer between different member associations (as in this case), the new association confirms registration in FIFA's TMS upon receipt of an ITC.

65. Further, Article 19.1 FIFA RSTP provides a general rule that *"International transfers of players are only permitted if the player is over the age of 18"*. Article 19.2 FIFA RSTP provides a number of specific exceptions to this rule, including that, pursuant to Article 19.2 (d) FIFA RSTP:

    "The player is at least temporarily permitted to reside in the country of arrival and/or is recognised by the competent state authorities as vulnerable and requiring state protection by the country of arrival after fleeing their country of origin (or previous country of domicile) for humanitarian reasons, without their parents, due to either of the following:

    i. their life or freedom being threatened on account of race, religion, nationality, belonging to a particular social group, or political opinion; or

    ii. any other circumstances where their survival is seriously threatened.

    If the minor has been formally recognised as a refugee or a protected person, they may be registered with a professional club or purely amateur club. There are no restrictions on any subsequent national transfer of the minor prior

to their turning 18. If the minor has been formally recognised as asylum seeker or has been recognised by the competent state authorities as vulnerable in accordance with article 19 paragraph d) above, they may only be registered with a purely amateur club. They may be the subject of a subsequent national transfer, but are not permitted to register with a professional club until they turn 18".

66. In addition, Article 19.7 FIFA RSTP provides the possibility for a member association to apply to the Players' Status Chamber of the FIFA Football Tribunal for a limited minor exemption ("LME"). Article 19.7 FIFA RSTP establishes that:

> *"a) An LME, if granted, relieves an association, under specific terms and conditions and solely for amateur minor players who are to be registered with purely amateur clubs, from the application obligations set out in paragraph 4.*
>
> *b) In such a case, prior to any request for an ITC and/or a first registration, the association concerned is required to verify and ensure that the circumstances of the player fall, beyond all doubt, under one of the exceptions provided for in paragraph 2, 3, or 4 c)".*

67. Against this regulatory background, the first question for the Sole Arbitrator to address in this case is whether the Player's registration with Novelda FC satisfied the requirements of the FIFA RSTP. The Appellant and the Fourth Respondent disagree on this point.

68. In particular, the Appellant argues that Novelda FC only registered the Player as an amateur, without passing through the regulatory path of FIFA but merely using the Spanish Royal Decree, and that Novelda FC never undertook the procedural steps to register the Player according to Article 19 FIFA RSTP (including via an LME) in the FIFA TMS. The Appellant further argues that the RFEF never received the Player's ITC at that time, contrary to when the Appellant subsequently registered the Player and received such a certificate.

69. FIFA, on the other hand, has presented evidence demonstrating that Novelda FC, the RFEF, DRC Dnipro and the UAF completed the transfer of the Player using FIFA's regulatory framework, the TMS system, and that the ITC was issued on 27 September 2022. FIFA submits that the Player was registered by the RFEF upon his transfer to Novelda FC as an amateur according to Article 19 RSTP using the applicable LME under Article 19.7 FIFA RSTP, with reference to Article 19.2 (d) FIFA RSTP.

70. Having reviewed the evidence presented by the Parties, including the documentation relating to the issuance of the ITC and the registration process through the TMS system, the Sole Arbitrator finds that the evidence supports FIFA's position. The documentation demonstrates that the Player was registered by the RFEF as an amateur player with Novelda FC for the purposes of the FIFA RSTP, under the minor exception (LME) pursuant to Article 19.2 (d) FIFA RSTP. The Sole Arbitrator is satisfied that the FIFA PSC granted an LME to the relevant member association (the RFEF) on 22 August 2022, which was valid only for amateur players who wish to be registered solely with purely amateur clubs. While the registration of the Player with Novelda FC was therefore entirely on an amateur (i.e. non-professional) basis, it was

carried out in accordance with and within the framework of FIFA's formal regulatory registration procedures, as set out in the FIFA RSTP.

71. The Appellant has referred to CAS 2020/A/7353-7354, a case in which a minor player was not registered via the FIFA/RFEF regulatory path by a Spanish club, and FIFA refused to recognise such a prior registration as acceptable and binding for regulatory consequences. However, the Sole Arbitrator notes that the present case is distinguishable from CAS 2020/A/7353-7354. In the present case, the evidence demonstrates that the Player's registration with Novelda FC was completed through the FIFA TMS system (see, on the registration and ITC process, including electronic registration, FIFA ID and TMS: Articles 5 and 9 RSTP; Annexe 3 RSTP), with the issuance of an ITC, and in accordance with the applicable FIFA regulations. This is fundamentally different from the situation in CAS 2020/A/7353-7354, where the registration was not completed through the FIFA regulatory framework.

72. Accordingly, the Sole Arbitrator concludes that the Player was registered with Novelda FC for the purposes of the FIFA RSTP on 29 September 2022 as an amateur player.

73. However, this finding is not necessarily determinative of the central issue in this case, which concerns the interpretation and application of Article 7.3, Annexe 7 FIFA RSTP. In other words, the fact that the Player was registered as an amateur with Novelda FC does not automatically preclude the Appellant's arguments regarding the interpretation of Article 7.3, as will be discussed below.

B. How are the provisions of Article 7.3, Annexe 7 FIFA RSTP to be interpreted and applied in the present case?

74. The Sole Arbitrator now turns to the application of the provisions which are at the heart of this dispute, being FIFA's 'Temporary rules addressing the exceptional situation deriving from the war in Ukraine' (Annexe 7, FIFA RSTP). In particular, Article 7.3, which concerns training compensation, provides as follows:

> *"3. No training compensation is payable by the new club for a player being registered for the first time as a professional if:*
>
> *a) the player is registered with a club not affiliated to the UAF or FUR after having left the territory of Ukraine or Russia subsequently to 7 March 2022 and was allowed to be registered with a new club under the exception provided in article 19 paragraph 2 a) or d) of these regulations;*
>
> *b) the player left the territory of Ukraine or Russia subsequently to 7 March 2022 and now wishes to be registered for the first time as a professional with a club affiliated to the UAF or FUR".*

75. As set out in the summary of the parties' submissions above, the Appellant and FIFA advance competing interpretations of this Article, both in respect of its (a) literal interpretation; and (b) systematic, teleological and historical interpretation.

It falls to the Sole Arbitrator to resolve these competing interpretations.

76. As far as the relevant principles for the interpretation of rules and regulations of international sports federation are concerned, the Sole Arbitrator takes note of the guidance set down in CAS 2025/A/11604, where the CAS panel provided the following helpful summary of the relevant CAS case law and that of the Swiss Federal Tribunal:

> *"99. Under the jurisprudence of the SFT and the CAS, "it is generally admitted that rules and regulations of international sports federations are subject to the methods of interpretation applicable to statutory provisions rather than contracts" (CAS 2024/A/10378, CAS 2020/A/7331, CAS 2022/A/8915, 8918, 8919 & 89120, citing CAS 2020/A/7356; SFT Judgement 4A_314/2017, stating "the Federal Court has interpreted the statutes of major sports associations, such as UEFA, FIFA and the IAAF, in the same way as a statute" (free translation))…*
>
> *100. Consequently, any interpretation of the UEL Regulations must follow the principles of regulatory interpretation under Swiss law, which can be summarised as follows:*
>
> > *"According to Swiss Law, there are four coequal methods of interpretation. They are the grammatical (seeks after the semantic meaning of the word or phrase), the systematical (seeks after the systematic position of an article in the legal texture of the greater whole), the historical (seeks after the original intention of the rule) and the teleological method (seeks after the spirit and purpose of the statute) of interpretation (KRAMER Ernst A., Juristische Methodenlehre, p. 57 ff., p. 85 ff.; 116 ff.; BGE 135 III 112 E. 3.3.2). While interpreting a statute, the judge has to seek for an objectively right and satisfying decision, taking account of the normative context and the ratio legis (BGE 135 III 112 E. 3.3.2). Thereby no interpretation method prevails over another. Rather, the judge has to choose those methodical arguments that allow approximating the ratio legis as close as possible (KRAMER Ernst A., Juristische Methodenlehre, p. 122)" (CAS 2013/A/3047, see also CAS 2020/A/7331, citing CAS 2013/A/3365-3366; SFT judgement 4A_314/2017, stating that "Any interpretation begins with the letter of the law (literal interpretation), but this is not the decisive factor: it must also convey the true scope of the provision, which also derives from its relationship with other legal provisions and its context (systematic interpretation), the aim pursued, in particular the interest protected (teleological interpretation), and the legislature's intention as it emerges in particular from the preparatory work (historical interpretation)" (free translation) (CAS 2022/A/8915, 8918, 8919 & 89120, citing CAS 2020/A/7008 & 7009, CAS 2013/A/3365 & 3366)…*
>
> *101. At the same time, the Panel notes that, while there is no hierarchy between the four methods of interpretation (i.e., grammatical, systematic, historical and teleological), "[t]here is no reason to depart from the plain text, unless there are objective reasons to think that it does not reflect the core meaning of the provision under review" (CAS 2013/A/3365 & 3366)…".*

77. In addition, the principle of *contra preferentum*, i.e., that any remaining ambiguity in the wording of a regulation may be resolved against the party who drafted it, has been confirmed consistently by CAS panels (see, for example, CAS 2013/A/3324, CAS 2020/A/7002, CAS 2021/A/7701, CAS 2022/A/9053, CAS 2024/A/10573). However, the Sole Arbitrator emphasises that the application of the frequently invoked *contra preferentum* principle is only required when there is an objective unclarity or ambiguity of the rule, which cannot be solved on the basis of the general interpretation methods mentioned above. I.e., the said principle only applies in case there is a provision/regulation in dispute, the meaning of which cannot be understood on the basis of its (a) literal meaning; and (b) systematic, teleological and historical meaning.

78. In consideration of the Parties' submissions, it appears undisputed that the Player was registered for the first time as a professional with the Appellant (his registrations with all other previous clubs, including Novelda FC, having been on a purely 'amateur' basis). In this context, it is clear that the primary condition of Article 7.3 (that the player in question is being registered for the first time as a professional) is satisfied. The differences in interpretation between the Parties instead concern the conditions set out in Article 7.3 (a) which must be satisfied in order for the Article to apply, and in particular, whether the Appellant constitutes a/the "new club" for the purposes of that Article.

79. In accordance with the FIFA regulations already referenced in this Award, a player can be officially registered with a club as either an 'amateur' or a 'professional.' Logically, therefore, it is possible under the FIFA regulations that a player (as in this case) is first registered as an amateur (with one or more clubs) before subsequently being registered for the first time as a professional. The key question is whether a player who left Ukraine following March 2022, was then registered with a third-party club outside Ukraine purely as an amateur, before subsequently being registered for the first time as a professional with another club outside Ukraine, is covered by the provisions of this Article.

(a) the literal interpretation of Article 7.3, Annexe 7 FIFA RSTP

80. In respect of the literal meaning of the provision, the Sole Arbitrator notes that the definitions section of the FIFA RSTP simply defines "new club" as *"the club that the player is joining"*. Further, the use of the definite article "the" before "club" in the first part of Article 7.3, and the indefinite article "a" before "new club" in the second part (i.e. within the body of the sub provision (a) of Article 7.3), could suggest that the provision contemplates two potentially different clubs. In other words, in the broadest literal reading of the provision, it could be construed that the Appellant constitutes "the new club" (as the club which the Player was joining) and that FC Novelda constitutes "a (separate) new club" as the first club which registered the player outside Ukraine (albeit in a purely amateur context). At least, as argued by the Appellant, there is nothing that explicitly precludes this possibility in the regulation. If FIFA intended to only allow one club to act as the "new club" for the purposes of this Article, then the Sole Arbitrator agrees

(in principle) with the Appellant that it was open to FIFA to simply draft the regulation this way and make this clear and unambiguous.

81. However, the Sole Arbitrator does not find that, in the context of a literal meaning, the provisions of the Article are sufficiently clear and obvious so as to resolve the dispute in favour of the Appellant's interpretation on this basis alone. Indeed, the Sole Arbitrator notes that the FIFA Regulations as a whole appear to frequently use both "a new club" and "the new club" interchangeably, with little indication of intentional differentiation. Similarly, if FIFA intended for the possibility advocated by the Appellant (namely that the Article could apply to the first club outside Ukraine to register a player as a professional, even after he had previously been registered for one or more clubs outside Ukraine as an amateur), it was equally open to FIFA to make this clear and ambiguous in its wording (for example, by adding words to the effect of *"regardless of whether he was previously registered as an amateur with one (or more clubs)"*. FIFA did not do this and such words do not appear in the Article. Nor does the that the FIFA Explanatory Note on Annexe 7 RSTP of June 2024, cited by the Parties, provide a clear resolution in this respect.

82. What's more, the Sole Arbitrator notes that Article 7.3(a) relates directly to the provisions of Article 19.2 FIFA RSTP. Article 19.2 (which, as seen above, provides a specific and limited exception to the general rule that international transfers of players are only permitted if the player is over the age of 18), speaks expressly of the bases on which *"the new club"* can first register an international transfer of a minor. In the case of Article 19.2 (which the Appellant asserts as the basis for it having registered the Player *in casu*), the provision alludes to an initial (international) transfer through which a player fleeing their country of origin for humanitarian reasons *"may be registered with a professional club or purely amateur club"* and then of there being *"no restrictions on any subsequent national transfer of the minor prior to their turning 18"*. As such, it is far from clear and unambiguous on a literal reading whether or not FIFA intended the provisions of Article 7.3, Annexe 7 FIFA RSTP to be applicable to multiple clubs, including a club (such as the Appellant *in casu)* which is registering a player for the first time as a professional who had previously made an international transfer from a club in Ukraine to a third party club in the Appellant's country as an amateur.

83. There also remains some doubt as to what is meant by *"after having left the territory of Ukraine or Russia"*. I.e., whether (as argued by the Appellant) this should be understood to mean the provisions of Article 7.3 apply at any point after the player in question has left Ukraine or Russia; or, as argued by FIFA, whether this implies *"a direct and immediate temporal link between the player's departure from Ukraine or Russia and his first professional registration with a club outside those countries"*. The Sole Arbitrator notes that words which specifically require such a direct and immediate temporal link are absent from the wording of the provision. However, it is understandable that the inclusion of such words may have presented additional ambiguities from a drafting and practical perspective. For instance, it is recognised that it may take time for a player to find, negotiate and agree terms and be registered with a

"new club" in a foreign country after leaving their home territory, especially unaccompanied minors fleeing in the sort of circumstances experienced by the Player and covered by Annexe 7 FIFA RSTP. In this context, the inclusion of words such as "directly" or "immediately" in the wording of this provision would potentially add additional ambiguities as to whether such situations were intended to be covered by the regulations. From a literal reading of the provision, there therefore remains ambiguity as to whether it was intended to apply only to the first club which a player in such circumstances signs for after leaving Ukraine, or whether it was also intended to apply to where a player had signed for one or more clubs on a purely amateur basis after leaving Ukraine and only then went on to sign for another club on a professional basis.

84. As such, the Sole Arbitrator turns his attention to the systematic, teleological and historical meaning of the disputed Article, and the Parties' lengthy submissions on this point.

85. In this context, the Sole Arbitrator notes that Article 7.3 belongs to the general framework established by Article 20 FIFA RSTP ("Training Compensation"), specifically the principle that *"training compensation shall be paid to a player's training club(s): (1) when a player is registered for the first time as a professional"*. It could therefore be argued that because Article 20 FIFA RSTP also links such training compensation mandatorily to registration as a professional, the exception in Annexe 7 can rarely (if ever) affect an amateur club, which generally does not register any professionals and therefore does not trigger/owe compensation. In other words, if registration as an amateur is not covered by Article 20 FIFA RSTP, then no exception needs to be made for it, and Article 7.3(a), Annexe 7 cannot, in principle, apply as an exception for registration as an amateur, but only for registration as a professional. Naturally, this interpretation speaks in favour of the position espoused by the Appellant. However, the scope of application set out in Article 1 of Annexe 7 (and which specifically excludes certain forms of contractual relationship) does not exclude its application to employment contracts for amateur players. Nor is the Sole Arbitrator fully persuaded by this logic alone.

(b) the systematic, teleological and historical interpretation of Article 7.3, Annexe 7 FIFA RSTP

86. Further, both the Appellant and FIFA argue that Article 7.3 (a) must be reviewed in the specific context of why Annexe 7 was drafted and introduced by FIFA in the first place. In this respect, the Sole Arbitrator also refers to the helpful analysis of the CAS Panel in CAS 2013/A/3324:

"However, the rules must be applied according to their spirit not merely according to their letter. In other words, the Panel has to interpret the rules in question in keeping with the perceived intention of the rule maker, and not in a way that frustrates it.

[…]

Further, as a senior English judge, Lord Steyn, once said "in the law, context is everything"".

87. Accordingly, at this point, the particular background to FIFA's introduction of

the provision (and Annexe 7 RSTP generally) must be emphasised. The Explanatory Note on Annexe 7 to the FIFA RSTP, dated June 2024, provides useful context in this respect. The introduction includes the following:

"As a consequence of the military invasion of Ukraine by Russian armed forces, FIFA decided to urgently address these extraordinary and unforeseen circumstances in March 2022. In the context of this complex and urgent situation, after a consultation process involving the key football stakeholders, the Bureau of the FIFA Council adopted regulatory measures to provide urgent legal certainty and clarity on a number of important regulatory matters. This led to the adoption of Annexe 7 to the Regulations on the Status and Transfer of Players (RSTP) in its original version of March 2022.

[…]

Following these decisions, the ongoing, tragic situation between Ukraine and Russia and the unforeseeable duration of the war have led to a need for further clarification on the application of Annexe 7 to the RSTP, in particular as to its possible application beyond 30 June 2024. There is an ongoing need for legal clarity related to the employment relationships of foreign players and coaches in Ukraine and Russia, which FIFA must address. In light of this, on 15 May 2024, the FIFA Council approved further temporary amendments to Annexe 7 to the RSTP.

Once again, these temporary rules that have been incorporated in the revised Annexe 7 to the RSTP (hereinafter "Annexe 7 (June 2024 edition)") are a result of extensive discussions with all key football stakeholders. Through intense discussions, FIFA has sought to strike a balance between all the interests at stake. Furthermore, as confirmed by CAS, it is within FIFA's competence as the world's governing body of football to issue the rules contained in Annexe 7 as a proportionate, reasonable and necessary regulatory step to address the extremely challenging circumstances caused by Russia's war against Ukraine".

88. This document thereby emphasises that the contested provision was introduced in extraordinary and unforeseen circumstances (namely the military invasion of Ukraine by Russian armed forces). They are described as *"temporary rules",* which have been extended and clarified due to the and the *"unforeseeable duration"* of this conflict. Notably, FIFA emphasises its goal to *"strike a balance between all the interests at stake*," within the context of its competence to take *"proportionate, reasonable and necessary"* regulatory steps in the context of this crisis situation.

89. FIFA also relies on its earlier circular letter to member associations dated 9 March 2022 (sent shortly after the Russian invasion of Ukraine), first informing members of the adoption of Annexe 7 on 7 March 2022. In respect of the relevant provisions of Annexe 7, this additional guidance stated:

"(f) Improved protection of minors

To best protect minors fleeing the conflict, any minor residing in the territory of Ukraine who wishes to be registered with a new club shall be automatically deemed to fulfil the requirements of the exception provided in article 19 paragraph 2 d) of the RSTP.

(g) Training compensation

The temporary amendments explicitly state that no training compensation will be due on registering any player whose previous registration was in the UAF or FUR and whose contract has been suspended, and no entitlement to

training compensation will arise for any club not affiliated to the UAF or FUR which has registered a player following the suspension of the player's contract".

90. Similarly, FIFA argues at paragraph 61 of its Answer that:

> *"Naturally, these measures aimed to respond to an urgent humanitarian crisis. Through the first measure, FIFA facilitated the safe relocation and integration of minors fleeing the armed conflict. Moreover, by waiving training compensation, FIFA encouraged clubs from other countries to register displaced players (not only minors) without the financial burden that training compensation might entail. The main goal at this point was to ensure that displaced players – especially minors – could be safe and continue their development in a non-violent environment both on and off the pitch".*

91. The Appellant, for its part, does not dispute the broad context for the drafting and introduction of Annexe 7, stating at paragraph 97 of its Appeal Brief that:

> *"In this matter the systematic interpretation derives from the whole analysis of Annexe 7 of FIFA RSTP in which the provision is inserted: this Annexe was set up to face with an urgent and problematic situation and was visibly drafted to grant Ukrainian (and Russian) players freedom of movement to flee from war zones".*

92. Where the positions of the Appellant and FIFA principally diverge is in the interpretation of FIFA's drafting intention in this context. In essence, the Appellant argues that Article 7.3 *"must be approached as a provision not limiting the chance of a minor player to sign outside Ukraine his first professional contract but rather the contrary".* The Appellant emphasises the concept of protection of minors and safeguarding of players' rights, arguing that finding that clubs in its position have to play training compensation would make it less likely that they would sign a minor in the Player's position, thereby reducing the level of protection afforded to such minors, *"contrary to the spirit of the rules".*

93. Conversely, FIFA emphasises the temporary and limited nature of the regulations in Annexe 7, arguing that a key intention in their drafting was not only to provide opportunities for footballers in Ukraine and Russia affected by the war in Ukraine (including unaccompanied minors) to safely pursue other footballing opportunities abroad on a temporary basis, but also to ultimately facilitate the return of such players to clubs affiliated with the national associations in Ukraine and Russia in due course, should they wish to. It argues that, *"if this exception in Article 7.3, Annexe 7 were to remain valid or applicable without any temporary limit and until the player becomes professional, the consequence would contradict the legislator's intent: the player's return would be least feasible because foreign clubs would be interested in registering a player as a first-time professional without having the burden of paying training compensation".*

94. Up to a point, the Sole Arbitrator follows the logic of both these interpretations, which are well articulated in the Parties' submissions. However, on balance and in all the circumstances of the case, the Sole Arbitrator finds more support for FIFA's interpretation of the systematic, teleological and historical nature of the provisions in context than that of the Appellant.

95. In coming to this conclusion, the Sole Arbitrator takes note of the specific and exceptional circumstances in which the provision in question was drafted, and in which it is rooted (as per the other provisions of Annexe 7 and the various guidance sources mentioned above). According to the documentation provided by FIFA, Annexe 7 in its original form was adopted by the Bureau of the FIFA Council on 7 March 2022, i.e. just over two weeks following Russia's invasion of Ukraine on 22 February 2022. In these circumstances, and considering the nature of the regulations as an urgent response to humanitarian crisis and uncertainty, it is understandable that the terms of Annexe 7 may not have been perfectly drafted or fit seamlessly and precisely into the existing FIFA regulatory framework.

96. What is repeatedly emphasised, from the outset of these regulations' introduction, is their limited and temporary nature, characterised by uncertainty as to how long the conflict in Ukraine would last, and how long footballers from that country would therefore be prevented from remaining registered and competing for their clubs affiliated with that national association, and be forced to leave the country to seek safety and opportunities elsewhere. While the Sole Arbitrator takes note on the emphasis placed by the Appellant on protecting the rights of players (including minors) in the circumstances covered by the regulations, he also notes the repeated emphasis in FIFA's provisions on the proportionality and fairness of the regulations, and its intention to balance the rights of all stakeholders involved. In this context, the Sole Arbitrator follows FIFA's logic at paragraph 76 of its Answer that *"if a player who fled Ukraine is permanently exempt from training compensation, while another local or internation* [sic] *player is not, this would create an unnecessary imbalance. Naturally, the war-related exemption should not create long-term disparities in how training compensation is applied and, therefore, the relevant exemption shall not be applied ad eternum"*.

97. In the Player's case, at his time of registration with the Appellant, he had already been residing in Spain and had been registered with another club (FC Novelda) for almost one year. As argued by the Appellant, his professional registration with the Appellant therefore did not follow on directly (or even shortly) after his departure from Ukraine. In these circumstances, it is harder to argue that the Player was in the specific circumstances intended to be captured by the limited and temporary provisions of Annexe 7 than a player who had left Ukraine specifically in order to take up an opportunity with a club abroad, or had joined such a club shortly after fleeing Ukraine. In effect, the Sole Arbitrator is satisfied that the Player's registration with FC Novelda and time spent living in Spain while registered with this third-party club broke the causal link to the provisions of Annexe 7 and deprives the Appellant of the benefit of relying on those provisions in this case.

98. Further context to the introduction of Annexe 7 has already been provided in detail by other CAS Panels, for example in CAS 2022/A/9016, in which the Panel also examined and upheld the substantive validity of the Annexe 7 provisions themselves. The Sole Arbitrator shares the concerns noted by the Panel in that case when it stated (at para. 156 of its award):

"Nonetheless, the Panel finds it disturbing that such new clubs may potentially obtain a financial advantage in the form of the registration of football players and/or coaches for which they did not have to pay any transfer fee to acquire their services, while potentially making significant profits on such players and/or coaches by subsequently transferring them to other clubs for a transfer fee".

99. The fundamental purpose and scope of the concept of training compensation are set out by FIFA in its Commentary on the FIFA RSTP cited by the Appellant, which includes the following description:

"The training compensation system established a framework whereby clubs that invest in training and educating young players are rewarded whenever a player that they trained becomes a professional, thus encouraging clubs to invest in youth development. Clubs that do not invest in training and educating young players are made to reimburse the clubs who train the players that become professional as, in principle, they are benefiting from the training and education provided by those training clubs".

100. In this context, the Sole Arbitrator is satisfied that the legislative intent of FIFA was not to create an exemption through Annexe 7 which would extend so far as to deny the rewards of training compensation to clubs in Ukraine and Russia on anything more than a strictly limited basis. This would serve to tip the balance of interests too far in favour of professional clubs outside Ukraine and Russia who may wish to sign players well beyond the time of their departure from those countries for humanitarian reasons, and therefore against the multiple (often small) clubs that invest time and money in training and educating such players as an amateur). Moreover, such an interpretation would create a manifest risk of circumvention, permitting clubs or agents to strategically place players with amateur clubs as an interim step before subsequently registering them as professionals, thereby avoiding training compensation obligations and fundamentally undermining the training compensation system. These points appear key, considering FIFA avowed intent in its Explanatory Note on Annexe 7 to the FIFA RSTP, dated June 2024 to *"strike a balance between all the interests at stake,"* within the context of its competence to take *"proportionate, reasonable and necessary"* regulatory steps in the context of this crisis situation.

101. Considering all the specific circumstances of the case at hand (in which a Player had been registered as an amateur with another club for around a year following his departure from Ukraine, before being registered with the Appellant as a professional), and in view of a systematic, teleological and historical interpretation of the relevant regulatory provisions, the Sole Arbitrator is therefore convinced that it was not FIFA's intent for such a scenario to be covered by the provisions of Annexe 7. This being the case, there is no need or basis for the application of the *contra preferentum* principle, as advocated by the Appellant.

102. Finally, the Appellant argues at paragraph 58 of its Appeal Brief that when registering the Player *"as a first registration and not as a subsequent transfer",* it relied upon the assurances given by RFEF, *"after the latter had consulted FIFA and thus understood that no training compensation was due to previous clubs in accordance with article 7.3 of Annexe 7*

RSTP". The Appellant has provided copies of email correspondence (in Spanish) between it and the RFEF as evidence on this point, citing the *venire contra factum proprium principle* and the duty to behave in good faith as a basis for its argument that it cannot now be *"condemned to pay training compensation"*. However, the Sole Arbitrator finds no support for such an argument in the evidence presented by the Appellant. Firstly, because as demonstrated above, it is not contested that the registration of the Player with the Appellant was a first professional registration (the previous registrations of the Player with all other clubs, including Novelda FC, having been on a purely amateur basis), but, for the reasons set out above, this is not determinative to the question of whether the Appellant is required to pay training compensation. Secondly, because in analysing the said email correspondence submitted by the Appellant, the Sole Arbitrator finds no indication of confirmation from the RFEF, FIFA or any other entity that the Appellant was not required to pay training compensation or that the provisions of Article 7.3, Annexe RSTP applied to the specific circumstances of the case. These matters were only analysed and decided upon in detail by the FIFA DRC in the FIFA proceedings referred to above, where it was determined and communicated to the Appellant that it was required to pay training compensation in respect of its registration of the Player. Thirdly, and in any event, the Sole Arbitrator sees no basis for attributing an email from the RFEF in which it references separate communication with FIFA as a statement from the regulatory authority in this case (FIFA) on which the Appellant is entitled to rely.

103. In summary, the Sole Arbitrator is satisfied, following detailed analysis of both of (a) the literal meaning; and (b) the systematic, teleological and historical meaning of the disputed provision (Article 7.3, Annexe 7 FIFA RSTP), that FIFA, when drafting the relevant regulations, did not intend the exception to the obligation to pay training compensation to apply to the specific circumstances of this case. Having determined that training compensation is therefore due in principle in respect of the Appellant's registration of the Player, the Sole Arbitrator turns to the question of whether the Third Respondent has waived its entitlement to its share of such training compensation.

C. If relevant, did the Third Respondent waive its entitlement to training compensation for the Player?

105. Having concluded that training compensation is payable in principle, it is necessary to address the Appellant's argument that the Third Respondent (DIUSSH Novomoskovsk) waived its entitlement to training compensation.

106. In respect of the general principles regarding a potential waiver of training compensation, the Sole Arbitrator notes that both the FIFA regulations (the FIFA CHR and the FIFA RSTP) and CAS jurisprudence (see, for example, CAS 2023/A/10041) recognise that waivers of training compensation are permissible in principle. This principle reflects the autonomy of clubs to manage their own contractual relationships.

107. In respect of the procedural requirements for a valid waiver, Article 9.7 of the FIFA CHR provides that

"[w]here a training club has waived its right to receive training rewards, proof of a valid waiver shall be uploaded in TMS by the new club". This procedural obligation is mandatory for a waiver to be valid (see CAS 2024/A/10453). This procedural requirement serves the legitimate purpose of enabling FIFA to process training rewards efficiently and to maintain the integrity of the transfer system.

108. In the present case, the Third Respondent uploaded a document in FIFA TMS under the "waiver section" stating: *"we have no financial claims against football player: ILLIA VOLOSHYN" and "do not object to his transfer to another football club"*. The document was uploaded to TMS, thereby satisfying the procedural requirement that waivers be submitted through the TMS system.

109. The Sole Arbitrator relies on the Commentary on the FIFA RSTP (at page 391 *et seq*.) on *"waiving the right to training compensation",* referenced by the Appellant, as well as to CAS jurisprudence, and subsidiarily Swiss law, to address this question. In this context, the Sole Arbitrator recalls that, for a waiver to be valid, (i) the person renouncing a right must have the capacity and authority to do so; (ii) the waiver must be clear and unequivocal; and (iii) the person must have the right which he is renouncing. As a further general principle of Swiss law, rights may be waived voluntarily unless the waiver is contrary to law, public policy or good morals (see, for example, CAS 2021/A/8392, CAS 2023/A/9975-9976).

110. The Sole Arbitrator must therefore assess whether the language used in the document uploaded by the Third Respondent is sufficiently clear and unequivocal to demonstrate an intention to waive its entitlement to training compensation, applying the standards articulated in the aforementioned CAS jurisprudence. The fact that the procedural requirement of uploading the document in TMS has been satisfied does not, in itself, establish that the waiver is substantively valid; the content and wording of the document must be examined against the established criteria.

111. The Appellant argues that, although the wording of this waiver does not expressly mention that it waives training compensation, the fact that the Third Respondent uploaded this document under the section *"waivers",* evidently shows the intention of this party to renounce its possible entitlement to any compensation. The fact that the same club in the document points out that *"we have no financial claims against football player"* for the Player (being a minor, amateur player at that time) shows that the intention of the waiver was to waive any financial entitlement of the Third Respondent in the form of training compensation.

112. FIFA argues that, given the paramount importance of rewarding and recompensing the (often small) clubs which train football players, the Football Tribunal's jurisprudence requires, for a valid waiver, *"a clear and unequivocal declaration by the party concerned and an unambiguous language that reflects such party's intention to renounce its rights"*. FIFA cites the principles outlined in the above CAS cases (CAS 2021/A/8392, CAS 2023/A/9975-9976) and argues that, in this context, the Third Respondent's statement that *"we have no financial claims*

against the football player […] *"does not reflect Novomoskovsk's waiver to training compensation as it does not refer to "training rewards" or "training compensation". In fact, it does not even refer to any financial debt against the Appellant. The uploaded document merely affirms that Novomoskovsk does not hold any financial claims against the player himself".*

113. The Sole Arbitrator concurs with FIFA's analysis on this point. Applying the aforementioned principles from previous CAS jurisprudence to the present case, the Sole Arbitrator notes that the document uploaded by the Third Respondent:

    i. does not specifically mention training compensation;

    ii. refers to *"financial claims against football player"* rather than claims against the Appellant or any other club;

    iii. does not specifically mention the Appellant or its registration of the Player;

    iv. therefore, does not contain any clear statement of intention to waive entitlement to training compensation due regarding the registration of the Player with the Appellant.

114. Based on the established CAS jurisprudence, and considering the nature and wording of the statement (a briefly, broadly-worded statement that refers to the Third Respondent having no claims against the Player, rather than a clear, specific waiver of the training compensation due to it from the Appellant), the Sole Arbitrator does not consider the statement made by the Third Respondent to be a substantively valid waiver of its entitlement to training compensation for the Player in any subsequent transfer. The language is not sufficiently clear and unambiguous to demonstrate an intention by the Third Respondent to waive its entitlement to training compensation from the Appellant. The reference to *"no financial claims against football player"* is more naturally interpreted as a statement that the Third Respondent has no outstanding financial claims against the Player himself (for example, for unpaid fees or breach of contract), rather than as a waiver of the Third Respondent's entitlement to receive training compensation from the Appellant.

115. The Sole Arbitrator concludes that the Third Respondent has not validly waived its entitlement to training compensation.

116. In light of the above considerations, the Sole Arbitrator concludes that the appeal shall be dismissed and the Appealed Decisions are, therefore, confirmed.

ON THESE GROUNDS

The Court of Arbitration of Sports rules that:

1. The Appeal filed by C.F. Rayo Majadahonda S.A.D. against MEE DSSC DRC Dnipro, DIUSC Inter Dnipro, DIUSSH Novomoskovsk and the Fédération Internationale de Football Association (FIFA) with respect to the decisions issued on 1 October 2024 by the FIFA General Secretariat in respect of an Electronic Player Passport and associated Allocation Statement is dismissed.

2. The decisions rendered on 1 October 2024 by the FIFA General Secretariat are confirmed.

3. (…).

4. (…).

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

CAS 2024/A/10961
International Weightlifting Federation (IWF) v. Revaz Davitadze & Georgian Anti-Doping Agency (GADA)
award 24 November 2025 (operative part of 30 September 2025)

Weightlifting; Doping (ostarine); Court judgment not constituting irrebuttable evidence of No Fault or No Negligence with respect to a third party; Investigation into an alleged sabotage; Breach of provisional suspension

Panel
Mr Vladimir Novak (Slovakia), Sole Arbitrator

1. **A State court judgment does not represent irrebuttable evidence to justify a finding of No Fault or Negligence with respect to an athlete non-addressee of the State court judgment under Article 10.5 of *inter alia* the World Anti-Doping Agency (WADA) Code on the basis of the fact that Article 3 of the WADA Code indicates that the provision as a whole is concerned with establishing *"Proof of Doping"*, rather than exonerating athletes, and Article 3.2.4 unambiguously refers to evidence *"against"* the person to whom the decision pertained, rather than to provide for a defence against such violations. If a State court ruling is rendered against an athlete or another person, those individuals are able to appeal, failing which it is only fair to take that decision on its face against its addressees. The same is not the case for an athlete that is non-addressee of the State court ruling. To find otherwise would also mean that other interested parties such as WADA or international federations would be left without any recourse – both nationally and internationally – which is not the rationale of the WADA Code as a whole (which expressly grants WADA jurisdiction to appeal certain cases) or Article 3.2.4 of the GADA Anti-Doping Rules (ADR) specifically. Finding that the CAS would be bound by any State court ruling against any person would also be untenable (i) as a conceptual matter, as it would mean that the CAS would automatically be precluded from exercising its *de novo* jurisdiction, which cannot be accepted, and (ii) as a policy matter, as it would enable "fall guy" scenarios where complicit third parties could confess to sabotage, allowing athletes to escape sanctions through manufactured defences.**

2. **As the information available regarding a sabotage scenario leaves open essential facts required for establishing on the balance of probabilities that a spiking offence occurred which led to ostarine entering an athlete's system without his knowledge or suspicion, such lack of detailed investigation, combined with the scientific implausibility and contradictory testimony, renders the facts established insufficient to allow the athlete to meet his burden of proof. Accepting such superficial findings without thorough independent verification would enable the above-mentioned "fall guy" scenarios.**

3. **According to Article 10.14.1 of the GADA's ADR, an athlete who has been declared ineligible or is subject**

to a provisional suspension cannot participate in any capacity in a competition or activity authorised or organised by the national federation, such as a training camp. Provisional suspension rules are strict as a matter of policy. The athletes are expected to strictly adhere to these rules and not look for technical ways to circumvent them. Both objective circumstances of the training setting and testimonial record can be considered to assess whether the athlete was functionally integrated into the team's organised session or instead trained independently in proximity to the team.

I. PARTIES

1. The International Weightlifting Federation ("IWF" or the "Appellant") is the international governing body for the sport of weightlifting. It is headquartered in Lausanne, Switzerland. As a Signatory to the World Anti-Doping Code ("WADA Code"), the IWF has enacted its anti-doping rules. In furtherance of its commitment to clean sport, the IWF has delegated the implementation of its anti-doping programme to the International Testing Agency ("ITA"). Such delegation includes, amongst others, results management and subsequent prosecution of potential anti-doping rule violations under the jurisdiction of the IWF.

2. Revaz Davitadze (the "First Respondent" or the "Athlete") is a 26-year old weightlifter from Georgia. He is a member of the Weightlifting Federation of Georgia.

3. The Georgian Anti-Doping Agency ("GADA" or the "Second Respondent", together with Revaz Davitadze the "Respondents") is approved by the World Anti-Doping Agency ("WADA") as a national anti-doping organisation ("NADO") in Georgia within the meaning of the WADA Code. GADA has its registered seat in Tbilisi, Georgia.

4. The Appellant and the Respondents are collectively referred to as the "Parties".

II. FACTUAL BACKGROUND

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

6. On 16 July 2023, the Athlete was subject to an out-of-competition doping control test, whereby a urine sample was collected from him by the IWF. The sample was transferred to a laboratory for analysis and did not reveal the presence of any prohibited substances.

7. On 15 August 2023, the Athlete was subject to another out-of-competition doping control test, whereby a urine sample (the "Sample") was collected by GADA.

8. On 5 September 2023, a laboratory finding confirmed the presence of

ostarine in the A-Sample (No. A-1190536). Ostarine is listed under S.1.2 of the WADA Prohibited List under *"Other Anabolic Agents"*.

9. On 6 September 2023, GADA notified the Athlete of an adverse analytical finding in the A-Sample in violation of Article 2.1 of GADA's Anti-Doping Rules ("ADR") and imposed a provisional suspension with immediate effect pursuant to Article 7.4.1 of the ADR.

10. On 27 October 2023, a laboratory finding confirmed the presence of ostarine in the B-Sample (B-1190536).

11. On 20 June 2024, the Tbilisi City Court delivered its judgment in Case 1/3853-24 ("Tbilisi City Court Judgment"), finding that on 1 July 2023, a defendant named Nikoloz Gogava inflicted bodily harm on the Athlete (and additional athletes) by adding ostarine to their drinking water while they were staying at a sports base in Dusheti, Georgia. The Court also found that on 24 or 25 June 2023, Mr Gogava added ostarine to the drinking water of additional athletes who are also members of the Georgian National Weightlifting Team, while they were staying at a sports base in Bakuriani, Georgia. The Tbilisi City Court sentenced Mr Gogava to a probationary sentence.

12. On 25 June 2024, the Athlete requested GADA to schedule a meeting regarding the removal of the provisional suspension because the Tbilisi City Court Judgment held that the Athlete was a victim of a sabotage.

13. On 26 August 2024, GADA's Disciplinary Committee issued Decision N 2024-04 (the "Appealed Decision") on the basis of the Tbilisi City Court Judgment, stating that fault and negligence are excluded under Article 10.5 of WADA Code and the provisional suspension imposed by GADA is terminated.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

14. On 25 October 2024, the Appellant submitted a Statement of Appeal within the meaning of Article R47 of the Code of Sports-related Arbitration ("CAS Code") and Article 13.2 of the IWF Anti-doping Rules ("IWF ADR") before the Court of Arbitration for Sport ("CAS") against the Appealed Decision. The Appellant requested a 10-day extension to submit its Appeal Brief.

15. On 28 October 2024, the CAS granted the Appellant a 10-day extension for the submission of the Appeal Brief pursuant to Article R32 of the CAS Code, followed by an additional 20-day extension granted on 5 November 2024 and last extension granted on 4 December 2024 with an ultimate deadline of 9 December 2024.

16. On 2 November 2024, the First Respondent agreed that the present case be submitted to a sole arbitrator together with case CAS 2024/A/10960.

17. On 4 November 2024, the Appellant and the Second Respondent concurred that cases CAS 2024/A/10960 and CAS 2024/A/10961 be submitted to the same sole arbitrator.

18. On 20 November 2024, the Second Respondent submitted an unsolicited statement in response to the Appeal

arguing that it was wrong because Georgian courts had already established sabotage as a fact, which under Article 3.2.4 of the WADA Code constitutes undeniable evidence that cannot be reviewed through arbitration.

19. On 21 November 2024, the CAS Court Office requested the Second Respondent to qualify whether its unsolicited statement constitutes its Answer in the sense of Article R55 of the CAS Code.

20. On 22 November 2024, the Second Respondent indicated that *"our last submission could be the respondent's answer following article R55 of the Code"*, but also that the Second Respondent would present new evidence when the Appellant submits its Appeal Brief. On the same day, the CAS Court Office requested again the Second Respondent to clarify whether its unsolicited statement constitutes its Answer in the sense of Article R55 of the CAS Code. The Second Respondent confirmed on the same day that *"the letter is the answer to the respondent's answer following article R55 of the Code"* but that the Second Respondent reserves the right to provide another answer. In the same letter, the Second Respondent also confirmed its acceptance to submit the present proceedings to the same *"panel"* as in CAS 2024/A/10960.

21. On 6 December 2024, the Appellant filed its joint Appeal Brief for cases CAS 2024/A/10960 and CAS 2024/A/10961. On the same date, the CAS Court Office invited the Respondents to file their Answers within 20 days.

22. On 23 December 2024, the First Respondent requested the deadline to file its Answer to be suspended due to the failure to provide all relevant documents. The CAS rejected the request on the same day as all relevant submissions and exhibit had been made available.

23. On 24 December 2024, the First Respondent requested a 14-day extension to file its Answer.

24. On 26 December 2024, the Second Respondent submitted its Answer to CAS *via* email only.

25. On 3 January 2025, the CAS granted the First Respondent an extension of 10 days to submit its Answer, given the Appellant did not object to said extension.

26. On 9 January 2025, the CAS Court Office noted that neither the Answers of 20 November 2024 nor of 26 December 2024 were received by the CAS Court Office *via* courier, as required by Article R31 paragraph 3 of the CAS Code. The Second Respondent was further invited to advise the CAS Court Office, within a three-day deadline, whether it had filed a physical copy of the Answer within the given time limit. Further information would be given depending on the Second Respondent's response to the above.

27. On 9 January 2025, the Second Respondent requested an extension of the time limit to file a physical copy of its Answer. On the same day, the CAS Court Office noted that the time period for the Second Respondent to file a physical copy of its Answer expired on 27 December 2024, and that time limit

extensions requested after the expiration cannot be accepted. The CAS Court Office further informed the Parties that the Sole Arbitrator may nevertheless proceed with the arbitration and deliver an award in accordance with Article R55 paragraph 2 of the CAS Code.

28. On 16 January 2025, the First Respondent submitted its Answer to CAS *via* email.

29. On 20 January 2025, the CAS Court Office requested the First Respondent to submit a physical copy of its Answer by 23 January 2025. On the same day, the First Respondent confirmed that a physical copy had been sent *via* courier on 16 January 2025.

30. On 22 January 2025, the CAS Court Office invited the Parties to state whether they wished a hearing to be held or for the Sole Arbitrator to issue an award solely on the basis of written submissions.

31. On 29 January 2025, the Appellant submitted that it wishes a hearing to be held, but that no case management conference was required.

32. On 31 January 2025, the Second Respondent requested a hearing to be held.

33. On 17 March 2025, the CAS Court Office informed the Parties that the Panel appointed to decide the present case was constituted as follows:

    Sole Arbitrator: Mr Vladimir Novak, Attorney-at-law in Brussels, Belgium.

34. On 21 March 2025, the Appellant was requested to comment on the admissibility of the Second Respondent's Answer, which was filed by e-mail only, within 5 days.

35. On 26 March 2025, the Appellant deferred to the Sole Arbitrator's discretion on the admissibility of the Second Respondent's Answer, and requested a leave to produce a new document containing correspondence with WADA in a related case, in which WADA explains its interpretation of Article 3.2.4 of the WADA Code, noting that the article cannot be relied on as irrebuttable evidence absolving athletes that allegedly fell victim to the sabotage by Mr Nikoloz Gogava of their responsibility for their adverse analytical findings.

36. On 27 March 2025, the CAS Court Office invited the Respondents to comment on the admissibility of the Appellant's new document.

37. On 28 March 2025, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to admit the Second Respondent's Answer, and that the reasons for such decision would be given in the final Award.

38. On 31 March 2025, the Second Respondent confirmed that it had no objection to the admissibility of the Appellant's new document and requested that it be granted 10 days after the document's admission to present its position on it.

39. On 1 April 2025, the First Respondent objected to the admissibility of the Appellant's new document, arguing that the Appellant should have submitted it within the permitted time frame, and requested that it be granted 10 days to

present its position on the new document in case it is admitted.

40. On 9 April 2025, the Appellant responded to the First Respondent's claim that the new document could have been produced earlier, arguing that the new document did not exist at the time when the Appeal Brief was filed, and that it thus could not have been produced at that time.

41. On 11 April 2025, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to admit the Appellant's additional document and to hold an oral hearing (the "Hearing") by video-conference.

42. On 15 April 2025, the Second Respondent presented its observation on the additional document produced by the Appellant, essentially disagreeing with the argument that Article 3.2.4 of the WADA Code cannot be relied on to refute the alleged doping offenses. Instead, the Second Respondent argued, the matter falls within the scope of Article 3.2.4 of the WADA Code and a finding of no fault or negligence under Article 10.5 of the WADA Code would be warranted.

43. On 21 May 2025, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a joint Hearing for cases CAS 2024/A/10960 and CAS 2024/A/10961 (with the agreement of the Parties) on 26 and 27 August 2025 and transmitted the Order of Procedure.

44. On 11 June 2025, the Appellant and the First Respondent returned their signed Order of Procedure.

45. On 18 June 2025, the Second Respondent returned their signed Order of Procedure.

46. On 26 and 27 August 2025, the hearing took place remotely. Together with the Sole Arbitrator, CAS Counsel Andrea Sherpa-Zimmermann and the First Respondent in case CAS/A/10960, the following persons attended the hearing:

- For the Appellant: Mr Anton Sotir (counsel); Ms Ayesha Talpade (counsel); Prof. Martial Saugy (expert witness); Nikita Sharapov (witness); Mr Irakli Todria (translator).

- For the First Respondent: Revaz Davitadze (First Respondent); Lukasz Klymczyk (counsel); Lasha Alkadze (witness); Giorgi Asanidze (witness); Kakhi Asanidze (witness); Gurami Giorbelidze (witness); Nikoloz Gogava (witness); Zurab Kakhabrishvili (witness); Professor Pascal Kintz (expert witness);

- For the Second Respondent: Mr Luka Khatiashvili (Second Respondent's representative); Mr Teimuraz Ukleba (Second Respondent's representative).

47. At the outset of the hearing, the Parties confirmed that neither had any objections as to the constitution of the Sole Arbitrator.

48. During the hearing, the Parties had ample opportunity to present their case, submit their arguments and answer the Sole Arbitrator's questions.

49. At the end of the hearing, the Parties stated that they had no objections as to the procedure adopted by the Sole Arbitrator and confirmed that their right to be heard had been respected.

IV. SUBMISSIONS OF THE PARTIES

A. The Appellant

50. The Appellant's Appeal Brief contains the following requests for relief:

- *"The IWF's appeal is admissible.*
- *The decision dated 26 August 2024 rendered by the Disciplinary Committee of GADA in the matter of Revaz Davitadze (decision N 2024-04) is set aside.*
- *Revaz Davitadze is found to have committed an anti-doping rule violation pursuant to Article 2.1 and/or 2.2 of the IWF/GADA ADR.*
- *Revaz Davitadze is sanctioned with a period of ineligibility of four years starting on the date on which the CAS award enters into force. No period of Provisional Suspension shall be credited against the total period of ineligibility to be served.*
- *All competitive results obtained by Revaz Davitadze from 15 August 2023 until the date on which the CAS award enters into force are disqualified, with all resulting consequences (including forfeiture of medals, points and prizes).*
- *The arbitration costs shall be borne by GADA or, in the alternative, by Revaz Davitadze and GADA jointly and severally.*
- *The International Weightlifting Federation is granted a contribution to its legal and other costs.*
- *Any other prayers for relief that the Sole Arbitrator deems fit in the facts and circumstances of the present case".*

51. In support of its relief, the Appellant relies on the following principal arguments:

- The First Respondent committed anti-doping violations under Articles 2.1 and 2.2 of the IWF ADR. The Appellant notes that the B-Sample analysis confirmed the presence of a prohibited substance (ostarine) in the A-Sample. The First Respondent did not challenge the analytical results' reliability, while WADA-accredited laboratories are presumed to have conducted proper analysis under Article 3.2.2 of the IWF ADR.
- The Appellant request upholding a four-year period of ineligibility under Article 10.2.1.1 of the IWF ADR, as ostarine is a non-specified substance. The Appellant contends that this period can only be reduced if an athlete establishes that his violation was not intentional under Article 10.2.3 of the IWF ADR, and further mitigation requires proving "No Fault or Negligence" (Article 10.5 of the ADR) or "No Significant Fault or Negligence" (Article 10.6 of the IWF ADR). The First Respondent bears the sole burden of establishing how the prohibited substance entered his body, citing

extensive CAS jurisprudence requiring proof on balance of probability that their explanation is *"more probable than non-occurrence"*.

- The First Respondent failed to meet the high evidentiary standard required to establish "No Fault or Negligence" under Article 10.5 of the IWF ADR, which forms the legal basis of the Appealed Decision, for the following reasons.

    - First, as a matter of law, the Appellant argues that CAS is not bound by the Tbilisi City Court Judgment. Pursuant to Article 13.1.2 of the IWF ADR, CAS proceedings should not give deference to prior proceedings. The Tbilisi City Court Judgment could only be considered on the basis of the probative value of the facts it establishes.

    - Second, the Appellant challenges that the evidence established by the Tbilisi City Court Judgment would suffice for a finding of No Fault or Negligence, arguing that the judgment relies solely on Mr Gogava's uncorroborated confession without independent verification. The Appellant highlights numerous unanswered questions regarding (i) the sabotage scenario, and (ii) how the prohibited substance entered the First Respondent's body. Regarding (i), the Appellant underlines the lack of evidence as to how Mr Gogava obtained ostarine, his travel to training camps, specific spiking methods, timing, quantities used, and how he avoided detection. Regarding (ii), the Appellant argues that there is no evidential basis for how the First Respondent consumed ostarine. Overall, the Appellant argues that the Tbilisi City Court Judgment provides insufficient evidence for a finding under Article 10.5 of the IWF ADR.

    - Third, the Appellant presents whereabouts evidence showing that the First Respondent was not present during the alleged sabotage incident: he was in Turkey (3-25 June 2023), then Tbilisi (26 June-7 July 2023), but not in Dusheti on 1 July 2023 when the alleged sabotage occurred.

    - Fourth, the Appellant argues that the circumstances indicate intentional use of the prohibited substance. For instance, ostarine's potent performance-enhancing effects in strength sports like weightlifting raise questions why this substance in particular was used for the purpose of sabotage. The detected concentration would be

consistent with intentional intake, and the timing would coincide with the preparation for major competitions including 2024 Paris Olympics qualification and the 2023 European Championships.
Furthermore, the First Respondent's negative test of 16 July 2023 makes it impossible that the Athlete was the victim of sabotage on 1 July 2023.

- Fifth, the Appellant argues that the First Respondent was found training with the Georgian National Weightlifting Federation's team on 13 March 2024 and should therefore be ineligible to receive credit for the time served under the Provisional Suspension.

52. At the Hearing, the Appellant raised the following additional arguments:

- The Appellant described Mr Gogava's testimony as lacking credibility and containing several inconsistencies. The Appellant pointed out elements such as Mr Gogava's memory gaps that allegedly prevent him (i) from remembering when he arrived in Georgia after procuring ostarine in Moscow, Russia, (ii) his appearance months after the alleged sabotage occurred and (iii) his questionable intention of inflicting harm on Mr Giorgi Asanidze and Mr Zurab Kakhabrishvili by sabotaging athletes with ostarine would render his testimony *"suspicious at best"*.

- The Appellant also pointed to inconsistencies with respect to the factual circumstances surrounding the First Respondent's ostarine contamination, noting that the First Respondent and Mr Kakhi Asanidze lived in the same room, yet the First Respondent tested negative on July 16 while Mr Kakhi Asanidze tested positive, questioning how one could avoid contamination if they were staying together in a room with allegedly contaminated items.

- The Appellant concluded that the First Respondent has not met his burden to establish, on the balance of probabilities, how ostarine entered his system.

B. The First Respondent

53. The First Respondent's Answer contains the following requests for relief:

- *"The IWF's appeal is dismissed;*

- *The Disciplinary Committee of GADA decision dated 26 August 2024 in the matter of Mr Revaz Davitadze is confirmed;*

- *Mr Davitadze has established that he did not know or suspect and could not reasonably have known or suspected, even with the exercise of utmost caution, that he had used or been administered the prohibited substance or otherwise violated an anti-doping rule;*

- *Mr Davitadze acted without "intent" pursuant to Article 10.2.3 of the GADA ADR and/or IWF ADR and "fault or*

negligence" pursuant to Article 10.5 of the GADA ADR and/or IWF ADR;

- *there were grounds to eliminate the period of ineligibility imposed on Mr Davitadze on the basis that the Athlete acted without "fault or negligence";*

- *that the IWF shall bear the additional costs of the proceedings which occur due to the proceedings before the GADA;*

- *any other prayers for relief that the Sole Arbitrator deems fit in the facts, and circumstances of the present case".*

54. In the alternative, to the extent the Sole Arbitrator does not find a basis for a finding of "No Fault or Negligence" under Article 10. 5 of the ADR, the First Respondent requests the following relief:

- *"Mr Davitadze established that he did not know or suspect and could not reasonably have known or suspected, even with the exercise of utmost caution, that he had used or been administered the prohibited substance or otherwise violated an antidoping rule;*

- *Mr Davitadze acted without "intent" pursuant to Article 10.2.3 of the IWF ADR and "significant fault or negligence" pursuant to the Article 10.6 of IWF ADR;*

- *there are grounds for reducing the period of ineligibility imposed on Mr Davitadze on the basis that the Athlete acted without "intent" and "significant fault or negligence" and imposing a sanction between 12 and 24 months (based on degree of fault);*

- *period of Provisional Suspension shall be credited against the total period of Ineligibility to be served;*

- *that the IWF shall bear all the costs of the arbitral proceedings (if any) and contribute an amount to the legal costs and other expenses of the Athletes incurred in connection with the present proceedings;*

- *that the IWF shall bear the additional costs of the proceedings which occur due to the proceedings before the GADA;*

- *any other prayers for relief that the Sole Arbitrator deems fit in the facts, and circumstances of the present case".*

55. In support of the relief, the First Respondent relies on the following principal arguments:

- The Tbilisi City Court Judgment constitutes irrebuttable evidence under Article 3.2.4 of the ADR, with the burden on the Appellant to prove any violation of natural justice principles. The Appellant misinterprets Article 13.1.2 of the ADR according to which *"CAS shall not give deference to the discretion exercised by the body whose decision is being appealed"*. This provision could not be taken to imply that CAS is not bound by the decision of common courts of law. The contrary would be the case as Article 3.2.4 of the ADR treats court findings as binding unless challenged. The Appellant would have to show that the Tbilisi City Court Judgment violates the rules of natural justice to rebut it.

- Even on the basis of the facts established by the Tbilisi City Court Judgment alone, the First

Respondent could discharge his burden of proof (on the balance of probabilities) to justify a finding of "No Fault or Negligence" under Article 10.5 of the ADR.

- The Tbilisi City Court applied a higher legal standard than required (beyond reasonable doubt) in finding Mr Gogava guilty, which is why the First Respondent would have met his burden of proof (on the balance of probabilities) on the basis of the facts established in that judgment. The First Respondent argues that this case provides *"the most concrete and credible evidence"* through a criminal conviction following comprehensive investigation of numerous witnesses.

- Key facts such as the source of ostarine or the perpetrator's motive, were conclusively established by the confirmation of the sabotage scenario in the Tbilisi City Court Judgment. Furthermore, the expert report of Prof. Kintz concerning a different athlete (Mr Kakhi Asanidze) who was victim of the same spiking offense would buttress the plausibility of the sabotage scenario.

- Beyond the Tbilisi City Court Judgment, the First Respondent argues that the intentional consumption of ostarine, and thereby the finding of an anti-doping violation, would be implausible. For instance, the scientific evidence contradicts intentional use: the minimal concentration detected indicates contamination rather than deliberate use. Furthermore, it would be *"illogical"* for athletes in testing pools to take ostarine intentionally where they are *"potentially undergoing daily anti-doping controls"*.

- The First Respondent also points to the principle of proportionality, which requires sanctions to maintain a reasonable balance between misconduct and punishment. The Athlete would have already suffered significant punishment through reputational damage and competition exclusion. The First Respondent argues with reference to CAS case law that *"in the light of recent jurisprudence in very similar cases, eliminating any period of Ineligibility in this case is not only just but also proportional"*.

- Finally, the First Respondent argues that he was not in violation of the rules of his provisional suspension as the Athletes of the Georgian National Weightlifting Federation's team had already finished their training session and only remained in the gym because of the ongoing anti-doping control. He further argues that the coach of the team (Mr Giorgi Asanidze) had informed the doping control officer of the situation, who had in turn confirmed that this situation was in compliance with the regulations.

56. At the Hearing, the First Respondent raised the following additional arguments:

- The First Respondent is a high-level clean athlete with extensive testing histories and clean anti-doping records.

- The First Respondent argued that adopting the Appellant's interpretation of Article 3.2.4 of the WADA Code would lead to an

absurd conclusion where court decisions would be evaluated not from the perspective of the court's findings but from how they affect particular parties, creating a situation where rulings confirming facts against athletes could constitute irrebuttable evidence but the same ruling confirming facts in favour of athletes could not, which would violate fundamental procedural safeguards including equality of parties and *res judicata*.

C. The Second Respondent

57. The Second Respondent's Answer contains the following requests for relief:

- *"The decisions issued by the Georgian Anti-doping Agency's disciplinary committee should stay in force.*

- *In no case should the costs be imposed on the Anti-Doping Agency of Georgia"*.

58. In support of the relief, the Second Respondent relies on the following principal arguments:

- The Tbilisi City Court Judgment of 20 June 2024 finding Mr Gogava guilty of sabotage constitutes an irrebuttable evidence under Article 3.2.4 of the ADR to discharge the Athlete under Article 10.5 of the ADR, as it was issued by a competent jurisdiction and is not subject to appeal. Furthermore, on the facts, the Tbilisi City Court's Judgment conclusively shows that (i) Mr Gogava had the intention to inflict bodily harm on the concerned athletes (including the First Respondent), and (ii) Mr Gogava intentionally spiked the concerned athletes' drinking water (including the First Respondent).

- The Appellant has presented no proof that the Tbilisi City Court Judgment violates principles of natural justice, which is the only exception that would allow challenging the court's findings. Similarly, the Appellant did not present other evidence that the anti-doping violation was intentional.

- Consequently, the Second Respondent was obligated under the ADR to accept the sabotage finding when issuing the Appealed Decision, as the facts established by the court decision constitute irrefutable evidence.

59. At the Hearing, the Second Respondent raised the following additional arguments:

- The Second Respondent clarified that the case involved the criminal police of Georgia, with the Tbilisi criminal court finding Mr Gogava guilty of sabotage and the athletes as victims. The Second Respondent repeated that in accordance with Article 3.2.4 of the ADR, the Second Respondent is bound by the decisions of Georgian courts, making the Tbilisi City Court Judgment irrebuttable evidence sufficient to prove that sabotage occurred and exonerate the athletes.

V. JURISDICTION

60. 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".

61. The Appellant submitted that the CAS has jurisdiction pursuant to Article 13.2.1 and 13.2.3.1 of the ADR.

62. Article 13.2.1 of the ADR provides as follows:

"[i]n cases arising from participation in an International Event or in cases involving International-Level Athletes, the decision may be appealed exclusively to CAS".

63. Article 13.2.3.1 of the ADR provides as follows:

"Appeals Involving International-Level Athletes or International Events

In cases under Article 13.2.1, the following parties shall have the right to appeal to CAS: (…) the relevant International Federation".

64. Article 13.2.3.2 of the ADR provides as follows:

"Appeals Involving Other Athletes or Other Persons

In cases under Article 13.2.2, the parties having the right to appeal to the appellate body shall be as provided in the National Anti-Doping Organization's rules but, at a minimum, shall include the following parties: (…) the relevant International Federation. For cases under Article 13.2.2, WADA, the International Olympic Committee, the International Paralympic Committee, and the relevant International Federation shall also have the right to appeal to CAS with respect to the decision of the appellate body. Any party filing an appeal shall be entitled to assistance from CAS to obtain all relevant information from the Anti-Doping Organization whose decision is being appealed and the information shall be provided if CAS so directs".

65. The Respondents did not contest the jurisdiction of the CAS.

66. The Sole Arbitrator notes that the Appellant is an International Federation and the First Respondent is an International-Level Athlete within the meaning of the ADR, the IWF ADR, and the WADA Code. Article 13.2.3.1 and 13.2.3.2 of the ADR applicable to the Appealed Decision read together explicitly provide for the Appellant's direct right of appeal to the CAS. The Sole Arbitrator therefore concludes that the CAS has jurisdiction to entertain the present Appeal.

VI. ADMISSIBILITY

A. Appeal

67. 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. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division

President or the President of the Panel, if a Panel has been already constituted, to terminate if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after any submission made by the other parties".

68. Article R51 of the CAS Code provides as follows:

"Within ten days following the expiry of the time limit for the appeal, the Appellant shall file with the CAS Court Office a brief stating the facts and legal arguments giving rise to the appeal, together with all exhibits and specification of other evidence upon which it intends to rely. Alternatively, the Appellant shall inform the CAS Court Office in writing within the same time limit that the statement of appeal shall be considered as the appeal brief. The appeal shall be deemed to have been withdrawn if the appellant fails to meet such time limit".

69. Article 13.2.3.4 of the ADR provides as follows:

"Appeal Deadline for Parties other than WADA

The deadline to file an appeal for parties other than WADA shall be as provided in the rules of the Anti-Doping Organization conducting Results Management".

70. The admissibility of the Appeal was not contested by the Respondents.

71. The Sole Arbitrator notes that the Appellant received the Appealed Decision and case file on 4 October 2024. The Appellant filed the Statement of Appeal on 25 October 2024, and therefore within the 21-day time limit prescribed by Article 13.6.1(b) of the ADR. The Appeal Brief was filed on 6 December 2024 and thus within the extended deadline of 9 December 2024.

72. Accordingly, the present Appeal is admissible.

B. Answer

73. The Sole Arbitrator explains below the reasons for the exceptional admission of the Second Respondent's Answer, despite that it was only submitted by e-mail and not by courier.

74. Article R31 of the CAS Code provides as follows:

"The request for arbitration, the statement of appeal and any other written submissions, printed or saved on digital medium, must be filed by courier delivery to the CAS Court Office by the parties in as many copies as there are other parties and arbitrators, together with one additional copy for the CAS itself, failing which the CAS shall not proceed".

75. Article R56 of the CAS Code provides as follows:

"Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer".

76. The Sole Arbitrator notes that the requirement for a delivery by courier is well-established in the CAS Code, given that procedural formalities are necessary to implement access to justice in order to ensure that the running of the procedure complies with the principle of equal treatment of the parties.

77. Nonetheless, the Sole Arbitrator decided to exceptionally admit the Second Respondent's Answer under Article R56 of the CAS Code as neither the Appellant nor the First Respondent expressly objected to the admission when requested so by the Sole Arbitrator nor did they raise any procedural objections at the Hearing.

C. Additional document produced by the Appellant

78. For completeness, the Sole Arbitrator also explains the reasons for the exceptional admission of the correspondence with WADA in a related case arising of the same alleged sabotage scenario, which was produced by the Appellant after it had already filed its Appeal Brief.

79. Article R56 of the CAS Code provides as follows:

> *"Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer".*

80. The Sole Arbitrator notes that the additional document produced by the Appellant was not available at the time the Appeal Brief was filed and therefore satisfied the requirement of exceptional circumstances within the meaning of Article R56 of the CAS Code. For completeness, the document at issue essentially discussed the interpretation of Article 3.2.4 of the WADA Code, which was anyway already addressed in previous CAS case jurisprudence (2025/ADD/117).

VII. APPLICABLE LAW

81. 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".*

82. The Appealed Decision was issued under the ADR, which is not disputed. The ADR mirrors the provisions of the WADA Code and the IWF ADR. Accordingly, consistent with Article R58 of the CAS Code and CAS jurisprudence, the Sole Arbitrator concludes that the ADR, as well as the IWF ADR and the WADA Code (2021), to which the ADR must conform as per Article 20.5.2 of the WADA Code, are applicable to the present case.

83. In accordance with Article R58 of the CAS Code and given that the First Respondent has its seat in Georgia, Georgian law will apply on a subsidiary basis.

VIII. MERITS

84. There is no dispute between the Parties that a prohibited substance – ostarine – was detected in the First Respondent's body. However, the Respondents argue that this is entirely unintentional and without fault or negligence as it results

from sabotage, both as a matter of law (based on the Tbilisi City Court Judgment) and fact (based on further evidence and testimonies allegedly corroborating the Tbilisi City Court Judgment). The First Respondent subsidiarily claims that he in any event bears no significant fault or negligence. The Sole Arbitrator will proceed as follows.

85. First, the Sole Arbitrator will analyse the legal status of the Tbilisi City Court Judgment under Article 3.2.4 of the WADA Code to assess whether it can constitute an irrebuttable evidence in favour of the First Respondent.

86. Second, the Sole Arbitrator will examine the entirety of the evidence to assess whether it supports the sabotage scenario on the balance of probabilities and subsidiarily whether the First Respondent demonstrated no significant fault or negligence.

87. Third, the Sole Arbitrator will consider whether the First Respondent breached his obligations during his provisional suspension.

A. Legal status of the Tbilisi City Court Judgment under the applicable ADR

88. The Respondents argue that the Tbilisi City Court Judgment ought to be respected on its face pursuant to Article 3.2.4 of the WADA Code, the ADR, and the IWF ADR, which would preclude the CAS from making any ruling contradicting that judgment.

89. The Sole Arbitrator recalls that Article 3.2.4 of the ADR/WADA Code provides as follows:

"[t]he facts established by a decision of a court or professional disciplinary tribunal of competent jurisdiction which is not the subject of a pending appeal shall be irrebuttable evidence against the Athlete or other Person to whom the decision pertained of those facts unless the Athlete or other Person establishes that the decision violated principles of natural justice".

90. The Sole Arbitrator notes the following in relation to Article 3.2.4 of the ADR/WADA Code:

- The heading of Article 3 indicates that the provision as a whole is concerned with establishing *"Proof of Doping"*, which indicates that the rationale has to do with establishing anti-doping rule violations rather than exonerating athletes.

- Similarly, the wording of Article 3.2.4 unambiguously refers to evidence *"against"* the person to whom the decision pertained, indicating that its purpose is to facilitate the establishment of anti-doping rule violations rather than to provide for a defence against such violations. Moreover, the Sole Arbitrator notes a clear rationale in this regard – if there is a national ruling against an athlete or Other Person, those individuals are able to appeal, failing which it is only fair to take that decision on its face against its addressees. The same is not the case for non-addressees because they are not parties to those proceedings. Moreover, to find otherwise would also mean that other interested parties such as WADA or international federations would be left without any recourse – both

nationally and internationally. That is not the rationale of the WADA Code as a whole (which expressly grants WADA jurisdiction to appeal certain cases) or Article 3.2.4 of the ADR specifically.

- The Introduction to the WADA Code and the ADR clarifies that *"Anti-doping rules, like competition rules, are sport rules governing the conditions under which sport is played. Athletes, Athlete Support Personnel or other Persons (including board members, directors, officers, and specified employees and Delegated Third Parties and their employees) accept these rules as a condition of participation or involvement in sport and shall be bound by these rules"*. This indicates that the mention of "*other Person*" in Article 3.2.4 refers specifically to persons related to sport who are subject to the WADA Code, not any person generally. The provision therefore applies to athletes or other persons within the sporting framework who can be held accountable under anti-doping rules, and whose alleged doping offence is being investigated in parallel by WADA (or NADOs) on the one hand, and a national court or professional disciplinary tribunal. Accordingly, national court judgments can only establish irrebuttable evidence against athletes or other persons to whom the WADA Code applies, such as those involved in facilitating alleged doping offences within the sporting context.

- Moreover, even though the wording of Article 3.2.4 of the ADR is clear, the Sole Arbitrator notes that the interpretation put forward by the Respondents is untenable as it would effectively mean that the CAS would be bound by any national ruling against any person, which would automatically preclude the CAS from exercising its *de novo* jurisdiction. This cannot be accepted as a conceptual matter.

- The position of the Respondents is also untenable as a policy matter as it would enable "fall guy" scenarios where complicit third parties could confess to sabotage, allowing athletes to escape sanctions through manufactured defences. The Sole Arbitrator is mindful that the person at hand who confessed to the alleged sabotage obtained only a short probationary sentence.

91. Applying the above considerations to the facts of the present case, the Tbilisi City Court Judgment concerns Mr Nikoloz Gogava, an individual who is not subject to the WADA Code and anti-doping proceedings by WADA or a NADO. Therefore, the Tbilisi City Court Judgment cannot constitute irrebuttable evidence to justify a finding of No Fault or Negligence with respect to the First Respondent under Article 10.5 of the WADA Code and the ADR.

92. The Tbilisi City Court Judgment will, however, be assessed holistically as part of a broader evidence base in this case.

B. Assessment of the evidentiary basis

1. Factual circumstances of the alleged sabotage

a. Mr Nikoloz Gogava

93. In his direct examination by First Respondent's counsel, Mr Gogava delivered the following testimony:

- Mr Gogava explained he had ostarine in capsules. The substance came from Russia and he had brought it back to Georgia and was consuming it himself. At some point, he decided to take revenge on Mr Giorgi Asanidze and Mr Zurab Kharabrishvili. To this effect, he took the powder out of the capsules and put it on paper and went to Bakuriani and later to Dusheti. In Bakuriani and Dusheti, he entered hotel rooms which had doors open, putting the powder in a liquid and added it to some vitamin powder he found.

94. On cross-examination by the Appellant, Mr Gogava delivered the following testimony:

- Regarding his approach to use ostarine for spiking, the Appellant questioned Mr Gogava about whether he knew ostarine was prohibited when taking it, and Mr Gogava testified he did not know at the time but *"learned that a bit later"* as *"some guys (…) told me that it's probably prohibited"*. When asked why he kept the ostarine pills he had acquired for his personal usage upon his return to Tbilisi from Moscow, Mr Gogava responded *"I had them; why should I throw them away? It was good for restoring energy"*.

- Regarding his travels to Bakuriani, Mr Gogava confirmed he lived in Kutaisi in June 2023 and travelled to Bakuriani by bus. When asked when he decided to go, Mr Gogava stated *"I can't remember because I was out of my mind and upset. Because when you mix methadone, sleeping pills and vodka one is not in right mind"*. Mr Gogava testified he did not buy the ticket in advance but *"just stopped the microbus"*.

- Regarding his ability to access the hotel where the First Respondent was staying in Bakuriani, Mr Gogava described that he walked for *"maybe 30-40 minutes"* from the bus to the hotel. He had no problems accessing the hotel, noting that security was *"not even there"*. He had *"no problem"* passing reception at the lobby.

- When asked how he found the room, Mr Gogava said *"almost all rooms were open"* and there were personal belongings in the rooms. Mr Gogava testified he was *"looking for Kharabrishvili's room"* who he *"had asked for help"*. Mr Gogava testified he was not sure in the end if it was Kharabrishvili's room *"but when I entered there were vitamins and proteins, I adduced it"* and confirmed he never actually saw Kharabrishvili at the hotel.

- Mr Gogava then described his actions in the room: *"I spread the powder"* and clarified *"there were cans with powder inside and I poured the powder into that one. I put it in the liquid too"*. When asked if he used all the ostarine, Mr Gogava said *"I had a lot so I was afraid if I put too much*

they will get sick", and *"I put about half"*, while he had *"10-15"* capsules overall and that he opened them *"beforehand"*, not in the room.

- Mr Gogava then decided to go to Dusheti *"4-5 days after going back to Kutaisi"* and knew about it because *"these camps usually take place in Dusheti or Bakuriani"*. He learned about the specific camp from *"some wrestlers"* including *"Ramaz"*.

- At the Dusheti hotel, Mr Gogava wanted to go to the room of Mr Giorgi Asanidze to sabotage him: *"I wanted to go to Giorgi's room but I was not sure if it was his room"*. He however testified that he saw Mr Giorgi Asanidze leaving the hotel. He then wanted to enter any weightlifters room and *"put* [ostarine] *in two rooms"*. He put the substance in *"some liquid. I put it in whatever I could put it in"*, including *"several bottles"*. When asked about dosage, Mr Gogava said *"I don't know, I did not measure the amounts"*.

95. When questioned by the Sole Arbitrator, Mr Gogava delivered the following testimony:

- When questioned on his duration of ostarine use, Mr Gogava testified that he used it for *"10 days or 2 weeks"* and that *"some time had passed between using and returning to Georgia"*. Mr Gogava confirmed he used ostarine in *"capsules"* form, and he bought them *"in the club where I was training"*. Mr Gogava purchased *"two bottles"* with *"c. 100 per bottle"* though later said *"I did not count the capsules, maybe it was 50 or 100"*. The total price was *"100 dollars"*. Mr Gogava was employed *"supplying a Georgian restaurant with products"* earning *"around 1000 dollars"* monthly by *"going to market and bringing it to them"*. Despite the cost for ostarine, Mr Gogava could afford it because *"I didn't spend money for food as I was eating in the restaurant"*.

b. The First Respondent

96. On direct examination by his counsel, the First Respondent testified the following:

- The First Respondent confirmed he was present at the sports camp in Dusheti in 2023, staying in room number 16 on the second floor with Mr Kakhi Asanidze. He described the room's location, noting that Mr Giorgi Asanidze was in the neighbouring room 15, and the coach was in room 17.

- Regarding room security, the First Respondent explained that the room used a key rather than a card system. He stated that athletes usually kept the key, but for cleaning purposes, they would sometimes leave it at reception or in the lock. The First Respondent confirmed they occasionally left the key in the door to allow cleaning staff to enter, which meant someone from outside could potentially access the room.

- Concerning items in the room, the First Respondent testified they had water and vitamins, with water in different bottle sizes (1.5L, 2L, 5L) kept *"all over the place"* as they

purchased large quantities. He noted these products were easily accessible because the room was small, and confirmed it was possible that someone could have entered and contaminated these items without their knowledge. After the training camp, they did not take water outside but consumed it during training sessions.

- When asked about doping controls, the First Respondent confirmed he underwent testing, and other athletes were also accused of using ostarine, including his roommate Mr Kakhi Asanidze and Mr Gurami Giorbelidze.

- When specifically asked if he knowingly used ostarine, the First Respondent firmly denied it, stating: *"No, I don't even know what this medicine looks like and the judgment confirmed victim"*. When questioned about whether he lied about the sabotage theory, the First Respondent maintained: *"No it was sabotage and* [the sabotage] *was proven by Supreme court of Georgia"*.

97. During cross-examination by the Appellant, the First Respondent testified the following:

- The First Respondent explained his arrival at the training camp where the alleged sabotage occurred, stating he arrived on 1 July 2023 with the team but requested a week to stay at home due to having a newborn baby and needing to help his wife. During this first week, he attended only training sessions before moving to the Dusheti base permanently after one week. When asked why he did not train in Tbilisi, he explained: *"Because the world championship was coming closer and last chance to get license for Paris Olympiad and the trainer insisted"*.

- When asked about previous training camps in Dusheti before July 2023, the First Respondent stated he could not recall precisely but visited quite often, noting that he was in Antalya before the alleged sabotage. The First Respondent confirmed he returned from the Turkey training camp on 26 June 2023 but could not recall exactly due to the passage of 2 years.

98. During examination by the Sole Arbitrator, the First Respondent testified the following:

- When questioned by the Sole Arbitrator about supplement use, the First Respondent confirmed: *"Yes as any athlete we have special vitamins as supplements"*. He described the forms as *"tablets, powders, liquids"* and stated these supplements are *"given to us, we are prohibited to buy themselves"*. The First Respondent explained they come from the Georgian *"medical association"*.

- Regarding checks for prohibited substances in the supplements, the First Respondent stated: "[the medical association] *are responsible for it and testing it themselves"*. The First Respondent confirmed he had *"not intentionally and knowingly*

taken prohibited substances". When asked if supplements could have contained prohibited substances, the First Respondent stated: *"No I cannot confirm this. The fact was discovered later. For next camp we would receive new vitamins"*.

- When asked if sabotage was the only plausible explanation for the adverse analytical finding, the First Respondent confirmed: *"Yes (…); I am professional athlete realizing risk of taking prohibited substances"*.

c. Other witnesses

99. Other witnesses testified on the factual circumstances surrounding the alleged sabotage, including Mr Kakhi Asanidze and Mr Giorgi Asanidze:

- Mr Kakhi Asanidze provided detailed testimony about the security vulnerabilities at the Olympic House in Dusheti, confirming that while rooms were *"locked by key"*, they were *"left open when cleaning ladies came"* and that *"someone from outside could enter your hotel and your rooms"*. He described the storage arrangements that allegedly facilitated contamination, testifying that *"vitamins were kept on tables whilst water bottles were placed at various places in rooms"*, making these items easily accessible to potential saboteurs.

- Coach Giorgi Asanidze described the Olympic House as *"not a high class luxury hotel"* with basic key-based security rather than modern card access systems. He confirmed that despite instructing athletes not to leave doors open, *"doors were left open for cleaning, with cleaning ladies saying they would lock the doors"*, creating opportunities for unauthorised access. He stated that "[The First Defendant] *was in room 16 on the 2nd floor, GA's room was 15, Kakhi and* [The First Defendant] *shared one room, and GG was alone in room 22 on the second floor"*. Upon learning of the positive tests, he testified having immediate *"suspicions of sabotage"* which were later *"confirmed"* by official investigation, and described how he immediately contacted ministry officials to involve investigative authorities.

2. The perpetrator's motive

a. Mr Nikoloz Gogava

100. In his direct examination by the First Respondent's counsel, Mr Gogava delivered the following testimony:

- Mr Gogava explained he had learnt about a tournament among veterans in the U.S. and was eager to get there. He had family tragedies and wanted to get to the U.S. to recommence his training. He approached Mr Zurab Kakhabrishbili and Mr Giorgi Asanidze and asked for help and *"initially they promised to help"*. Later they started avoiding him and depicted him as a drug addict.

- When Mr Kakhabrishbili and Mr Asanidze did not answer his phone calls, he decided to go to Bakuriani *"to see them there and discuss the issues"*, but then changed his mind and *"decided to take revenge"*

because they did not help him go to the U.S.

- Mr Gogava described that he was in an *"inadequate state"* at the time and that he was consuming methadone, vodka, and sleeping pills. He expressed his remorse.

101. On cross-examination by the Appellant, Mr Gogava delivered the following testimony:

- Mr Gogava explained that he had reached out to Mr Asanidze to help him for *"training with weights"* and *"physical training"*. While Mr Gogava had *"access to gym"* in Kutaisi where he could exercise, he nevertheless *"was angry because I had asked initially and they refused"* and he wanted to *"train along with the athletes, because the trainer would be there; provide vitamins and supplements. I really wanted to go to veteran tournament in United States and I wanted to stay there"*.

- Mr Gogava's expectation upon his sabotage was that he *"thought Kakhabrishvili would be punished"* by *"the control"* from the *"Ministry or whoever"* and *"I thought when athletes take this and it would be discovered, they would be punished for this"*.

- Mr Gogava testified about his remorse: *"when I learned that the athletes were punished I was back in adequate situation but at the time of doing this I was in odd position"* and *"when I came back to my mind, I had understood what I had done and I regretted it. I was a dumb idiot doing this"*.

102. When questioned by the Sole Arbitrator, Mr Gogava delivered the following testimony:

- Mr Gogava's desired support was *"no financial support. Just with training and vitamins"* and he *"expected help with my training, vitamins, general support; I was trying to get rid of methadone"*. The support was related to a *"veterans tournament that he wanted to qualify for and he needed to be top 3 in Georgia"*.

b. The First Respondent and Mr Gurami Giorbelidze

103. The First Respondent testified that he learned that Mr Gogava's motive was vengeance.

104. When asked about Mr Gogava's motive, Mr Giorbelidze answered *"Not sure"*.

c. Other witnesses

105. Mr Giorgi Asanidze and Mr Zurab Kakhabrishvili, the alleged targets of Mr Gogava's sabotage, testified the following:

- Mr Giorgi Asanidze testified that he had seen Mr Gogava several times but had no good relationship with him. When asked about the motive, Mr Asanidze explained that Mr Gogava had approached him asking for help, and they had met at the funeral of a common friend. However, Mr Asanidze stated he did not know Mr Gogava well, and noted that Mr Gogava was drunk at the time and it was unclear why he was angry with them.

- Mr Zurab Kakhabrishvili testified about his interaction with Mr Gogava, explaining that Mr Gogava had approached both him and Mr Asanidze at a funeral where they were sitting at the same table. Mr Kakhabrishvili stated that Mr Gogava was drunk and wanted help with vitamins and physical preparation.

- Mr Kakhabrishvili learned that Mr Gogava was the perpetrator from Mr Irakli Sirekhidze in October 2023, but decided not to go public with this information because he *"didn't want this information to spread. We didn't want to disclose"*.

106. Other witnesses including Mr Teimuraz Ukleba, Mr Lasha Alkadze, and Mr Kakhi Asanidze testified that they heard that Mr Gogava's motive was revenge.

3. Investigation of the alleged sabotage

a. Mr Nikoloz Gogava

107. In his examination by First Respondent's counsel, Mr Gogava delivered the following testimony:

- Mr Gogava told a man named Irakli Tsirekidze about his actions and decided to contact the Georgian authorities to confess when he learned his actions had damaged the athletes. His confession occurred in January 2024.

- After confessing, Mr Gogava was interrogated and there were court proceedings resulting in a two-year suspended sentence or one year of imprisonment.

- Mr Gogava testified that he did not appeal the court decision because he had admitted to the crime. When asked if the decision is final and binding in Georgia, Mr Gogava said he does not know whether it is binding or not.

108. On cross-examination by the Appellant, Mr Gogava delivered the following testimony:

- Mr Gogava testified that he met a man called Irakli Tsirekidze to confess *"end of October or early November"*, although he did not remember exactly. Further, Mr Gogava claimed that *"Irakli told me he'd report me"*. Mr Gogava testified that *"I thought I'd be arrested and decided to confess"* because *"I understood what I had done"*.

- When asked why he did not go to the police in October 2023, Mr Gogava said *"not sure"* and that he asked Mr Tsirekidze to wait until the new year 2024.

- Mr Gogava was *"pardoned based on amnesty act"* because *"before the elections they had an amnesty; it was my first offense and they relieved me"* and he confirmed he no longer needs *"to go to the authorities"*. The amnesty act was issued around *"July 2024"*.

b. The First Respondent and Mr Gurami Giorbelidze

109. The First Respondent noted in his testimony that both the public

prosecutor and the police conducted an investigation into the criminal liability in connection to the alleged sabotage.

110. Gurami Giorbelidze had a limited recollection of the investigation. During his examination by his counsel, he confirmed that he was *"questioned during criminal proceedings"*. When asked by the Sole Arbitrator whether he was interrogated by the police, he said *"Yes"*, but when asked where that was, and whether it was in Bakuriani, he could not remember and said *"No. I am not sure. I can't tell you for sure"*.

c. Other witnesses

111. Several other witnesses testified about the investigation following the alleged sabotage, generally confirming that a police and criminal investigation took place. Mr Kakhi Asanidze confirmed that he was interrogated. Mr Giorgi Asanidze testified that the prosecutor's office initiated an investigation and interviewed *"25 people including athletes"*.

112. Mr Teimuraz Ukleba testified that as soon as the criminal investigation started, the representatives of the Second Respondent were invited to the criminal department and were interviewed as witnesses. When asked about the result of the proceedings, Mr Ukleba confirmed there was a court trial and the court ruled that there was sabotage.

113. Mr Lasha Alkadze testified that *"the police were involved, and an investigation was started. Eventually, the person responsible was identified and confessed to the sabotage"*.

4. Scientific evidence

114. The two expert witnesses that were called to the proceedings by the Parties (Prof. Martial Saugy for the Appellant, and Prof. Pascal Kintz for the First Respondent), gave detailed assessments of the scientific possibility of contamination in the training camps in Bakuriani and Dusheti, including in relation to the possibility that the First Respondent was allegedly subject to contamination on 1 July 2023, tested negative on 16 July 2023, and then only tested positive on 15 August 2023.

115. Prof. Saugy testified the following:

- Regarding the timeline of the First Respondent's ostarine intake, Prof. Saugy explained that contact with ostarine must have occurred after 15 July, stating *"it can be one day or several days after the 15th of July, depending on the dose"*. He referenced a publication from WALPURGIS K. *et al.*[379] showing that ostarine glucuronide was detected until approximately 15 days after intake of 15 microgram doses, noting the difficulty in determining whether the 16 August adverse finding was due to *"a single intake of a high dose or pharmacologically active dose of Ostarine the days after 15th of July or several small doses always after 15th of July"*.

- Prof. Saugy explicitly stated during the hearing that *"from the scientific point of view, I have to say that in my case, I cannot conclude that this is*

379 WALPURGIS/RUBIO/WAGENER/KRUG/KNOOP/GÖRGENS/GUDDAT/THEVIS, 2020: Elimination profiles of microdosed ostarine mimicking contaminated products ingestion. Drug test Anal 2020;12: 1570-1580.

sabotage rather than voluntary intake" and emphasized that *"sabotage is something for the forensic and for the legal to decide"*. He testified that *"I cannot rule out any intentional intake of a substance. Even if the results is low, the concentration in the urine is low, we have a lot of time for the athlete to take several mini-doses or several doses and to have this kind of concentration"*.

- Prof. Saugy challenged the environmental contamination theory presented by Prof. Kintz, stating: *"it's difficult to understand if the environment was contaminated 1st or 2nd of July, why the 16 of July sample was negative"*.

116. Prof. Kintz testified the following:

- Prof. Kintz stated that *"I fully agree that exposure to ostarine occurred after the 16th of July"*. He also acknowledged the general scientific uncertainty: *"We don't know whether it is a single dose, multiple dose, low dose, therapeutic dose, pharmacologically active, mini-dose, micro dose. So in fact, we don't know a lot of things"*.

- Prof. Kintz described the possibility of environmental contamination after 16 July. He explained that ostarine can persist on surfaces for days or weeks, and that athletes could be contaminated by touching these surfaces long after the initial sabotage, noting that even microgram quantities could result in detectable levels in urine. Prof. Kintz confirmed that contamination occurring two weeks after initial sabotage was possible.

- Commenting on the concentrations of ostarine found in the samples of the athletes that were tested, he opined regarding Gurami Giorbelidze that *"we have 767* [picograms per milligram]. *I agree with Professor Saugy, this can either be due to contamination or due to the end of excretion"*, the latter referring to an intentional intake. However, regarding the other two athletes that were tested (including the First Respondent), *"the concentration is very low"* and *"does not correspond to a regimen of doping, intentional doping"*. However, Prof. Kintz admitted that the scientific evidence is not conclusive and also relied on the alleged sabotage scenario to privilege the scenario that contamination occurred due to sabotage: *"it can be* [a doping situation]*; it is more likely, a consequence of contamination, because the sabotage, I guess, is now established and recognized"*.

5. Analysis

117. The principal issue at hand is whether the Tbilisi City Court Judgment and/or other evidence in the file set out in the preceding section, demonstrate on the balance of probabilities that Mr Gogava engaged in the alleged sabotage and the Athlete was a victim thereof.

a. Evidence established in the Tbilisi City Court Judgment

118. A detailed examination of the Tbilisi City Court Judgment reveals fundamental deficiencies that prevent it from

supporting the alleged sabotage scenario. The judgment lacks essential details about Mr Gogava's specific intentions for targeting these particular athletes including the First Respondent, how he procured ostarine, how he gained access to the training facilities, and crucially, how he ensured that the First Respondent consumed the substance. The judgment also does not explain why Mr Gogava would use ostarine, a performance-enhancing drug, for sabotage purposes, or what effect he was hoping to achieve.

119. These deficiencies are compounded by significant scientific and factual inconsistencies. Ostarine is not soluble in water, which fundamentally undermines the alleged method of administration through contaminated drinking water.

120. In this regard, the Single Judge in a parallel CAS proceedings (2025/ADD/117) concerning an athlete who was subject to the same alleged sabotage by Mr Gogava has found that the sabotage was impossible with respect to the concerned athlete, who was not at the training site in Bakuriani when the alleged sabotage occurred. The Single Judge noted that the entire sabotage scenario might have been construed. This finding sheds further doubt on the reliability of the Tbilisi City Court Judgment as evidence to prove that the First Respondent was indeed a victim to sabotage in the scope of this sabotage scenario.

121. Overall, the Tbilisi City Court Judgment contains only high-level factual explanations and conclusions that leave open essential facts required for establishing on the balance of probabilities that a spiking offence occurred which led to ostarine entering the First Respondent's system without his knowledge or suspicion. The evidence referenced in paragraph 2 of the Tbilisi City Court Judgment has not been made available for examination. This lack of detailed investigation, combined with the scientific implausibility and contradictory testimony, renders the facts established by the judgment insufficient to allow the First Respondent to meet his burden of proof.

122. From a policy perspective, accepting such superficial findings without thorough independent verification would create a dangerous precedent for anti-doping enforcement. It would enable "fall guy" scenarios where complicit third parties could confess to sabotage, allowing athletes to escape sanctions through manufactured defences.

123. In conclusion, the judgment lacks the detailed factual investigation necessary to support the sabotage theory and accepting such evidence without rigorous verification would undermine the integrity of anti-doping enforcement by enabling manufactured defences.

b. Other evidence

124. The evidence file includes other documentary evidence, witness testimonies, and expert evidence. The core element, however, is the evidence and testimony provided by Mr Gogava, the alleged perpetrator of the claimed sabotage. Demonstrating that the sabotage actually occurred is a prerequisite for subsequent showing that a specific athlete was a victim thereof, be

it due to direct exposure or indirect environmental contamination.

125. Based on a detailed review of Mr Gogava's statements in this case (as well as the transcript of Mr Gogava's statements in case CAS 2023/ADD/65 that the Parties agreed to be included in the case file in the present proceedings), the Sole Arbitrator concludes that Mr Gogava's testimony fundamentally lacks credibility:

- Implausible financial and logistical circumstances. The Sole Arbitrator considers it highly implausible that Mr Gogava, reportedly earning *"around 1000 dollars"* monthly at the time, would spend *"100 dollars"* on ostarine capsules (of which he had two packages), only to use them briefly for *"10 days or 2 weeks"*, then suddenly decided to return to Georgia to seek revenge against coaches who had refused to help him. This sequence of events lacks logical coherence and raises serious questions about the veracity of his account. Moreover, in another case (CAS 2023/ADD/65), Mr Gogava testified that he paid for ostarine in roubles, not dollars, which casts further doubts on the circumstances of the alleged purchase of ostarine.

- Contradictory mental state claims. Mr Gogava described himself as being *"in inadequate situation"* due to methadone intake combined with *"sleeping pills and vodka",* yet simultaneously provided detailed recollections of specific actions and locations. For instance, regarding his decision to go to Bakuriani, Mr Gogava stated *"I can't remember because I was out of my mind and upset. Because when you mix methadone, sleeping pills and vodka one is not in right mind"*. At the same time, Mr Gogava was able to recall details of the alleged sabotage, including whether the hotel security was present in Bakuriani, how he passed by the reception, and how he identified the rooms where he would commit the alleged sabotage. This contradiction between claimed mental incapacity and detailed memory is inherently implausible.

- Inconsistent and vague details concerning the usage of ostarine. Mr Gogava's explanations for the quantities of ostarine used were contradictory - initially claiming he had 10-15 capsules in total, but later testifying he bought *"two bottles"* with *"c. 100 per bottle"*, then stating *"I did not count the capsules, maybe it was 50 or 100"*. When asked about dosage he said *"I don't know, I did not measure the amounts"*, while at the same time testifying that he did not want to use too much ostarine to avoid inflicting too much harm. Mr Gogava testified he was *"looking for Kharabrishvili's room"* but *"wasn't sure in the end if it was Kharabrishvili's room"* and confirmed he never actually saw Kharabrishvili at the hotel, instead identifying his room by seeing *"vitamins and proteins"*.

- Implausible motive. According to Mr Gogava, his motive was revenge for Giorgi Asanidze's and Zhurab Khakrabishvili's failure to

help him compete in a tournament in the United States. Yet he fails to explain why and how exactly these two people disappointed him and why did it call for a major act of elaborate vengeance. The testimonies of Mr Giorgi Asanidze and Mr Zurab Khakrabishvili do not shed further light on this point, as neither seems able to give a plausible reason for Mr Gogava's disappointment. Furthermore, the hearing transcript from the case concerning Mr Kakhi Asanidze (CAS 2023/ADD/65) reveals inconsistencies in Mr Gogava's testimony regarding his encounters with Mr Giorgi Asanidze and Mr Zhurab Khakrabishvili. In particular, he contradicts himself by first explicitly stating that he did not meet them at the funeral of a mutual friend, only to later withdraw this statement and claim that it was during a funeral.

- Implausible sabotage method. While Mr Gogava testified taking ostarine himself for its performance enhancing effect while living in Moscow, he wanted to use it to harm Giorgi Asanidze and Zhurab Khakrabishvili. When asked to explain what harm he was trying to inflict with ostarine, he simply stated *"I did not think properly"*, and at the same time claimed that he did not want to use too much ostarine to not inflict excessive harm.

- Implausible execution. As noted above, Mr Gogava testified extensively that he was in a difficult mental state (subject to substance abuse) at the time of the alleged sabotage, yet effectively claimed he was able to implement a highly elaborate sabotage scheme at two different locations in the span of weeks, with complex logistics, and without any detection.

- Implausible voluntary confession. Mr Gogava testified that he was aggrieved and wanted to get revenge, which he allegedly undertook not once but twice and not against his direct targets but against athletes. It is inherent in an elaborate contamination sabotage that the "damage" would only arise if athletes are subsequently tested and detected. Mr Gogava ought to have known this when he allegedly planned and implemented the sabotage. Yet Mr Gogava concurrently claims that while no one detected him in the commission of a crime, he suddenly voluntarily disclosed his alleged involvement and confessed to the police, because he felt sorry about the athletes. This further adds to the implausibility of the entire sabotage scenario.

126. In conclusion, the evidence of Mr Gogava's alleged sabotage is far-fetched, contradictory, entirely unconvincing, and inherently implausible. Absent a proof of Mr Gogava's sabotage, the remaining evidence and testimonies from the First Respondent, other athletes, the coach and other sports personnel, as well as the First Respondent's expert, effectively fall away because that evidence is dependent on proving that sabotage occurred in the

first place. For example, while Prof. Kintz opined that it was possible for the First Respondent to be a victim of an environmental contamination from an ostarine residue left during Mr Gogava's alleged sabotage, that possibility only arises if the alleged ostarine sabotage occurred on the balance of probabilities. But this was not demonstrated.

c. No Significant Fault or Negligence Defence

127. As explained above, the First Respondent's request for relief also includes an alternative no significant fault or negligence defence under Article 10.5 of the ADR which appears to go beyond the sabotage scenario. The First Respondent argues that independently from the sabotage scenario, he could not have known or suspected, even with the exercise of utmost caution, that he had used or been administered the prohibited substance.

128. To benefit from a no significant fault or negligence, the Athlete must provide concrete evidence of how the prohibited substance entered their system through no fault of their own. The First Respondent has manifestly failed to discharge this burden for the following reasons: (i) other than relying on the alleged sabotage which was not demonstrated, the Athlete did not establish any credible alternative scenario explaining how ostarine entered his system; (ii) his vague references to potential contamination lack any substantive explanation of how such contamination could have occurred; (iii) his general assertions that doping would not make sense for him are speculative and do not constitute evidence of how the substance was ingested; and (iv) his reliance on the small detected concentration as indicative of innocence fails to address the fundamental question of source and ingestion pathway. Such wholly inadequate assertions ought to be dismissed.

6. Overall conclusion

129. Accordingly, on the basis of all evidence considered, the Sole Arbitrator finds that: (i) the First Respondent did not establish the sabotage scenario on the balance of probabilities; and (ii) the First Respondent did not demonstrate he bore no significant fault or negligence. The Sole Arbitrator therefore finds that the First Respondent committed an anti-doping rule violation in breach of Articles 2.1 and 2.2 of the ADR.

C. Provisional suspension

1. Background

130. The Appellant alleges that, in violation of his obligations under the ADR, the First Respondent participated in a training session with the Georgian National Weightlifting Team during his provisional suspension.

131. At the Hearing, the following witness testimonies were provided in this regard.

a. First Respondent

132. During cross-examination by the Appellant, the First Respondent testified the following:

- The First Respondent confirmed he recalled the training session on 13 March 2024. When asked if he was in the same room where the weightlifting team was training, the First Respondent clarified:

"Only after they finished. Then we entered the room". The First Respondent confirmed he was present next to them at the same time *"because they were asked to stay in the room by the doping officers"*. The First Respondent stated he did not arrive after the doping officers, explaining: *"No, they entered right after us. The trainer told them that"*.

- When asked who told him he could train in that facility, the First Respondent explained: *"I am visiting Bakuriani often with family; in this case we knew that we were not guilty, I did not want to stop training; I asked trainer I take family to Bakuriani to not miss the training. I was not expecting to see the national team there. They were still there only because doping officers asked them to wait"*.

- When asked why he did not leave when he was conscious about not training with the national team, the First Respondent explained: *"They weren't training any longer (…). Minutes later the doping officers entered; the trainer explained that they didn't expect to see us. When trainer asked if it would constitute any problem, they said no because they could also test us"*.

- The First Respondent confirmed he recognized video footage of the training and confirmed he was training in the gym. When confronted about the contradiction between saying nobody was training and the video showing a training, the First Respondent maintained: *"The training was over, and the video was shot by doping officers"*.

- When questioned whether the First Respondent included Bakuriani in his whereabouts for that day, the First Respondent stated he could not recall because almost 2 years had passed.

b. Mr Kakhi Asanidze

133. On direct examination by the First Respondent's counsel, Mr Kakhi Asanidze testified that "[The First Respondent] *was going there with family"* and that they *"went together"*. Their coach had confirmed that they could train in Bakuriani after the national team had finished. When Mr Asanidze and the First Respondent arrived to the camp, Mr Asanidze *"saw the team,* [and] *although they had finished doping officers asked them to stay"*.

134. On cross-examination by the Appellant, Mr Asanidze testified that he arrived at the gym in Bakuriani whilst other members were finishing their training. He explained why he started training while other team members were still there: *"They were finished. They were staying there because of the doping officer's demand"*. Regarding the timing of the doping officers' demand, Mr Asanidze stated *"I don't know. It was communicated to the head coach"*. He added that had he known that the doping control was happening *"I would not even go there. I would wait until they vacate the building"*. When asked why he did not leave when the other athletes in the gym were waiting for doping control officers, he explained: *"In the moment when I learned, in the exact moment the officers arrived. Maybe it was not seconds, but 1-2 minutes maximum. When they entered they saw us. Coach asked if we can start training. The doping officers said no problem"*. When asked if he was surprised that doping control

officers wanted to test him and the First Respondent that day, Mr Asanidze responded *"yes"* and when asked why, he stated *"in this moment they should not have come to me"*.

c. Mr Giorgi Asanidze

135. On direct examination by the First Respondent's counsel, Mr Giorgi Asanidze testified that Mr Kakhi Asanidze and the First Respondent were not officially training with the national team that day. Before the incident his son *"Kakhi (…) called (…) and he said he and Revaz were planning to come there. I told him that he cannot. But that he can train after the training is done"*.

136. Regarding the approach of the testing officers, he testified that the security at the Crystal Hotel stopped the doping officers: *"The security took them to the reception and there was a dialogue and I told* [the doping officers] *that the training was finished. They demanded us to stay in gym and wait there"*. When the doping officers entered he explained them the situation regarding the First Respondent and Mr Kakhi Asanidze and explained that they were about to leave the room. According to Mr Asanidze, the officer said that he *"wanted to test the two anyway"*.

d. Mr Nikita Sharapov

137. On direct examination by the Appellant, Mr Nikita Sharapov testified the following:

- Mr Sharapov confirmed that he remembered the training incident and went to the hotel where the national team was training. When asked if he was stopped by security staff when entering, Mr Sharapov stated: *"entrance was open, no control"* and regarding whether there was any interaction with security, he responded *"not at all"*. Regarding notification of the head coach or Georgian weightlifting team, Mr Sharapov stated: *"No, there was no communication. We parked car near building of weightlifting hall. We notified the coach at the same time when the athletes. No interaction with coach"*. When asked what he saw before entering the gym, Mr Sharapov described: *"the first door is main one, right side .. toilet and bench, and when you go a meter straight you see another door, and you see the training hall; and you can see the people"*.

138. On cross-examination by First Respondent's counsel, Mr Sharapov testified the following:

- When asked how many doping controls Mr Sharapov had conducted in Bakuriani, he responded it was his *"second time there"* and when asked why he remembered this doping control so well, he explained: *"when we get the missions, I pay attention to special instructions, I check the circumstances and the areas. It was special mission because it involved group of athletes; involved more instructions"*. When asked if he could see Mr Kakhi Asanidze and the First Respondent, Mr Sharapov confirmed *"yes"* and regarding whether the coach was giving them instructions, he stated: *"yes coach was there, in middle section, the coaches and doctors were moving around. I couldn't hear them"*. When asked if he could see that Mr Davitadze

was lifting the bar and that they were training, Mr Sharapov stated: *"I could see that Davitadze was lifting the bar and that they were training but I don't know if they were given instructions by the coach"*.

- When asked by GADA to confirm that the athletes were held in the gym room due to ongoing doping control, Mr Sharapov responded: *"No. When I was entering, the athletes were having a training session. When we notified the athletes they were training. We did not force anyone to stay"*. When asked if the First Respondent was training as an active team member, Mr Sharapov stated: *"he was in the room with the team; athletes have their own bar bells, he had his own volume and lifting weights"* but he did not confirm that the First Respondent received specific instructions from the coach.

2. Analysis

139. According to Article 10.14.1 of the ADR, *"No Athlete or other Person who has been declared Ineligible or is subject to a Provisional Suspension may, during a period of Ineligibility or Provisional Suspension, participate in any capacity in a Competition or activity (other than authorised anti-doping Education or rehabilitation programmes) authorised or organised by any Signatory, Signatory's member organisation, or a club or other member organisation of a Signatory's member organisation"*.

140. Comment to Article 10.14.1 clarifies that:

"For example, subject to Article 10.14.2 below, Ineligible Athletes cannot participate in a training camp, exhibition or practice organized by their National Federation or a club which is a member of that National Federation or which is funded by a governmental agency" (emphasis added).

141. The key question therefore is whether the First Respondent participated in a training camp organized by the Georgian national weightlifting team. In assessing this question, the Sole Arbitrator considers both the objective circumstances of the training setting and the testimonial record regarding whether the First Respondent was functionally integrated into the team's organised session or instead trained independently in proximity to the team. Importantly, the Sole Arbitrator is mindful that the provisional suspension rules are strict as a matter of policy. The athletes are expected to strictly adhere to these rules and not look for technical ways to circumvent them.

142. Against this background, the Sole Arbitrator is mindful of the broader context -- the First Respondent travelled all the way to Bakuriani and trained around the same time and in the same venue as the Georgian national team. The circumstances, including his arrival and commencement of training while the team was still present in the hall, tend to show functional participation in the team's session rather than a clearly segregated, private workout.

143. The First Respondent's testimony indicates that he was told by Coach Giorgi Asanidze he could train *"after"* the national team had completed their organised session. However, the lead doping control officer, Mr Nikita Sharapov, testified that the First Respondent was actively training when the officers arrived, and that he was

training *"in the room with the team"*, lifting weights in the same hall and observable as part of the group present.

144. Mr Sharapov's testimony also reveals contradictions in the account of Coach Giorgi Asanidze regarding entry security and communications. Whereas Coach Asanidze claimed the doping officers were stopped by hotel security and a dialogue ensued before they came to the gym, Mr Sharapov stated there was no interaction with security at entry, and that he notified athletes and coach contemporaneously upon entering the hall. These contradictions weaken the First Respondent's narrative that he waited to begin only after team training had formally ended and suggest the team remained in active training when the First Respondent was present and lifting.

145. In light of the evidence at hand, the Sole Arbitrator finds that the First Respondent participated in a training camp organized by a national federation, in violation of Article 10.14.1 of the ADR.

D. Sanction

146. Article 10.2 of the ADR and the WADA Code provides as follows:

"The period of Ineligibility, subject to Article 10.2.4, shall be four (4) years where:

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

- *10.2.1.2 The anti-doping rule violation involves a Specified Substance or a Specified Method and the Anti-Doping Organization can establish that the anti-doping rule violation was intentional".*

147. Article 10.10 of the ADR and the WADA Code 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".

148. Article 10.13 of the ADR and the WADA Code provides as follows:

"Where an Athlete is already serving a period of Ineligibility for an anti-doping rule violation, any new period of Ineligibility shall commence on the first day after the current period of Ineligibility has been served. Otherwise, except as provided below, the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing".

149. Further, Article 10.13.2.1 of the ADR and the WADA Code provides that:

"If a period of Ineligibility is served pursuant to a decision that is subsequently appealed, then 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".

Conversely, Article 10.14.3 of the ADR stipulates that:

"An Athlete or other Person who violates the prohibition against participation during a Provisional Suspension described in Article 10.14.1 shall receive no credit for any period of Provisional Suspension served and the results of such participation shall be Disqualified".

150. The Sole Arbitrator notes that the First Respondent committed an anti-doping rule violation under Articles 2.1 and 2.2 of the ADR. Ostarine is not a Specified Substance and it has not been established that the anti-doping violation was not intentional. The appropriate period of ineligibility to be imposed on the First Respondent pursuant to Article 10.2 of the ADR and the WADA Code is thus four years.

151. The period of ineligibility shall commence on the date when this Award becomes effective.

152. Moreover, pursuant to Article 10.10 of the ADR and the WADA Code, all competitive results obtained by the First Respondent from and including the day that the Sample was collected (15 August 2023) through the commencement of the period of ineligibility shall be annulled, with resulting consequences including forfeiture of medals, points and prizes.

153. Finally, given the First Respondent violated his provisional suspension, he shall receive no credit for the period of provisional suspension served

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by the International Weightlifting Federation on 25 October 2024 against Mr Revaz Davitadze and the Georgian Anti-Doping Agency with respect to the decision rendered by the Disciplinary Committee of the Georgian Anti-Doping Agency on 26 August 2024 (Decision N 2024-04) is upheld.

2. The decision of the Disciplinary Committee of the Georgian Anti-Doping Agency of 26 August 2024 (Decision N 2024-04) is set aside.

3. Mr Revaz Davitadze is sanctioned with a period of ineligibility of four (4) years, which shall commence on the date this CAS Award becomes effective, with no credit given for any period of provisional suspension already served by Mr Revaz Davitadze.

4. All individual results earned by Mr Revaz Davitadze from and including 15 August 2023 through to the commencement of the period of ineligibility shall be invalidated, with all resulting consequences, including forfeiture of all medals, points and prizes.

5. (…).

6. (…).

7. (…).

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

TAS 2024/A/11036
Óscar Zambrano Preciado c. Confederación Sudamericana de Fútbol (CONMEBOL)
laudo de fecha 7 de noviembre de 2025 (parte dispositiva de fecha 31 de marzo de 2025)

Fútbol; Dopaje (clortalidona); Grados de culpa aceptados; Elementos objetivos de culpa o negligencia; Nivel alto de diligencia de un atleta
Aplicación de criterios subjetivos para graduar la culpa de un atleta; Criterios subjetivos aplicables para determinar la culpa o negligencia

Formación Arbitral
D. Jaime Castillo (México), Presidente
D. Gustavo Albano Abreu (Argentina)
D. Alexander McLin (Suiza)

1. **A partir de la reforma del Código WADA del año 2015, los criterios para imponer sanciones por infracciones a la normativa antidopaje fueron modificados. Consecuentemente, los grados de culpa aceptados son dos: (i) Grado Normal: sancionable con una suspensión de 12 a 24 meses; (ii) Grado Leve: sancionable con una suspensión de 0 a 12 meses.**

2. **Los elementos objetivos de culpa o negligencia son aquellos relacionados con el estándar de cuidado que se podía esperar de una persona razonable en la situación del atleta. En términos generales, es objetivamente razonable esperar que el atleta: i) lea la etiqueta del producto a consumir; ii) coteje los ingredientes del producto con la lista de sustancias prohibidas; iii) efectúe una búsqueda por internet o cualquier otro medio respecto de la naturaleza y características del producto; iv) se asegure de que el producto ha sido obtenido de forma confiable; y v) consulte con expertos antes de consumir el producto.**

3. **El atleta siempre tendrá la responsabilidad personal ineludible de verificar y comprobar la naturaleza, origen y efectos de toda sustancia que ingiera, lo cual implica un nivel de diligencia muy alto.**

4. **La aplicación de criterios subjetivos para graduar la culpa de un atleta debe hacerse de manera restrictiva. En casos excepcionales, puede ser que los elementos subjetivos sean tan significativos que desplacen a un atleta particular no solo al extremo de una categoría particular, sino a una categoría por completo diferente. Esa sería, no obstante, la excepción a la regla.**

5. **Los criterios subjetivos aplicables para determinar la culpa o negligencia de un atleta se refieren a lo que se podría esperar de ese atleta en particular, a la luz de sus capacidades particulares. Específicamente, los siguientes criterios han sido considerados especialmente relevantes al momento de valorar la sanción a imponer: (i) La juventud y/o experiencia del atleta; (ii) Problemas de idioma o de ambiente enfrentados por el atleta; (iii) El alcance de la educación antidopaje recibida por el atleta; (iv) Otras incapacidades personales tales como: haber consumido un producto durante un periodo extendido de tiempo sin incidencias; haber revisado**

previamente los ingredientes del producto; sufrir de un alto nivel de estrés; o una reducción en la conciencia del atleta en virtud de un error negligente pero comprensible.

I. LAS PARTES

1. Óscar Zambrano Preciado (el "Apelante" o el "Jugador") es un jugador profesional de fútbol que formaba parte del club Liga Deportiva Universitaria en la ciudad de Quito, Ecuador, al momento en que le fue imputada la violación a la normativa antidopaje, y que actualmente milita en el club Hull City en la ciudad de Hull, Reino Unido.

2. La Confederación Sudamericana de Fútbol (la "Apelada" o "Conmebol") es la asociación deportiva continental que rige el fútbol en Sudamérica, con domicilio en Luque, Paraguay; El Apelante y la Apelada serán denominados en su conjunto como las "Partes".

II. HECHOS

3. A continuación se presenta un resumen de los hechos más relevantes al presente asunto según las consideraciones de la Formación Arbitral, tomando como base los argumentos escritos y orales de las Partes, así como las pruebas producidas por las mismas durante el procedimiento, con la finalidad de obtener una perspectiva general de lo acontecido durante la controversia. Sin embargo, podrán ser tenidos en cuenta otros hechos no mencionados aquí al momento en que la Formación se aboque al estudio y análisis de las cuestiones jurídicas a resolver en el presente laudo.

4. El 19 de febrero de 2024, el Apelante fue sujeto a un control antidopaje fuera de competencia, en el Centro de Alto Rendimiento de la ciudad de Quito, Ecuador. El control antidopaje antedicho fue efectuado de cara a la disputa del torneo denominado "CONMEBOL Recopa 2024", organizado por la Apelada.

5. El 22 de febrero de 2024, se disputó un partido entre Liga Deportiva Universitaria (club profesional de fútbol domiciliado en Quito, Ecuador - en adelante "LDU") y Fluminense Football Club (club profesional de fútbol domiciliado en Rio de Janeiro, Brasil) en la ciudad de Quito, Ecuador, correspondiente a la fase de ida de la CONMEBOL Recopa 2024. El Apelante disputó el partido como jugador de LDU.

6. Una vez finalizado el partido, el Apelante fue seleccionado para someterse al control antidopaje.

7. El 5 de marzo de 2024, el Laboratorio de Colonia, Alemania (denominado en alemán "Deutsche Sporthochschule Köln Institut für Biochemie" – en adelante, el "Laboratorio"), acreditado por la Agencia Mundial Antidopaje ("WADA"), informó a la Unidad Antidopaje de la Conmebol del resultado analítico adverso resultante del análisis de la Muestra "A" Nº 1224742, correspondiente a aquella tomada al Jugador en el control antidopaje fuera de competencia de fecha 19 de febrero de 2024, con base en la detección de la sustancia Clortalidona.

8. La Clortalidona es una sustancia que se encuentra prohibida en todo momento, por pertenecer al grupo S5 - Diuréticos y Agentes Enmascarantes, de la Lista de

Prohibiciones 2024 publicada por WADA.

9. El 7 de marzo de 2024, el Laboratorio informó a la Unidad Antidopaje de la Conmebol del resultado analítico adverso resultante del análisis de la Muestra "A" Nº 1000885, correspondiente a aquella tomada al Jugador en el control antidopaje de fecha 22 de febrero de 2024, efectuado con posterioridad a la disputa del partido de la CONMEBOL Recopa 2024, con base en la detección de la sustancia Clortalidona que, como se mencionó en el párrafo que antecede, se encuentra prohibida por pertenecer al grupo S5 - Diuréticos y Agentes Enmascarantes, de la Lista de Prohibiciones 2024 publicada por WADA.

10. El 14 de marzo de 2024 la Unidad Antidopaje de la Conmebol (la "Unidad Antidopaje") notificó a la Unidad Disciplinaria de la Conmebol (la "Unidad Disciplinaria") del resultado analítico adverso obtenido de las dos muestras antecitadas.

11. El 15 de marzo de 2024, la Unidad Antidopaje notificó al Apelante del resultado analítico adverso surgido de las Muestras "A" recogidas el 19 de febrero de 2024 fuera de competencia, y el 22 de febrero de 2024 una vez finalizado el partido de la CONMEBOL Recopa 2024, y concedió al Apelante un plazo para manifestar si solicitaba el análisis de las Muestras "B" recogidas en esos mismos exámenes. Asimismo, el Apelante no fue suspendido provisionalmente por Conmebol.

12. El 20 de marzo de 2024, la Comisión Disciplinaria de la Conmebol (la "Comisión Disciplinaria") convocó al Apelante a una audiencia preliminar con fecha 25 de marzo de 2024, misma que posteriormente fue postergada al 8 de abril de 2024.

13. El 5 de abril de 2024, el Apelante presentó un escrito ante la Comisión Disciplinaria en el que expuso diversos alegatos en su defensa, y manifestó su disposición para celebrar un Acuerdo para la Resolución del Caso, conforme lo prevé el artículo 24.5 del Reglamento Antidopaje de la Conmebol (en adelante, el "Reglamento Antidopaje").

14. El 8 de abril de 2024, se celebró la audiencia preliminar del caso ante la Comisión Disciplinaria.

15. El 6 de mayo de 2024, la Unidad Antidopaje notificó a la Unidad Disciplinaria del resultado analítico de las Muestras "B" Nos. 1224742 y 1000885, correspondientes a los exámenes antidopaje efectuados al Apelante en fechas 19 y 22 de febrero de 2024, en los que se detectó la presencia de la sustancia Clortalidona, misma que había sido detectada en el análisis de las Muestras "A" del Apelante.

16. El 16 de agosto de 2024, la Unidad Disciplinaria imputó al Apelante la presunta infracción a los artículos 6 y 7 del Reglamento Antidopaje, con base en el hallazgo de la sustancia Clortalidona en las muestras que le fueron tomadas al Apelante en los exámenes antidopaje correspondientes. Asimismo, la Unidad Disciplinaria propuso al Apelante un Acuerdo para la Resolución del Caso que conllevaría la declaración de culpabilidad del Apelante por haber infraccionado los artículos 6 y 7 del Reglamento Antidopaje, así como la imposición de una sanción de dos años de suspensión contada a partir del 22 de febrero de 2024. Finalmente, y en caso de que el

Apelante no aceptara la propuesta contenida en el Acuerdo de Resolución del Caso, la Unidad Disciplinaria ordenó la apertura de un expediente disciplinario (identificado con el número de expediente D-01-24), en contra del Apelante, otorgando asimismo al imputado un plazo para que formulase su defensa y exhibiera las pruebas que estimase oportunas.

17. Con fecha 26 de agosto de 2024, el Apelante presentó una contrapropuesta al Acuerdo para la Resolución del Caso, solicitando que la sanción al Jugador fuese limitada a un año de suspensión contado a partir del 22 de febrero de 2024.

18. El 26 de septiembre de 2024, el Apelante presentó su escrito de defensa ante la Comisión Disciplinaria, reiterando su petición de reducción de la sanción propuesta por la Apelada en el Acuerdo para la Resolución del Caso, así como interesando, de forma alternativa, que se considerase la falta de intencionalidad del Jugador y la ausencia de culpa y negligencia significativa, solicitando que en ambos supuestos se limitase la sanción a un año de suspensión contado a partir del 22 de febrero de 2024.

19. Con fecha 21 de octubre de 2024, se celebró la Audiencia Final del caso.

20. Con fecha 4 de noviembre de 2024, la Comisión Disciplinaria emitió su resolución en el caso que nos ocupa, resolviendo lo siguiente:

> *"1°. Que el Jugador ÓSCAR ZAMBRANO PRECIADO es culpable de una infracción a los artículos 6 y 7 del Reglamento Antidopaje de la CONMEBOL.*
>
> *2°. En consecuencia, se impone una sanción al Jugador ÓSCAR ZAMBRANO PRECIADO de dieciséis (16) meses de suspensión.*
>
> *3º. El cómputo de la sanción impuesta se contará desde la fecha de notificación de la presente decisión.*
>
> *4º. Contra esta decisión cabe recurso ante el Tribunal Arbitral del Deporte (TAD), conforme al Art. 82 del Reglamento Antidopaje de la CONMEBOL en el plazo de veintiún días corridos contados a partir del día siguiente a la notificación de la presente decisión con fundamentos, debiendo cumplir con las formalidades y elementos establecidos por el TAD".*

21. Los fundamentos de la decisión adoptada por la Comisión Disciplinaria (en adelante la "Decisión Apelada") fueron comunicados por Conmebol al Apelante el 13 de noviembre de 2024.

22. Los razonamientos expuestos por la Apelada en la Decisión Apelada fueron, *inter alia*, los siguientes:

    a. Resulta incuestionable la presencia de la sustancia prohibida Clortalidona en el organismo del Jugador, y el Jugador reconoció asimismo que ingirió dicha sustancia el 4 de febrero de 2024, de modo que el Jugador infringió los artículos 6 y 7 del Reglamento Antidopaje.

    b. Una vez analizado el relato de hechos desarrollado por el Jugador y las pruebas aportadas por la Unidad Disciplinaria, entre las que se encuentran las muestras tomadas al Jugador en las pruebas antidopaje, así como la concentración de la sustancia

prohibida hallada en las mismas, no puede concluirse, bajo un estándar mayor al del justo equilibrio de probabilidades, que el Jugador ingirió la sustancia prohibida de forma intencional.

c. El Jugador acreditó, bajo el criterio del justo equilibrio de probabilidades, haber consumido alimentos contaminados por camarones el 4 de febrero de 2024, ser alérgico al camarón y, consecuentemente, haber sufrido una reacción alérgica que lo llevó a apersonarse en una farmacia cercana a su domicilio, y a adquirir y consumir una pastilla de Clortalidona de 50mg por recomendación de la empleada que ahí lo atendió, de modo que se tiene por demostrada la forma en que la sustancia prohibida ingresó en el cuerpo del Jugador.

d. Analizados los criterios objetivos del caso, se desprende que el Jugador actuó con ausencia significativa de culpa o negligencia, si bien ostentando un nivel de culpa normal sancionable con una suspensión de entre 12 y 24 meses, puesto que no comprobó haber obrado con un alto nivel de diligencia previo a consumir la Clortalidona, y tampoco comprobó que padeciera una sintomatología tal que justificara su desatención y falta de diligencia.

e. Una vez tomados en cuenta los criterios subjetivos del caso, en particular la juventud e inexperiencia del Jugador, y considerando que padecía un nivel de estrés significativo, así como su falta de intención de hacer trampa o enmascarar una sustancia prohibida, resulta que, en el marco de la culpa normal, la negligencia del Jugador debe ponderarse en una escala media.

f. Consecuentemente, resulta ajustado a derecho y proporcionado imponer al Jugador un periodo de suspensión de 16 meses.

g. La sanción impuesta debe comenzar a computarse a partir del día de la notificación de la decisión, pues en ningún momento pesó sobre el Jugador una suspensión provisional.

III. PROCEDIMIENTO ANTE EL TRIBUNAL ARBITRAL DEL DEPORTE (TAS)

23. Con fecha 25 de noviembre de 2024, el Apelante presentó su Declaración de Apelación ante el Tribunal Arbitral del Deporte (en adelante el "TAS") en contra de Conmebol, impugnando la Decisión Apelada de conformidad con el Artículo R48 del Código de Arbitraje Deportivo (en adelante el "Código"). El Apelante nominó como árbitro a D. Gustavo Albano Abreu. Asimismo, el Apelante solicitó que el procedimiento se tramitase de forma acelerada. En esa misma fecha, el Apelante presentó ante el TAS una Solicitud de Medidas Provisionales con fundamento en el artículo R37 del Código, mediante la cual peticionó al TAS que suspendiese provisionalmente la ejecución de la Decisión Apelada.

24. Con fecha 27 de noviembre de 2024, la Secretaría del TAS comunicó la Declaración de Apelación a Conmebol, e

invitó a esta última a informar si estaba de acuerdo con tratar este arbitraje de forma acelerada, en cuyo caso se invitaba a las Partes a que, de común acuerdo, comunicaran al TAS un calendario procesal acelerado. Asimismo, la Secretaría del TAS invitó a la Apelada a presentar su posición respecto a la solicitud de medidas cautelares presentada por el Apelante.

25. El 2 de diciembre de 2024, la Apelada manifestó que las Partes habían alcanzado un acuerdo para la tramitación del procedimiento de forma acelerada, en tanto que el Apelante habría aceptado retirar la solicitud de suspensión provisional, proponiendo los siguientes plazos:

- Plazo para presentar la memoria de apelación: 19 de diciembre de 2024
- Plazo para presentar la contestación a la apelación: 31 de enero de 2025
- Fecha de celebración de la audiencia: 13-14 de marzo de 2025
- Fecha máxima para la comunicación de la parte dispositiva del laudo arbitral: 31 de marzo de 2025

26. Con fecha 3 de diciembre de 2024, la Secretaría del TAS tomó nota del calendario procesal acordado por las Partes, e invitó al Apelante a que confirmase su desistimiento de la solicitud de medidas cautelares.

27. En esa misma fecha, el Apelante manifestó su voluntad de renunciar a la solicitud de medidas provisionales presentada con su Declaración de Apelación, con base en el acuerdo alcanzado con la Apelada para que el procedimiento se tramitase en forma acelerada.

28. El 9 de diciembre de 2024, la Apelada designó como árbitro a D. Alexander McLin.

29. Con fecha 18 de diciembre de 2024, el Apelante presentó su Memoria de Apelación de conformidad con lo establecido por el Artículo R51 del Código.

30. Con fecha 16 de enero de 2025, la Secretaría del TAS, en nombre de la Presidenta de la Cámara de Apelaciones del TAS, informó a las Partes que la Formación Arbitral encargada de resolver la presente disputa estaría integrada de la siguiente manera:

Presidente:
D. Jaime Castillo, abogado en Ciudad de México, México

Co-árbitros:

D. Gustavo Albano Abreu, Profesor en Buenos Aires, Argentina

D. Alexander McLin, abogado en Lausana, Suiza

31. Con fecha 24 de enero de 2025, una vez consultadas las Partes, la Secretaría del TAS comunicó que, de conformidad con el Artículo R57 del Código, la Formación convocaba a las Partes a una audiencia que se celebraría por videoconferencia el día 13 de marzo de 2025 a partir de las 14h30 (hora suiza).

32. El 3 de febrero de 2025, la Apelada presentó su Contestación a la Apelación de conformidad con el Artículo R55 del Código.

33. El 5 de febrero de 2025, la Secretaría del TAS emitió la Orden de Procedimiento, la cual fue firmada posteriormente por las Partes.

34. El 13 de marzo de 2025 se llevó a cabo la audiencia del presente procedimiento por videoconferencia, cuya fecha y organización fueron debidamente consensuadas entre la Secretaría del TAS y las Partes. Comparecieron, además de la Formación Arbitral, Antonio de Quesada, Responsable de Arbitraje del TAS, el Jugador, los abogados representantes de las Partes y los testigos y experto propuestos por cada una de ellas. En el transcurso de la audiencia, las Partes hicieron uso de la palabra sin limitación alguna y sus alegatos fueron escuchados, tomados en cuenta y analizados por la Formación. El Jugador fue asimismo interrogado, al igual que los testigos y el experto propuestos por el Apelante. Al finalizar la audiencia las Partes confirmaron que no tenían objeción alguna a la composición de la Formación Arbitral en el presente caso, ni a la forma en que se desarrolló la propia audiencia, señalando que su derecho a ser oído y al trato equitativo en el marco del procedimiento arbitral había sido respetado irrestrictamente.

IV. ARGUMENTOS DE LAS PARTES

35. En este capítulo se presenta, con carácter meramente ilustrativo, un resumen de los argumentos de las Partes. No obstante, la Formación reitera que ha estudiado y valorado pormenorizadamente las presentaciones, alegaciones, exposiciones y argumentaciones escritas y orales de las Partes en el procedimiento que nos ocupa, se encuentren o no las mismas mencionadas específicamente en la siguiente síntesis.

36. En sus alegaciones escritas y orales, el Apelante argumentó medularmente lo siguiente:

- Luego de exponer un resumen introductorio del caso, reconoce, preliminarmente, que el Jugador no controvierte la presencia de la sustancia prohibida Clortalidona en su organismo, reconociendo asimismo que es procedente que se le haya imputado haber incurrido en los supuestos previstos en los artículos 6 y 7 del Reglamento Antidopaje, con base en el resultado analítico adverso proveniente de las muestras resultantes de los exámenes a los que fue sometido el 19 y 22 de febrero de 2024. Se duele, no obstante, de que la Apelada haya encuadrado su grado de culpabilidad como "normal", dentro de la escala empleada en el marco de la figura normativa de la ausencia significativa de falta o negligencia, cuando lo apropiado sería calificar la culpabilidad como "leve", de modo que la sanción impuesta debe ser reducida de acuerdo dentro de los límites de tal baremo.

- Comienza su argumentación coincidiendo con la valoración efectuada por la Apelada en la Decisión Apelada respecto de la falta de intencionalidad del Apelante, quien habría infringido

la normativa antidopaje sin saber que su accionar era contrario a la citada norma, o bien conllevaba un riesgo significativo en tal sentido. Reitera, asimismo, que el Apelante probó oportunamente la forma en que la sustancia prohibida ingresó en su organismo, así como los motivos por los cuales procedió a su ingesta, por lo que la sanción correspondiente en ningún caso puede ser mayor a una suspensión de dos años.

- Subsecuentemente, y a efectos de acreditar que en el presente caso se actualiza la figura de la ausencia significativa de falta o negligencia, el Apelante reitera que la sustancia Clortalidona ingresó en el organismo del Jugador de forma no intencionada, dado que el Jugador ingirió una única tableta de un medicamente que le fue prescrito por una empleada farmacéutica en una situación de extrema urgencia y desesperación, debido a que el Apelante exhibía síntomas y padecía reacciones alérgicas que pudiesen derivar en un shock anafiláctico y, eventualmente, en su muerte.

- Que el 4 de febrero de 2024 el Apelante comió, junto con su pareja, en el restaurante denominado "Bolones Don K" en la ciudad de Quito, Ecuador, en el que presuntamente el ceviche que consumió habría sido contaminado por camarón, alimento al que es alérgico el Apelante, y que una vez terminado el almuerzo el Apelante presentó ronchas en el cuerpo, hinchazón, dificultad para respirar y taquicardia, por lo que acudió de inmediato a la farmacia denominada "Farmacia Fybeca", en la cual la dependienta del establecimiento, la Sra. Monica Alexandra Sierra León, tras escuchar la descripción de sus padecimientos, le indicó que consumiera una pastilla de un medicamento que contiene Clortalidona.

- Que una vez consumida una sola pastilla del medicamento que contenía Clortalidona, los síntomas del Apelante no cesaron, por lo que se comunicó con el médico de LDU, el Dr. William Bastidas, quien se apersonó en su domicilio para tratarlo, y quien tras estabilizar al Jugador le ordenó que no consumiera más el medicamento en cuestión.

- Que el recuento de hechos ha sido aceptado como cierto, o al menos verosímil, por la Apelada y que la falta de intencionalidad del Apelante ha quedado corroborada con el dictamen suscrito por el médico experto, el Dr. Enrique Terán, en el que esencialmente se concluye que la concentración de la sustancia encontrada en el organismo del Jugador corresponde a la ingesta de una sola tableta, y que dichos niveles de concentración son muy inferiores a aquellos que podría considerarse útil para su eficacia terapéutica.

- Que el informe de experto suscrito por el Dr. Luis Ferrari concluye, asimismo, que de la sintomatología presentada por el

Apelante surge que sufrió un episodio alérgico agudo, de modo que la recomendación de la empleada farmacéutica a efectos de que consumiese Clortalidona resulta plausible.

- Así las cosas, concluye el Apelante que, de los hechos comprobados, resulta que el Jugador no tenía intención de consumir una sustancia prohibida, ni mucho menos de obtener una ventaja competitiva derivada de la misma (lo cual se desprende del calendario de partidos de LDU, del que surge que el club no disputó partidos oficiales antes del 22 de febrero de 2024, en tanto el Jugador consumió la sustancia prohibida apenas el 4 de febrero de 2024), sino que simplemente atendió una situación de emergencia por su estado de salud, y que carece de negligencia o culpa grave en vista de que no hizo más que seguir la recomendación de una experta farmacéutica para atender sus síntomas, considerando la situación de extrema gravedad y urgencia en que se encontraba.

- Posteriormente, el Apelante pasa a analizar el grado de culpabilidad con el que se debe valorar la conducta del Apelante, dentro del marco de la ausencia significativa de falta o negligencia, señalando que, a diferencia de lo dictaminado en la Decisión Apelada, los factores subjetivos pueden, excepcionalmente, ser tomados en cuenta a efectos de encuadrar la conducta del Jugador dentro de alguna de las dos escalas de culpabilidad (normal o leve). Tal sería el caso cuando los criterios subjetivos sean muy significativos, o bien que se presente un solapamiento entre los elementos objetivos y subjetivos. Cita a tal efecto precedentes del TAS, y subraya que cada caso presenta características particulares y debe ser tratado individualmente.

- Pasando al análisis de los factores objetivos del caso, se duele el Apelante de que el "grado de cuidado estándar" aplicable a un atleta no puede ser aplicado de forma uniforme a todos los deportistas. Sin embargo, la Apelada no tomó en consideración los hechos y circunstancias particulares del caso, en particular desatendiendo la situación de desesperación en la que se encontraba el Apelante, producto de una emergencia médica con síntomas graves y desconocidos (cuestión que, alega, ha sido probada), así como su condición de deportista muy joven, con poca educación formal y sin educación antidopaje, por lo que no se le podía exigir el mismo nivel de diligencia y cuidado que a un deportista consolidado.

- Considera que la propia Apelada reconoció en la Decisión Apelada que el Apelante ingirió Clortalidona padeciendo un "alto grado de estrés", lo cual se contradice con su conclusión posterior en el sentido de que el Jugador no se encontraba en una situación de urgencia tal que le eximiera de adoptar todas las medidas apropiadas de cuidado,

tales como efectuar una búsqueda exhaustiva de la Lista de Sustancias Prohibidas de WADA, consultar con la empleada de la farmacia si contaba con las calificaciones profesionales para recetar medicamentos, o bien cualquier otra diligencia a las adoptadas por el Apelante en este caso, dado el carácter excepcional y urgente de la situación en que se encontraba. Se duele, asimismo, de que la Apelada no haya valorado la diligencia con la que obró el Apelante al consultar con el médico de su club una vez que sus síntomas empeoraron, y que no consumió más que una sola pastilla de Clortalidona, además de que ni dicho médico ni el personal del club le aconsejaron que solicitara una Autorización de Uso Terapéutico.

- Así las cosas, concluye el Apelante respecto de este punto que el grado de culpabilidad del Jugador debe encuadrarse dentro de la escala leve, de modo que su sanción debe oscilar entre 0 y 12 meses de suspensión.

- Continúa argumentando el Apelante que, al analizar los factores subjetivos del caso, se debe tomar en cuenta que:

  - El Apelante es un futbolista inexperimentado, de solo 19 años, por lo que deviene razonable su reacción a la sintomatología que presentó.

  - El Apelante nunca recibió capacitación sobre temas de dopaje, ni por parte de su club, ni por parte de la Federación Ecuatoriana de Fútbol.

  - El Apelante pasaba por una situación de agobio, estrés y desesperación.

  - El Apelante obró de buena fe, mostrando cooperación con la Apelada con relación al presente caso.

  - El Apelante no tiene antecedente alguno en materia de dopaje.

  - La recomendación de tratarse con el consumo de Clortalidona provino de una profesional de farmacia, por lo que el error de su consumo no puede atribuirse al Apelante.

- Que de dichos factores surge que la culpa del Apelante debe calificarse de leve, o bien, en caso de que fuese estimada como normal, la suspensión debe ser atenuada al mínimo legal de 12 meses de suspensión.

- Con relación al cómputo de la sanción impuesta en la Decisión Apelada, el Apelante considera que se debe tomar en cuenta los retrasos en el procedimiento de origen tramitado ante los órganos disciplinarios de la Apelada, no imputables al Jugador, así como su exclusión de la lista de jugadores registrados por LDU para disputar la Copa Conmebol Libertadores 2024, que fue consecuencia directa

del procedimiento antidopaje abierto en su contra. Con base en ello, el Apelante sostiene que el lapso comprendido entre el 3 de abril de 2024 y el 29 de mayo de 2024 debe ser deducido del periodo de sanción.

37. Como corolario a todo lo anterior, el Apelante realiza las siguientes peticiones al TAS en su Memoria de Apelación:

(i) Que, como planteamiento principal, gradúe la culpabilidad del deportista como leve dentro de la figura de la ausencia significativa de falta o negligencia y, dentro de dicha escala, aplique una sanción acorde al análisis subjetivo del caso;

(ii) Ad Cautelam y subsidiariamente, si la formación arbitral considera que, dentro de la figura de la ausencia significativa de falta o negligencia, la culpabilidad del deportista debe graduarse como normal, que el periodo de sanción se reduzca a su mínimo legal, es decir doce (12) meses, teniendo en consideración el análisis subjetivo del caso;

(iii) Ad cautelam y subsidiariamente, no aplique un periodo de sanción superior a dieciséis (16) meses, o sea al ya establecido por la Comisión Disciplinaria de la CONMEBOL en su Decisión número D-01-24 de fecha 4 de noviembre de 2024, objeto del presente recurso;

(iv) En cualquier caso, que retrotraiga la fecha de inicio del periodo de suspensión al 19 de febrero de 2024, momento en el que ocurre la toma de la primera muestra que deriva en el resultado analítico adverso, como consecuencia de retrasos en el procedimiento no imputables al deportista;

(v) Ad cautelam y subsidiariamente al punto cuarto del presente petitum, si se valora que el periodo de suspensión no puede retrotraerse al momento de la toma de la primera muestra de dopaje, se compute dentro del periodo de sanción los ciento dos (102) días de retraso en el procedimiento no imputables al deportista;

(vi) En cualquier caso, que se computen dentro del periodo de sanción los cincuenta y siete (57) días durante los cuales el Sr. Óscar Zambrano Preciado no fue elegible para disputar los encuentros pertenecientes a la Fase de Grupos de la Copa Libertadores de América (ed. 2024);

(vii) En cualquier caso, condenar a la apelada al pago de la totalidad de los gastos administrativos del TAS y de los honorarios de los árbitros;

(viii) En cualquier caso, fijar una cantidad a pagar por la apelada, con el fin de contribuir al pago de los honorarios y costas legales de la parte recurrente;

(ix) En cualquier caso, determinar cualquier otra medida que considere oportuna.

38. Por su parte, la Apelada opuso las siguientes consideraciones de hecho y de derecho en su Contestación a la Memoria de Apelación:

- Preliminarmente, la Apelada señala que existen diversas contradicciones e inexactitudes en el relato fáctico del Apelante, una vez cotejadas sus manifestaciones en el procedimiento ante la Comisión Disciplinaria y en apelación ante el TAS. Procede a enlistar las contradicciones identificadas, y agrega asimismo que el Apelante mintió al declarar que no ha recibido educación en materia de dopaje, poniendo de relieve que las irregularidades en el relato constituyen motivo suficiente para desestimar las pretensiones del Apelante.

- Asimismo, la Apelada sostiene que la clasificación de la Clortalidona como sustancia específica prohibida no es objeto de controversia por parte del Apelante, quien, al momento de disponerse a consumir un medicamente cuyo empaque identificaba precisamente como tal, pudo haber efectuado una simple consulta a la Lista de Prohibiciones publicada por Conmebol y por WADA, o bien pudo haber realizado una búsqueda sencilla en internet, lo cual constituiría, en cualquier caso, el estándar mínimo de conducta exigible a un atleta profesional, que además había asistido a al menos dos cursos de formación en materia de dopaje impartidos por Conmebol. Considerando, a su vez, que el medicamento requería de receta para su venta al público, conforme a la normativa aplicable en Ecuador, el Apelante debió tomar las precauciones debidas antes de consumir un medicamento de venta controlada.

- Pasando a exponer sus argumentos con relación al fondo del asunto, la Apelada afirma que el análisis de la conducta del Apelante desde el punto de vista objetivo y subjetivo ayudará a determinar el grado de culpa y resolver sobre la sanción aplicable, siendo los criterios objetivos aquellos que permiten determinar si una conducta se encuentra bajo un grado normal o leve de culpa, en tanto que los criterios subjetivos sirven para ajustar el grado de culpa dentro de la categoría correspondiente, solo pudiéndose cambiar el caso de categoría con base en los criterios subjetivos en casos verdaderamente excepcionales.

- Subsecuentemente, el Apelado analiza los criterios objetivos en cuanto a su aplicación al presente caso, partiendo de la determinación del punto hasta el cual el Apelante se desvió de su obligación de aplicar el nivel de diligencia que exige la normativa aplicable, que en este caso es el de "mayor diligencia", puntualizando que la jurisprudencia del TAS identifica como precauciones mínimas no automedicarse ni tomar pastillas de proveniencia o composición desconocida, así como leer la descripción del producto y verificar sus ingredientes con base en la Lista de Prohibiciones de WADA, efectuando una búsqueda del producto en internet, y consultando con expertos antes de consumir el producto. Concluye

que, en este caso, el Apelante no adoptó una sola de esas medidas precautorias, sin que las pruebas que ha ofrecido en esta apelación hayan justificado su omisión.

- Es así que, alega, la negligencia del Apelante es objetivamente muy grave, puesto que había recibido formación en materia de dopaje en dos ocasiones, además de recibir la indicación de no automedicarse por parte del doctor de LDU al inicio de cada temporada y, pese a ello, ingirió un medicamento sin verificar su contenido ni consultar con los médicos del club.

- Ahondando sobre la situación en que se encontraba el Apelante al momento de consumir Clortalidona, la Apelada afirma que la conducta adoptada por el Apelante no corresponde a aquella de una persona que estuviese en estado de desesperación, en vista de que acudió a pie a la farmacia en la que adquirió el producto, volvió a su domicilio, y llamó al médico del club esperando que este acudiera a su domicilio, de modo que, objetivamente, no se encontraba impedido para aplicar la debida diligencia y adoptar las medidas simples de precaución a las que le obliga la normativa aplicable. Aunado a lo anterior, el Jugador siguió las instrucciones de una auxiliar de farmacia que no se encontraba habilitada legalmente para ofrecer o recomendar medicamentos, de modo que la conducta ostentada encuadra en un grado de culpa normal, dado el nulo nivel de atención y cautela desplegado por el Apelante.

- Revisando a su vez los criterios subjetivos aplicables al caso, la Apelada estima que el Apelante es un jugador profesional con algunos años de experiencia en primera división, así como en competiciones internacionales con selección nacional, de modo que no se le puede considerar inexperto en la materia, además de que había recibido dos cursos en materia de dopaje impartidos por Conmebol. Asimismo, el Apelante ha reconocido que no sufrió síntomas respiratorios hasta después de haber ingerido Clortalidona, por lo que, al momento de la compra del medicamento correspondiente en la farmacia, estaba en condiciones de haber identificado la situación de elevado riesgo en que se situaba al automedicarse con un medicamento que fácilmente pudo verificar que contenía una sustancia prohibida.

- La Apelada reitera que el nivel de atención e investigación ejercido por el Apelante, respecto del riesgo que debió percibir, fue inexistente, de modo que la Apelada valoró correctamente los criterios subjetivos aplicables.

- Rechaza también el argumento del Apelante respecto de la existencia de presuntos impedimentos personales, tales como la falta de antecedentes, el error atribuible a un tercero, y la falta de intencionalidad, puesto que estos no son factores que se deba considerar a efectos de atenuar la sanción, así como resulta también irrelevante a efectos de la

normativa antidopaje que el Apelante no haya tenido la intención de mejorar su rendimiento a través del consumo de la sustancia prohibida.

- Con relación al inicio del periodo de suspensión, la Apelada argumenta que el Apelante ha sido elegible para disputar todas las competencias en las que participara su club durante el periodo en que se desahogó el procedimiento de primera instancia ante Conmebol, en tanto que su exclusión de la Copa Conmebol Libertadores 2024 se debió únicamente a la decisión y conducta de LDU, además de que tampoco existen retrasos atribuibles a la Apelada en la tramitación del procedimiento de origen. Asimismo, nunca pesó sobre el Apelante una suspensión provisional, de modo que pudo proseguir normalmente con su carrera deportiva hasta la fecha en que fue emitida la Decisión Apelada.

- Concluye, consecuentemente, que la valoración del grado de falta o negligencia del Apelante efectuado por Conmebol es correcta, y que la sanción impuesta mediante la Decisión Apelada es ajustada a derecho y proporcionada a la conducta desplegada por el Apelante.

39. A su vez, en su contestación a la Memoria de Apelación la Apelada solicita expresamente:

    i. Desestime íntegramente, en última instancia, la apelación presentada por el Jugador, por las razones de fondo expuestas en la presente contestación.

    ii. Condene al Apelante a pagar todos los costes del arbitraje.

    iii. Condene al Apelante a pagar a la CONMEBOL una contribución significativa a los costes de defensa en que ha incurrido en el presente procedimiento, en la cantidad que se determine discrecionalmente por el Panel.

V. JURISDICCIÓN

40. El artículo R47 del Código TAS establece que:

"Artículo R47

Se puede presentar una apelación contra la decisión de una federación, asociación u otra entidad deportiva ante el TAS si los estatutos o reglamentos de dicha entidad deportiva así lo establecen o si las partes han convenido un acuerdo de arbitraje específico y siempre que la parte apelante haya agotado los recursos legales de que dispone con anterioridad a la apelación, de conformidad con los estatutos o reglamentos de dicha entidad deportiva. Se puede presentar una apelación ante el TAS contra un laudo dictado por el TAS cuando éste haya actuado como tribunal de primera instancia si dicha apelación se ha previsto expresamente en el reglamento de la federación o de la entidad deportiva correspondiente".

41. La jurisdicción del TAS para entender en el presente caso ha sido invocada por el Apelante con base en el artículo 62, incisos 1 y 2, del Estatuto de la Conmebol, así como en los artículos 77.1 y 83 del Reglamento Antidopaje. La jurisdicción del TAS no ha sido objetada por la Apelada, habiendo sido todo ello

confirmado con la firma y devolución de la Orden de Procedimiento.

42. El artículo 57 del Código Disciplinario de la Conmebol y el artículo 62 de los Estatutos de la Conmebol disponen lo siguiente:

> *"ARTÍCULO 57. TRIBUNAL DE ARBITRAJE DEPORTIVO (TAD)*
>
> *1. En materia disciplinaria, se prohíbe el recurso ante tribunales ordinarios.*
>
> *2. De conformidad con el Artículo 62 de los Estatutos, la CONMEBOL reconoce el derecho a interponer recurso de apelación exclusivamente ante el Tribunal Arbitral del Deporte (TAD) con sede en Lausana (Suiza).*
>
> *3. Solo se podrán presentar disputas ante el TAD cuando se hayan agotado todas las vías internas. (…)"*
>
> *"Artículo 62 – Estatutos de la Conmebol*
> *1. La CONMEBOL reconoce la jurisdicción del Tribunal Arbitral del Deporte (TAD) con sede en Lausana (Suiza).*
>
> *2. Únicamente se podrán presentar disputas ante el TAD cuando se hayan agotado todas las vías internas que apliquen. El TAD intervendrá, como órgano de alzada en todos aquellos recursos presentados contra resoluciones definitivas de la CONMEBOL, o, como tribunal de arbitraje deportivo si el litigio no recae en la jurisdicción de los órganos de la CONMEBOL o de la FIFA.*
>
> *(…)".*

43. Asimismo, el artículo 77.1 del Reglamento Antidopaje de la Conmebol dicta:

> *"Todas las decisiones dictadas por la Comisión Disciplinaria de la CONMEBOL relativas a la infracción de la normativa antidopaje sean de forma provisional o definitiva se podrá recurrir únicamente ante el TAS".*

44. Finalmente, en el punto resolutivo cuarto de la Decisión Apelada se indica lo siguiente:

> *"Contra esta decisión cabe recurso ante el Tribunal Arbitral del Deporte (TAD), conforme al Art. 82 del Reglamento Antidopaje de la CONMEBOL en el plazo de veintiún días corridos contados a partir del día siguiente a la notificación de la presente decisión con fundamentos, debiendo cumplir con las formalidades y elementos establecidos por el TAD".*

45. De lo anterior se sigue que el TAS es competente y tiene plena jurisdicción para estudiar y resolver la presente apelación.

VI. ADMISIBILIDAD

46. De conformidad con lo dispuesto por el artículo R49 del Código y, correlativamente, con lo establecido por el artículo 62, inciso 4 del Estatuto de la Conmebol, así como por el artículo 57, inciso 6 del Código Disciplinario de la Conmebol, y el artículo 82 del Reglamento Antidopaje, el Apelante contaba con un plazo de 21 días desde la notificación de la Decisión Apelada para la interposición de la apelación.

47. La Decisión Apelada (con fundamentos) fue notificada al Apelante el 13 de noviembre de 2024 y éste presentó su Declaración de Apelación el 25 de

noviembre de 2024, de modo que interpuso su apelación dentro del plazo establecido por la normativa de Conmebol.

48. Asimismo, el recurso de apelación cumple con los requisitos que establece el artículo R48 del Código. Consecuentemente, la apelación es admisible.

VII. LEY APLICABLE

49. El artículo R58 del Código establece lo siguiente:

> *"La Formación resolverá la controversia de acuerdo con las regulaciones aplicables y, subsidiariamente, con las normas jurídicas elegidas por las partes o, en ausencia de dicha elección, de acuerdo con la ley del país en el que la federación, asociación o entidad deportiva que haya emitido la decisión recurrida esté domiciliada o de acuerdo con las normas jurídicas que la Formación considere apropiadas. En este último caso, la Formación deberá motivar su decisión".*

50. El artículo 57, inciso 4 del Código Disciplinario de la Conmebol dicta, por su parte:

> *"El procedimiento arbitral se rige por las disposiciones del Código de Arbitraje del TAD, excepto en lo establecido en el presente capítulo".*

51. De lo anterior sigue lógicamente que el presente litigio debe ser resuelto siguiendo la normativa de Conmebol (que ambas partes han invocado en el presente procedimiento y además tiene la condición de "*regulaciones aplicables*" de acuerdo con el artículo R58 del Código), en especial el Reglamento Antidopaje de la Conmebol vigente al momento en que ocurrieron los hechos materia del presente arbitraje (ed. 2021), el Código Disciplinario de la Conmebol y, subsidiariamente, pero únicamente en caso de que la reglamentación de Conmebol no ofreciera respuesta respecto de algún aspecto relevante a la presente apelación, el derecho paraguayo (en vista de que Conmebol tiene domicilio en Luque, Paraguay).

VIII. MOCIONES Y PETICIONES DIVERSAS DE LAS PARTES

52. La Apelada solicitó, durante la tramitación del procedimiento, que se excluyera del expediente el testimonio rendido por escrito por el Dr. Terán, en vista de que dicho experto no estaría presente en la audiencia para responder preguntas de la Apelada.

53. Una vez tomada en cuenta la resolución adoptada por la Formación en la presente apelación, y que el testimonio de experto rendido por el Dr. Terán ha resultado inmaterial a los razonamientos y conclusiones de la Formación, resulta innecesario dar cauce a la petición de la Apelada, que resulta, en consecuencia, rechazada.

54. Asimismo, la Apelada solicitó como medida procesal que se requiriera al Apelante y a la Federación Ecuatoriana de Fútbol a efectos de que presentasen una copia del contrato de trabajo del Jugador con LDU, a efecto de demostrar que dicho instrumento contiene disposiciones en materia antidopaje.

55. La Formación resuelve, asimismo, rechazar dicha moción, en vista de que el contrato de trabajo vincula y obliga al Apelante únicamente con LDU. Dado que LDU no ha elevado reclamo alguno en contra del Apelante, ni es parte del presente procedimiento, y considerando que lo que aquí se discute es la infracción

por parte del Jugador de la normativa antidopaje denunciada por la Conmebol, las obligaciones que en esa materia haya podido adquirir el Jugador ante su club no resultan relevantes a la resolución del caso.

56. Todas las otras peticiones o medidas solicitas por las Partes resultan rechazadas.

IX. FONDO DE LA APELACIÓN

57. Una vez analizados a fondo tanto los argumentos de las Partes en sus escritos y en la audiencia, como valoradas las pruebas aportadas por las mismas, la Formación debe considerar, primeramente, cuáles son los hechos pacíficos de la presente controversia, y cuáles son las cuestiones sobre las que las Partes están en desacuerdo, a efectos de fijar adecuadamente la *litis*.

58. Las Partes coinciden, en buena medida, en que:

    i. El Apelante se sometió a dos controles de dopaje, el 19 de febrero de 2024 y el 22 de febrero de 2024, que arrojaron, ambos, un resultado analítico adverso por la presencia de la sustancia prohibida Clortalidona.

    ii. No se ha producido una desviación del Estándar Internacional para Controles e Investigación, y el Apelante no contaba con una Autorización de Uso Terapéutico de la sustancia detectada en los controles antidopaje. Por lo tanto, la validez del resultado de los controles antidopaje en cuestión no se encuentra cuestionada.

    iii. El Apelante no consumió la sustancia prohibida intencionalmente, o bien a sabiendas de que su consumo constituía una infracción a la normativa antidopaje, o que constituía un riesgo de violación a la citada normativa.

    iv. La sustancia prohibida ingresó al organismo del Apelante el 4 de febrero de 2024 cuando este consumió una pastilla de 50mg de Clortalidona adquirida en una farmacia cercana a su domicilio, en la ciudad de Quito, Ecuador, por recomendación de una empleada de la propia farmacia, una vez que el Apelante se presentó en la farmacia con síntomas derivados de una reacción alérgica al consumo de camarón en esa misma fecha.

    v. No se actualiza en este caso el supuesto de la ausencia total de falta o negligencia.

    vi. La conducta del Apelante cae en el supuesto de la ausencia significativa de falta o negligencia.

59. La discusión entre las Partes se centra, entonces, en el grado de la culpa o negligencia del Apelante, y en la consecuente sanción que se le debe imponer tomando en cuenta las circunstancias específicas del caso, y en particular los criterios objetivos y subjetivos de aplicación, de acuerdo con la jurisprudencia del TAS, cuestión que no constituye un hecho factual en estricto sentido, sino una calificación, juicio o valoración respecto de la conducta del Apelante.

60. En efecto, el Apelante sostiene que la culpa del Jugador, en el marco de la ausencia significativa de falta o negligencia, fue de naturaleza leve, de modo que la sanción del Jugador debe ser reducida de conformidad con la escala que regula el periodo de suspensión correspondiente a ese grado de culpa. O bien, subsidiariamente, si la Formación considera que el grado de culpa del Jugador es normal, tal y como se determinó en la Decisión Apelada, la sanción debe en todo caso ser reducida al mínimo disponible con base en las circunstancias específicas del caso, una vez aplicados los criterios subjetivos a la situación particular del Apelante.

61. La Apelada, por su parte, opone que la falta total de diligencia ostentada por el Apelante al momento de ingerir la sustancia prohibida se traduce en un grado de culpa normal, y una imposibilidad de reducir la sanción impuesta en la Decisión Apelada.

62. Como cuestión adicional, el Apelante argumenta que la sanción debe contabilizarse a partir de la fecha en que el Jugador se sometió a las pruebas antidopaje, o bien, subsidiariamente, que se descuenten del periodo de sanción los lapsos atribuibles a retrasos en el procedimiento no imputables al Apelante, así como el periodo en que fue inhabilitado por su club para disputar la Copa Conmebol Libertadores 2024.

63. La Apelada, a su vez, niega que pueda efectuarse cualquier ajuste o modificación al cómputo de la sanción, con base en que nunca pesó sobre el Apelante una suspensión provisional que le impidiera continuar desempeñando su actividad profesional.

64. La Formación Arbitral considera, preliminarmente, que la carga de la prueba sobre la existencia de un hecho determinado recae en la parte que lo invoca y pretende el reconocimiento de un derecho a partir de dicho hecho. En el presente caso, dado que el Apelante controvierte medularmente la sanción impuesta por la Apelada, y solicita un ajuste en la forma en que ésta debe ser computada, con base en los hechos que hace valer en su Memoria de Apelación, es el Apelante quien debe probar sus reclamos con base en el principio legal del equilibrio justo de probabilidades.

65. Asimismo, la Formación se encuentra plenamente facultada para revisar los hechos y fundamentos de derecho del caso, con base en el principio *de novo* sustentado por el artículo R57 del Código.

66. Lo anterior, no obstante, la Formación ha notado que la Apelada ha cuestionado y objetado, tanto en su Contestación a la Memoria de Apelación como en los argumentos orales formulados en audiencia, diversos puntos del relato fáctico desarrollado por el Apelante ante el TAS, particularmente relacionados, *inter alia*, con la presunción de la reacción alérgica sufrida por el Apelante, las circunstancias en las que éste adquirió la Clortalidona, los motivos que lo llevaron a su consumo y el estado de urgencia/estrés en el que presuntamente se encontraba en ese momento. A esos efectos, la Formación considera pertinente aclarar que considera como firme e indiscutido que el Apelante ingirió una sola pastilla de 50mg de Clortalidona de forma no intencionada (dentro del ámbito de la normativa antidopaje), por sugerencia de una empleada de la farmacia en que adquirió

el medicamento, y con el propósito de atender síntomas producto de una reacción alérgica derivada del consumo de un alimento contaminado con camarones, puesto que así se dictaminó en la Decisión Apelada:

> *"106. Así las cosas, conforme a las pruebas previamente citadas, esta Comisión debe concluir que, bajo el estándar de un justo equilibrio de probabilidades, la defensa del Jugador logró demostrar la forma como la sustancia ingresó al cuerpo del señor Óscar Zambrano Preciado, siendo la ocurrencia del marco fáctico narrado en precedencia más probable que la ocurrencia de otra situación"* (ver también párrafos 94, 98 y 102 de la Decisión Apelada).

67. Tratándose, consecuentemente, de cuestiones de hecho que se tuvieron por probadas en la Decisión Apelada, tales hechos deben presumirse por ciertos en esta instancia en cuanto se refiere a la no intencionalidad del Apelante, así como a la ausencia significativa de falta o negligencia, A pesar de ello, los argumentos de la Apelada respecto de los hechos controvertidos podrán ser tomados en cuenta por la Formación al momento de valorar el grado de la falta o negligencia del Apelante en el presente caso. Asimismo, la propia Apelada ha postulado en su Contestación que dichos argumentos se han formulado precisamente con esa finalidad.

68. Con todo lo anterior, queda muy claro que la materia específica del presente arbitraje, y lo que debe de resolver la Formación, es el grado o categoría de la culpa o negligencia del Apelante, dentro del marco de la figura normativa de la ausencia significativa de falta o negligencia, así como de la sanción que corresponde aplicar al Apelante una vez determinada dicha categoría, así como consideradas las circunstancias específicas del caso.

69. Finalmente, corresponde a la Formación determinar a partir de qué fecha debe comenzar a correr el periodo de suspensión del Apelante, o bien si corresponde descontar determinado periodo de tiempo al plazo de suspensión con base en retrasos del procedimiento imputables a la Apelada, o por cualquier otro motivo.

70. Concretamente, lo que debe de estar bajo estudio en este laudo es:

    i) ¿En qué categoría de culpa o negligencia encuadra la conducta del Apelante?

    ii) Una vez determinado lo anterior, ¿Cuál es la sanción aplicable?

    iii) La correcta contabilización de la sanción.

71. En los párrafos subsecuentes, la Formación atenderá las cuestiones planteadas.

(i) ¿En qué categoría de culpa o negligencia encuadra la conducta del Apelante?

72. Como punto de partida, recordemos que al Apelante se le ha imputado la infracción de los artículos 6 y 7 del Reglamento Antidopaje, que medularmente coinciden en que el jugador tiene el deber personal de garantizar que ninguna sustancia prohibida se introduzca en su organismo, de modo que será responsable de toda sustancia prohibida que esté presente en sus muestras.

73. Es incuestionable, en este caso, que las muestras tomadas al Apelante en fechas 19 y 22 de febrero de 2024 arrojaron como resultado la presencia de la sustancia prohibida Clortalidona, de modo que resulta evidente que el Apelante contravino lo establecido en las disposiciones antes citadas.

74. Asimismo, la Decisión Apelada dictamina que el Apelante no consumió la sustancia prohibida de forma intencionada, y que actuó con ausencia significativa de culpa o negligencia, debiendo calificarse su grado de culpa como normal, y dentro de dicha graduación la sanción a imponer corresponde a una escala media:

> *"151. En consideración de lo expuesto en precedencia, y teniendo en cuenta los artículos 20.1 literal b), 20.2 y 23.1 literal a) del RAD CONMEBOL, la Comisión Disciplinaria debe concluir que i) la Clortalidona es una sustancia específica prohibida en todo momento; ii) la infracción a los artículos 6 y 7 del RAD CONMEBOL no fue intencionada; iii) conforme a los elementos subjetivos y objetivos del caso, el Jugador actuó con ausencia significativa de culpa y/o negligencia, graduándose su culpa como normal conforme a la jurisprudencia del TAS, y dentro de ese rango, debe tasarse la sanción a imponer en una escala media".*

75. Con base en ello, la Apelada impuso al Apelante una sanción consistente en una suspensión de 16 meses.

76. Ahora bien, el Apelante no ha postulado en la presente apelación la ausencia total de falta o negligencia, de modo que ha reconocido en buena medida la valoración de la Apelada en cuanto a la ausencia significativa de culpa o negligencia ostentada por el Jugador, si bien controvirtiendo el grado de culpa estimado por la Apelada, así como la sanción correspondiente.

77. Como punto de partida, y una vez teniendo por indiscutido que el Apelante ha infringido lo dispuesto por los artículos 6 y 7 del Reglamento Antidopaje, la Formación debe poner su atención en lo dictado por el artículo 20 del propio Reglamento Antidopaje:

> *"1. El periodo de suspensión impuesto por infringir los Arts. 6 (Presencia de una sustancia prohibida o de sus metabolitos o marcadores en la muestra del jugador), 7 (Uso o intento de uso de sustancias o métodos prohibidos) u 11 (Posesión de una sustancia prohibida o uso de un método prohibido por parte de los jugadores o de su personal de apoyo) será de 4 años, sujeto a una posible reducción o eliminación en virtud de los Arts. 22 (Condonación del periodo de suspensión por ausencia de falta o negligencia), 23 (Reducción del periodo de suspensión por ausencia significativa de falta o negligencia) o 24 (Condonación , reducción o revocación del periodo de suspensión o de otras consecuencias por motivos distintos a la de la falta):*
>
> *a. Si la infracción de la normativa antidopaje está vinculada a una sustancia no específica, salvo que el jugador u otra persona pueda demostrar que la infracción no fue intencionada.*
>
> *b. La infracción de la normativa antidopaje está vinculada a una sustancia especifica y la CONMEBOL puede demostrar que la infracción de la normativa antidopaje fue intencionada.*

2. Si no es de aplicación el Art. 20, inc. 1, el periodo de suspensión será de dos años, sin perjuicio de lo dispuesto en el Art. 20 inc. 4 del presente reglamento" (subrayado de la Formación).

78. Asimismo, una vez que es pacifico que la infracción en que incurrió el Apelante no fue intencionada, y que resulta asimismo incontrovertido que se actualiza el supuesto de la ausencia significativa de falta o negligencia en el actuar del Apelante, resulta pertinente hacer referencia al artículo 23 del Reglamento Antidopaje en lo que concierne a una posible reducción del periodo de suspensión:

"1. Reducción de las sanciones en determinadas circunstancias por infracciones de los Arts. 6 (Presencia de una sustancia prohibida o de sus metabolitos o marcadores en la muestra del jugador), 7 (Uso o intento de uso de sustancias o métodos prohibidos) u 11 (Posesión de una sustancia prohibida o uso de un método prohibido por parte de los jugadores o de su personal de apoyo).

Todas las reducciones previstas en este inciso son excluyentes y no acumulativas:

a. Sustancias o métodos específicos: Cuando la infracción de la normativa antidopaje esté vinculada a una sustancia específica (y no adictiva) o a un método específico y el jugador u otra persona pueda demostrar ausencia significativa de falta o negligencia, la sanción consistirá, como mínimo, en un apercibimiento y ningún periodo de suspensión y, como máximo, en dos años de suspensión, dependiendo de la gravedad de la falta.

(…)" (subrayado de la Formación).

79. Es decir, una vez acreditada la ausencia significativa de falta o negligencia en el caso de marras, corresponde a la Formación valorar la negligencia ostentada por el Apelante a efectos de poder determinar la sanción que le es aplicable, dado el amplio rango que a esos efectos concede el antecitado artículo 23, que va desde un simple apercibimiento hasta un máximo de dos años de suspensión.

80. Cuestión esta última en la que no ahonda el propio Reglamento Antidopaje, de modo que deviene necesario recurrir a la jurisprudencia del TAS sobre esta cuestión.

81. Ahora bien, a partir de la reforma del Código WADA del año 2015, los criterios para imponer sanciones por infracciones a la normativa antidopaje fueron modificados. Consecuentemente, los grados de culpa aceptados por la doctrina y por la jurisprudencia reciente de este Tribunal, son dos:

- Grado Normal: sancionable con una suspensión de 12 a 24 meses
- Grado Leve: sancionable con una suspensión de 0 a 12 meses

82. El criterio referido fue aplicado por la formación arbitral en el expediente CAS 2017/A/5301&5302:

"194. Therefore, the Cilic principles are to be accommodated accordingly. The time span of 24 months which is still available now covers only two instead of three categories of fault:

- normal degree of fault: over 12 months and up to 24 months with a standard normal degree leading to an 18-month period of ineligibility; and

- light degree of fault: 0-12 months with a standard light degree leading to a 6-month period of ineligibility".

83. Criterio que fue aplicado también en el caso TAS 2023/A/9376:

"135. Si bien hay Formaciones Arbitrales que (al igual que se hizo en la Decisión Apelada) siguen utilizando los tres grados de culpa del laudo Cilic, la Formación Arbitral en este caso entiende que, siguiendo el laudo CAS 2017/A/5301-5302, hay que adaptar dicha doctrina a dos categorías de culpa.

136. O sea que de acuerdo a la normativa vigente, corresponde hacer referencia a dos grados de culpa:

- Grado Normal (sancionable con 12 a 24 meses).

- Grado Leve (sancionable con 0 a 12 meses)".

84. Dicho lo anterior, los criterios enunciados en el multicitado laudo *"Cilic"* (CAS 2013/A/3327 & 3335) han continuado siendo consistentemente de aplicación por diversas formaciones del TAS, a efectos de determinar el grado de la culpa o negligencia (así como para la cuantificación de la suspensión aplicable). En efecto, en el citado laudo la Formación Arbitral listó una serie de criterios objetivos y subjetivos que, si bien no exhaustivos, ofrecen un parámetro razonable para la resolución del caso concreto.

85. Y es precisamente ello lo que postula el Apelante en su Memoria de Apelación, en la que repasa dichos criterios argumentando que, de su aplicación al caso, se desprende que la culpa del Apelante debe ser graduada como leve.

86. Con base en ello, la Formación Arbitral procederá a analizar dichos criterios, si bien haciendo énfasis en este apartado a los de naturaleza objetiva, que son aquellos empleados principalmente como base para determinar en qué categoría se debe encuadrar la culpa, como se desprende precisamente de CAS 2013/A/3327 & 3335:

"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".

87. Así como de CAS 2017/A/5301 & 5302:

"191. In order to find into which category of fault a particular case might fall, the panel suggested as "helpful to consider both the objective and subjective level of fault" (…) and that the objective element should be "foremost in determining" in determining the category of fault".

Como también de CAS 2023/A/9376:

"140. De acuerdo al análisis objetivo se debe ubicar el caso en uno de los grados de culpa y de acuerdo al subjetivo moverse para imponer la sanción específica".

88. Ahora bien, los elementos objetivos de culpa o negligencia son aquellos relacionados con el estándar de cuidado que se podía esperar de una persona razonable en la situación del atleta (CAS 2013/A/3327 & 3335). En términos generales, es objetivamente razonable esperar que el atleta: i) lea la etiqueta del producto a consumir; ii) coteje los ingredientes del producto con la lista de sustancias prohibidas; iii) efectúe una búsqueda por internet o cualquier otro medio respecto de la naturaleza y características del producto; iv) se asegure de que el producto ha sido obtenido de forma confiable; y v) consulte con expertos antes de consumir el producto (ver CAS 2013/A/3327 & 3335, pág. 19; TAS 2023/A/9376, pár. 138).

89. En el caso que nos ocupa, el Apelante afirma que no pudo adoptar las diligencias antes planteadas, debido a que se encontraba en una situación de extrema urgencia y desesperación que requería de una atención y respuesta inmediata. De acuerdo con su relato fáctico, el Apelante sufrió una intoxicación o reacción alérgica a un alimento contaminado por camarones (a los que es alérgico) y comenzó a sufrir de hinchazón y picor, síntomas que pronto se elevaron a dificultad para respirar y sensación de ahogo. Ante una situación de tal desesperación, el Apelante se dirigió directamente a una farmacia cercana a su domicilio (en su trayecto de vuelta del restaurante en el que consumió los alimentos contaminados), y tomó el medicamento (la Clortalidona) que le aconsejó la empleada de la farmacia, la Sra. Mónica Alexandra Sierra León, una vez que ésta revisara los síntomas del Apelante. Es decir, y siempre de acuerdo con el relato del Apelante, éste se encontraba en una situación psicológica tal que no le permitía detenerse a revisar la etiqueta del medicamento, ni de efectuar una búsqueda por internet, o de alguna manera informarse sobre el origen del producto, ya que su situación requería de atención inmediata y, en respuesta a ello, consumió sin más demora el medicamento propuesto por la empleada de la farmacia. Una vez en su domicilio, y considerando que los síntomas que le aquejaban no cedían, el Apelante tuvo la diligencia y el cuidado de llamar al médico de su club, y de no consumir más la Clortalidona una vez que recibió la visita e instrucciones de dicho médico.

90. Ante dicha exposición de hechos, la Apelada opone que la situación en que se encontraba el Apelante no era de una urgencia tal que le impidiera llevar a cabo los pasos relativamente simples que mínimamente se puede esperar de un atleta profesional. Es decir, considera que el Apelante tuvo suficiente tiempo, tanto en su trayecto desde el restaurante en el que consumió los alimentos contaminados, como en la propia farmacia, para revisar el etiquetado del producto, efectuar una búsqueda rápida en internet respecto de la naturaleza y efectos de la Clortalidona, así como revisar en el listado de sustancias prohibidas publicado por WADA y por Conmebol. Sostiene que al momento de acudir a la farmacia, el Apelante aún no presentaba síntomas de dificultad para respirar, y mucho menos pudo haber anticipado que corría el riesgo de un shock anafiláctico, por lo que no se

encontraba en una situación de urgencia tal que justificara la omisión de su deber básico de cuidado. Asimismo, postula que el Apelante fue particularmente negligente al seguir el consejo de una empleada de farmacia sin formación profesional en medicina o farmacéutica, cuando su actuar posterior demuestra, como lo hizo eventualmente, que sí contaba con las facultades suficientes para llamar al médico del club y solicitar su atención y cuidado.

91. En la audiencia desahogada dentro del procedimiento de apelación que nos ocupa, el Apelante reiteró que al momento de apersonarse en la farmacia presentaba hinchazón en el rostro y otras partes del cuerpo, a tal grado que se colocó una capucha sobre la cabeza para ocultar parcialmente su rostro por la vergüenza que le ocasionaba su estado físico. Asimismo, de la Decisión Apelada surge que el Apelante declaró, respondiendo a la pregunta girada por su abogado, que en el trayecto de vuelta a su domicilio (después de almorzar en el restaurante en el que habría sufrido la reacción alérgica) *"…me empezó como que a salir ronchas, entre más me rascaba más me salían en las piernas y demás"*, reiterando, asimismo, que los síntomas que sufría consistían en *"Hinchazón, picazón en todo el cuerpo, en la cara en las pantorrillas…"*, y que se sintió *"Muy desesperado la verdad…"*.

92. Por su parte, la parte Apelada opone que, una vez contrastados los elementos probatorios del expediente de origen y de la presente apelación, surgen múltiples contradicciones en el relato del Apelante, tales como con quién comió en el restaurante, si asistió o no a la farmacia, o bien con quién se hizo acompañar en su caso, así como las circunstancias que rodearon la visita del doctor de LDU a su domicilio y la forma en que éste se enteró de que el Jugador había consumido Clortalidona.

93. Ahora bien, la Formación Arbitral coincide en buena medida con lo resuelto respecto de este particular en la propia Decisión Apelada, en cuanto concluye que, examinado bajo el estándar del justo equilibrio de probabilidades, *"… la ocurrencia del marco fáctico narrado en precedencia más probable que la ocurrencia de otra situación"*.

94. Lo anterior, no obstante, a juicio de esta Formación los argumentos del Apelante resultan insuficientes para concluir que, bajo la óptica de los criterios objetivos, el Apelante fue lo suficientemente diligente para que su culpa o negligencia pueda ser graduada a leve. Es decir, una vez examinadas y valoradas las pruebas en su conjunto, la Formación coincide en buena medida con la calificación efectuada en la Decisión Apelada, en la que se tasa como normal el grado de culpa o negligencia ostentada por el Apelante.

95. En particular, la Formación ha notado que del propio relato del Apelante surge que sus síntomas comenzaron a empeorar significativamente después de haber consumido la sustancia prohibida. Es decir, si bien al momento de acudir a la farmacia y consumir la Clortalidona el Apelante presentaba síntomas serios de hinchazón, dichos síntomas no parecerían haber alcanzado un umbral tal que no le permitiera al Apelante reflexionar en absoluto sobre las potenciales consecuencias de ingerir una sustancia que desconocía, y que no le había sido recetada por un médico especializado en materia deportiva, o

incluso por cualquier médico o farmaceuta licenciado.

96. En efecto, el Apelante no alegó en audiencia haberse encontrado en una situación de ahogo abrumadora o de temor por su vida al momento de acudir a la farmacia (de ser así el caso, lo más probable es que habría acudido a la sala de urgencias de un hospital). Tampoco surge lo anterior de la declaración rendida por la empleada de la farmacia, la Sra. Mónica Alexandra Sierra León, en la propia audiencia, en la que aseveró que el Jugador se presentó ante ella muy hinchado y preocupado (de la Decisión Apelada se desprende que en su momento declaró algo muy similar, que el Jugador tenía el rostro hinchado y estaba *"…bastante preocupado, un poco asustado"*), mas no en una situación de ahogo o de riesgo de shock anafiláctico (de igual forma, es muy probable que en ese caso la empleada le habría recomendado acudir de inmediato a un hospital). Asimismo, de la Decisión Apelada se desprende que el Apelante declaró, a pregunta de su abogado, que fue después de haber consumido la Clortalidona que se le empezaron a tapar las vías respiratorias, se *"asustó mucho"*, y llamo al doctor de LDU (ver Decisión Apelada, pág. 21).

97. En concreto, la Formación ha estudiado cuidadosamente los argumentos que ha hecho valer el Apelante respecto del estado de urgencia, desesperación y/o estrés y, sin pretender desestimar que el Apelante efectivamente se haya encontrado en una situación que le generara un nivel elevado de estrés y de preocupación por su salud, la conclusión a la que ha llegado, una vez examinado exhaustivamente el caso, es que la situación del Jugador no alcanzó el extremo suficiente para que desatendiera por completo su deber de diligencia respecto a toda sustancia que consume, en vista de que, recordemos, los estándares exigibles a un atleta profesional no son ni remotamente similares a los de una persona común que se pudiese haber encontrado en la situación del Apelante.

98. No es óbice a lo anterior la aplicación del principio de igualdad entre iguales invocado por el Apelante, ya que, más allá de su juventud e inexperiencia, el Apelante es un futbolista profesional mayor de edad al que no podemos considerar discapacitado para ejercer una diligencia mínima respecto de lo que ingiere, ni para adoptar las precauciones básicas que se debe exigir de cualquier atleta de alto rendimiento en esta materia. Ahora bien, con esto la Formación no pretende ignorar por completo la juventud e inexperiencia del Apelante como factores relevantes en su conducta, pero considera que estos no inciden significativamente al valorarlos dentro de los criterios objetivos de la culpa o negligencia.

99. El TAS ha reiterado en múltiples laudos que el atleta siempre tendrá la responsabilidad personal ineludible de verificar y comprobar la naturaleza, origen y efectos de toda sustancia que ingiera, lo cual implica un nivel de diligencia muy alto (ver TAS 2017/A/5015 & 5110).

100. En este caso, el Apelante no verificó la sustancia cuyo consumo le recomendó la empleada de la farmacia, puesto que no revisó la composición del medicamento en el empaque del mismo, ni intentó averiguar qué es la Clortalidona y qué efectos puede tener. Resulta claro que

también pudo verificar con el médico de su club la recomendación de dicha empleada (puesto que una vez que sus síntomas empeoraron se comunicó con dicho médico sin dificultad aparente).

101. Ahora bien, en su Memoria de Apelación el Apelante argumenta que los criterios subjetivos también deben ser considerados como parámetro para determinar si la culpa o negligencia del deportista encuadra en el grado normal o en el leve. Cita a tales efectos los razonamientos del laudo adoptado en el caso CAS 2021/A/7983, insistiendo en que en casos en que los criterios subjetivos sean muy significativos, alcanzan para modificar el grado de culpa que resultaría de solo considerar los criterios objetivos del caso.

102. A juicio de la Formación, la aplicación de criterios subjetivos para graduar la culpa de un atleta debe hacerse de manera restrictiva, tal y como se desprende del criterio citado por el Apelante en que se hace énfasis de que *"…en casos excepcionales, puede ser que los elementos subjetivos sean tan significativos que desplacen a un atleta particular no solo al extremo de una categoría particular, sino a una categoría por completo diferente"*. Reiterando a su vez que *"Esa sería, no obstante, la excepción a la regla"*. (ver CAS 2021/A/7983 & 8059, par. 278). Lo mismo postula la Formación en CAS 2013/A/3327 & 3335 (pár. 74).

103. En el caso que nos atañe, del análisis de los criterios subjetivos no es posible concluir que estos sean de un impacto y relevancia tales que puedan eclipsar a los criterios objetivos y obviar la falta casi absoluta de diligencia exhibida por el Jugador, en el contexto ya descrito en párrafos anteriores. En todo caso, la Formación se ha abocado al estudio de los criterios subjetivos en párrafos subsecuentes del presente laudo.

104. En consideración de todo lo anterior, la Formación determina que el grado de culpa o negligencia atribuible a la conducta del Apelante corresponde a la categoría de conducta normal, misma que es sancionable con una suspensión de 12 a 24 meses.

(ii) ¿Cuál es la sanción aplicable?

105. De acuerdo a establecida jurisprudencia del TAS, los criterios subjetivos aplicables para determinar la culpa o negligencia del Apelante se refieren a lo que se podría esperar de este atleta en particular, a la luz de sus capacidades particulares (TAS 2013/A/3327 & 3335; CAS 2017/A/5301 & 5302). Específicamente, los siguientes criterios han sido considerados especialmente relevantes al momento de valorar la sanción a imponer:

- La juventud y/o experiencia del atleta;
- Problemas de idioma o de ambiente enfrentados por el atleta;
- El alcance de la educación antidopaje recibida por el atleta;
- Otras incapacidades personales tales como:
    - Haber consumido un producto durante un periodo extendido de tiempo sin incidencias;
    - Haber revisado previamente los ingredientes del producto;

- Sufrir de un alto nivel de estrés;
- Una reducción en la conciencia del atleta en virtud de un error negligente pero comprensible.

106. De los elementos antes listados, la Formación descarta los problemas idiomáticos y las incapacidades personales, salvo lo concerniente al sufrimiento de un alto nivel de estrés, por no ser aplicables en la especie. El resto de los criterios serán examinados subsecuentemente por la Formación.

107. *Juventud e inexperiencia del Apelante:* El Apelante es un futbolista profesional que tenía 19 años al momento en que cometió la infracción a la normativa antidopaje (fecha de nacimiento, 20 de abril de 2004). Si bien, como lo ha resaltado en su momento la Apelada, el Apelante comenzó su carrera en primera división siendo bastante joven y ha participado incluso con su selección nacional en diversas categorías, resulta incontrovertible que se trata de un chico muy joven, aún en los inicios de su carrera profesional (más allá de su precocidad) y con escasa experiencia en el ámbito de la alta competencia deportiva. Aunado a lo anterior, el Apelante ha afirmado haber recibido una educación formal limitada.

108. Dado lo anterior, resulta comprensible, si bien no plenamente justificable, que ante una situación en la que padecía síntomas desconocidos y extraños el Apelante haya actuado sin contemplar las consecuencias de sus acciones, dirigiéndose a una farmacia y consumiendo sin contemplaciones el medicamento que le recomendó la empleada que lo atendió en ese establecimiento. Si bien, como ha señalado correctamente la Apelada y lo ha reconocido la propia señalada (en su comparecencia durante la audiencia del caso), dicha empleada no era una profesional de la salud, y que bajo la ley nacional ecuatoriana no debió diagnosticar ni vender al Apelante un medicamento que además es de uso controlado, también es un hecho notorio que en buena parte de América Latina los medicamentos controlados de efectos relativamente leves, suelen ser vendidos de forma libre en las farmacias comerciales. Y si bien es evidente que el Apelante no debió seguir la recomendación de una persona no capacitada ni autorizada para ello, también es probable que el Apelante haya procedido de la misma forma como, tanto él, como sus familiares, amigos y conocidos, han procedido habitual y consuetudinariamente cuando presentan un malestar: acudiendo a la farmacia y tomando el producto que les recomienda el empleado que ahí los atiende. Actuar que no es propio de un atleta profesional, pero que entra dentro de la esfera de lo subjetivamente entendible tratándose de un jugador inexperimentado y con poca formación.

109. La Formación reitera que el atleta es siempre responsable de todo lo que ingiere, y que ese deber de diligencia no debe ceder incluso ante recomendaciones de médicos especializados, que en ningún caso eximen al Jugador de su deber de verificación e investigación. Es decir, la Formación no exime al atleta de su responsabilidad por haber seguido las instrucciones y consejos de otra persona (incluso considerando la autoridad que el Apelante presuntamente, y en el contexto de sus circunstancias

personales y sociales, atribuyó a la empleada de la farmacia por simple virtud de su posición), motivo por el que, como se explicó en el apartado que antecede, incurrió en un grado de culpa normal. Sin embargo, la juventud, falta de experiencia, escasez de educación formal y las recomendaciones que recibió de una empleada farmacéutica a las que sin duda el Apelante otorgó mucho mayor autoridad de la que en realidad tenía, ciertamente constituyen factores subjetivos a considerar al momento de considerar una atenuación de la sanción aplicable.

110. Finalmente, es de resaltar que en la propia Decisión Apelada se estableció que la juventud e inexperiencia del Apelante fueron factor en su conducta y habrían de tomarse en consideración al momento de determinar la sanción aplicable.

111. *Educación antidopaje:* El Apelante declaró que nunca ha recibido educación en materia de antidopaje. La Apelada, no obstante, presentó pruebas para acreditar que el Apelante recibió al menos dos capacitaciones antidopaje impartidas por Conmebol. En ese sentido, se tiene por probado que el Apelante recibió esas dos capacitaciones, si bien es claro que el impacto de estas en el Apelante no fue profundo, pues en audiencia reiteró que no recordaba en absoluto haber recibido dicha formación.

112. Lo anterior no significa que al Apelante se le debería considerar conocedor en la materia. Tratándose de un chico joven con poca educación formal, debemos considerar que dichas formaciones, si bien revisten una introducción a la materia del antidopaje y un recordatorio a sus sujetos de las diligencias que deben adoptar al momento de consumir cualquier sustancia, no constituye tampoco una formación profunda y exhaustiva en la materia. Si bien, se reitera, el atleta es siempre responsable de todo lo que ingiere y de cumplir con la normativa antidopaje, la escasa formación en esa materia del Apelante, tomada en conjunto con las circunstancias que rodean su caso, ciertamente puede considerarse un factor (ligeramente) mitigante.

113. *Sufrimiento de un alto nivel de estrés*: Al analizar los criterios objetivos relevantes, la Formación concluyó que la situación de urgencia y desesperación en que se encontraba el Apelante no alcanza el umbral necesario para eximirle plenamente de la negligencia ostentada al momento de consumir la Clortalidona sin mayor reparo o reflexión. No obstante, ello no implica que el Apelante no se haya encontrado en una situación en la que padeció de alto grado de estrés, de ansiedad, e incluso de desesperación.

114. Tanto en el procedimiento de origen, como en sus argumentos escritos y declaración oral en la presente apelación, el Apelante explicó que, después de haber comido un ceviche de pescado el 4 de febrero de 2024, comenzó a sufrir de hinchazón y de la presencia de ronchas en su rostro y cuerpo (ver par. 96 *ut supra*). La reacción, presumiblemente alérgica, fue repentina y casi inmediata, pues el Apelante sostiene que la sufrió en el trayecto de vuelta del restaurante a su casa. Es así que, no es solamente plausible, sino probable, que el Apelante se haya visto presa de la ansiedad y el estrés, al presentar reacciones físicas violentas, repentinas y desconocidas.

115. La empleada de la farmacia que atendió al Apelante ese 4 de febrero de 2024, la Sra. Mónica Alexandra Sierra León, atestiguó asimismo que observó que el Apelante se encontraba bastante preocupado y un poco asustado (par. 101 *ut supra*). La seriedad del padecimiento del Apelante también se presume, dado que sus síntomas no cedieron tras la toma de la Clortalidona y, una vez en su domicilio, llamó al doctor de su club, que se dirigió de inmediato a su domicilio a tratarlo, de lo cual se desprende que la condición del Jugador había devenido urgente, o cuando menos de una gravedad considerable.

116. Asimismo, cualquier persona normal que haya sufrido una reacción alérgica como consecuencia del consumo de un alimento, o de una naturaleza similar, podrá atestiguar que la manifestación rápida y agresiva de síntomas extraños genera en el sujeto un estrés no desdeñable, y que no tratar oportunamente una reacción alérgica puede llevar, en ciertos casos, a la imposibilidad de respirar adecuadamente, e incluso en dados casos conlleva un riesgo de muerte.

117. Considerado lo anterior, la Formación estima que el Apelante efectivamente se encontró en una situación de alto estrés emocional y de ansiedad, e incluso de desesperación, que lo condujeron a consumir irreflexivamente el medicamento que le recomendó la empleada de la farmacia a la que acudió en busca de aliviar sus síntomas.

118. Y si bien dicho situación de apremio no alcanzó un umbral suficiente para, a juicio de esta Formación, eximir al Apelante de su deber básico de diligencia, sí es un factor a considerar al momento de calcular una sanción proporcionada y justa (ver CAS 2012/A/2756, pár. 8.46).

119. *Otros factores a analizar*: El Apelante a puesto de relieve que no tenía la intención de mejorar su rendimiento deportivo, ni de enmascarar el uso de una sustancia prohibida. Si bien este factor en específico ya no es considerado determinante al amparo de la actual reglamentación antidopaje, no deja de ser un factor a considerar dentro del conjunto de circunstancias del caso.

120. En efecto, de las pruebas ofrecidas en el caso no se desprende que el Apelante haya ingerido Clortalidona a efectos de mejorar su rendimiento o bien de enmascarar el uso de otra sustancia prohibida. De la relación de hechos descrita por el Apelante, y a la que se otorgó presunción de veracidad en la Decisión Apelada, surge que el Apelante actuó irreflexivamente en respuesta a una situación poco común, y que consumió Clortalidona a efectos de paliar sus síntomas, a recomendación de una empleada farmacéutica. Las declaraciones del Apelante y el testimonio de la empleada de la farmacia en cuestión corroboran en buena medida lo anterior, y la interpretación del Dr. Luis Ferrari de los resultados detectados en las pruebas practicadas al Apelante confirmaría que este consumió una sola pastilla de 50mg de Clortalidona. Asimismo, el consumo de la pastilla ocurrió el 4 de febrero de 2024, cuando el siguiente partido de LDU se llevaría a cabo hasta el 22 de febrero de 2024, lo cual fortalece la presunción de que no existe relación entre la ingesta de la sustancia y la participación del Apelante en competencia.

121. Visto lo anterior, la Formación concluye que el Apelante no pretendía ingerir la Clortalidona para mejorar su rendimiento deportivo, o bien para enmascarar el uso de otra sustancia dopante, conclusión que es además coincidente con la adoptada en la Decisión Apelada.

122. Como corolario a lo anterior, la Formación Arbitral concluye que, una vez tomada en cuenta la i) juventud, falta de experiencia y poca educación formal del Apelante; ii) su formación apenas introductoria y básica en materia de dopaje; iii) su ausencia de intención de mejorar su rendimiento mediante el consumo de la sustancia prohibida y, sobre todo iv) el alto grado de estrés y ansiedad que sufrió como resultado de la reacción alérgica padecida, los criterios subjetivos del caso, tomados en su conjunto y valorados con el resto de las circunstancias particulares del caso, indican que el grado de culpa del Apelante, si bien normal, debe categorizarse en su escala más baja.

123. Ahora bien, en la Decisión Apelada la sanción impuesta al Apelante también considera que, dentro del grado de culpa normal, la conducta del Apelante debe categorizarse en una escala menor al promedio, por lo cual impuso una sanción de 16 meses de suspensión. A ojos de la Formación Arbitral, los criterios subjetivos del caso son tendientes a atenuar la sanción al nivel más bajo de dicha escala.

124. En conclusión, la Formación Arbitral concluye que el Apelante consumió Clortalidona sin intención, que los elementos objetivos del caso indican que actuó con un grado de culpa normal, si bien en el menor nivel de dicha escala una vez considerando los elementos subjetivos del caso. Consecuentemente, la Formación considera justo, proporcionado y razonable imponer al Apelante una sanción consistente en 12 meses de suspensión.

(iii) La correcta contabilización de la sanción

125. El Apelante sostiene que, en caso de imponerse una suspensión, se le deben descontar los días atribuibles a retrasos en el procedimiento ante la Apelada, o bien el periodo en que se disputó la Copa Conmebol Libertadores 2024, en virtud de que el Apelante habría sido presumiblemente excluido por su club de esa competencia con base en la acusación de antidopaje que sobre él pesaba.

126. Ahora bien, el artículo 29 del Reglamento Antidopaje establece que *"…el periodo de suspensión empezará en la fecha en que sea dictada la resolución del procedimiento, si se renunciara a la audiencia o esta no se celebrara, en la fecha en que se acepte o imponga la suspensión"*.

127. A efectos de abordar esta cuestión, es de especial importancia que al Apelante no se le impusiese una suspensión provisional en ningún momento del procedimiento de origen. Es decir, entre febrero de 2024, cuando al Apelante le fue imputada la infracción a la normativa antidopaje, hasta la finalización del procedimiento ante la Conmebol y la emisión de la resolución condenatoria de fecha 4 de noviembre de 2024, el Apelante pudo continuar su actividad profesional normalmente, sin que pesara sobre él impedimento legal alguno que obstaculizara su elegibilidad para sus clubes y para su selección nacional.

128. Y, en efecto, es un hecho notorio (además de encontrarse acreditado en el expediente contencioso) que el Apelante continuó disputando partidos regularmente con LDU y, posteriormente, con el club Hull City de Inglaterra.

129. Así las cosas, los argumentos del Apelante respecto de las supuestas dilaciones que habría sufrido el procedimiento de origen devienen inoperantes y no merecen más consideración en este apartado, en vista de que el Apelante no sufrió daño u obstáculo alguno en su carrera deportiva, dado que hasta el mes de noviembre de 2024 permaneció elegible y habilitado para disputar partidos con sus clubes.

130. Con relación a la petición formulada subsidiariamente por el Apelante, respecto de que a la sanción deben deducirse los días en que el Apelante permaneció inelegible para disputar la fase de grupos de la Copa Conmebol Libertadores 2024, la Formación considera que la Apelada no ha impedido ni obstaculizado al Apelante el acceso al torneo y la posibilidad de disputar los partidos de este. En particular, no pesaba sobre el Jugador una suspensión provisional que le impidiera ser registrado por su club para dicha competencia y disputar los partidos correspondientes.

131. Los argumentos del Apelante resultan, en consecuencia, improcedentes para dar sustento legal a su petición de deducir el periodo de duración de la fase de grupos de la Copa Conmebol Libertadores 2024 en detrimento de los efectos y el alcance del artículo 29 del Código Antidopaje, puesto que los motivos que haya tenido LDU para no inscribir al Apelante en la lista de jugadores que disputarían tal competencia, no tiene implicación legal o reglamentaria alguna respecto de la fecha y duración de la sanción a imponer al Apelante.

132. Así mismo, los motivos que haya podido tener LDU para excluir al Apelante de la lista de jugadores inscritos en dicha competición resultan por completo ajenos a la Apelada, en tanto el Apelante se encontraba habilitado para ser inscrito y disputar los partidos correspondientes. Es decir, incluso si admitiésemos que LDU excluyó deliberadamente al Apelante de su lista de jugadores inscritos por temor a que dicha inscripción tuviese algún efecto o consecuencia en el procedimiento antidopaje al que se encontraba sujeto, esta cuestión constituye *res inter alios acta* para Conmebol, y no puede surtir efecto alguno con relación a una posible reducción de la suspensión. Las razones que llevaron a LDU a no incluir al Jugador para participar en la competición son irrelevantes a los efectos del presente procedimiento.

133. Consecuentemente, la fecha de la sanción debe contabilizarse a partir de la fecha en que fue emitida la Decisión Apelada, y no resulta procedente hacer deducción alguna al periodo de suspensión.

DECISIÓN

El Tribunal Arbitral del Deporte resuelve:

1. Acoger parcialmente el recurso de apelación interpuesto por Óscar Zambrano Preciado contra la decisión de la Confederación Sudamericana de Fútbol (CONMEBOL) de fecha 4 de

noviembre de 2024.

2. Modificar el punto resolutivo número 2 de la decisión dictada por la Confederación Sudamericana de Fútbol (CONMEBOL) de fecha 4 de noviembre de 2024, a efectos de que resuelva lo siguiente:

   "2º. En consecuencia, se impone una sanción al Jugador OSCAR ZAMBRANO PRECIADO de doce (12) meses de suspensión".

3. (…).

4. (…).

5. Rechazar toda otra petición de las partes.

CAS 2025/A/11339
World Anti-Doping Agency (WADA) v. Finnish Center for Integrity in Sports (FINCIS) & Miro Sihvonen
award of 27 November 2025

Motorcycling; Doping (drostanolone, nandrolone); Burden of proof; Standard of proof; Application of differentiated treatment of multiple ADRVs arising from the same event; Source and intent regarding a first prohibited substance; Contamination regarding a second prohibited substance; Duty of care and negligence; Aggravating circumstances and the presence of multiple substances

Panel
Mr Jacques Radoux (Luxembourg), Sole Arbitrator

1. **The burden of proving that an anti-doping rule violation (ADRV) was not intentional, within the meaning of Article 10.2.3 of the Finland's Anti-Doping Rules (ADR), lies on the athlete who is required to prove that his ADRV was neither deliberate (direct intent) nor reckless (indirect intent). Pursuant to Article 10.2.3 ADR, an athlete does not have to establish how the prohibited substance entered his or her system in order to claim that the ADRV was not intentional. However, in practice, apart from extremely rare cases, athletes must establish how the prohibited substance entered their system to discharge the burden of establishing the lack of intention.**

2. **The applicable standard of proof is the balance of probabilities, requiring the athlete to establish that the relevant facts were more likely than not to have occurred (more than 50%).**

3. **A separate legal analysis should be conducted by the CAS panel for each prohibited substance arising from the same event. Considering the circumstances, the athlete can be found to have successfully established the source and lack of direct and indirect intent for one ADRV, whereas he can be found to have failed to rebut the presumption of intentionality for a second ADRV, resulting in the maximum standard sanction for that violation.**

4. **Factual evidence such as (i) the direct testimonies of witnesses and (ii) the team's physiotherapist credible, clear and unequivocal testimony can be sufficient to establish the source of a prohibited substance. The athlete's lack of direct intent can be established by his known position not to take prohibited substances and his enquiry to the team's physiotherapist. There is no indirect intent (recklessness) where the athlete consistently communicated an intention to compete clean and had previously been cautious about medication, even when competing in an environment where doping was prevalent.**

5. **In the absence of concrete and credible evidence to establish on the balance of probabilities that contamination is more likely than not to have occurred, the mere**

possibility of contamination is not sufficient. Expert evidence based on unproven premises (e.g., that the substance was a black market product) should be given limited weight. Moreover, in the absence of any other robust evidence, the athlete's protestations of innocence and the witness testimonies – standing alone – do not carry sufficient weight to establish, on the balance of probabilities, that an unintentional exposure to prohibited substance i.e. drostanolone was more likely than not.

6. **Duty of care is non-delegable in its most elementary form. Even where an athlete places genuine trust in a physiotherapist and is in significant pain, the failure to ask to see the package or vial of a substance being administered amounts to significant negligence, representing a failure to take the most elementary precautionary step to fulfil the duty of care. A distinction between significant negligence and recklessness (indirect intent) must be drawn.**

7. **The mere detection of multiple prohibited substances in an athlete's sample does not automatically trigger aggravating circumstances. Where the athlete has established a lack of knowing commission of one of the violations, Article 10.4 of the ADR does not operate to increase the sanction.**

I. PARTIES

1. The World Anti-Doping Agency (the "WADA" or the "Appellant") is a Swiss private-law foundation. Its legal seat is in Lausanne, Switzerland, and its headquarters are in Montreal, Canada. The WADA was created in 1999 to promote, coordinate and monitor at international level the fight against doping in sport in all its forms. It does this on the basis of the World Anti-Doping Code (the "WADC").

2. The Finnish Center for Integrity in Sport (Suomen urheilun eettinen keskus SUEK ry) (the "FINCIS" or the "First Respondent"), is the national authority responsible for anti-doping controls and for the implementation of the WADC in Finland. To do so, it adopted and implemented "Finland's Anti-Doping Rules" (the "ADR"). Its Anti-Doping Disciplinary Board rendered the decision that is the subject of the present appeal (the "Appealed Decision").

3. Mr. Miro Sihvonen (the "Athlete" or the "Second Respondent"), born on 20 September 1998, is a national-level professional motocross rider who was racing in Brazil from March 2024 until June 2024.

4. Together, the First Respondent and the Second Respondent are referred to as the "Respondents". The Appellant and the Respondents are collectively referred to as the "Parties".

II. FACTUAL BACKGROUND AND FIRST INSTANCE PROCEEDINGS

5. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings

and evidence adduced in this procedure. 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, he refers in this Award only to the submissions and evidence he considers necessary to explain his reasoning.

6. On 14 July 2024, the Athlete was subject to an in-competition doping control in Karkkila, Finland. During that control, the Athlete provided a urine sample (the "Athlete's Sample" or the "Sample").

7. On 7 August 2024, the analysis of the "A" Sample by the WADA-accredited laboratory in Helsinki, Finland, (the "Laboratory") revealed the presence of drostanolone metabolite 2a-methyl-5a-androstan-3a-ol-17-one and 19-norandrosterone. Both of these substances are Anabolic Androgenic Steroid listed under S.1.1 of the 2024 WADA Prohibited List.

8. On 16 August 2024, the FINCIS notified the Athlete of the fact that his Sample had revealed an Adverse Analytical Finding ("AAF"), meaning that there was a potential breach of Article 2.1 and/or 2.2 of the ADR, invited him to provide his explanations and informed him that he could request the "B" Sample opening and analysis. Further, the Athlete was informed that the FINCIS had decided to impose a Provisional Suspension against him.

9. On 22 August 2024, the Athlete informed the FINCIS that he reserved his right to have the B-Sample analysed once the concentrations found in the A-Sample have been communicated, knowing that the FINCIS had not disclosed that concentration. He further stated that in absence of any information on those concentrations, he could not comment further on the matter.

10. On 20 September 2024, the FINCIS informed the Athlete that he was charged with an anti-doping rule violation ("ADRV") pursuant to Article 2.1 and Article 2.2 of the ADR. The FINCIS further informed the Athlete that the estimated concentrations of the Prohibited Substances found in his A-Sample were as follows:

    (i) drostanolone metabolite 2a-methyl-5a-androstan-3a-ol-17-one: 0.3 ng/mL;

    (ii) 19-norandrosterone: 19 ng/mL.

11. On 10 October 2024, in response to the letter of indictment, the Athlete informed the FINCIS that he admitted the ADRV and requested a hearing. In his response, he explained, in substance, that his enquiries had revealed that on 9 June 2024, during a competition in Brazil, the physiotherapist of the team he was competing for administered him what he believed to be a painkiller. However, contrary to what he had believed, the injection apparently consisted of 2 mL of nandrolone which had, apparently, been obtained by the team manager through a friend, who in turn had bought it in Paraguay, where it is available without a prescription. The

Athlete added that he had been told during the injection that it was just a painkiller. He thus argued that his ADRV was not intentional and that his actions did not involve Significant Fault or Negligence within the meaning of Article 10.6.2 of the ADR. Consequently, he considered that a *"proportionate ban on sports in this case would be 12-18 months"*.

12. On 28 October 2024, the Athlete filed written statements by Mr. Pedro Bueno, his former team manager in Brazil, and Ms. Roberta Bueno, the physiotherapist of his former team in Brazil.

13. On 16 December 2024, the Anti-Doping Disciplinary Board of the FINCIS held a first hearing in the matter after which it decided that a second round of written submissions would be appropriate.

14. In the second round of written submissions, the FINCIS and the Athlete filed, *inter alia*, some expert reports and literature.

15. On 30 January 2025, the Anti-Doping Disciplinary Board held a second hearing in the matter.

16. On the 25 February 2025, the Anti-Doping Disciplinary Board rendered the Appealed Decision. In its relevant parts, the Appealed Decision reads as follows:

"[FINCIS] has dropped its claim requiring the athlete to be intentional at the end of the oral hearing. [FINCIS] has considered that it has been shown in the case by the usual standard of probability that the prohibited substances detected in the athlete's sample could have ended up in him through the approximately 2 ml Nandrol injection given by Roberta Bueno at the Interlagos championships on June 9, 2024. According to [FINCIS], this is also supported by the concentrations of prohibited substances in the sample taken from the athlete.

[FINCIS] has stated that this is a situation in accordance with Section 10.6 of the Code […], on the basis of which the duration of the athlete's ban must be assessed in relation to his fault. The athlete has also considered this to be the case. Based on the above, [FINCIS] has demanded an 18-month ban from sports for the athlete.

[…]

The Disciplinary Committee has decided that this is a doping violation as defined in Section 2.1 of the Code. […]

[FINCIS] has stated that the athlete's actions were not intentional and has dropped its demand for a four-year ban. The parties have agreed that this was a case of negligence, which must be assessed pursuant to Section 10.6 of the Code. The Board considers that no circumstances have arisen in the handling of the matter that would require it to base its assessment on other starting points and circumstances than those that the parties have jointly accepted. The Board therefore agrees with the parties' view that the athlete has been able to demonstrate by a standard balance of probabilities that the prohibited substances entered his body through the approximately 2 ml Nandrol injection given by Roberta Bueno at the Interlagos championships on 9 June 2024.

Therefore, the board will investigate, as requested by the parties, based on the evidence received, the degree of negligence in the athlete's case. The degree of negligence determines the length of the suspension imposed on an athlete for a doping violation.

[…] The Board's assessment of the degree of negligence in this respect is based on Section 10.6.2 of the Code.

[…]

In the case under assessment, the focus of the assessment of negligence is on the athlete's conduct and the circumstances surrounding him/her. 9.6.2024 For the muscle injected in the Interlagos races approximately 2 ml of Nandrol injection, through which the prohibited substances have entered his body. […].

The board finds that the athlete's conduct meets the characteristics of normal negligence, assessed on an objective level, and he should be banned from sports for a minimum of 16 and a maximum of 20 months. To determine the length of the ban, the following must be assessed: the subjective factors affecting the athlete's misconduct.

[…]

Taking the above into account, the board considers that a proportionate punishment for what is considered normal negligence on the part of the athlete in this case is an 18-month ban from sports activities. In accordance with Article 10.13.2.1 of the Code, the duration of the provisional suspension shall be deducted from the period of Ineligibility imposed on the athlete. The athlete has been temporarily banned from sports activities on 16 August 2024 […].

According to Article 10.10 of the Code, in addition to the automatic disqualification of the individual competition in which a positive sample was taken as referred to in Article 9 of the Code, all other competition results achieved after the time of testing shall be disqualified and points, medals and awards shall be forfeited until the start of the provisional suspension from sport, unless reasons of fairness require otherwise.

Based on this, the athlete's results in the Karkkila Finnish Championships in question must be rejected with all consequences. In addition, competition results achieved after the testing date of 14 July 2024 […] and the start of the temporary sports ban on 16 August 2024 [must be rejected]".

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

17. On 9 April 2025, the WADA filed a Statement of Appeal with the Court of Arbitration for Sport (the "CAS"), in Lausanne, Switzerland, in accordance with Articles 13.2.3.2 and 13.1.3 of the ADR and Article R47 et seq. of the Code of Sports-related Arbitration (the "CAS Code") (2023 edition) against the FINCIS and the Athlete with respect to the Appealed Decision. In its Statement of Appeal, the Appellant requested that the present matter be submitted to a sole arbitrator.

18. On 14 April 2025, the CAS Court Office acknowledged receipt of the Statement of Appeal and invited the Respondents to state, *inter alia*, whether they agreed to the appointment of a sole arbitrator.

19. On 22 April 2025, the CAS Court Office acknowledged that the Respondents had agreed to the Appellant's request that the case be handled by a sole arbitrator.

20. On 9 May 2025, the WADA filed its Appeal Brief in accordance with Article R51 of the CAS Code.

21. On 13 May 2025, the CAS Court Office invited the Respondents to

submit their Answer pursuant to Article R55 of the CAS Code, highlighting that if a Respondent failed to do so, the sole arbitrator, once appointed, may nevertheless proceed with the arbitration and deliver an award.

22. On 28 May 2025, the CAS Court Office informed the Parties that the Sole Arbitrator appointed to resolve the present case was Mr. Jacques Radoux, Référendaire, Court of Justice of the European Union, Luxembourg.

23. On 18 and 19 June 2025, respectively the Second Respondent and the First Respondent filed their Answer.

24. On 19 June 2025, the CAS Court Office acknowledged receipt of the Respondents' Answers and informed the Parties that unless they agree or the Sole Arbitrator orders otherwise on the basis of exceptional circumstances, Article R56 para.1 of the CAS Code provides that the Parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the Appeal Brief and of the Answer. The Parties were also invited to state, by 26 June 2025, whether they preferred a hearing to be held in the present matter and whether they requested a case management conference (CMC) with the Sole Arbitrator.

25. On 25 June 2025, the Parties informed the CAS Court Office of their preference for a hearing to be held in this matter. None of them considered a CMC to be necessary.

26. On 30 June 2025, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a hearing by videoconference in the present matter and provided the Parties with possible dates for that hearing in July and August.

27. On 21 July 2025, the CAS Court Office informed the Parties that, in light of the difficulties encountered to find a suitable hearing date, the Sole Arbitrator had decided to hold a CMC conference (CMC) by video conference, on 14 August 2025, in order to discuss and determine the next steps in the present procedure.

28. On 25 July 2025, the CAS Court Office acknowledged that an agreement had been found on the hearing date and informed the Parties that the hearing would be held on 29 September 2025 by videoconference.

29. On 14 August 2025, a CMC, attended by all the Parties, was held by videoconference.

30. On 1 September 2025, the Court Office sent to the Parties an Order of Procedure, requesting them to return a signed copy by 8 September 2025. On 5 September 2025, the Appellant returned a signed copy of said Order of Procedure. Both Respondents returned a signed copy of the Order of Procedure on 8 September 2025.

31. On 29 September 2025, a hearing took place by videoconference. The Sole Arbitrator was assisted by Ms. Delphine Deschenaux-Rochat, counsel to the CAS, and joined by the following participants:

For the WADA:

Mr. Ross Wenzel, WADA General Counsel;

Mr. Nicolas Zbinden, counsel;

Ms. Louise Reilly SC, counsel;

Mr. Cyril Troussard, WADA ;

Ms. Frédérique Lacroix Dion, WADA ;

Ms. Lisa Benaglia, WADA;

Mr. Matthieu Holz, WADA.

For the First Respondent:

Mr. Jukka Blomberg, counsel;

Ms. Henni Untamo, counsel;

Mr. Petteri Lindblom, FINCIS General Counsel.

For the Second Respondent:

Mr. Miro Sihvonen;

Mr. Hannu Kalkas, counsel;

Ms. Janika Sokolova, counsel;

Ms. Roberta Bueno, witness;

Mr. Pedro Bueno, witness;

Mr. Sami Eerola, interpreter.

32. At the outset of the hearing, the Parties confirmed that they had no objection as to the constitution of the Panel.

33. During the hearing, the Sole Arbitrator heard evidence from the above mentioned witnesses. Before doing so, the Sole Arbitrator informed the Interpreter and each of the witnesses of their duty to tell the truth, subject to sanctions of perjury under Swiss law. The Parties had the opportunity to examine and cross-examine the witnesses. Finally, the Athlete also made a statement.

34. The Parties were given full opportunity to present their case, submit their arguments and answer the questions from the Sole Arbitrator. At the end of the hearing, the Parties confirmed that their right to be heard and their right to a fair trial had been fully respected during the hearing and that they had no objections as to the manner in which the proceedings had been conducted.

IV. THE PARTIES' SUBMISSIONS

35. The aim of this section of the Award is to provide a summary of the Parties' main arguments rather than a comprehensive list thereof. However, the Sole Arbitrator confirms that in making his decision he has carefully considered all the Parties submissions and evidence, even if not expressly mentioned in this section of the Award or in the discussion of the claims below.

A. The Appellant's Submissions and Requests for Relief

36. In its Statement of Appeal, the WADA observes, as a preliminary point, that, in light of the fact that the Appealed Decision was rendered in application of the ADR, the latter are governing the present matter. It further maintains that it has a right to appeal the Appealed Decision to the CAS on the basis of Article 13.2.3.2 of the ADR and is, pursuant to Article 13.1.3 of the ADR, not required to exhaust the internal remedies before doing so. Finally, it argues that its appeal is filed within the deadline set out in Article

13.6.1 of the ADR and is, hence, admissible.

37. In its Appeal Brief, the WADA notes that, in the present matter, the Athlete admitted the ADRV but denied intent before the FINCIS Anti-Doping Disciplinary Board. Accordingly, the elements of both Article 2.1 and 2.2 of the ADR are met and the only issue before the Sole Arbitrator is the period of ineligibility to impose on the Athlete.

38. According to Article 10.2.1.1 of the ADR, the period of ineligibility in respect of an Article 2.1 or Article 2.2 ADRV shall be four (4) years where the ADRV does not involve a specified substance, unless the athlete can establish that the ADRV was not intentional. Pursuant to constant CAS jurisprudence, athletes must necessarily establish how the substance entered their body to successfully prove that the substance was not taken intentionally. While it is true that, as per the comment to Article 10.2.1.1 of the ADR, there exists a theoretical possibility for an athlete to prove that the ADRV was not intentional without establishing the source of the prohibited substance, it would, in the light of the existing CAS jurisprudence (CAS 2016/A/4534;
CAS 2016/A/4919;
CAS 2017/A/5016 & 5036;
CAS 2020/A/6978;
CAS 2020/A/7068;
CAS 2023/A/9916 & 9966), be highly unlikely that an athlete would manage to do so. The standard of proof required to establish the source of the prohibited substance is on the balance of probabilities. This requires, according to the CAS jurisprudence, persuasive, objective evidence adduced by the athlete demonstrating that his or her explanation for the source is more likely than not to be true (CAS 2006/A/1067;
CAS 2010/A/2230;
CAS 2014/A/3820;
CAS 2016/A/4676). An athlete cannot seek to establish source by relying on conceptual, speculative evidence of the source of the prohibited substance.

39. Moreover, the burden of establishing lack of intent lies solely with the athletes and, pursuant to Article 3.1 of the ADR, the standard to which the athletes must prove the lack of intention is on the balance of probabilities. To meet such standard of proof, it is not sufficient to show that an explanation is possible, but the athletes must show that the proposed hypothesis is more likely than not to be true.

40. The WADA adds, in relation to intent, that it is not necessary that an athlete acts with "direct intent" in committing the ADRV knowing that, according to constant CAS jurisprudence (CAS 2016/A/4609), it is sufficient if the athlete had "indirect intent" or *"dolus eventualis"*. Such "indirect intent" is established where the athlete, (i) knew that there was a significant risk that his conduct might constitute or result in an ADRV and (ii) manifestly disregarded that risk.

41. The WADA argues that, in the present matter, the Athlete has failed to provide any actual evidence as to the specific source of the two prohibited substances in his sample. His explanations amount to nothing more than bare assertions and are an exercise

in speculation. Indeed, as regards his ADRV for nandrolone, the Athlete's only evidence would be the witness statement and testimony of Ms. Roberta Bueno according to which she injected him 2 mL of Nandrolone on 9 June 2024. However, Ms. Bueno admitted that she had administered prohibited substances to athletes and knew this was illegal. Additionally, that injection is not on record, there would is no evidence as to whom bought the nandrolone and to where it was bought, there is no prescription and no receipt. In addition, WADA considers that, even taking the Athlete's scenario at face value, there is a discrepancy as to who bought the alleged bottle of nandrolone. In these conditions, one could not consider that the Athlete established the source of the nandrolone found in his system. In any event, even if the Sole Arbitrator were to find that the Athlete has established source, the Athlete's behaviour would still amount to recklessness and, thus, to indirect intent. In response to the argument that the WADA had not put forward any alternative scenario to the one advanced by the Athlete, the Appellant stated that given the circumstances under which the Athlete was competing in Brazil, *i.e.* competing in an environment for five months where doping was freely available, where everyone was doping and where nobody was being tested, he could very easily have been thinking that he should do the same to help his chronic knee problem. However, the burden of establishing source and non-intent would be on the Athlete and the latter failed to discharge this burden.

42. As regards the Athlete's ADRVs for drostanolone, there would be no explanation at all except the Athlete's allegation that the drostanolone must have been contained in the nandrolone injection, *i.e.* the nandrolone was somehow contaminated with drostanolone. However, the expert report from a Brazilian sports physician who states that it is *"possible to have cross contamination"* with substances from Paraguay, and the article referring to the frequent contamination of steroids bought on the underground market are entirely speculative. These elements should thus be dismissed.

43. The Appellant thus considers that the Athlete has failed to establish on the balance of probabilities the source of the drostanolone and nandrolone in his Sample.

44. According to the Appellant, the Athlete also failed to rebut the presumption that his ADRV was intentional. Indeed, pursuant to the CAS jurisprudence, establishing a lack of intent absent proof of source requires the Athlete to traverse the *"narrowest of corridors"* and is only possible in the *"rarest of cases"*. The present case would not be one of those rare cases as the Athlete's explanations are purely based on speculation, *i.e.* an alleged injection and a possible contamination, without any specific evidence.

45. Hence, the Appellant submits that, in the present matter, the standard four-year period of Ineligibility applicable under Article 10.2.1 should be imposed. It adds that, in accordance with Article 10.4 of the ADR governing the Aggravating Circumstances, the Sole Arbitrator

may increase this standard Period of Ineligibility by up to two years as the Athlete's Sample contained multiple Prohibited Substances.

46. The Appellant further argues that, pursuant to Article 10.13 of the ADR, the period of ineligibility shall commence on the date of the CAS award and that credit should be given for the period of Provisional Suspension served by the Athlete, and that, pursuant to Article 10.10 of the ADR, all of the Athlete's results from 14 July 2024, *i.e.* the date of collection of the Athlete's Sample, until his Provisional Suspension, *i.e.* 16 August 2024, must be disqualified.

47. Finally, the Appellant argues, primarily, that the FINCIS should bear the costs of the present proceedings as the FINCIS may be considered as responsible for the decisions adopted by its Anti-Doping Disciplinary Board.

48. In view of all the above considerations, the Appellant requests the CAS to rule that:

"1) The appeal of WADA is admissible.

2) The decision dated 25 February 2025 rendered by the Finnish Sports Ethics Center SUEK ry Anti-Doping Disciplinary Board in the matter of Miro Sihvonen is set aside.

3) Miro Sihvonen is found to have committed an anti-doping rule violation under Article 2.1 and/or Article 2.2 of the ADR.

4) Miro Sihvonen is sanctioned with a period of ineligibility of between four and six years starting on the date on which the CAS award enters into force. Any period of provisional suspension or ineligibility effectively served by Miro Sihvonen 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 Miro Sihvonen from and including 14 July 2024 are disqualified, with all resulting consequences (including forfeiture of medals, points and prizes).

6) The arbitration costs shall be borne by FINCIS/SUEK or, in the alternative, by the Respondents jointly and severally.

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

B. The First Respondent's Submissions and Requests for Relief

49. In its Answer, the FINCIS notes that, in the present matter, the Athlete has admitted the ADRV but denied intent. Hence, the question would be whether the Athlete can establish that the ADRV was not intentional within the meaning of Article 10.2.1.1 of the ADR and what would be the justified length of the Period of Ineligibility. As regards intent, in principle, it would be for the Athlete to establish the source of the Prohibited Sustances found in his system in order to prove that the ADRV was not intentional. The standard of proof to establish that an ADRV was not intentional would be by balance of probabilities. However, according to CAS jurisprudence, an ADRV could be found to be unintentional even if an athlete has not been able to identify nor prove the source of a prohibited substance (CAS 2020/A/7579 & 7580).

50. The First Respondent highlights that it follows from the evidence filed by the Athlete that (i) he has a chronic knee condition; (ii) he has undergone frequent treatment for his knee, *inter alia*, in Brazil including multiple injections; (iii) he requested pain medication from Ms. Bueno on 9 June 2024; (iv) Ms. Bueno testified that she gave the Athlete an injection of 2 mL of nandrolone because she sometimes uses that substance as pain killer; (v) according to the evidence from Ms. and Mr. Bueno the substance was bought in Paraguay; (vi) according to the expert report by Dr. Gilberto Kocerginsky it is possible that any medication from Paraguay could be contaminated with another substance; (vii) an article referred to by the Athlete shows that anabolic steroids obtained from illegal markets often contain impurities. In light of this evidence, the First Respondent considers that the Athlete has established, on the balance of probabilities, that the source of the Prohibited Substances was the injection given by Ms. Bueno on 9 June 2024 and that his ADRV was not intentional.

51. As regards, the Athlete's degree of fault, the First Respondent argues that, according to the CAS jurisprudence, an athlete's degree of fault under Article 10.6 of the ADR has to be determined in consideration of that athlete's *"objective and the subjective level of fault"* (CAS 2013/A/3327). Further, although athletes cannot fully delegate their anti-doping responsibilities to others, CAS panels have accepted that athletes can delegate some elements of their anti-doping *obligations* (CAS 2016/A/4643*).* In the present matter, it appears from the elements on file and from the witness testimony that the Athlete completely trusted the team around him in Brazil*, i.e.* Mr. and Ms. Bueno, with regards to legality of the Substances he was given by Ms. Bueno. Indeed, both Mr. and Ms. Bueno testified that the Athlete clearly stated that he did not want to use any Prohibited Substances. Given that Ms. Bueno was a trained physiotherapist, had her own clinic and acted as the team's physiotherapist, the Athlete trusted her competence in that matter and delegated partially his anti-doping responsibilities to her. The Athlete's fault or negligence regarding his decision to partially delegate these responsibilities is not significant. As regards the Athlete's fault not to inspect the label of the vial the Nandrolone injection came from, the First Respondent considers, in essence, that, in light of the language barriers that existed, the fact that he had asked the physiotherapist whether the injection contained painkillers and the fact that he had stated before that he did not want to use any Prohibited Substances, he could reasonably believe that there was no risk for him. Hence, the Athlete's degree of fault is a normal degree of fault, and the Period of Ineligibility of eighteen (18) months imposed in the Appealed Decision is, in comparison to other cases (CAS 2017/A/5015 and CAS 2016/A/4643), appropriate.

52. Finally, with respect to the Appellant's argument that, pursuant to Article 10.4 of the ADR, the Period of Ineligibility should be increased for Aggravating Circumstances, the First Respondent maintains that such Aggravating Circumstances only come into play when the ADRVs are serious and

require exceptional circumstances and gross misconduct. However, in the present matter, (i) the ADRV was unintentional, (ii) the Athlete has no previous ADRVs; (iii) the Athlete has not tried to manipulate the results or hide the violation and (iv) the fact that the analysis of the Athlete's Sample revealed the presence of two Prohibited Substances could be due to the fact that the nandrolone was contaminated with drostanolone. Hence, according to an overall assessment, Aggravating Circumstances do not apply to this case.

53. In view of the above considerations, the FINCIS requests the CAS to rule that:

"1. The Appellant's appeal is rejected.

2. The decision dated 25 February 2025 given by the Finnish Sports Ethics Center SUEK ry Anti-Doping Disciplinary Board in the matter of Miro Sihvonen is upheld.

3. WADA shall bear all arbitration costs.

4. WADA shall pay a contribution towards FINCIS' legal fees and other expenses in this matter".

C. The Second Respondent's Submissions and Requests for Relief

54. The Second Respondent emphasises, first, that, according to the CAS jurisprudence, the intent mentioned in Article 10.2.3 of the ADR is not the intention to cheat. Indeed, the relevant intent in the context of an ADRV for presence of a Prohibited Substance is the intent to ingest the said Prohibited Substance (CAS 2023/A/9451, 9455 & 9456).

55. In the present case, the Athlete did not intentionally use the substance, and he only learned what had been injected into him after the positive test result. At the moment of the injection on 9 June 2024, the circumstances were such that he could not have known that there was a significant risk to commit an ADRV. In this regard, the Second Respondent argues that (i) he does not speak Portuguese; (ii) he was hired by the Team GASGAS Brazil as professional driver for the 2024 season; (iii) he moved to Brazil in March 2024 and lived with the team manager's family for about a month before he moved into his own flat; (iv) he was very close to the team manager's family as they had built a special bond and trust; (v) Ms. Roberta Bueno has her own physiotherapy clinic; (vi) the team knew that he suffered from advanced osteoarthritis in his right knee; (vii) the team also knew that he wanted to compete clean and did not want to take any Prohibited Substances; (viii) he received many different treatments and medications from the team's physiotherapist and was always careful about all the medication he received; (ix) he asked his team manager to translate the information about the medication he did not understand; (x) before receiving his injection on 9 June2024, he asked Ms. Bueno if it was a painkiller and she said yes; (xi) he trusted her because of the close relation he had with the family; (xii) he received the injection shortly before the start of the race and the situation was hectic and he was in a lot of pain;

(xiii) in Brazil, nandrolone is used by some people as a painkiller, especially in osteoarthritis cases. It would be confirmed by Ms. Tiina Suominen that nandrolone is used in osteoporosis treatments. In light of these circumstances, it would be clear that the Athlete did not intend, neither directly nor indirectly, to commit the ADRV.

56. Regarding, in particular, the Appellant's argument that the Athlete could be considered as having acted with *"indirect intent"*, the Second Respondent notes that the precedent referred to by the Appellant, *i.e.* CAS 2016/A/4609, is very different from to the present matter as the athlete in that case had access to the package of the medication and was injected four times. The circumstances of the present case would be totally different and there could, thus, not be any indirect intent.

57. The Second Respondent adds that, pursuant to Articles 3.1 and 3.2. of the ADR, an athlete can establish the absence of intent by any reliable means. He emphasizes that, although the standard of proof in a case like the one at hand, *i.e.* balance of probabilities, is the same for all athletes, one should keep in mind that national level athletes very often do not have the same means to fulfil their burden of proof as international level athletes and should, thus, not be expected to bring the same kind of evidence to fulfil their burden of proof.

58. With respect to the alleged obligation to establish the source of the Prohibited Substance in order to be able to prove lack of intent, the Second Respondent argues, in essence, that it is clear from Article 10.2.1 of the ADR and the CAS jurisprudence, in particular CAS 2020/A/7579 & 7580 and CAS 2023/A/9451, 9455 & 9556, that athletes do not have to establish the origin of the substance in order to demonstrate that their conduct was not intentional. This would be so even in the light of the comment to Article 10.2.1.1 of the ADR as that comment cannot override the rules set out in Articles 3.1. and 3.2 of the ADR.

59. In the present matter, the Athlete has established, to the relevant standard of proof, the source of both nandrolone and drostanolone, *i.e.* the injection he was given on 9 June 2024 by Ms. Bueno. Indeed, the testimonies of Mr. and Ms. Bueno, which is direct evidence, the testimony of the Athlete, the expert opinion from Dr. Kocerginsky, the Article on "Anabolic Androgenic Steroids from Underground Market: drug Quality and Implications for Research" as well as the FINCIS's expert opinion from Ms. Tiina Suominen all allow to state that this injection was the source of the substances found in the Athlete's system. Even the concentrations found in the Athlete Sample were, as pointed out by Ms. Suominen, in line with the half-life of both nandrolone and drostanolone, it cannot be shown whether the drostanolone finding is related to the nandrolone injection or not and the WADA has not disputed the fact that the two compounds can exist together. Moreover, the WADA has not put forward any reason why the Athlete would have used these Prohibited Substances and it is clear that for Motocross their intake would not make sense as an increase in

muscle mass is a disadvantage in that sport. In light of the above, the case at hand cannot be compared to the one underlying the award in CAS 2017/A/5016 & 5036, given that the athlete in that case did not know and could not understand where the Prohibited Substance came from.

60. As regards the Appellant's claim that, in the present matter, there are Aggravating Circumstances as the ADRV involved "multiple prohibited substances", the Second Respondent argues that Article 10.4 of the ADR is not meant for a case like the present and that the WADA has not fulfilled its burden of proof in this respect.

61. All in all, it would be clear that the Athlete has established, on the balance of probabilities, that he did not engage in conduct which he knew constituted an ADRV or knew that there was a significant risk that the conduct might constitute or result in an ADRV, and he did not disregard that risk. Accordingly, the decision to impose a Period of Ineligibility of eighteen (18) months would be appropriate.

62. As regards the costs of the proceedings, the Second Respondent maintains, *inter alia*, that in light of (i) the fact that the Athlete is in a subordinate position in relation to the WADA, (ii) the financial resources of the parties, and (iii) the fact that this is a forced arbitration for the Athlete, the Sole Arbitrator, in application of Article R64.5 of the CAS Code, should decide that the Second Respondent is not to bear any of the arbitration costs regardless of the outcome of the case and order the WADA to pay a contribution towards the Second Respondent's legal fees and other expenses related to the present proceedings.

63. In light of the above considerations, the Second Respondent requests the CAS to rule:

"1. The Appeal by WADA is dismissed.

2. The decision by the FINCIS Anti-Doping Disciplinary Board is upheld.

3. All arbitration costs shall be borne by WADA and, in case WADA's Appeal would be successful, by FINCIS.

4. Mr. Sihvonen is granted a contribution to his legal and other costs in all possible outcomes of appeal".

V. THE WITNESS AND EXPERT EVIDENCE HEARD AT THE HEARING

64. In addition to the written evidence filed, at the hearing, the Sole Arbitrator heard the witness testimonies from the Athlete, Mr. Pedro Bueno and Ms. Roberta Bueno.

65. The relevant parts of the witness testimonies may be summarized as follows:

- The Athlete stated that he finished his motocross career and works, at the moment, as an insurance salesman. He explained that when he learned about his ADRV, he could not understand where it could be coming from and, thus, turned to his former team manager in Brazil to see whether the latter had an idea. After a day or two, his former team manager told him that

he had been injected "nandrolone". It was the first time he heard that word. He stated that when in Brazil he was always cautious not to take any Prohibited Substance and was checking the boxes and asking for translations from his former team manager. He stated that he felt like being part of the Bueno family and that he fully trusted them. He explained that the moments before the race on 9 June 2024 were hectic and that he was in a lot of pain. That's when Ms. Bueno asked him if he was ok. He said he was not and asked for painkillers, using the little Portuguese he knew. She went into the front of the truck, came back and told him to come. They went into the area next to the kitchen and she took out the same kind of syringe that she had used before to inject him B12, iron etc. He stated that he asked again whether it would help him against the pain. She answered "Sim Sim" (yes, yes) and just nodded. He stated that he did not see the bottle the medication was taken from and had not asked to see that bottle either. He admitted that it was a fault not to ask to see the bottle. As regards the Prohibited Substances found in his system, he stated that it would not make any sense to take these substances in motocross as an increase in muscle mass is detrimental to the performance.

During cross-examination, he confirmed that he had followed several courses on anti-doping and was well educated in that matter. He explained that in Brazil medication was available without prescription and that the situation in Brazil was very different from that in Finland. He stated that the first time he got an injection from Ms. Bueno, he checked the boxes and the contents of the medications and double-checked with his former team manger to make sure it was ok to take the B12 and iron. He confirmed that he had informed Mr. Bueno about the fact that he was subject to anti-doping rules. Mr. Bueno gave that information to Ms. Bueno. He stated that while being in Brazil he was not tested for doping once and that Mr. Bueno told him most riders in Brazil were taking Prohibited Substances. He also stated that he was aware that he was competing in an environment in which he had to be extra-careful. He acknowledged having received a cortisone injection while in Brazil, but that injection did not occur on the weekend of 9 June 2024 and admitted not having been aware that cortisone was forbidden in-competition.

- Ms. Bueno stated that she is working with high-performance athletes in different sports and has her own cabinet/clinic for twenty years. She explained that she met the Athlete for the first time in 2023 and that she considers him to be a very integer and honest person. She confirmed that he was always strict about what medication he was taking. Her son normally translated the contents of the medication the Athlete was taking or the injections he was given, *i.e.* B12, iron, cortisone. She stated that, on 9 June 2024, she

injected 2 mL of nandrolone to the Athlete as he had asked for painkillers. She testified that she opened the package in front of the Athlete and showed it to him. When confronted with her written witness statement dated 10 October 2024, in which she stated that the Athlete had not seen the vial, she confirmed her written witness statement.

During cross-examination, Ms. Bueno explained that she had not received any anti-doping training, given that in Brazil, at least in Motocross, there are no anti-doping tests. She confirmed that she knew that the Athlete was submitted to the ADR and could be tested in Finland. She stated that she had given injections to the Athlete on a few occasions. Although affirming that she kept a record of the injections/treatments she gives to athletes in her cabinet/clinic, she acknowledged that she did not have a record of the injection she gave the Athlete on 9 June 2024 as it was given at a competition. She stated that she was not aware of the fact that cortisone is prohibited in-competition. She also stated that she knew, before injection the 2 mL of nandrolone to the Athlete, that it was a Prohibited Substance and that the Athlete could not take it. She, again, confirmed that she showed the medication, *i.e.* the vial of nandrolone, to the Athlete before she injected it, but they did not discuss the content. She explained that she got the nandrolone over a friend of her son, who bought it in Paraguay and added that, in the past, she had injected nandrolone to other athletes, including her son. She used it, in very small doses, as fast acting pain relief on race days. She acknowledged that, in Brazil, you need a prescription to buy nandrolone and that it was illegal for her to administer that substance to the Athlete without a prescription. She confirmed that she understood that her evidence, *i.e.* admitting that she injected nandrolone to the Athlete without having a prescription, could have professional repercussions for her. Finally she stated that she does not have nandrolone in her clinic/cabinet but that they have some in the truck for emergencies.

In response to a question from the Sole Arbitrator, Ms. Bueno stated that she only knew that the nandrolone was bought in Paraguay and did not know whether it was bought on the black marked or not as she did not buy the product. She stated that she knew what she was injecting because she looked on the vial and used it for emergency cases.

- Mr. Bueno stated that the Athlete was very cautious about the medication he would take and did not want to take anything that could make him test positive. He confirmed that he was not in the team bus/truck when the Athlete received the nandrolone injection on 9 June 2024 as he was on the track with other pilots of the team. He also confirmed that they had gotten the nandrolone from a friend who had bought it in

Paraguay. He testified that the nandrolone injected to the Athlete had been bought 4 or 5 months prior and was kept in the truck ever since.

In cross-examination, he acknowledged having taken nandrolone himself at one or two occasions. He stated that they had only bought the nandrolone on two occasions from friends of his in 2022 and 2024. He stated that, in Brazil, they use nandrolone to relief pain and that they had bought it for extreme situations. As regards his written witness statement, in which he stated that cortisone could not be envisaged on the 9 June 2024 because it had already been administered previously, he specified that cortisone had not been administered on that weekend. He confirmed that he was not present when the Athlete received the nandrolone injection but that his mother had told him that she had administered 2 mL to the Athlete. He confirmed that there is no record of what the athletes receive from his mother on the race days because there is no time to keep such a record. He stated that his friend bought the nandrolone in Paraguay, where you don't need a prescription.

In response to a question from the Sole Arbitrator, Mr. Bueno explained that in Paraguay you don't need a prescription to buy nandrolone. He could not say whether his friend bought the nandrolone in a pharmacy or not.

VI. JURISDICTION

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

"An appeal against the decision of a federation, association or sports-related body may be filed with 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".

67. Pursuant to Article 13.1 of the ADR:

"Decisions made under the Code or these Anti-Doping Rules may be appealed as set forth below in Articles 13.2 through 13.7 or as otherwise provided in these Anti-Doping Rules, the Code or the International Standards. Such decisions shall remain in effect while under appeal unless the appellate body orders otherwise".

68. Article 13.1.3 of the ADR provides as follows:

"Where WADA has a right to appeal under Article 13 and no other party has appealed a final decision within FINCIS's process, WADA may appeal such decision directly to CAS without having to exhaust other remedies in FINCIS's process".

69. Pursuant to article 13.2 of the ADR:

"The following decisions may be appealed exclusively as provided in Article 13.2:

a) a decision establishing that an anti-doping rule violation has occurred;

b) a decision imposing Consequences or not imposing Consequences for an anti-

doping rule violation, or a decision that no anti-doping rule violation was committed;

[…]".

70. According to article 13.2.2 of the ADR, in cases not involving "International-Level Athletes" or "International Events", *"the decision may be appealed to the Finnish Sports Arbitration Board in accordance with its rules".*

71. In the present matter, it is uncontested that the Second Respondent is not an International-Level Athlete within the meaning of the ADR and none of the Parties objected to the CAS jurisdiction.

72. Moreover, all Parties confirmed such jurisdiction by signing the Order of Procedure.

73. In view of the above, the Sole Arbitrator considers that the CAS has jurisdiction to decide on the present appeal.

VII. ADMISSIBILITY

74. 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. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties".

75. Pursuant to Article 13.6.1 of the ADR:

"The time 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 having led to the decision subject to appeal:

[…]

The above notwithstanding, the filing deadline for an appeal filed by WADA shall be the later of:

(a) Twenty-one (21) days after the last day on which any other party having a right to appeal could have appealed, or

(b) Twenty-one (21) days after WADA's receipt of the complete file relating to the decision".

76. In the present matter, it is uncontested that the Appealed Decision was notified on 26 February 2025, and the WADA received the case file from FINCIS on 14 March 2025. Pursuant to the provisions of Article 13.6.1 of the ADR, the deadline within which the WADA could file an appeal came to an end on 9 April 2025. The WADA having filed its Statement of Appeal on that exact day, it respected that deadline and its appeal is, thus, admissible.

VIII. APPLICABLE LAW

77. 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".

78. The Appealed Decision was rendered by the Anti-Doping Disciplinary Board of the FINCIS in application of the ADR and there is no dispute as to the applicability of these ADR in the present matter.

IX. MERITS

79. In the present matter, it is common ground between the Parties that the Athlete committed an ADRV within the meaning of Article 2.1 of the ADR for the presence of drostanolone metabolite 2a-methyl-5a-androstan-3a-ol-17-one and 19-norandrosterone (nandrolone). Both of these substances are Anabolic Androgenic Steroids listed under S.1.1 of the 2024 WADA Prohibited List.

A. The Relevant Provisions

80. According to Article 10.2.1.1 of the ADR, the period of Ineligibility, subject to Article 10.2.4, shall be four (4) years where the ADRV *"does not involve a Specified Substance or a Specified Method, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional".*

81. The comment to Article 10.2.1.1 specifies that *"[w]hile it is theoretically possible for an Athlete or other Person to establish that the anti-doping rule violation was not intentional without showing how the Prohibited Substance entered one's system, it is highly unlikely that in a doping case under Article 2.1 an Athlete will be successful in proving that the Athlete acted unintentionally without establishing the source of the Prohibited Substance".*

82. Article 10.2.3 of the ADR provides:

"As used in Article 10.2, the term 'intentional' is meant to identify those Athletes or other Persons who engage in conduct which they knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. […]".

83. Article 10.4 of the ADR, entitled *"Aggravating Circumstances which may Increase the Period of Ineligibility"*, reads as follows:

"If FINCIS establishes in an individual case involving an anti-doping rule violation other than violations under Article 2.7 (Trafficking or Attempted Trafficking), 2.8 (Administration or Attempted Administration), 2.9 (Complicity) or 2.11 (Acts by an Athlete or Other Person to Discourage or Retaliate Against Reporting) that Aggravating Circumstances are present which justify the imposition of a period of Ineligibility greater than the standard sanction, then the period of Ineligibility otherwise applicable shall be increased by an additional period of Ineligibility of up to two (2) years depending on the seriousness of the violation and the nature of the Aggravating Circumstances, unless the Athlete or other Person can establish that he or she did not

knowingly commit the anti-doping rule violation".

84. Pursuant to Article 10.5 of the ADR:

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

85. Article 10.6.2 of the ADR provides:

"If an Athlete or other Person establishes in an individual case where Article 10.6.1 is not applicable, that he or she bears No Significant Fault or Negligence, then, subject to further reduction or elimination as provided in Article 10.7, the otherwise applicable period of Ineligibility may be reduced based on the Athlete or other Person's degree of Fault. However, the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this Article may be no less than eight (8) years".

B. The Burden and Standard of Proof

86. As is clear from the above provisions, the burden of proving that the ADRV was not intentional, within the meaning of Article 10.2.3 of the ADR, lies on the Athlete. Further, according to this provision, the Athlete is required to prove that his ADRV was neither deliberate (direct intent) nor reckless (indirect intent).

87. As to the standard of proof applicable to the Athlete, Article 3.1 of the ADR provides, in its relevant parts, that *"[w]here these Anti-Doping Rules place the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, except as provided in Articles 3.2.2 and 3.2.3, the standard of proof shall be by a balance of probability".*

88. As recalled by some CAS panels, according to predominant line of jurisprudence, this standard of proof requires the athletes to establish that *"the occurrence of a specified circumstance is more probable than its non-occurrence"* or, in other words, the athletes must establish that the facts they rely on are more likely than not to have occurred (more than 50%) (CAS 2024/A/10655).

89. Pursuant to another line of jurisprudence, it is sufficient for athletes to prove that the theory put forward by them is the most likely among several scenarios (see, e.g., CAS 2007/A/1370 & 1376, para. 58; CAS 2008/A/1515, para. 116; CAS 2012/A/2986, para. 69; CAS 2011/A/2384 & 2386, paras. 111-113). The Sole Arbitrator considers that, as is clear, for example, from the award in CAS 2011/A/2384 & 2386, this second line of jurisprudence is mainly inspired by the thought that in some cases the athletes have to prove a negative fact and that principles of procedural fairness impose, in such a case, a duty of cooperation on the counterparty. Hence, while it is accepted that the WADA does not have to establish that scenarios alternative to the one advanced by an athlete caused the AAF, the lack of sufficiently plausible alternative scenarios presented to the panel may, in some cases, assist the athlete in meeting his or her burden of proof (CAS 2024/A/10655). However, it must be recalled that,

ultimately, the burden of proving that the ADRV was not intentional lies with the athletes.

C. Preliminary Points

90. As a preliminary point, the Sole Arbitrator recalls that, as is clear from the wording of Article 10.2.3 of the ADR, an athlete does not have to establish how the Prohibited Substance entered his or her system in order to claim that the ADRV was not intentional. However, according to constant CAS jurisprudence, apart from extremely rare cases (see CAS 2016/A/4534, CAS 2016/A/4676, and CAS 2016/A/4919), athletes must establish how the prohibited substance entered their system in order to discharge the burden of establishing the lack of intention (CAS 2016/A/4377, CAS 2023/A/9377).

91. Regarding the "*extremely rare cases*" in which a ADRV may be deemed unintentional even if an athlete has failed to prove the source of a prohibited substance, the Sole Arbitrator considers that in such a case an athlete has to establish lack of intention with other robust evidence, such as the possibility that the prohibited substance came from a specific product, the athlete's credible testimony, evidence by the athlete's doctors that the athlete had no intent to use a prohibited substance, or the implausibility of a scenario that the athlete intentionally used prohibited substances (CAS 2017/A/5248 and CAS 2023/A/10273). Or, as the CAS Panel in CAS 2023/A/9451, 9455 & 9456 has summarized it:

> 2. *"An athlete must provide actual evidence to support his protestations of innocence; he or she must provide 'concrete and persuasive evidence establishing such lack of intent on the balance of probabilities'; protestations of innocence, however credible they appear, 'carry no material weight in the analysis of intent' […]. The same applies to a 'lack of a demonstrable sporting incentive to dope, diligent attempts to discover the origin of the prohibited substance or the athlete's clean record', which have constantly been rejected as justifications for a plea of lack of intent […]".*

D. Applying the above Principles to the Case at Hand

92. In the present matter, the Athlete argues that the ADRV was caused by the injection, on 9 June 2024, of 2 mL of nandrolone that was contaminated with drostanolone. He asserts, in essence, that he did not know that his physiotherapist, Ms. Roberta Bueno, injected him nandrolone and that he had, thus, no direct intent. Further, given that he had repeatedly informed his physiotherapist and his team manager that he wanted to compete clean and trusted them, there would be no indirect intent either in the present matter. He acknowledged that he made a fault by not asking to see the package and/or the vial containing the injected substance, but he explained that he was in a lot of pain and that the situation was hectic as it was shortly before the start of his race. He argues that he should benefit from Article 10.6.2 of the ADR and considers that the period of ineligibility of eighteen (18) months imposed in the Appealed Decision is appropriate.

As regards the ADRV for nandrolone

93. With respect to the source of the Prohibited Substances found in the Athlete's Sample, the Sole Arbitrator considers that, as regards the nandrolone, the Athlete has produced sufficient factual evidence to establish that the source of this substance was the injection he received on 9 June 2024 by his physiotherapist.

94. Indeed, first, there are two directly implicated witnesses that testified that an injection really occurred on that date. Second, while it is uncontested that the Athlete's former team manager was not present when the injection was performed, he testified that they had nandrolone in the truck, that he had bought the nandrolone from a friend of his, that they used nandrolone in emergency cases, that he had himself been injected that substance when he was still competing and that his mother told him that she had injected 2 mL of nandrolone to the Athlete on that date. Mr. Bueno did not contradict himself in this part of his testimony and appeared to be a credible witness, given that he acknowledged having himself used a Prohibited Substance and not having been honest about that with the Athlete. Third, and most importantly, Ms. Bueno provided direct evidence that she injected 2 mL of nandrolone to the Athlete on the 9 June 2024. Her testimony in this regard was crystal clear and univocal as she confirmed that she injected that substance on purpose, to relief the Athlete's pain, admitting that that injection was illegal as they did not have a prescription for that substance.

95. The Sole Arbitrator considers that, given the circumstances of the case, in particular the clarity of the witness testimonies and the fact that Ms. Bueno acknowledged that her testimony might have professional repercussions for her, the absence of a receipt of the purchase of the nandrolone as well as the fact that Ms. Bueno did not keep a record of this injection do not put the above-mentioned witness testimonies into doubt.

96. Hence, the Sole Arbitrator considers that the Athlete has established, on the balance of probabilities, the source of the nandrolone found in his Sample.

97. The Sole Arbitrator further considers that, in light of the circumstances of the case, in particular the fact that Ms. Bueno confirmed that, on 9 June 2024, the Athlete inquired with her whether the substance she was about to administer to him was a painkiller, that Ms. Bueno acknowledged that she knew that the Athlete's position was to not take Prohibited Substances and that she had not told him what she was injecting him, the Athlete has established, to the relevant standard of proof, that his ADRV for nandrolone did not involve direct intent.

98. As regards the question as to whether the Athlete can be considered to have committed the ADRV for nandrolone with indirect intent, the Sole Arbitrator considers that, in light of the circumstances in which the ADRV for nandrolone occurred, the Athlete cannot be considered to have acted with recklessness. Indeed, and while it is true that the Athlete acknowledged during the hearing that he was aware that, in Brazil, he was competing in environment in which he had to be extra-careful regarding the respect of

anti-doping rules, the fact remains that both Mr. and Ms. Bueno confirmed that they knew the Athlete wanted to compete clean and that he had, previously to the 9 June 2024, been cautious about the medication he was taking or being administered. Further, given that the Athlete had been treated for several months by Ms. Bueno and knew that she was aware of the fact that he wanted to compete clean, he had, at that stage, no reasons to believe that she would not respect his position regarding Prohibited Substances.

99. However, and notwithstanding the fact that he was in great pain and that he was soon to compete, the Athlete's omission to ask to see the package and/or the vial of the substance that Ms. Bueno was about to administer to him and to briefly check the package, vial or notice of the medication he was being administered amounts, in the Sole Arbitrator's view, to a significant negligence within the meaning of the ADR. Indeed, by not doing so, the Athlete failed to take an elementary, if not the most elementary, step to respect his duty of care. Hence, according to Article 10.2.2 of the ADR, the standard period of ineligibility for the ADRV for nandrolone would be two (2) years.

100. In light of the developments that follow, the Sole Arbitrator considers that it is not necessary to further analyse the degree of fault of the Athlete concerning his ADRV for nandrolone.

As regards the ADRV for drostanolone

101. As regards the source of the drostanolone found in the Athlete's Sample, the latter argues that this substance has entered his system through the nandrolone injection he received on 9 June 2024, the nandrolone having been contaminated with drostanolone. In support of this claim, the Athlete maintains, on the basis of the expert report from Dr. Gilberto Kocerginsky and the Article on *"Anabolic Androgenic Steroids from Underground Market: drug Quality and Implications for Research"*, that *"Paraguayan black market medication can and often do contain different kind of contaminants"* and it would be *"common knowledge that black market products can include almost anything"*.

102. In this respect, the Sole Arbitrator notes, first, that neither Mr. Bueno, who admitted having bought the nandrolone from a friend who had bought that substance in Paraguay, nor Ms. Bueno, who administered the substance to the Athlete, testified that the that the nandrolone had been bought on the black market. Moreover, given that Mr. Bueno argued that he bought the nandrolone from the above-mentioned friend because in Paraguay, in difference to Brazil, that substance can be bought without prescription, and taking into consideration that you don't need a prescription to buy a medication on the black market anyhow, the Sole Arbitrator finds that, on the balance of probabilities, it is not established that the nandrolone administered to the Athlete on 9 June 2024 was a black market product.

103. Second, in his expert report, Dr. Gilberto Kocerginsky listed several

considerations, amongst others, that (i) *"bodybuilders in Brazil usually [use] anabolic steroids from underground origin, and mainly from Paraguay"*, (ii) *"anabolic steroids are commonly smuggled from Paraguay to Brazil, with no health authority clearance"* and (iii) *"underground labs in Paraguay have no good practices on manipulation of those steroids"*. On basis of these considerations and the observations he has made in his medical practice, he concluded that it *"is possible to have cross contamination or even gross contamination for any possible drug, and it includes a contaminated vial of nandrolone with drost[an]olone, originated from Paraguay"*. However, as mentioned above, in the present matter, it is not established to the relevant standard of proof, that the nandrolone administered to the Athlete was a "black market product". Hence, part of the premisses taken into consideration by Dr. Kocerginsky are not established in the present matter. Moreover, and in any event, Dr. Kocerginsky's conclusion only mentions a "possible" cross contamination. However, the mere possibility of a contamination of a substance by another substance is, in absence of any concrete and credible evidence to prove this beyond mere speculation, not enough to establish that such contamination is more likely than not to have occurred. The Sole Arbitrator thus considers that the expert report of Dr. Kocerginsky does not support the claim that, in the present matter, it is more likely than not that the nandrolone was contaminated with drostanolone.

104. Third, the Article on *"Anabolic Androgenic Steroids from Underground Market: drug Quality and Implications for Research"* is not helpful to the Athlete's case neither. Indeed, as mentioned above, in the present matter, it cannot be considered as established that the nandrolone came from the black market. Moreover, while it is true that, according to that Article, of the 5 samples labelled as nandrolone, 100% had *"some type of adulteration"*, it is also clear from said Article that none of these adulterations concerned the presence of drostanolone.

105. The Athlete further maintains that (i) Ms. Tiina Suominen stated that *"it cannot be shown whether the drostanolone finding is related to the nandrolone injection or not"*, (ii) that it is undisputed that nandrolone and drostanolone can exist together, and (iii) that the *"minimal concentration of drostanolone – 0.3 ng/mL – also suggests that the nandrolone injection […] was in fact contaminated"*.

106. In this regard, the Sole Arbitrator remarks, first, that these three arguments support, at best, the allegation that is scientifically possible that the administered nandrolone could have been contaminated with drostanolone. However, that is not enough to establish that it is more likely than not that, in the present matter, the administered nandrolone was indeed contaminated with drostanolone. Second, as mentioned by Ms. Suominen in her expert report dated 14 January 2025, (i) *"there are no reports indicating that drostanolone metabolites have been found in urine following nandrolone administration. Therefore, the findings are not attributable to the same preparation"* and (ii) *"based on the reported concentrations, it cannot be determined whether the drostanolone finding is related to the nandrolone injection preparation or not"*.

107. Hence, the Sole Arbitrator finds, in light of the evidence submitted in the present matter, that the Athlete has not established, on the balance of probabilities, that it is more likely than not that the nandrolone administered on 9 June 2024 was the source of the drostanolone found in his Sample.

108. Given that the Athlete has not put forward any other potential source of how the drostanolone entered his system, the Sole Arbitrator still has to examine whether the Athlete has overcome his burden to establish, on the balance of probabilities, that his ADRV for drostanolone was not intentional.

109. In this regard, the Athlete recalls that, according to the Panel in CAS 2023/A/9451, 9455 & 9456, in essence, the elements of evidence put forward by an athlete to establish his lack of intent, such as his protestations of innocence and the lack of sporting incentive to dope, must be evaluated in light of the circumstances of the particular case and there is no a priori reason or basis to dismiss such evidence out of hand. In this particular case, it would be clear that the use of the substances at hand would not have made sense as their effects are detrimental to motocross riders. Also, the minimal concentrations of drostanolone found in his Sample would be compatible with a contamination, *i.e.* an unintentional intake. Finally, it would be established, *inter alia* by the witness testimonies of Mr. and Ms. Bueno, that he wanted to compete clean and was cautious about was medication he was taking. In light of all the circumstances of the case, it would be clear that there was neither intent nor indirect intent in the present case and that the Athlete's fault, when compared to the situations of other CAS cases, should only lead to the imposition of an ineligibility period of eighteen (18) months.

110. In this respect, the Sole Arbitrator notes that while it is true that the Athlete made a correct referral to what was said by the Panel in CAS 2023/A/9451, 9455 & 9456, it is also true that that Panel stated, *"that in the ordinary case such evidence will likely be given little weight"*.

111. Regarding the weight that has to be given to the different elements brought forward by the Athlete to establish, on the balance of probabilities, that the ADRV for drostanolone was unintentional, the Sole Arbitrator recalls that, as is clear from Article 10.2 of the ADR, for an ADRV to be considered "intentional" it is not necessary for the athlete to have effectively benefitted from a performance enhancing effect nor is it required that the use of the relevant substance or method made "sense" from a scientific or a sports specific point of view (CAS 2024/A/10800 & 10802). Hence the Athlete argument according to which the intake of the substances found in his Sample would not have made sense is, at best, of very limited weight.

112. As regards the inferences that may be drawn from the concentration of drostanolone found in the Athlete's Sample, the Sole Arbitrator notes that drostanolone is not a threshold substance within the meaning of the WADC and that in absence of any other anti-doping tests shortly before

or after the collection of the Athlete's Sample on 14 July 2024, this concentration does not, of itself, support any conclusion as to the intentional or unintentional administration of – or exposure to – drostanolone.

113. This leaves the Sole Arbitrator with nothing else but the witness testimonies of Mr. and Ms. Bueno according to which, in essence, the Athlete wanted to compete clean and the Athlete's own affirmations that he was mindful of not taking any Prohibited Substances. However, in light of the CAS jurisprudence recalled above, in particular CAS 2023/A/9451, 9455 & 9456, in absence of any other robust and concrete evidence supporting the Athlete's protestations that his ADRV for drostanolone was unintentional, the Sole Arbitrator finds that these elements do not carry enough weight to consider that, in the present matter, an unintentional administration of – or exposure to – drostanolone is, on the balance of probabilities, more likely than not.

114. In light of all the above considerations, the Sole Arbitrator concludes that the Athlete, on the balance of probabilities, has not been able to rebut the presumption according to which his ADRV for drostanolone was intentional.

115. Hence, the Sole Arbitrator finds that the ADRV for drostanolone committed by the Athlete must be qualified as intentional within the meaning of Article 10.2.1 of the ADR and that the applicable sanction for that ADRV is a four (4) period of Ineligibility.

116. The Appellant argues that the fact that multiple Prohibited Substances were found in the Athlete's Sample constitutes an aggravating circumstance within the meaning of Article 10.4 of the ADR and justifies the imposition of an increased period of ineligibility on the Athlete.

117. In this regard, the Sole Arbitrator recalls that this provision, entitled *"Aggravating Circumstances which may Increase the Period of Ineligibility"*, allows for an increase of the standard period of ineligibility in case of Aggravating Circumstances, *"unless the Athlete or other Person can establish that he or she did not knowingly commit the anti-doping rule violation"*. Further, the Appendix 1 to the ADR defines the Aggravating Circumstances as follows: *"Circumstances involving, or actions by, an Athlete […] which may justify the imposition of a period of Ineligibility greater than the standard sanction. Such circumstances and actions shall include but are not limited to the Athlete[…] Used or Possessed multiple Prohibited Substances or Prohibited Methods, […] For the avoidance of doubt, the examples of circumstances and conduct described herein are not exclusive and other similar circumstances or conduct may also justify the imposition of a longer period of Ineligibility"*.

118. In the present matter, it is true that two Prohibited Substances were found in the Athlete's Sample. However, as is clear from the considerations above, the Sole Arbitrator has found that the Athlete has established that he did not knowingly commit the ADRV for nandrolone. The Sole Arbitrator considers that, in these circumstances

and in absence of any other facts that could constitute Aggravating Circumstances within the above meaning, the Appellant has not established that there are Aggravating Circumstances in the present matter that would warrant an increase of the standard period of ineligibility. Hence, this aspect of the Appellant's claims is dismissed.

119. According to Article 10.13 of the ADR the period of Ineligibility shall *"start on the date of the final hearing decision providing for Ineligibility"*, *i.e.* in the present case the date of the notification of the present Award.

120. However, considering that the Athlete has been provisionally suspended from 16 August 2024 onwards and that the Period of Ineligibility imposed on the Athlete by the Appealed Decision on 25 February 2025 is still effective, the Period of Ineligibility already served shall, in application of Article 13.13.2 of the ADR, be credited against the four (4) year Period of Ineligibility to be served.

121. Finally, pursuant to Article 10.10 of the ADR, *"[i]n 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"*.

122. In application of that provision and given that neither of the Respondents has established that fairness requires otherwise, the Sole Arbitrator confirms that all the results obtained by the Athlete from 14 July 2024, *i.e.* date of the Athlete's Sample collection, until the provisional suspension on 16 August 2024 are disqualified, in each case with all resulting consequences, including forfeiture of any medals, titles, ranking points and prize money.

123. In view of the above considerations, the Sole Arbitrator concludes that the Appellant's Appeal is partially upheld and that the Appealed Decision must be set aside.

124. Any other and further claims or requests for relief on the merits are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by the World Anti-Doping Agency (WADA) against the Finnish Center for Integrity in Sports (FINCIS) and Mr. Miro Sihvonen with respect to the decision rendered by the Anti-Doping Disciplinary Board of the FINCIS on 25 February 2025 is partially upheld.

2. The decision rendered by the Anti-Doping Disciplinary Board of the FINCIS on 25 February 2025 is set aside.

3. Mr. Miro Sihvonen is found to have committed an anti-doping rule violation under Article 2.1 of the ADR.

4. Miro Sihvonen is sanctioned with a period of ineligibility of four (4) years starting on the date of the present award. Any period of provisional suspension or ineligibility effectively served by Mr. Miro Sihvonen before the entry into force of the present award shall be credited against the four (4) year period of ineligibility to be served.

5. Mr. Miro Sihvonen's competitive results in the period from 14 July 2024 to 16 August 2024 are disqualified with all resulting consequences including forfeiture of medals, points and prizes.

6. (…).

7. (…).

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

CAS 2025/A/11388
Sophie Bordet v. International School Sport Federation (ISF) &
CAS 2025/A/11389
Sophie Bordet v. International School Sport Federation (ISF)
award of 26 January 2026

Multisport; Governance; Finality of decision and exhaustion of legal remedies; Competent body to decide on the dismissal of an executive body member of an association; Nature of the relationship between an association and a member of the executive body of the association, Nature of the dismissal of an executive body member ; Extent of the power of the association's general assembly to dismiss a member of the executive body; Grounds for nullity of a final decision of an association; Right to be heard

Panel
Mr Michele Bernasconi (Switzerland), Sole Arbitrator

1. **A decision of an executive committee of an association to submit a disputed matter to the decision of the general assembly of the association cannot be compared to a final decision closing a related disciplinary procedure. Furthermore, such decision of the executive committee cannot be considered *"final"* in the sense of Article R47 CAS Code in that the general assembly is free to take any decision in relation to the issue.**

2. **Under Swiss law (and the Statutes of ISF), the general assembly of an association is the competent body to decide on the dismissal of a member of the executive body of the association.**

3. **The legal nature of the relationship between an association and a member of the executive body of such association depends on the specific circumstances, but is generally characterised as a mandate as per Article 394 *et seqq.* Swiss Code of Obligations (CO) or, in case the member of the executive body is an employee of the association, as employment agreement as per Article 319 *et seqq.* CO.**

4. **While under certain circumstances, disciplinary grounds may motivate the decision to dismiss a member of an executive body, unlike a suspension or a fine, such dismissal of a member is not *per se* a disciplinary sanction. This is because such measure is primarily the exercise of the governance power granted by law to the general assembly of an association. This is why the dismissal of a member of an executive body of an association can, in principle, be decided by the competent corporate body at any time. A dismissed member may have, depending on the circumstances, a contractual claim for the payment of a certain salary, if the member is an employee, or compensation for some expenses, if the requirements under the relevant contract justify such a claim, but the dismissed member cannot somehow insist on strict compliance with any term of office.**

5. **Under Swiss law, it is recognised that the role of a general assembly to act as highest monitoring body of an**

association includes the right of the assembly to dismiss members of the executive body of the association at any time, independently of whether such dismissal terminates a mandate of an elected person before the expiry of the originally foreseen term of office. The power to dismiss a member of the executive body is not limited nor restricted by the existence of valid grounds, by the presence of fault of the relevant member of the executive body or by the compliance with any termination notice period. However, Swiss law allows an association to limit the power to dismiss at any time a member of the executive body only in situations where valid grounds exist. In fact, Article 65(3) CC reads: *"The right of dismissal exists by law whenever justified by good cause"*.

6. Under Swiss law, only serious formal/procedural deficiencies and/or serious deficiencies in terms of content may be considered as grounds to admit the nullity of a final decision of an association. In circumstances where the dismissed member of the association expresses surprise at the short notice time granted to the general assembly prior to a decision to dismiss the member of the association, but where the association complied with all requests advanced by the dismissed member prior to the dismissal decision, *e.g.* where the association members had been aware that the agenda of the general assembly included the possible dismissal of officials and where upon the member's request, a written position by it is transmitted to the general assembly prior to the holding of the general assembly, and the member's representative is granted the right to orally address the generally assembly during its meeting and prior to its decision, there is insufficient evidence to conclude that the decision of the general assembly to dismiss the member suffers from formal deficiencies.

7. In circumstances where the association, prior to deciding whether to dismiss a member of its executive body, had mandated an independent person to conduct an investigation into alleged violations of the member of the executive body and where further, the association complied with all requests advanced by the member prior to the general assembly, *e.g.* transmitting its written position to the general assembly prior to the holding of the general assembly, and the member's representative is granted the right to orally address the general assembly during its meeting and prior to its decision, no breach of the member's right to be heard invalidating the general assembly decision is established.

I. PARTIES

1. Sophie Bordet (the "Appellant") is a French national who served as an elected member of the Executive Committee of the International School Sport Federation (ISF) and as Chair of the ISF Integrity Committee. She was elected to the ISF Executive Committee in 2020 and re-elected in 2022 for a term expiring in 2026.

2. The International School Sport

Federation (the "Respondent" or the "ISF") is an international association under Swiss law, domiciled in Lausanne, Switzerland. It is the umbrella organisation for national school sport organisations and organises international school sport events, including the "Gymnasiade".

3. The Appellant and the Respondent are jointly referred to as the "Parties".

II. FACTUAL BACKGROUND

4. What follows is a short summary of the background facts and allegations based on the Parties' written and oral submissions, pleadings and evidence examined in the course of the present proceedings. Additional facts and allegations found in the Parties' submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties, this award (the "Award") refers only to the submissions and evidence considered necessary to explain the reasoning.

5. In late 2024, the ISF faced governance and financial challenges leading to the resignation of its then President.

6. Between January and April 2025, concerns were raised within the ISF regarding the Appellant's conduct, including steps allegedly taken by the Appellant to establish a new entity, the "International School Sport Committee", and to register certain trademarks, using a company apparently linked to the Appellant and named "MAN SAS".

7. On 30 January 2025, the ISF Executive Committee provisionally suspended the Appellant from her functions pending further measures. The Appellant had not been invited to attend the meeting held on 30 January 2025. According to the Decision with grounds, issued on 3 February 2025, the Appellant had not been invited *"due to a conflict of interests as the only item on the agenda is to discuss her actions"*.

8. Following the decision taken on 30 January 2025, the Appellant filed a criminal complaint against several members of the ISF Executive Committee.

9. Based on the decision of 30 January 2025, the Ethics and Legal Committee of the ISF, appointed M Lou Brouleau as independent investigator and instructed her to conduct a thorough and impartial investigation of the allegations raised against the Appellant.

10. On 22 March 2025, Ms Brouleau, issued an investigation report following her review of the actions of Appellant.

11. On 28 March 2025, the Executive Director of the ISF, Ms Hasnae El Ayoubi, transmitted a copy of the report of Ms Brouleau to the Appellant and indicated that in case the Appellant wanted *"to be heard and provide explanations, you [the Appellant] may do so in writing within a deadline expiring on 3 April 2025. If you [the Appellant] are willing to be personally heard by the Executive Committee, please let us know within the same deadline. You [the Appellant] may then be heard by videoconference"*.

12. On 3 April 2025, the Appellant's Counsel submitted a letter of 13 pages to the ISF, together with 9 exhibits. The

letter commented in detail all the allegations raised against the Appellant.

13. On 6 April 2025, the ISF Executive Committee resolved to refer the Appellant to the General Assembly for a decision on dismissal.

14. On 7 April 2025, the ISF's Counsel communicated the decision of the ISF Executive Committee of 6 April 2025 to the Appellant's Counsel. Attached to the Email of the ISF was also a copy of the email sent by the ISF to all ISF members with which the members had been provided with the copy of the letter of the Appellant's counsel of 3 April 2025, as requested by the Appellant.

15. On the same date, the letter of the Appellant's Counsel dated 7 April 2025 was also transmitted to all ISF members, as requested by the Appellant.

16. On 8 April 2025, the Appellant's Counsel was initially denied and later granted the right to participate in the General Assembly. In particular, the ISF's Counsel informed the Appellant's Counsel that she was granted *"no more than 5 minutes to make a statement"*.

17. On 8 April 2025, the ISF General Assembly voted by secret ballot to dismiss the Appellant from her position as a member of the Executive Committee.

18. On 9 April 2025, the Executive Committee decided to relieve her from her Integrity Committee Chair role.

III. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

19. The Appellant filed a Statement of Appeal on 23 April 2025 against (i) the decision of the Executive Committee of the ISF dated 6 April 2025 and (ii) the decision of the General Assembly of the ISF dated 8 April 2025 to dismiss Ms Bordet from her position as a member of the Executive Committee of the ISF (jointly referred to as the "Appealed Decisions").

20. On 25 April 2025, the CAS Court Office informed the Parties that as the Appellant was challenging two distinct decisions of the ISF, each appeal would be treated separately, resulting in the opening of two separate proceedings (subject to Article R50 para. 3 of the Code for Sports-related Arbitration (2023 edition), the "CAS Code"), *i.e.* the CAS 2025/A/11388 and the CAS 2025/A/11389 proceedings.

21. As indicated and agreed by the Parties during the Hearing, for reasons of efficiency and procedural economy, the present Award covers both proceedings and both Appealed Decisions. Where appropriate, the two cases are dealt with separately.

22. On 7 May 2025, the Appellant filed the Appeal Brief.

23. On 14 May 2025, in light of the Parties' agreement, the CAS Court Office confirmed that cases *CAS 2025/A/11388* and *CAS 2025/A/11389* would be submitted to the same Arbitral Tribunal pursuant to Article R50 of the CAS Code.

24. The ISF filed its Answer on 3 July 2025.

25. On 19 June 2025, the CAS Court Office informed the Parties that, following their agreement on the person of the Sole Arbitrator, the Panel appointed to decide the matter was constituted as follows:

Sole Arbitrator: Mr Michele A.R. Bernasconi, Attorney-at-Law in Zurich, Switzerland.

26. On 15 July 2025, the Sole Arbitrator decided to order a second round of submissions strictly limited to the matter of CAS jurisdiction.

27. On 4 August 2025, the Appellant submitted her Answer to the Respondent's Objections to Jurisdiction.

28. On 11 August 2025, the CAS Court Office informed the Parties *inter alia* as follows on behalf of the Sole Arbitrator:

"In view of the fact that, in any event, jurisdiction of the CAS is not disputed for at least some of the Prayers for Relief, the Sole Arbitrator does not consider it necessary to grant, as originally planned, an additional deadline to the Respondent to rebut the last comments filed by Appellant. Both Parties will be entitled to make at their discretion further considerations and submissions on jurisdiction at the Hearing.

Further, in view of the Hearing to be held, the Sole Arbitrator has decided to follow ordinary CAS procedure and to not order an additional round of written submissions. Accordingly, the procedural request of the Appellant (i.e. "that the ISF not be granted leave to file a reply to this Answer to the Respondent's Objections to Jurisdiction unless and until the Appellant is afforded the opportunity to file a reply on the merits in response to the ISF's Answer dated 3 July 2025") is moot".

29. On 15 August 2025, the CAS Court Office informed the Parties that a hearing would be held on 30 September 2025 at the CAS Court Office in Lausanne. In the same correspondence, the Parties were invited to attend a Case Management Conference on 2 September 2025, to discuss the structure, the starting time and other practical issues of the Hearing.

30. On 2 September 2025, the Case Management Conference took place and the Parties agreed on the practical matters mentioned above.

31. On 30 September 2025, the Hearing was held, in person, at the CAS Court Office in Lausanne. The following persons attended the hearing besides the Sole Arbitrator and Ms Amelia Moore, Counsel to the CAS:

<u>For the Appellant</u>:

- The Appellant herself, Ms Sophie Bordet;
- Mr Olivier Attias, Counsel;
- Mr Benjamin Sabbagh Zadeh, Counsel;
- Ms Karen Leach, as a witness (by video).

<u>For the Respondent:</u>

- Mr Zeljko Tanaskovic, ISF President, as Party representative and witness;
- Ms Hasnae El Ayoubi, ISF Executive Director, as Party representative and witness;
- Ms Belijana Majstorović, as interpreter (by video);
- Mr Claude Ramoni, Counsel;
- Ms Monia Karmass, Counsel;
- Mr Ricardo Suescun Sabadell, Counsel.

32. At the outset of the Hearing, the Parties declared that they had no objection to the appointment of the Sole Arbitrator and to the manner in which the procedure had been conducted until the Hearing.

33. The Sole Arbitrator heard the testimony of all witnesses called by the Parties. All witnesses heard by the Sole Arbitrator were advised of their obligation to tell the truth.

34. During the Hearing, the Parties made full oral submissions. Before the Hearing concluded, the Parties expressly stated that they had no objection to the procedure adopted by the Sole Arbitrator and confirmed that they had been given a full opportunity to present their cases, submit their arguments, and to answer the questions posed by the Sole Arbitrator. They confirmed that their right to be heard had been respected and that due process had been granted.

IV. SUBMISSIONS OF THE PARTIES

35. This section of the Award does not contain an exhaustive list of the Parties' contentions; its aim is to provide a summary of the substance of the Parties' main arguments. In considering and deciding upon the Parties' claims, the Sole Arbitrator has accounted for and carefully considered all the submissions made and evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the Award or in the discussion of the claims below.

A. The Appellant's Position

36. In her Appeal Brief, the Appellant requested as follows:

"(a) Annul the decision of the Executive Committee of the ISF of 6 April 2025 to submit Sophie Bordet's dismissal as member of the Executive Committee to the General Assembly of the ISF.

(b) Annul the decision of the General Assembly of the ISF of 8 April 2025 to dismiss Sophie Bordet from the Executive Committee of the ISF.

(c) Order the ISF to pay the Appellant a total of 350,000 euros as compensation for the emotional damage directly resulting from the vexatious removal process it initiated against her.

(d) Order the ISF to pay the Appellant a totalof 150,000 euros as compensation for the reputational damage directly resulting from the vexatious removal process it initiated against her.

(e) Should Mrs Sophie Bordet's removal from the Executive Committee not be annulled, order the ISF to pay the Appellant a total of 230,000 euros as compensation for the losses resulting from her personal and financial investment and involvement with the ISF.

(f) Order the ISF to the pay the Appellant for the legal counsel and arbitration costs she incurred in this appeal.

(g) Order the ISF to pay the Appellant post-award interest on the above sums to be assessed by the arbitral panel".

37. On 17 September 2025, the Appellant submitted the following updated Prayers for relief:

"(a) Find the CAS has jurisdiction to rule on the prayers for relief (a), (c), (d) and (e) of the Appeal Brief of 7 May 2025.

(b) Find the claims that are translated in the prayers for relief as items (a), (c), (d) and (e) of the Appeal Brief of 7 May 2025 are admissible.

(c) Annul the decision of the Executive Committee of the ISF of 6 April 2025 to

submit Sophie Bordet's dismissal as member of the Executive Committee to the General Assembly of the ISF.

(d) Annul the decision of the General Assembly of the ISF of 8 April 2025 to dismiss Sophie Bordet from the Executive Committee of the ISF.

(e) Order the ISF to pay the Appellant a total of 350,000 euros as compensation for the emotional damage directly resulting from the vexatious removal process it initiated against her.

(f) Order the ISF to pay the Appellant a total of 150,000 euros as compensation for the reputational damage directly resulting from the vexatious removal process it initiated against her.

(g) Should Mrs Sophie Bordet's removal from the Executive Committee not be annulled, order the ISF to pay the Appellant a total of 230,000 euros as compensation for the losses resulting from her personal and financial investment and involvement with the ISF.

(h) Order the ISF to the pay the Appellant for the legal counsel and arbitration costs she incurred in this appeal.

(i) Order the ISF to the pay the Appellant for the legal counsel and arbitration costs she incurred in defending the ISF's objections to jurisdiction.

(j) Order the ISF to pay the Appellant post-award interest on the above sums to be assessed by the Arbitrator".

38. The Appellant argues that both the Executive Committee decision of 6 April 2025, proposing her dismissal, and the General Assembly decision of 8 April 2025, dismissing her, should be annulled because serious breaches of the ISF Statutes, the Code of Conduct and Swiss law tainted the voting processes and could have affected the voting outcomes under Swiss law. The Appellant submits that procedural compliance is essential to the validity of association decisions and that material breaches warrant annulment.

39. The Appellant's submissions in support of her appeal against the Appealed Decisions may be briefly summarized as follows:

40. The Executive Committee's 30 January 2025 suspension and 6 April 2025 resolution, and the General Assembly's 8 April 2025 dismissal, breached the ISF Statutes and Code of Conduct and Swiss law (in particular the right to be heard and to due process). Further, they were based on fabricated, manipulated and incomplete information, and should therefore be declared null and void.

41. In the Appellant's view, the breaches of the ISF Statutes and of the ISF Code of Conduct have been so serious *"that they influenced the result of the votes"*.

42. The Appellant contends that the decision of the Executive Committee of 6 April 2025 was unlawful for two principal reasons.

43. First, she states she was not invited to the 6 April Executive Committee meeting, contrary to Article 2.2.5 of the ISF Statutes, which requires all Executive Committee members to be invited and treats repeated absences as resignations only where proper invitations are issued; she argues the meeting was therefore not validly convened and any decision taken is without effect. She further submits that her participation could have altered

deliberations and the vote, thereby satisfying the Swiss-law materiality threshold for annulment.

44. Second, the Appellant argues Article 15 of the Code of Conduct requires the ISF Disciplinary Committee — not the Ethics and Legal Committee — to investigate alleged breaches by persons involved in ISF governance and to provide recommendations before any decision is taken; she submits no Disciplinary Committee investigation occurred and that reliance on an investigation commissioned by another committee violated the Code, again potentially affecting the outcome.

45. On this basis, the Appellant seeks annulment of the 6 April 2025 decision for multiple statutory and code violations that, in her view, could have influenced the vote and thus fail under Swiss law and CAS standards on procedural compliance and voting validity.

46. As to the decision of the ISF General Assembly of 8 April 2025, the Appellant argues that the decision breached Article 2.1.3.7 of the ISF Statutes, which requires circulation of the final agenda and supporting documents at least 30 days in advance (or shorter timeframes only for online emergency meetings). Although an agenda was sent on 7 March 2025, it generically listed *"If applicable, election and dismissal of ISF Officials"* without disclosing that her personal dismissal would be proposed; the specific proposal and supporting materials were circulated only on 7 April 2025, *i.e.*, one day before the vote.

47. The Appellant further asserts procedural imbalance at the General Assembly: her Counsel was initially refused participation and only admitted 41 minutes before the scheduled item; the ISF's Counsel spoke for about 20 minutes with slides, while her Counsel was limited to 5 minutes despite the Statutes capping speaking time at 5 minutes absent a timely written request for 10 minutes, and allowing exceptions only in extraordinary circumstances. She argues the different treatment and compressed notice prevented members from preparing and voting in full knowledge, contrary to CAS guidance that strict compliance with convening and preparation rules underpins validity.

48. Further, the Appellant notes that approximately 25% of the ISF members did not vote to dismiss her, which she says confirms that proper procedure might have changed the result, warranting annulment under Swiss law.

49. The Appellant further argues that the alleged conflict of interest retained by the Respondent does not proscribe the Appellant's actions. Accordingly, in the Appellant's view, no disciplinary offence was established, and, in any event, compensation is due for the damages caused, *i.e.* the emotional and reputational harm (EUR 350,000 and EUR 150,000) and, subsidiarily, for unjust enrichment (EUR 230,000) if her reinstatement is denied.

50. Finally, the Appellant argues that both decisions violated her right to be heard as recognized in CAS jurisprudence. She claims she was provisionally suspended on 30 January 2025, without being heard; the 22 March 2025 investigation report was prepared without interviewing her or relevant entities; the 6 April 2025 decision was taken after only a brief written submission; and the

8 April 2025 hearing was imbalanced in timing and speaking opportunities. She submits these cumulative shortcomings infringed due process and require annulment of the decisions.

B. The Respondent's Position

51. In its Answer, the Respondent requested the Sole Arbitrator to rule as follows:

> *"I. The CAS does not have jurisdiction to rule on the prayers for relief (a), (c), (d) and (e) of the Appeal Brief of 7 May 2025.*
>
> *II. The appeal filed by Ms Sophie Bordet against the International School Sport Federation's Executive Committee's resolution of 6 April 2025 is inadmissible.*
>
> *III. Ms Sophie Bordet's requests that ISF be condemned to pay EUR 350,000 + EUR 150,000 + EUR 230,000 to her (prayers for relief (c), (d) and (e)) are inadmissible.*
>
> *IV. The appeals filed by Ms Sophie Bordet against (i) the International School Sport Federation's Executive Committee's resolution of 6 April 2025 and (ii) the International School Sport Federation's General Assembly's decision of 8 April 2025 are dismissed.*
>
> *V. All prayers for relief by Ms Sophie Bordet are dismissed.*
>
> *VI. Ms Sophie Bordet shall bear all the arbitration costs.*
>
> *VII. Ms Sophie Bordet shall be ordered to pay to the International School Sport Federation a significant contribution towards its legal and other costs incurred within the framework of these proceedings, in an amount to be determined at the discretion of the Panel, upon submission of the International School Sport Federation's statement of costs at or after the hearing".*

52. The Respondent's submissions may be summarized as follows:

53. The appeal against the resolution of 6 April 2025 of the Executive Committee of the ISF is inadmissible as it is a non-final preparatory act without animus decidendi.

54. Further, as to the Appellant's pecuniary claims, they are outside CAS's jurisdiction, as these are appeal proceedings directed against two decisions. The only appealable decision is the decision of the General Assembly of 8 April 2025.

55. On the merits, considering the loss of trust, the General Assembly of the ISF lawfully terminated the Appellant's mandate under Swiss association law (Article 65 of the Swiss Civil Code, "CC") and mandate law (Article 404 of the Swiss Code of Obligations, "CO") as a governance measure, not as a disciplinary sanction. The Respondent submits that the due process requirements applicable to sanctions do not apply, and that, in any event, the Appellant was heard in writing and orally, and that her counsel was admitted to the General Assembly. Any procedural imperfections were minor, non-causal, and cured by de novo review of the CAS in accordance with Article R57 of the CAS Code.

56. Finally, according to Respondent, CAS lacks jurisdiction over the Appellant's damages claims, which should in any event be rejected the merits.

V. JURISDICTION

57. This arbitral procedure is governed by the Article 176 *et seq.* of the Swiss Private International Law Act ("PILA"), as at

least one of the Parties is domiciled outside Switzerland and because the seat of the arbitration is in Switzerland (Article R27 of the CAS Code). Furthermore, the Parties have not opted out of the applicability of chapter 12 of the PILA.

58. Article R47(1) of the CAS Code provides as follows:

"An appeal against the decision of a federation, association or sports-related body may be filed with the CAS if the statutes or regulations of 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".

59. The Respondent does not contest the jurisdiction of CAS to decide appeals directed against final decisions issued by the competent bodies within the ISF, as set out in Article 13(2) of the ISF Statutes.

60. Article 13 of the ISF Statutes reads as follows:

"13 Applicable Law and Dispute Resolution
For any question or matter not specifically provided in the present statutes, or in the Internal Regulations, the laws and customs applicable in Switzerland shall apply.
Final decisions issued by the competent bodies within the ISF may be exclusively appealed before the Court of Arbitration for Sport in Lausanne, Switzerland, which will resolve the dispute definitively in accordance with the Code of sports-related arbitration. The time limit for appeal is twenty-one days after the reception of the decision concerning the appeal. The panel of arbitrators shall resolve the dispute by exclusively applying the ISF statutes and regulations and Swiss law.
Any other dispute between the ISF and any of its member or affiliated person, which does not relate to a decision issued by the ISF shall be exclusively settled by the competent courts in Lausanne, Switzerland".

61. It is undisputed that the decision of the General Assembly of 8 April 2025 constitutes a final decision passed by a legal body of the ISF and that, based on Article 13 of the ISF Statutes, CAS has jurisdiction to decide on the appeal directed against the decision of the General Assembly. This has been confirmed by the Respondent's signature of the Order of Procedure.

62. In relation to the decision of the Executive Committee of the ISF of 6 April 2025, the Sole Arbitrator is satisfied that CAS has no jurisdiction to decide on an appeal directed against such decision. As set out above, Article 13 of the ISF Statutes explicitly limits appeals to CAS to "final decisions". Article R47 of the CAS Code also requires the exhaustion of all internal remedies.

63. The content and meaning of the decision of the Executive Committee of 6 April 2025 are clear: the executive body of the ISF decided to refer the matter for decision to the competent body, the General Assembly. The Sole Arbitrator therefore shares the view of the Respondent that such referral is not, by its very nature, a "final decision" within the meaning of Article 13 of the ISF Statutes. In fact, the corporate life of a legal entity would become unmanageable if one were to declare admissible appeals directed against any kind of preparatory decisions, *i.e.* of decisions that are not final, but have the purpose of advancing a certain procedure.

64. The arguments made by the Appellant in her Answer to the Objections to Jurisdiction do not bring the Sole Arbitrator to any other conclusion: in particular, a decision to submit a matter to the decision of the General Assembly cannot be compared to a final decision closing a disciplinary procedure. Further, the Sole Arbitrator does not share the view of Appellant that the decision of the Executive Committee was "final": rather, the General Assembly was free to take any decision in relation to the position of the Appellant.

65. Against the above background, the Sole Arbitrator has no jurisdiction to decide on the appeal directed against the resolution taken on 6 April 2025 by the Executive Committee of the ISF.

66. Also disputed by the Respondent is the jurisdiction of CAS concerning the pecuniary claims submitted by the Appellant.

67. Article 13 of the ISF Statutes explicitly foresees that the jurisdiction of CAS shall be limited to appeals against final decisions. The Sole Arbitrator is satisfied that the meaning of Article 13(3), quoted above, is very clear: for any other dispute than an appeal against a final decision, CAS has no jurisdiction and the matter *"shall be exclusively settled by the competent courts in Lausanne, Switzerland"*.

68. The Appellant has not brought convincing arguments against applying the above rule. In her Answer to the Objection to Jurisdiction, the Appellant argues that the link between the Appealed Decisions and the suffered damages justifies CAS retaining jurisdiction also over those pecuniary claims.

69. In the Sole Arbitrator's view, this argument and the references made to previous CAS cases are not convincing. In the present case, the Appellant was not and is not prevented from filing a civil claim against the Respondent before the competent courts in Lausanne, as explicitly stated in Article 13(3) of the ISF Statutes.

70. In addition, the Sole Arbitrator notes that Prayer (e) seeks a compensation for the personal and financial investment made by the Appellant, in the event CAS dismisses the appeals and confirms the Appealed Decisions. Whether or not such a claim is due is admittedly totally disconnected from the issue of validity of the Appealed Decisions.

71. Considering all arguments advanced by the Parties, orally and in writing, the Sole Arbitrator is satisfied that CAS has no jurisdiction to decide the appeal directed against the resolution of the Executive Committee of the ISF of 6 April 2025 nor to decide on the pecuniary claims filed by the Appellant against the Respondent.

72. It follows from the above that CAS has jurisdiction to hear only the appeal directed against the decision of the General Assembly of 8 April 2025. Accordingly, the Sole Arbitrator will decide (i) whether or not the decision of the ISF General Assembly of 8 April 2025 shall be confirmed, and (ii) the usual financial consequences concerning arbitration costs and contribution to legal expenses, as per Article R64 of the CAS Code.

VI. ADMISSIBILITY

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

"In the absence of a time limit in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for the appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the parties".

74. Article 13 of the ISF Statutes provides a deadline to file an appeal of 21 days, starting from *"the reception of the decision concerning the appeal"*.

75. It has remained undisputed that the appeal against the decision of the ISF General Assembly of 8 April 2025 has been filed in time and in accordance with the formal requirements under the CAS Code. Accordingly, this appeal is admissible.

76. In view of the lack of jurisdiction concerning the appeal directed against the resolution of the Executive Committee of 6 April 2025 and with respect to the pecuniary claims, there is no need to decide on the formal admissibility of those requests.

VII. OTHER PROCEDURAL ISSUES

77. As indicated above, and anticipated during the Hearing, the Parties agreed that only a single Award would be issued covering both CAS proceedings.

VIII. APPLICABLE LAW

78. 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 absence of such 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".

79. Pursuant to Article 13(1) of the ISF Statutes, the Sole Arbitrator shall apply the ISF statutes and regulations and, subsidiarily, *"the laws and customs applicable in Switzerland"*.

IX. MERITS

A. The Issue at Stake

80. The main issue to be resolved by the Sole Arbitrator is whether the decision of the ISF General Assembly of 8 April 2025 violates the ISF Statutes and Regulations and/or Swiss law.

B. Competence

81. Article 2.1.1 of the ISF Statutes states that the General Assembly *"shall have the authority to decide on […] the election and dismissal of elected members of the Executive Committee"*.

82. Article 2.2.2.1(3) provides that while elections of members of the Executive Committee are held every four years, vacant positions may need to be filled *"e.g. as a result of resignation or dismissal"*.

83. The above legal framework is in line with Swiss law. Article 65 CC reads as follows:

"(1) The general meeting of members decides on admission and exclusion of members, appoints the committee and decides all matters which are not reserved to other governing bodies of the association.

(2) It supervises the activities of the governing bodies and may at any time dismiss the latter without prejudice to any contractual rights of those dismissed.

(3) The right of dismissal exists by law whenever justified by good cause".

84. The above leads to a first interim conclusion: both under the Statutes of ISF and Swiss law, the General Assembly is indeed the competent body to decide on the dismissal of a member of the ISF Executive Committee.

C. Timing

85. Under Article 65(2) CC, quoted above, a General Assembly of an association may dismiss governing bodies at any time. This is confirmed by the above quoted Articles 2.1.1 and 2.2.2.1(3) of the ISF Statutes.

86. The legal nature of the relationship between an association and a member of the executive body of such association depends on the specific circumstances, but is generally characterised as a mandate as per Article 394 *et seqq.* CO or, in case the member of the executive body is an employee of the association, as employment agreement as per Article 319 *et seqq.* CO (see, *ex multis*, RIEMER H. M., Berner Kommentar, 2023, Art. 69 N 20 *et seqq.*).

87. Unlike a suspension or a fine, the dismissal of a member of an executive body is not *per se* a disciplinary sanction. While under certain circumstances disciplinary grounds may motivate the decision, the measure is primarily the exercise of the governance power granted by the law to the general assembly of an association, and, in this case, confirmed by the ISF Statutes.

88. The above explains why a dismissal of a member of an executive body of an association can be decided by the competent corporate body, in principle, at any time. A dismissed member may have, depending on the circumstances, a contractual claim for the payment of certain salary, if the member is an employee, or compensation for some expenses, if the requirements under the relevant contract justify such a claim. But a member of an executive body cannot somehow insist on the strict compliance with any term of office.

89. This is in any event the case for those associations that, like the ISF, do not limit the right of the competent body to dismiss a member of the executive body. As anticipated above, under Swiss law it is recognised that the role of a general assembly to act as highest monitoring body of an association includes the right of the assembly to dismiss members of the executive body of the association at any time, independently of whether such dismissal terminates a mandate of an elected person before the expiry of the originally foreseen term of office. The power to dismiss a member of the executive body is not limited nor restricted by the existence of valid grounds, by the presence of fault of the relevant member of the executive body or by the compliance with any termination notice period (RIEMER H. M., *op. cit.*, Art. 65 N 16).

90. However, Swiss law allows an

association to limit the power to dismiss at any time a member of the executive body only in situations where valid grounds exist. In fact, Article 65(3) CC reads: *"The right of dismissal exists by law whenever justified by good cause"*. The Sole Arbitrator notes that the ISF has not made use of such right, and no limitation of the power to dismiss has been inserted in the ISF Statutes.

91. The above leads to a further interim conclusion, namely that the validity of the decision of the General Assembly of 8 April 2025 cannot be questioned for timing reasons.

D. Procedural Grounds for Nullity or Invalidity of the decision of the General Assembly

92. The Sole Arbitrator must now review whether any procedural defects or mistakes occurred that would warrant the annulment of the decision of the General Assembly of 8 April 2025 or even trigger, as argued by the Appellant, the nullity of the decision.

93. Before reviewing the procedural arguments raised by the Appellant in detail, it should be clarified that under Swiss law only *serious formal deficiencies* and/or *serious deficiencies in terms of content* may be considered as grounds to admit the nullity of a final decision of an association (cf. *ex multis* RIEMER H. M., *op. cit.*, Art. 75 N 107 *et seqq.*).

94. The Appellant alleges multiple breaches of a formal nature: non-compliant convening, late communication of documents and agenda specifics, imbalance in speaking time, late confirmation of counsel attendance, the violation of the right to be heard and reliance on fabricated, manipulated, and incomplete information.

95. On the basis of the evidence submitted, the Sole Arbitrator is not satisfied that the decision of the General Assembly of 8 April 2025 is affected by any serious deficiencies.

96. The Sole Arbitrator notes that on 3 April 2025, *i.e.* five days before the General Assembly, the Appellant sent a letter to the ISF of 13 pages, asking among other things that, in case the General Assembly of 8 April 2025 were asked to vote on the dismissal of the Appellant, the Executive Body of the ISF had to *"(a) ensure that the present letter is shared with all ISF members called to attend the general assembly, sufficiently in advance to allow them to make an informed decision when casting their votes, and (b) provide formal proof that the present letter has been distributed to all members invited to the general assembly"*.

97. On 6 April 2025, the Executive Committee met, resolved to submit the matter to the General Assembly and accepted the Appellant's request that her letter be shared with all ISF members.

98. On 7 April 2025, the Appellant was informed of the resolution of the Executive Committee and was provided with the evidence that her letter of 3 April 2025 had been shared, as she had requested, with all ISF members.

99. On the same day, the Appellant sent a further letter to the ISF, requesting that this second letter also be shared with all members of the ISF or, if the letter *"should be impossible to transmit"*, that it be read aloud at the General Assembly. Further, the Appellant asked that her Counsel be permitted to attend the General Assembly.

100. What the above shows is that at no time the Appellant considered it inappropriate for the matter to proceed or that a decision on 8 April 2025 by the ISF General Assembly would be null and void. She expressed her surprise at the short notice time, but she simply requested that her two letters be shared with the ISF members and that her lawyer be permitted to attend the General Assembly. At no time the Appellant requested a postponement of the General Assembly, nor did she argue that such a General Assembly would not be able to take a valid decision. She wanted to make her case, which is of course legitimate.

101. The Sole Arbitrator acknowledges that the ISF complied with the requests advanced by the Appellant: the letters of 3 and 6 April 2025 were shared with all ISF members, and the Appellant's Counsel was entitled to speak at the General Assembly, before the Assembly voted on the dismissal of the Appellant. Further, it has remained undisputed that the Agenda of the General Assembly included the standard item *"If applicable, election and dismissal of ISF Officials"*.

102. Accordingly, the Sole Arbitrator is satisfied, on the basis of the evidence available, that the formal arguments raised by the Appellant cannot be upheld, and the decision taken by the General Assembly on 8 April 2025 does not suffer from formal deficiencies. The ISF members had been aware that the Agenda of the General Assembly included the possible dismissal of ISF Officials; they also had received the correspondence that the Appellant has requested the ISF to provide to the members; there is no evidence available that would indicate that the vote at the General Assembly of 8 April 2025 was considered by any ISF member and/or by the Appellant herself, unacceptable in time and form.

103. Further, the Appellant also argues that her right to be heard had been violated. The Sole Arbitrator notes that the ISF asked an independent person, Ms Brouleau, to conduct an investigation; that the ISF Executive Committee acknowledged the letters of the Appellant of 3 and 7 April 2025; that they were shared with the ISF members; and that the Appellant's Counsel had the right to speak at the Assembly. Accordingly, even if the time granted to Counsel to present the case of the Appellant was relatively short, the Sole Arbitrator does not share the view of the Appellant that her right to be heard had been violated. Rather, the members of the ISF, when they voted on the dismissal of the Appellant had been aware of her position and her arguments, set out in detail in the letter of 3 April 2025 (of 13 pages) and reaffirmed both in the letter of 7 April 2025 and in the oral statement of the Appellant's Counsel. Accordingly, the Sole Arbitrator finds no breach of the Appellant's right to be heard invalidating the decision.

E. Other Grounds for Annulment

104. Finally, the Appellant argues that the decision to dismiss her was taken on the basis of fabricated, manipulated and incomplete information and that based on Article 28 of the Swiss Federal Code of Obligations ("CO"), the decision shall be annulled.

105. Article 28 CO is part of the rules relating to defects of the consent of parties when

concluding an agreement. The Appellant argued that *"a decision obtained by deceit may be annulled because the consent of the decisionmaker is then considered to have been obtained through fraud"*. The Appellant however did not indicate why and how Article 28 CO could apply, *mutatis mutandis*, not only to the conclusion of a contract but also to the decision of a member of an association on how to vote on a certain issue.

106. The issue of the applicability of Article 28 CO can, in any event, be left open in the present case. Article 75 CC foresees the possibility of a challenge of a final decision of a general assembly of a Swiss association, in cases where the decision violates the Statutes and the rules of the association and/or the law. If an executive body of an association willingly and maliciously submits wrong, fake, fabricated information to the members of the association, to induce fraudulently the members to vote in a certain manner, it is likely that in so doing such executive body violates its duties under the Statutes and the law.

107. The Sole Arbitrator, however, is not satisfied that the ISF Executive Body can be reproached with such kind of fraudulent activity in the circumstances of the present case. In particular, after careful consideration of all evidence submitted, the Sole Arbitrator is not satisfied that the General Assembly had been provided, by either the Appellant or the Executive Committee, with fabricated, manipulated or incomplete information. Rather, the Sole Arbitrator, on the basis of the evidence presented by the Parties, is satisfied that both the Appellant and the ISF Executive Committee have submitted to the attention of the ISF members the factual basis that they considered in good faith to be accurate and relevant.

108. Accordingly, the Sole Arbitrator finds no deceit invalidating the decision of the ISF General Assembly of 8 April 2025.

F. Conclusion

109. Given the above, the appeal fails. The decision of the ISF General Assembly of 8 April 2025 does not violate the ISF Statutes nor the ISF Regulations nor Swiss law. Therefore, the request to annul that decision shall be rejected.

G. Other Prayers for Relief and Requests

110. The above conclusion on the merits, together with the lack of jurisdiction of CAS to decide on the requests concerning the decision of the Executive Committee of 6 April 2025 and those relating to pecuniary claims, makes it unnecessary for the Sole Arbitrator to consider the other requests submitted by the Parties.

111. Accordingly, all other requests and prayers of the Parties are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Court of Arbitration for Sport does not have jurisdiction to rule on the appeal filed on 23 April 2025 by Ms Sophie Bordet with respect to the decision rendered by the Executive Committee of the International School Sport Federation on 6 April 2025 in procedure *CAS 2025/A/11388*.

2. The Court of Arbitration for Sport does not have jurisdiction to rule on the pecuniary claims submitted by Ms Sophie Bordet against the International School Sport Federation in procedures *CAS 2025/A/11388* and *CAS 2025/A/11389*.

3. The appeal filed on 23 April 2025 by Ms Sophie Bordet with respect to the decision rendered by the General Assembly of the International School Sport Federation on 8 April 2025 in procedure *CAS 2025/A/11389* is admissible.

4. The appeal filed on 23 April 2025 by Ms Sophie Bordet with respect to the decision rendered by the General Assembly of the International School Sport Federation on 8 April 2025 in procedure *CAS 2025/A/11389* is dismissed.

5. (…).

6. (…).

7. All other or further claims and counterclaims are dismissed.

CAS 2025/A/11592
Russian Luge Federation *et al.* v. International Luge Federation (FIL)
award of 22 January 2026 (operative part of 31 October 2025)

Luge; Eligibility to participate in competitions; CAS jurisdiction; Exceptions to the exhaustion of internal remedies; Admissibility of a request for relief; Autonomy of the association and its limits; Standing to sue or to appeal; Powers of the FIL Executive Board; Proportionality of a measure; Legality of an overall ban of all Russian athletes and support personnel

Panel
Prof. Luigi Fumagalli (Italy), President
Mrs Annett Rombach (Germany)
Prof. Christoph Vedder (Germany)

1. **To be valid, an arbitration agreement must contain or at least permit the determination of the following four elements: the identity of the parties, the dispute(s) covered by the agreement, the parties' consent to refer such disputes to arbitration, and a direct or indirect connection to a legal system. A letter by which an authorised representative of a federation (i) indicates that the federation, being fully informed of the dispute and of the claims, expressly and unequivocally accepts that the matter be handled directly by CAS, and (ii) appoints without any reservation an arbitrator from the CAS list, is sufficient to confer jurisdiction to the CAS.**

2. **The condition of the exhaustion of all internal remedies is intended to afford the internal bodies of a federation the opportunity to take a final decision on a disputed matter, in order to ensure that all the relevant rules, applicable to the case at stake, are fully complied with, to put right an alleged violation thereof and to prevent further appeals to the CAS. Although it pays tribute to the freedom of organization of the sports entity in question, it is therefore based on the assumption that the internal legal order will provide effective remedies for the violations of its internal rules. As a result, the internal remedies must be readily and effectively available to the aggrieved party and must give access to a definite procedure. If not, their omission, therefore, does not prevent the exercise of jurisdiction by CAS.**

3. **A vague and generic claim seeking an action for which no legal basis is offered is not admissible.**

4. **While the principle of deference and respect to the autonomy of associations is of paramount importance in sports law, it is however not absolute. The decision of a sports governing body can be afforded deference and respect, but only subject to the obligation of such body to act fairly, in accordance with any applicable mandatory law(s) and with its own rules and regulations, and in a way that is not irrational, capricious, or arbitrary.**

5. **Standing to sue (or to appeal) is attributed to a party which can validly invoke the rights which it puts forward, on the basis that it has a legally protectible and tangible interest at stake in litigation. This**

corresponds to the Swiss legal notions of *"légitimation active"* or *"qualité pour agir"*. Parties which have a direct, personal and actual interest are considered to have legal standing to appeal to the CAS. At the same time however, parties who are sufficiently affected by a decision and who have a tangible interest of a financial or sporting nature at stake may bring a claim, even if they are not the direct addressees of the measure being challenged.

6. Article 4.5.8 of the FIL Statutes allows the FIL Executive Board to adopt measures that would be outside its competence (e.g., the suspension of the membership rights of a member federation), but only in the event extreme situations arise and provided that the measures are *"appropriate"* to achieve the stated purpose. Two conditions need to be satisfied for *"appropriate"* measures to be taken and for the Ordinary Congress to approve their continuation: (a) causal link between the persons concerned and the events giving rise to the need to adopt the measures, so that only those who created the case can be targeted by the measure; and (b) the proportionality of the measure.

7. The principle of proportionality implies that there must be a reasonable balance between the measure and its stated purpose. To be observed, the principle of proportionality requires that (i) the measure taken by the governing body is capable of achieving the envisaged goal, (ii) the measure taken by the governing body is necessary to reach the envisaged goal, and (iii) the constraints which the affected person will suffer as a consequence of the measure are justified by the overall interest to achieve the envisaged goal. In other words, to be proportionate a measure must not exceed what is reasonably required in the search of the justifiable aim.

8. Only in respect of Russian athletes who are found to support the Russia-Ukraine War may the adoption of restrictions in search of the justifiable aim to ensure safety and safe racing conditions at FIL events appear proportionate, as their participation may provoke incidents jeopardizing the safety of competitions to a greater extent than participation of athletes who have no involvement, of whatever nature, in the Russia-Ukraine War. An overall ban of all Russian athletes (and support personnel) is inconsistent also with the first condition set out by Article 4.5.8 of the FIL Statutes for the adoption of the measures therein contemplated: the existence of a causal link between the persons concerned and the events giving rise to the need to adopt the measures, so that only those who created the case can be targeted by the measure.

I. THE PARTIES

1. The Russian Luge Federation (the "RLF") is the national governing body for the sport of luge in Russia. It is affiliated to the International Luge Federation.

2. Mr Aleksandr Gorbatsevich, Ms Sofiia Mazur, Mr Andrei Bogdanov, Mr Iurii Prokhorov, Ms Ekaterina Fomina and

Ms Polina Grigoreva (the "Individual Athletes") are luge athletes of international level from Russia. They are affiliated to the RLF and are members of the Russian national luge team.

3. The International Luge Federation (the "FIL" or the "Respondent") is the world governing body for the international sport of luge, recognised as such by the International Olympic Committee (the "IOC").

4. The RLF and the Individual Athletes will be hereinafter collectively referred to as the "Appellants".

5. The Appellants and the Respondent together are referred to as the "Parties".

II. BACKGROUND FACTS

6. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced during these proceedings. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this award only to the submissions and evidence it considers necessary to explain its reasoning.

7. On 24 February 2022, the Russian-Ukraine military conflict began. This will be described neutrally as the "Russia-Ukraine War".

8. On 24 February 2022 the IOC issued a press statement according to which it *"condemn*[ed] *the breach of the Olympic Truce by the Russian government"*.

9. On 25 February 2022, the Executive Board of the IOC (the "IOC EB") issued a statement recommending, *inter alia*, that all International Sports Federations (the "IFs") relocate or cancel any sports events planned in Russia or Belarus, and to *"take the breach of the Olympic Truce by the Russian and Belorussian governments into account and give the safety and security of the athletes absolute priority"*.

10. On 28 February 2022, the IOC EB issued the following resolution:

> *"1. In order to protect the integrity of global sports competitions and for the safety of all the participants, the IOC EB recommends that International Sports Federations and sports event organisers not invite or allow the participation of Russian and Belarusian athletes and officials in international competitions.*
>
> *2. Wherever this is not possible on short notice for organisational or legal reasons, the IOC EB strongly urges International Sports Federations and organisers of sports events worldwide to do everything in their power to ensure that no athlete or sports official from Russia or Belarus be allowed to take part under the name of Russia or Belarus. Russian or Belarusian nationals, be it as individuals or teams, should be accepted only as neutral athletes or neutral teams. No national symbols, colours, flags or anthems should be displayed.*
>
> *Wherever, in very extreme circumstances, even this is not possible on short notice for organisational or legal reasons, the IOC EB leaves it to the relevant organisation to find its own way to effectively address the dilemma described above.*
>
> *In this context, the IOC EB considered*

in particular the upcoming Paralympic Winter Games Beijing 2022 and reiterated its full support for the International Paralympic Committee (IPC) and the Games.

3. *The IOC EB maintains its urgent recommendation not to organise any sports event in Russia or Belarus, issued on 25 February 2022.*

4. *The IOC EB has, based on the exceptional circumstances of the situation and considering the extremely grave violation of the Olympic Truce and other violations of the Olympic Charter by the Russian government in the past, taken the ad hoc decision to withdraw the Olympic Order from all persons who currently have an important function in the government of the Russian Federation or other government-related high-ranking position, including the following:*

   - *Mr Vladimir Putin, President of the Russian Federation (Gold, 2001)*
   - *Mr Dmitry Chernyshenko, Deputy Prime Minister of the Russian Federation (Gold, 2014)*
   - *Mr Dmitry Kozak, Deputy Chief of Staff of the Presidential Executive Office (Gold, 2014)*

5. *The IOC EB welcomes and appreciates the many calls for peace by athletes, sports officials and members of the worldwide Olympic Community. The IOC admires and supports in particular the calls for peace by Russian athletes.*

6. *The IOC EB reaffirms its full solidarity with the Ukrainian Olympic Community. They are in our hearts and thoughts. The IOC EB commits to continue and strengthen its efforts for humanitarian assistance. Therefore, the IOC EB has today established a solidarity fund. In this context, the IOC expresses its gratitude to the National Olympic Committees (NOCs) and International Sports Federations that are already supporting Ukrainian athletes and their families".*

11. On 2 March 2022, the FIL Executive Board (the "FIL EB") held an emergency meeting in response to the situation in Ukraine, condemning, *"in the strongest terms"*, the invasion of Ukraine by the Russian and Belarus governments and adopting the following sanctions (the "March 2022 Decision"), effective immediately and which were to last until further notice as follows:

    "• Russia is ineligible to host any FIL sanctioned events

    - *All Russian athletes, coaches and officials are excluded from all FIL sanctioned events*
    - *Russian representatives appointed by the FIL Executive Board to various Commissions and Working Groups are suspended from their positions*
    - *The FIL will initiate an investigation into certain derogatory and disturbing social media posts by Russian athletes directed at Ukraine".*

12. On 16 March 2022, the RLF challenged these sanctions before the FIL Court of Arbitration (the "FIL CoA"), requesting

it to set aside the March 2022 Decision. In support of its request, the RLF submitted that the FIL EB had no power to adopt the March 2022 Decision and that the March 2022 Decision was discriminatory and therefore was contrary to the FIL Statutes.

13. On 7 April 2022, the FIL CoA issued an award setting aside the March 2022 Decision (the "CoA Award") and annulling all measures imposed against the RLF. More specifically, the FIL CoA found that

    i. *"the Statutes and Regulations of the FIL are clear. The EB has no jurisdiction to declare the RLF ineligible to host any FIL sanctioned events"*; and

    ii. *"the collective actions against all Russian athletes, coaches, officials and even the Russian representatives appointed by the EB in FIL Commissions and Working Groups is based only on the nationality of the individuals concerned, and to be regarded as prohibited political discrimination"*.

14. On 11 April 2022, the FIL EB issued a public statement regarding the CoA Award, stating *inter alia* that:

    "[…] Even knowing that the measures against the Russian Luge Federation have been lifted for legal reasons, the FIL Executive Board is still fully committed to the measures decided on March 2nd, 2022 until revoked […]".

15. On 25 April 2022, FIL announced that its 70th Ordinary Congress would take place in Hall in Tirol, Austria, on 18 and 19 June 2022.

16. On 23 May 2022, FIL transmitted to its members a revised draft of its Statutes. Such draft (the "May 2022 Draft") contained some proposed modifications, including (to the extent relevant in this arbitration) to Articles 1.5 and 4.5.8.

17. On 17 June 2022, FIL transmitted to its members a second revised draft of its Statutes. Such draft (the "June 2022 Draft") contained some amendments to the modifications to Articles 1.5 and 4.5.8 set out in the May 2022 Draft. In the email circulating the June 2022 Draft, FIL explained that the *"few changes"* to the Statutes were proposed *"in consideration of Austrian law and after having been advised by an Austrian legal expert"*.

18. On 18 and 19 June 2022, the 70th FIL Ordinary Congress took place. At this occasion, modifications to the FIL Statutes were approved, corresponding to those contained in the June 2022 Draft (the "FIL Statutes"). So far as relevant in this arbitration, the provision in the Statutes so approved, and chiefly its Article 4.5.8, correspond to those currently in force.

19. On 14 September 2022, the UN Special Rapporteurs in the field of cultural rights and on contemporary forms of racism, racial discrimination, xenophobia and related intolerance sent a letter to the IOC raising some concerns regarding the decision of the IOC EB which imposed and recommended sanctions on Russian and Belarusian athletes.

20. On 23 September 2022, the FIL EB adopted a resolution (the "Emergency Resolution"), taken on the basis of Article 4.5.8 of the FIL Statutes as follows:

    "In view of the war of aggression currently being waged by the Russian Federation against Ukraine, the suspension of all rights to participation of athletes, assistants, coaches, and

other officials of the Russian Luge Federation in FIL-sanctioned competitions is ordered until further notice in order to ensure safe, peaceful, and upright athletic competitions.

The presence of Russian athletes, assistants, coaches, and other officials from the Russian Luge Federation during the staging of FIL-sanctioned sport competitions is associated with the high risk that the safety, peacefulness and integrity of these competitions and their participants (including those of the Russian Federation itself) are gravely endangered. This risk is based on the causal personal involvement of the named persons in these FIL competitions and cannot be replaced by a less drastic measure, so that the suspension of participation is proportionate if and as long as the hostilities in Ukraine continue as a reason for this measure".

21. On 28 March 2023, the IOC, following consultations within the Olympic Movement, adopted some recommendations concerning the participation of Russian and Belarusian athletes to international competitions as Individual Neutral Athletes ("AIN"), subject to some criteria (the "IOC AIN Criteria"), as follows*:*

"1. Athletes with a Russian or a Belarusian passport must compete only as Individual Neutral Athletes.

2. Teams of athletes with a Russian or Belarusian passport cannot be considered.

3. Athletes who actively support the war cannot compete. Support personnel who actively support the war cannot be entered.

4. Athletes who are contracted to the Russian or Belarusian military or national security agencies cannot compete. Support personnel who are contracted to the Russian or Belarusian military or national security agencies cannot be entered.

5. Any such Individual Neutral Athlete, like all the other participating athletes, must meet all anti-doping requirements applicable to them and particularly those set out in the anti-doping rules of the IFs.

6. The sanctions against those responsible for the war, the Russian and Belarusian states and governments, must remain in place:

a. No international sports events organised or supported by an IF or NOC in Russia or Belarus.

b. No flag, anthem, colours or any other identifications whatsoever of these countries displayed at any sports event or meeting, including the entire venue.

c. No Russian and Belarusian government or state official can be invited to or accredited for any international sports event or meeting".

22. At the same time, the IOC indicated that:

"these recommendations do not concern the participation of athletes and their support personnel with a Russian or Belarusian passport at the Olympic Games Paris 2024 or the Olympic Winter Games Milano Cortina 2026. The IOC will take this decision at the appropriate time, at its full discretion, and without being bound by the results of previous Olympic qualification competitions".

23. On 17 and 18 June 2023, the 71st FIL Ordinary Congress took place in Bucharest, Romania, and the Emergency Resolution was confirmed in its effects.

24. On 25 October 2023, the IOC issued a statement to address, in a *"Q&A"* format, the issues raised by the exclusion of athletes with a Russian or Belarusian

passport. In such document, the IOC AIN Criteria were confirmed and explained.

25. On 14 and 15 June 2024, the 72nd FIL Ordinary Congress took place in Lake Placid, USA, confirming the continued application of the Emergency Resolution.

26. On 18 June 2025, the 73rd FIL Ordinary Congress, held in Tampere, Finland, approved resolutions (jointly the "Appealed Decision"):

    i. to confirm the Emergency Resolution, *"since the situation has not changed since last year's Congress"* (Congress Resolution 05/25, approved with 24 votes in favour and 7 votes against); and

    ii. to reject the proposal to authorize the FIL EB to create and implement an AIN program to enable Russian neutral athletes and their entourage to participate in the 2026 Olympic Winter Games Milano-Cortina 2026 (the "2026 OWG") and in the training weeks and qualifying competitions (Congress Resolution 07/25, proposal rejected, having obtained only 8 votes in favour and 24 votes against). Such proposal was explained in a document dated 10 June 2025, contained as Enclosure 7 to the Congress documentation ("Enclosure 7").

27. The adoption of the Appealed Decision was described as follows on the FIL website:

    "FIL Congress disallows Russian athletes from Milano-Cortina 2026.

    Tampere (FIL/June 18, 2025) At its 73rd Congress in Tampere, Finland, the International Luge Federation (FIL) has voted to continue the exclusion of Russian athletes from FIL competitions, including the qualification process for the Olympic Winter Games Milano-Cortina 2026. The decision was made through a democratic vote held on June 18, 2025.

    Agenda item 8.2 once again addressed whether Russian athletes and officials should remain excluded from the FIL events, in line with the resolutions passed by the FIL Executive Board on September 23, 2022, and reaffirmed at the 72nd FIL Congress in Lake Placid in 2024.

    A lively and engaged discussion followed among the Congress delegates. Leon Felderer, Chair of the FIL Athletes' Commission, presented the results of an anonymous survey conducted among athletes from artificial and natural track disciplines. The survey revealed a broad range of concerns and opinions regarding safety, Olympic quotas, anti-doping compliance, and fairness. 'Athletes hold a wide range of views. There are many concerns and arguments on both sides', Felderer summarized.

    The first vote asked whether to uphold the 2022 and 2024 resolutions. 24 delegates voted in favor of continuing the exclusion, while seven voted against and one ballot was invalid.

    A second vote followed, in which the Congress decided not to authorize the FIL Executive Board to develop an AIN program for neutral Russian athletes. As a result, Russian athletes and their entourage will not be permitted to participate in the 2026 Olympic Winter Games. Again, 24 delegates voted for the exclusion, while eight supported the possibility of participation under the AIN (Athletes with Individual Neutrality) concept.

    FIL President Einars Fogelis commented on the decision: 'The Congress has made its position

clear. This outcome reflects our collective responsibility to uphold fair and safe competition. We fully respect the diversity of views within our community, especially from our athletes.'

With this decision, the FIL reaffirms its commitment to integrity, safety, and solidarity in international sport".

28. On 19 September 2025, the IOC EB, considering *"the experience of the Olympic Games in Paris, during which 32 athletes with a Russian or Belarusian passport from 10 different sports took part, without any incident on or off the field of play"*, confirmed the IOC AIN Criteria also for the 2026 OWG, and adopted in such respect the *"Principles Relating to the Implementation of the Participation for Individual Neutral Athletes and their Support Personnel with a Russian or Belarusian Passport at the Olympic Winter Games Milano Cortina 2026".*

III. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

29. On 8 July 2025, the Appellants filed with the Court of Arbitration for Sport ("CAS") a Statement of Appeal pursuant to Article R47 of the CAS Code of Sports-related Arbitration (the "CAS Code"), to challenge the Appealed Decision (the "Appeal"). In the Statement of Appeal, the Appellants, *inter alia*, nominated Ms Annett Rombach, Attorney-at-law in Frankfurt am Main, Germany, as an arbitrator.

30. On the same day, the Appellants sent a letter to the Respondent in order to inform it of the filing of the Appeal and to request it, *inter alia*, that it confirmed *"its agreement that jurisdiction lies with CAS"* to deal with the matter.

31. On 9 July 2025, the FIL, in a letter sent by his counsel, specified to the Appellants that it could not confirm its agreement to the CAS jurisdiction, because it would be for the FIL CoA to decide on the dispute in the first instance.

32. On 16 July 2025, the Appellants filed also with the FIL CoA an appeal against the Appealed Decision (the "Appeal to the FIL CoA"). In a letter to the CAS Court Office of the same date, the Appellants wrote that:

"The Appellants maintain that the CAS clearly has exclusive jurisdiction over this dispute, given its Olympic nature and the absence of any legal avenue within the FIL Statutes or Regulations to challenge a Congress decision of the type and nature of the Challenged Decision.

However, in light of the undue objection to CAS jurisdiction raised by the FIL in its letter dated 9 July 2025 […], and notwithstanding the Appellants' firm position that CAS retains exclusive jurisdiction, the Appellants have, in good faith, filed an appeal today before the FIL Court of Arbitration […] in order to pre-empt any argument by the FIL that internal remedies have not been exhausted […].

This step is taken strictly without prejudice, and on the express condition that the FIL COA proceedings constitute an effective remedy, including the implementation of an expedited timetable, as requested in the appeal brief, in order to secure a decision in time for Milano-Cortina 2026.

In light of the above, the Appellants respectfully request the immediate suspension of the present CAS proceedings, including the suspension of the current deadline to file the Appeal Brief, until notification of the final decision of the FIL

CoA pursuant to the expedited timetable, i.e. until 1st September 2025.

The Appellants expressly reserve their right to reactivate the CAS proceedings should the FIL CoA proceedings fail to provide an effective and timely remedy, particularly in view of the fast-approaching Olympic Winter Games Milano-Cortina 2026".

33. On 17 July 2025, the CAS Court Office invited the Respondent to comment on the Appellants' request for suspension of the CAS proceedings.

34. On 21 July 2025, the President of FIL sent to the CAS Court Office a letter as follows:

"Due to a brief health issue affecting our FIL Legal Commission Chairman Dr. Christian Krähe, I am writing to you as President of the International Luge Federation (FIL) to provide the following information on this matter:

- *The FIL would like this case to be handled directly by the CAS without prior referral to the FIL's internal arbitration tribunal.*
- *The FIL nominates Prof. Dr. Christoph Vedder (Munich / Germany) as arbitrator".*

35. On 22 July 2025, the CAS Court Office informed the Parties that, as a result of the Respondent's letter, the suspension of the procedure was lifted with immediate effect.

36. On 8 August 2025, the Appellants filed with the CAS Court Office their Appeal Brief pursuant to Article R51 of the CAS Code, together with a bundle of documents, which included the witness statements of the Individual Athletes and an expert report signed by Prof. Vincent Chetail.

37. On 27 August 2025, the Respondent filed with the CAS Court Office its Answer to the Appeal, pursuant to Article R55 of the CAS Code, objecting to the jurisdiction of CAS and seeking in any case the dismissal of the Appeal. In its Answer, the Respondent indicated some witnesses, including an expert (Prof. Patricia Wiater), to be heard at the hearing and agreed to an expedited procedure within the meaning of Article R44.4 of the CAS Code.

38. On 2 September 2025, the CAS Court Office, acknowledging the receipt of the Answer submitted by the Respondent, in a letter to the Parties:

- invited the Appellants to file their written submission on the issue of jurisdiction raised by the Respondent;
- noted that the Respondent agreed to the expedited the procedure and, therefore, invited the Appellants to provide their comments on the matter;
- invited the Parties to express a preference as to the holding of a hearing or whether they wished the Panel to decide on the basis of their written submissions.

39. On 5 September 2025, the Appellants informed the CAS Court Office that:

"[…] we acknowledge the Respondent's agreement to an expedited procedure, which we welcome.

The Appellants further confirm their preference for a hearing to be held and respectfully request

that a case management conference be convened at the earliest practicable opportunity.

With regard to the expedited procedure, we respectfully propose the following calendar: […]".

40. On 8 September 2025, the CAS Court Office invited the Respondent to comment on the expedited procedural calendar proposed by the Appellants.

41. By letter of 9 September 2025, the Appellants confirmed their preference that a hearing and a case management conference (CMC) be held. At the same time, the Appellants filed their Reply on jurisdiction.

42. On 9 September 2025, the Respondent wrote to the CAS Court Office that:

"[…] we can confirm that the Respondent is attaching great importance to a hearing to be held in these proceedings.

However, a case management conference is not necessary as a preparation of the hearing will not be required due to lack of procedural issues and the absence of necessity to organize the taking of evidence.

We do not support the calendar of expedited procedure proposed by the Appellants, but leave it to the Panel to decide on the program of the expedited procedure".

43. On 9 September 2025, the CAS Court Office noted that under Articles R55(4) and (5) of the CAS Code, the Panel would rule on its own jurisdiction either preliminarily or in the final award, and that in the absence of an agreement the arbitration would not be expedited.

44. On 12 September 2025, the Appellants informed the CAS Court Office that:

"[…] As both parties have agreed on the principle of an expedited procedure, without however agreeing on any schedule, I request that the Panel be constituted as a matter of emergency. […]

I further request that a Case Management Conference(CMC) be convened at the earliest possible date in order to discuss the next steps of the procedure to allow for an award to be issued in time for the Appellants to take part in qualifying events for the Winter Olympic Games Milano Cortina 2026".

45. On 18 September 2025, the CAS Court Office informed the Parties that Prof. Luigi Fumagalli, Professor and Attorney-at-Law in Milano, Italy, had been appointed as President of the Panel in the present case.

46. On 19 September 2025, the Appellants challenged the nomination of Prof. Fumagalli as President of the Panel pursuant to Article R34 of the CAS Code.

47. On 23 September 2025, the CAS Court Office invited the Respondent and the arbitrators to provide their comments on the petition for challenge submitted by the Appellants.

48. On 24 September 2025, Prof. Fumagalli sent a letter to the CAS Court Office confirming his availability to sit in the Panel *"with open mind to fairly adjudicate in fully independent capacity the Parties' claims".*

49. On 25 September 2025, the Appellants sent a letter to the CAS Court Office, requesting that two additional documents be admitted to the file, as follows:

"On behalf of the Appellants, and pursuant to Article R56 of the CAS Code, please find

enclosed the IOC Guidelines issued on 19 September 2025 by the IOC Executive Committee, entitled 'Individual Neutral Athletes to compete at Milano Cortina 2026 Olympic Winter Games under the same conditions as for Paris 2024', together with the related press release. (…).

These documents confirm (i) the continued admission of Individual Neutral Athletes (AIN) for Milano-Cortina 2026 under the same regime as Paris 2024, and (i) that at Paris 2024, 32 athletes with a Russian or Belarusian passport from 10 sports competed as neutrals 'without any incident on or off the field of play'.

It is directly material to the issues of the Challenged Decision's non-compliance with the IOC framework (contrary to its own assertions), of proportionality, non-discrimination, of the feasibility of neutral participation, and the availability of less-restrictive measures, all of which are central to the Appellants' case. We therefore respectfully request that it be admitted into evidence".

50. On 25 September 2025, the CAS Court Office invited the Respondent to comment by 30 September 2025 on the Appellants' request to admit their two new exhibits to the file.

51. On 25 September 2025, the Respondent in a letter to the CAS Court Office requested that the Appellants' challenge of the appointment of Prof. Fumagalli be dismissed.

52. On 26 September 2025, Prof. Vedder sent a message to the CAS Court Office stating that, following the reasoned response of Prof. Fumagalli to the Appellants' challenge, he had no further comments.

53. On 29 September 2025, the CAS Court Office, referring to the letters submitted by Prof. Fumagalli, Prof. Vedder and the Respondent, invited the Appellants to confirm whether they intended to maintain their challenge against the appointment of Prof. Fumagalli. The Parties were further informed that, should the challenge be confirmed, the Challenge Commission of the International Council of Arbitration for Sport (the "Challenge Commission") would issue an order pursuant to Article R34 of the CAS Code.

54. On 1 October 2025, the Respondent requested that the new exhibits submitted by the Appellants not be admitted to the case file, since:

"The IOC principles relating to the implementation of the participation for AIN-athletes and their support Personnel with Russian passports at the upcoming Olympic Winter Games Milano Cortina 2026 do not really contain new maxims other than those which were applied during the Paris Summer Games.

Therefore these principles were already discussed extensively in the correspondence of the parties.

Moreover, the IOC principles are not relevant as far as the legal issues of this case are concerned which is dealing with the legal validity of resolutions passed during the FIL Congress in Juni 2025 when the IOC documents had not been published yet. […]".

55. On 1 October 2025, the CAS Court Office informed the Parties that the admissibility of those exhibits would be determined by the Panel.

56. On 2 October 2025, the Appellants informed the CAS Court Office that they maintained their challenge against Prof. Fumagalli.

57. On 3 October 2025, Prof. Fumagalli, in a message to the CAS Court Office, confirmed his position as independent of the Parties and impartial, and that he remained available for a fair adjudication of the dispute.

58. On 8 October 2025, on behalf of the Panel, the CAS Court Office informed the Parties that, in view of the Appellants' request that the Award be rendered by the end of October 2025, the Panel had decided to identify a provisional hearing date without awaiting the decision of the ICAS Challenge Commission, and stated that the hearing date would however only be confirmed upon receipt of the Order on Challenge.

59. On 16 October 2025, the CAS Court Office, following correspondence with the Parties, informed them that the Panel would be available for a hearing in this matter on 24 October 2025.

60. On 23 October 2025, the CAS Court Office:

    i. transmitted to the Parties a copy of the operative part of the Order on Challenge issued by the Challenge Commission, dismissing the Appellants' petition;

    ii. confirmed that the hearing would take place on 24 October 2025 by video link;

    iii. submitted to the Parties a tentative hearing schedule prepared by the Panel;

    iv. provided the Parties with an order of procedure (the "Order of Procedure");

    v. informed the Parties that the Panel would rule on its jurisdiction in the final award.

61. On the same 23 October 2025:

    i. the Respondent in correspondence addressed to the CAS Court Office:

        a. returned a signed copy of the Order of Procedure, confirming in a handwritten note that it objected to the CAS jurisdiction;

        b. in a separate letter, while indicating the names of the witnesses that would attend the hearing, *"complain[ed] about the lacking of fairness of the procedure and urge[d] the Panel to guarantee fair conditions to all parties and participants"*, since *"the start time of the hearing was communicated less than 24(!) hours before its beginning, so that the requirements of a serious preparation of the hearing could not been met any more, especially as the witnesses from European and American countries could not be instructed in due course"*;

        c. confirmed, following a request for clarification by the CAS Court Office, that the expert Prof. Wiater would not be presented during the hearing;

    ii. the Appellants, in a letter to the CAS Court Office:

        a. returned a signed copy of the Order of Procedure,

amending it to specify the basis on which the CAS jurisdiction was invoked;

b. transmitted copies of *"two extremely recent decisions"* on which they intended to rely at the hearing, namely an award rendered by CAS on 26 September 2025 (CAS 2022/A/8856 – the "CAS 8856 Award"), and an Interim Order issued by the Appeals Tribunal of the International Bobsleigh & Skeleton Federation on 19 October 2025 (the "IBSF AT Order").

62. On 24 October 2025, a hearing was held by videoconference (the "Hearing"). In addition to the Panel and Ms Delphine Deschenaux-Rochat, CAS Counsel, the following persons attended it:

for the Appellants:

Mr Claude Ramoni and Mr Ricardo Suescun, counsel, as well as the Individual Athletes in person, assisted by Ms Margarita Larshina, interpreter;

for the Respondent:

Dr Christian Krähe and Dr Thomas Summerer, counsel, Mr Christopher Schwaiger, FIL Executive Director, and Ms Olena Lukhta, interpreter.

63. At the outset of the Hearing, the Panel thanked the Parties for their availability to appear on short notice on a date which was announced only on 16 October 2025, and which was confirmed after the Challenge Commission had issued its decision on the petition filed by the Appellants. At the same time, after hearing the Parties, the Panel confirmed the admission to the case file of the exhibits and documents submitted by the Appellants on 25 September 2025 and 23 October 2025.

64. The Panel then, after opening statements by counsel, heard declarations by the witnesses called by the Parties, which were all duly informed of their duty to tell the truth. In that context:

i. declarations were rendered by the Individual Athletes. All of them confirmed the contents of the written statements filed together with the Appeal Brief, and stressed that they have no connections with the Russia-Ukraine War, have no military affiliation or education, have not expressed any opinion with respect to the Russia-Ukraine War, are available to compete as AIN, and have suffered from important prejudice caused by the exclusion of Russian athletes from luge international competitions. In addition:

a. Ms Sofiia Mazur declared that she earns a salary from the Russian Centre for Athletic Training in the Moscow region, which is financed by the Russian government;

b. Mr Aleksandr Gorbatsevich also declared that he trains in the Centre for Athletic Training, which pays him a salary and provides for courses on sporting matters,

such as anti-doping, not on political or military affairs;

c. Mr Andrei Bogdanov, in the same way, indicated that he is paid by the Centre for Athletic Training, but that he does not know how the Centre is financed;

d. Mr Iurii Prokhorov also confirmed that he receives payments made by the Centre for Athletic Training, and that he is not aware of how the activities of the Centre are funded;

e. Ms Ekaterina Fomina stated that she is also paid a salary by the Centre for Athletic Training, where she trains;

f. Ms Polina Grigore declared that she receives payments from the Centre for Athletic Training;

ii. declarations were rendered by the witnesses designated by the Respondent in its Answer to the Appeal, namely by:

a. Mr Taras Hartsula, President and chief coach of the Luge Federation of Ukraine, who declared that Russian athletes are part of the Russian propaganda, and that several athletes posted on social media symbols linked to the Russian aggression against Ukraine, in messages subsequently deleted. In addition, he stressed the risks of incidents in the event Russian and Ukrainian athletes are to take part in the same luge competition, as there is a high sensitivity in Ukraine, in light of the fact that several athletes died during the war or have relatives killed or still fighting;

b. Mr Karl-Friedrich Schauhoff, FIL Ethics Authority, who underlined the importance of safety at luge competitions and described the incidents which occurred at the World Cup event in Winterberg, Germany, and at the World Championship in Altenberg, Germany when a lady, identified as a German citizen, displayed a Russian flag at the end of the track. This incident occurred at two occasions in the season 2023/2024: he was present at the second episode, not at the first, but he could see some photos of the event. No Russian athletes took part in the competitions where the incidents occurred;

c. Mr Christoph Schweiger, FIL Executive Director, who stressed the risks to security and safety, not only at the 2026 OWG, but also

at the qualifying events, if Russian athletes were allowed to compete. It is a tradition, and not a regulatory requirement, that in luge competitions the spectators are allowed to stand very near the track. The increased risks would also translate into higher costs, and no insurance would cover them. Security was the decisive aspect when FIL assessed the possibility for Russian athletes and their entourage to be admitted to luge competitions; this assessment was endorsed by a clear majority of the FIL members at the Ordinary Congress in 2025: the decision adopted on that occasion were not meant to be a sanction, but a measure of protection to safety. Another problem is caused by Latvian legislation, which prohibits Latvian athletes from participating in competitions where Russians are admitted or to organize competitions in Latvia inviting Russian athletes. In Latvia a qualifying event is scheduled to take place in Sigulda and it would be too late to relocate it, not to mention the financial implications of such relocation;

d. Mr Markus Prock, President of the Luge Federation of Austria, who confirmed the increased risks to safety if the Russian athletes were allowed to compete, and that safety cannot be guaranteed. In addition, enhanced security measures would imply higher costs, that the organizers are not in a position to bear;

e. Mr Scott Riewald, Executive Director of the US Luge Association, who declared that there is an increased possibility of incidents if the Russian athletes were allowed to compete at the US qualifying events, especially in Lake Placid, NY, where a pro-Ukraine community exists. In no case, however, the absence of risks can be guaranteed;

f. Mr Klavs Vasks, President of the Luge Federation of Latvia, who referred to the Latvian legislation prohibiting the organization in Latvia by public entities of competitions with the participation of Russian athletes, and the participation of Latvian athletes to competitions where Russians are admitted. The track in Sigulda, Latvia, where the qualifying event for the OWG is scheduled to take place in early January 2026 is

owned by the Latvian State. In any case, security and safety problems would be caused by the presence of athletes from Russia;

iii. Prof. Vincent Chetail, an expert called by the Appellants, confirmed and further explained his opinion, contained in a report filed by the Appellants, and noted that the document signed by Prof. Wiater produced by the Respondent was not the basis of the Appealed Decision, but had been prepared for other purposes. Prof. Chetail stated that safety is a legitimate purpose for the Appealed Decision, but concluded that the measures therein contained are discriminatory and disproportionate.

65. The Parties were finally invited to submit their pleadings. In that context, the Parties confirmed that the qualifying events for the 2026 OWG are scheduled to take place in Innsbruck-Igls, Austria (3-7 December 2025), in Park City, USA (11-13 December 2025), in Lake Placid, USA (17 -21 December 2025), in Sigulda, Latvia (30 December-4 January 2026), and in Winterberg, Germany (6-11 January 2026), answered questions asked by the Panel and insisted for the granting of the relief respectively sought (see paras 69, 70 and 74 below).

66. At the conclusion of the Hearing, the Parties confirmed that, subject to the Appellants' challenge to the appointment of Prof. Fumagalli as a member and President of the Panel, they had no objections in respect of their right to be heard and to be treated equally in the arbitration proceedings. The Panel informed the Parties that the operative part of the award would be rendered as soon as possible.

67. On 31 October 2025, the operative part of this Award was issued.

IV. THE POSITION OF THE PARTIES

68. The following outline of the Parties' positions is illustrative only and does not necessarily comprise every submission advanced by the Parties. The Panel, however, has carefully considered all the submissions made by the Parties, whether or not there is specific reference to them in the following summary.

A. The Position of the Appellants

69. In their Appeal Brief, the Appellants requested the CAS to issue an award as follows:

"I. The appeal is upheld.

II. The decision issued by the International Luge Federation Congress on 18 June 2025 is set aside.

III. The resolutions adopted by the FIL Executive Board on 23 September 2022, as well as their continuation, as decided at the 71st FIL Ordinary Congress in 2023 and at the 72nd FIL Congress in Lake Placid in 2024, are repealed.

IV. Mr Aleksandr Gorbatsevich, Ms Sofiia Mazur, Mr Andrei Bogdanov, Mr Iurii Prokhorov, Ms Ekaterina Fomina, and Ms Polina Grigoreva, together with their entourage, as well as all other Russian Athletes, assistants, coaches, and other officials of the Russian Luge Federation

are immediately entitled to take part in all international FIL-sanctioned events in the sport of luge under the same conditions as all other athletes and officials affiliated to the International Luge Federation, including in the qualification process for the Olympic Winter Games Milano-Cortina 2026.

V. Subsidiarily to IV, Mr Aleksandr Gorbatsevich, Ms Sofiia Mazur, Mr Andrei Bogdanov, Mr Iurii Prokhorov, Ms Ekaterina Fomina, and Ms Polina Grigoreva, together with their entourage, as well as all other Russian luge athletes, coaches, and officials, shall be immediately authorised to participate as neutral athletes under the designation "AIN" (Athletes with Individual Neutrality) in all international FIL-sanctioned luge events, including the qualification process for the Olympic Winter Games Milano-Cortina 2026.

VI. The International Luge Federation shall bear all the arbitration costs, if any, as well as any other advances of costs, if any, paid by Russian Luge Federation & al.

VII. International Luge Federation shall be ordered to pay Russian Luge Federation & al. A contribution towards the legal costs and other costs incurred in the framework of these proceedings in an amount to be decided by the Panel".

70. In their Reply on jurisdiction, then, Appellants requested the CAS to:

"I. Dismiss FIL's objection to CAS jurisdiction.

II. Confirm that CAS has jurisdiction to rule on the appeal filed by the Appellants on 8 July 2025 against the decision issued by the International Luge Federation Congress on 18 June 2025.

III. Confirm that the appeal filed by the Appellants on 8 July 2025 against the decision issued by the international Luge Federation Congress on 18 June 2025 is admissible".

71. In support if their requests, in essence, the Appellants submit that CAS has jurisdiction to hear the Appeal and that the Appealed Decision was taken on the basis of misleading information, breaches Article 4.5.8 of the FIL Statutes, infringes fundamental rights such as non-discrimination and the freedom to practice one's profession, violates EU competition law and disregards the CoA Award, which had already ruled on the exclusion of Russian athletes from FIL competitions.

72. As to the CAS jurisdiction, the Appellants maintain that it was expressly accepted by the FIL President in a letter to the CAS Court Office of 21 July 2025 and that it is in any case grounded on Article 4.9.5 of the FIL Statutes and Article 4.2 of the FIL Law and Procedure Regulations, also in consideration of the fact that the Appeal to the FIL CoA remained without an answer. Therefore, any remedy internal to the FIL structure is not effective and the Appellants cannot be blamed for not having exhausted them.

73. In more details, the position of the Appellants can be summarized as follows:

i. following Russia's invasion of Ukraine, the IOC in February 2022 urged the IFs to exclude the

Russian and Belarusian athletes from their competitions. In March 2022, the FIL EB imposed sanctions on the Russian athletes; however, those sanctions were annulled by the FIL CoA in April 2022. In June 2022, after some internal evaluations with regard to preparatory drafts, new FIL Statutes were approved, introducing, in Article 4.5.8, the possibility to adopt measures in extraordinary situations, under which the FIL EB again suspended all Russian participation in September 2022. Although the IOC later clarified on several occasions that nationality-based bans are discriminatory and permitted the participation of Russian athletes as AIN, the FIL Congress repeatedly reaffirmed their exclusion, eventually by the Appealed Decision. However, the FIL misled its members before and during the Congress when the Appealed Decision was adopted. In fact, the FIL falsely claimed that the IOC supported the continued exclusion, omitting crucial information, such as the updated IOC guidance from March and October 2023 and the UN Rapporteurs' position, both of which rejected nationality-based bans and endorsed the AIN model as the proper standard. At the Congress, officials reiterated that nothing had changed since the previous year, despite clear global shifts like many federations that had already reintegrated Russian athletes as neutrals, including at the Paris 2024 Olympic Games. The FIL further misrepresented in Enclosure 7 the AIN model as risky, citing unsubstantiated claims about funding losses, security threats and visa issues based on anonymous surveys lacking evidence. Consequently, the vote was based on misleading and incomplete data;

ii. the Appealed Decision was formally based on Article 4.5.8 of the FIL Statutes, but this provision does not authorize collective exclusions based on nationality. It allows restrictive measures only when there is an individualized causal link between a person and an event beyond the FIL's control, such as armed conflict. This clause was deliberately drafted to exclude collective punishment, based on the consideration that such sanctions would violate both Austrian law and fundamental legal principles (such as the principle *nulla poena sine culpa*). In the present case, the FIL imposed a blanket ban on Russian athletes without any evidence or allegation of individual wrongdoing. None of the Individual Athletes, who explicitly declared having no political or military ties, were shown to have contributed to the Russia-Ukraine War;

iii. Article 4.5.8 of the FIL Statutes requires the FIL Congress to reassess annually the factual circumstances and revoke the measure when its justification no longer exists. In the case, when the Appealed Decision was adopted the situation had materially changed compared to the time the

Emergency Resolution was approved:

- the Russia-Ukraine War could no longer be considered an exceptional emergency;
- various other armed conflicts were ongoing worldwide and athletes from the countries involved continue to participate in international sport without restriction;
- many sports (*e.g.*, tennis, fencing, judo) have reinstated Russian athletes under neutral status, and the IOC itself now promotes individual eligibility (AIN) rather than nationality-based bans.

Despite these elements, the FIL distorted the IOC's position, falsely claiming the IOC supported continued exclusion while concealing official IOC guidance and UN human rights warnings opposing such measures. By withholding this critical information, the FIL distorted the decision-making process and deprived Congress delegates of a legally informed vote;

iv. Article 4.5.8 of the FIL Statutes allows emergency measures only when those measures are proportionate. Any restrictive measure adopted under Article 4.5.8 of the FIL Statutes requires to satisfy the *"three-prong proportionality test"*: suitability, necessity and proportionality. In the present case none of these requirements is fulfilled:

- *"lack of suitability"*: there is no evidence that Russian luge athletes pose any threat to the safety, integrity or peacefulness of FIL events. The FIL has not identified a single instance of misconduct or disruption by any Russian participant and its claim of *"high risk"* rests solely on unproven assumptions. Russian athletes, often competing under neutral status, have participated without incident in numerous major sports, including at the Paris 2024 Olympic Games;
- *"failure to consider less restrictive measures"*: even if a risk existed, the principle of proportionality required the FIL to adopt less restrictive measures. Instead, the FIL Congress rejected the AIN model, despite the IOC endorsement and the athletes' expressed willingness to compete neutrally. The IOC had confirmed that nationality-based exclusions are discriminatory and that the AIN model is a lawful and effective alternative, successfully applied at the Paris 2024 Olympic Games. By ignoring this precedent and misrepresenting the AIN option, the FIL acted arbitrarily;
- *"excessive impact and*

irreversibility": the annual automatic renewal of the exclusion, without reassessing its basis despite major changes, amounts to an indefinite ban. This makes the measure arbitrary and disproportionate. The ban has severely harmed Russian luge athletes, ending careers and denying young competitors any international experience;

v. the unlimited exclusion of all Russian athletes, coaches, and team members from FIL competitions, without any individual assessment or proof of misconduct, is discriminatory and contrary to the FIL Statutes, the Olympic Charter and international human rights law. It violates the FIL's own prohibition of political or national discrimination and the Olympic Charter's fundamental principles guaranteeing equality, political neutrality, and the right to practice sport regardless of nationality. The measure politicizes sport by punishing individuals for state actions beyond their control. Prof. Chetail confirmed that the decision constitutes a clear case of nationality-based discrimination;

vi. the Appealed Decision violates Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU). As the sole international governing body for luge, the FIL holds a monopoly over access to the professional luge market and therefore falls under EU competition law when its decisions have economic effects. According to EU and CAS case law, sporting regulations must be necessary and proportionate to legitimate objectives. The absolute exclusion of Russian athletes from FIL events, as the Olympic qualifiers, fails this test: it is not based on individual misconduct, is unlimited in duration, and ignores less restrictive alternatives such as participation under neutral status. This exclusion acts as an unjustified barrier to market access, distorting competition and depriving athletes of professional opportunities, in violation of Article 101 TFEU. Moreover, by refusing to allow neutral participation, the FIL abuses its dominant position under Article 102 TFEU, imposing discriminatory and disproportionate restrictions without objective justification;

vii. the Appealed Decision contradicts the final and binding CoA Award, which had already found unlawful a similar collective exclusion of Russian athletes, coaches and officials. In that case, the CoA held that such measure, based solely on nationality, violated Article 1.6.2 of the FIL Statutes, prohibiting political or discriminatory actions. Despite the subsequent introduction of Article 4.5.8, this provision still requires a causal link between exclusion and individual misconduct, something absent here. Therefore, the same legal defect identified in 2022 persists: the ban constitutes unlawful

collective punishment without individual responsibility.

B. The Position of the Respondent

74. The Respondent in its Answer requested the CAS to find as follows:

> *"1. The action is dismissed.*
>
> *2. The plaintiffs shall jointly bear the costs of the arbitration proceedings.*
>
> *3. The plaintiffs shall jointly compensate the defendant for its procedural expenses in an appropriate amount".*

75. The Respondent grounds its request that the Appeal be denied on a number of reasons: according to the Respondent, (i) CAS has no jurisdiction, (ii) the Appeal (a) is inadmissible, since (1) the Individual Athletes have no standing to challenge the Appealed Decision, (2) the relief sought by the Appellants is vague, (3) the Emergency Resolution and its confirmation at the FIL Ordinary Congress in 2023 and 2024 cannot be reviewed, and in any case (b) is ungrounded.

76. Preliminarily, in fact, the Respondent denies the jurisdiction of CAS, since the Appellants have not exhausted the internal remedies, which provide for an appeal to the FIL CoA before starting CAS appeal proceedings against the FIL CoA decision. In addition, the letter signed by the President of FIL in July 2025 is not sufficient to grant jurisdiction to CAS, because it contravenes the FIL Statutes providing for the necessity to submit disputes to the FIL CoA before reverting to CAS.

77. The Respondent, at the same time, submits that the Appeal is (at least in part) inadmissible, because:

i. only member associations affected by a decision issued by the FIL Ordinary Congress (such as the Appealed Decision) can challenge it. The Individual Athletes are not direct members of FIL, and therefore cannot contest the Appealed Decision;

ii. Sections IV (*"Violation of fundamental rights, including non-discrimination, and professional freedom"*) and V (*"Violation of EU Competition Law"*) of the Appeal Brief are inadmissible for vagueness, as they fail to specify which athletes, coaches, or officials would be entitled to participate;

iii. the Appellants' request to annul the Emergency Resolution (adopted in 2022) and the subsequent resolutions of the FIL Ordinary Congresses of 2023 and 2024 is time-barred. In fact, under Article 7 of the Austrian Association Act (the Austrian *Vereinsgesetz*: the "VG") (*"Beschlüsse von Vereinsorganen sind nichtig, wenn dies Inhalt und Zweck eines verletzten Gesetzes oder die guten Sitten gebieten. Andere gesetz- oder statutenwidrige Beschlüsse bleiben gültig, sofern sie nicht binnen eines Jahres ab Beschlussfassung gerichtlich angefochten werden. Jedes von einem Vereinsbeschluss betroffene Vereinsmitglied ist zur Anfechtung berechtigt"*), resolutions remain valid unless challenged in court within one year of adoption, and any affected member may bring a challenge. However, the Appellants do not claim that those

decisions are *"inherently invalid"*.

78. According to the Respondent, the Appeal is in any case ungrounded:

i. the challenge to a resolution adopted under Article 4.5.8 of the FIL Statutes requires evidence that the original reason for the measure no longer exists. The Congress' role is limited to assessing whether the reason persists, not the measure's original legality. Since the Appellants have not provided evidence that the Russia-Ukraine War has ended, the Emergency Resolution of 2022, based on Russia's war against Ukraine, remains factually relevant and the challenge to the Appealed Decision lacks grounds;

ii. the Emergency Resolution and the Appealed Decision fully comply with the FIL Statutes, which permit measures in exceptional situations (such as war) to safeguard safety, peace, and integrity:

- the FIL EB and the FIL Ordinary Congress acted within the FIL's discretionary powers, and no error of discretion has been shown by the Appellants. The discrimination claim is unfounded, as the exclusion of Russian athletes was based not on nationality, but on legitimate safety and integrity concerns stemming from Russia's ongoing war of aggression against Ukraine;

- the FIL's autonomy, safeguarded under Article 11 of the European Convention on Human Rights (ECHR) and Article 12(1) of the Charter of Fundamental Rights of the European Union (CFR), allows it to regulate participation according to its principles. Acting consistently with the IOC and other IFs', as well as with the international consensus reflected in CAS awards and UN resolutions condemning Russia's aggression, the Appealed Decision was lawful, proportionate, and aligned with the fundamental principles of safety, peace, and integrity in sport;

- the measures adopted by FIL, in fact, sought to prevent risks of hostility, violence, and security threats during competitions – particularly relevant in luge events, where athletes compete at high speeds and in close proximity to spectators. Past incidents, such as hate messages exchanged between Russian and Ukrainian athletes and the flag incidents in Germany, confirm the seriousness of these risks. Similar measures have been adopted by many IFs, while those allowing neutral participation face lower safety risks. The risks are linked to the close ties between Russian athletes and the State or military structures, demonstrated by the public statements of loyalty made by leading figures, such as the RLF's President;

- security concerns guided both the Emergency Resolution and the Appealed Decision, when at least 75% of delegates voted against Russian athletes' participation, even as AIN. Expert testimony from FIL and national federation officials highlighted potential risks for the Olympic qualification events. The President of the Ukrainian Luge Federation, Mr Taras Hartsula, emphasized the dangers to Ukrainian and other peace-advocating athletes, noting that Russian athletes have not condemned the war, while Ukrainian athletes face trauma, creating unfair competition conditions. The then IOC President Thomas Bach stressed that integrity, fairness and safety cannot be guaranteed under these circumstances. Furthermore, Ukrainian athletes support excluding the Russian team until the invasion ends;

- if the athlete's safety cannot be guaranteed, it threatens competition integrity, since hostility or hate messages can impair performance. Political boycotts and terrorism risks are typically uninsurable, meaning the FIL itself would bear responsibility and financial burdens. Consequently, the only way to eliminate these risks is to exclude Russian athletes and their entourage from competitions;

- in March 2023, Prof. Patricia Wiater, an expert in public international and human rights law, issued a legal opinion on the exclusion of Russian and Belarusian athletes from international competitions. She concluded that such exclusion constitutes unlawful discrimination only if not justified by legitimate grounds. Legitimate purposes include: (1) the *"protection of the human rights of Ukrainian athletes"*; (2) the *"security and public order considerations"*; and (3) the *"peace policy reasons"*. Thus, despite the nationality-based unequal treatment, the exclusion is permissible under international human rights law, making the FIL's decision lawful.

V. JURISDICTION

79. This CAS Panel has the power to decide upon its own jurisdiction, in accordance with Article 186 of the Swiss Private International Law Act (the "PILA"), which applies pursuant to its Article 176.

80. According to Article R47, first paragraph 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".

81. The jurisdiction of CAS is contemplated by Article 4.9.5 of the FIL Statutes in the following terms:

"Under exclusion of ordinary legal proceedings

an appeal can be made to the Tribunal Arbitral du Sport (TAS)/Court of Arbitration for Sport (CAS) based in Lausanne on the basis of the Code of Sports-related Arbitration, as far as the FIL Law and Procedure Regulations does not contain any specifications for the appeals procedure".

82. At the same time, Article 4.9.2 of the FIL Statutes defines the jurisdiction of the FIL CoA as follows:

"Upon motion by a NF, the Executive Board, the Presidium, or a person concerned, the Court of Arbitration makes a decision in the case of violations by the members of the FIL bodies and the settlement of disputes. Furthermore, it decides on all other cases provided in the Statutes as well as in the case of complaints against sanctions and penalties of the Executive Board".

83. The FIL Law and Procedure Regulations provides as follows:

- Article 4.1 ("FIL Court of *Arbitration"*)

  "4.1.1 Regarding violations by the members of the FIL bodies, the settlement of disputes as well as in those cases provided in the Statutes, the FIL Court of Arbitration makes a decision on the request of a NF, the Executive Board, the Presidium or a person concerned under exclusion of ordinary legal proceedings. In the final trial it hears both parties and gives a judgement with majority vote. […]

  4.1.5 An appeal against the final decisions of the FIL Court of Arbitration can be made at the Tribunal Arbitral du Sport (TAS) under exclusion of the due process of law. The time limit for appeal is two months; it starts from the delivery of the completely written decision. With respect to the formal requirements regarding the filing of an appeal, the procedure regulations of TAS are applicable. […]".

- Article 4.2 ("Further competence of the Tribunal Arbitral du Sport") *"Disputes within the FIL which can neither be settled by the Executive Board nor by the FIL Court of Arbitration, can be submitted by the parties to the Tribunal Arbitral du Sport (TAS) for decision under exclusion of ordinary legal proceedings. The decision of TAS is binding and final".*

84. The Respondent denies the CAS jurisdiction on the basis of Articles 4.9.2 of the FIL Statutes and 4.1 of the FIL Law and Procedure Regulations. The Respondent in fact maintains that the internal remedies within the federation's structure have not been exhausted, because the challenge to the Appealed Decision would fall within the first instance jurisdiction of the FIL CoA, and CAS can hear appeals only as a second instance against awards issued by the FIL CoA. In addition, the Respondent invokes, with respect to the Appeal as filed by the Individual Athletes, Article 2.3.4, first bullet point of the FIL Statutes, under which *"ordinary members have the right […] to appeal"*. Since the Individual Athletes are not ordinary members (only the national federations have that status), they would have no right to appeal. At the Hearing, the Respondent indicated that by this objection it (also) challenged the jurisdiction of CAS to decide on the claims submitted by the Individual

Athletes (and not only their standing to appeal: see below, at paras 116-120 and 143-145).

85. The Panel finds that it has jurisdiction to decide on the appeal filed by the Appellants against the Appealed Decision.

86. The jurisdiction of CAS was in fact confirmed by the FIL President in a letter to the CAS Court Office dated 21 July 2025, sent following some correspondence with the Appellants concerning the CAS jurisdiction (paras 30-31 above) and upon receipt of the Statement of Appeal. In that letter (*supra*, para. 34), the FIL President (i) indicated that FIL accepted that the matter be handled directly by CAS without prior referral to the FIL CoA, and (ii) appointed an arbitrator from the CAS list.

87. The Panel finds this letter to be sufficient for the purposes of Swiss law, made relevant under Article 178(2) PILA (*"As regards its substance, the arbitration agreement shall be valid if it conforms […] to Swiss law"*), and of Article R47 of the CAS Code, according to which an appeal to CAS can be filed if the parties have concluded a *"specific arbitration agreement"* referring to CAS.

88. According to the Swiss Federal Tribunal ("SFT") (ATF 142 III 239 at 3.3.1; ATF 138 III 29 at 2.2.3; ATF 130 III 66 at 3), in fact, an arbitration agreement must contain or at least permit the determination of the following four elements in order to be valid: the identity of the parties, the dispute(s) covered by the agreement, the parties' consent to refer such disputes to arbitration, and a direct or indirect connection to a legal system (see also KAUFMANN-KOHLER/RIGOZZI, *International Arbitration: Law and Practice in Switzerland*, Oxford, 2015, at 3.10; ARROYO M. (ed.), *Arbitration in Switzerland. The Practitioner's Guide*, Vol. I, 2nd ed., Alphen aan den Rijn, 2026, 71-72). Those elements are clearly satisfied with respect to the letter of FIL President of 21 July 2025, sent following the Appellants' requests of 8 July 2025 (in the Statement of Appeal and in a specific letter to the Respondent) that the FIL confirmed *"its agreement that jurisdiction lies with CAS"* to deal with the matter. The Panel, specifically, remarks that the acceptance of the CAS jurisdiction expressed by the President of FIL was not only express and unequivocal: it was also "informed", *i.e.* with full view of the dispute and the Appellants' claims (at least as they were set out in the Statement of Appeal). In addition, the nomination without any reservation of an arbitrator from the CAS list makes it additionally clear that the FIL President intended to participate in the CAS arbitration, as governed by the CAS Code.

89. The above conclusion is sufficient to find the CAS jurisdiction pursuant to Swiss law, as no ground for invalidity of that letter according to the law governing its validity under Article 178(2) PILA has been invoked. Any claim based on Austrian law is therefore irrelevant.

90. In addition, the Panel remarks that the FIL President, as a member of the Presidium, represents the FIL in public (Article 4.6.3, first paragraph of the FIL Statutes) and that, *"in emergencies and when time if of essence"*, he is authorized to make unilateral decisions normally falling within the powers of another FIL body (Article 4.6.3, first paragraph of the FIL Statutes).

91. In any case, the internal remedies, which the Appellants would have omitted, but that they actually tried to pursue (see para. 32 above), appear to be ineffective. Their omission, therefore, would not prevent the exercise of jurisdiction by CAS.

92. The Panel recognizes indeed that Article R47 of the CAS Code, and Article 4.1.5 of the FIL Law and Procedure Regulations, stipulate that an appeal to the CAS can be formed only after the exhaustion of all internal remedies, *i.e.* as a challenge to a decision rendered by the FIL CoA.

93. The condition of the exhaustion of all internal remedies is intended to afford the internal bodies of a federation the opportunity to take a final decision on a disputed matter, in order to ensure that all the relevant rules, applicable to the case at stake, are fully complied with, to put right an alleged violation thereof and to prevent further appeals to the CAS. Although it pays tribute to the freedom of organization of the sports entity in question, it is therefore based on the assumption that the internal legal order will provide effective remedies for the violations of its internal rules.

94. In this vein, as a result, the CAS precedents, that have dealt with the issue of the exhaustion of legal remedies, have indicated that *"the internal remedy must be readily and effectively available to the aggrieved party and it must give access to a definite procedure"* (CAS 2010/A/2243, 2358, 2385 & 2411; CAS 2007/A/1373; CAS 2008/A/1468; CAS 2008/A/1494; CAS 2008/A/1495; CAS 2008/A/1699).

95. On such basis, this Panel finds that the appeal to the FIL CoA proved for the Appellants not to be a *"readily and effectively available"* remedy: indeed, the appeal that the Appellants filed with the FIL CoA on 16 July 2025 (para. 32 above) remained without an answer, following the letter of FIL President of 21 July 2025, in a dispute where time was of the essence.

96. Based on the foregoing, the Panel concludes that it has jurisdiction to decide on the Appeals brought against the Appealed Decision.

97. This conclusion concerns also the Appeal as filed by the Individual Athletes, without prejudice to any evaluation of Individual Athletes' standing to appeal. The acceptance of the CAS jurisdiction, in fact, as expressed by the FIL President, did not only cover the RLF, but also the Individual Athletes, as it was made with full view not only of the claims but also of the identity of all the Appellants, including the Individual Athletes, mentioned in the Statement of Appeal. The Panel, consequently, has jurisdiction to decide also on the Appeal filed by the Individual Athletes against the Appealed Decision.

VI. ADMISSIBILITY

98. The Statement of Appeal complied with the requirements of Article R48 of the CAS Code.

99. Its admissibility is, however, challenged by the Respondent in two distinct aspects: first, in the portions of the Appeal relating to decisions taken by FIL bodies in 2022, 2023 and 2024, *i.e.* to the extent the Appellants request this Panel to set aside the Emergency Resolution of 2022, as well as its continuation, as decided at the FIL Congress in 2023 and at the Congress in 2024 (request for

relief III: para. 69 above – "Claim III"), because the time limit to challenge them expired long ago; second, in the portions of the Appeal where the Appellants seek a remedy (in requests for relief IV and V: para. 69 above– "Claim IV" and "Claim V") also for their entourage, as well as for all other unnamed Russian luge athletes, coaches and officials.

100. The Panel agrees with the Respondent:

i. Claim III is not admissible to the extent the Appellants request the Panel to set aside decisions of 2022, 2023 and 2024: the deadline set in Article R49 of the CAS Code, which the Appellants indicated in the Statement of Appeal to be applicable in the case at stake, in fact, had expired when the Appeal was filed. The admissibility of the Appeal is limited, therefore, to its portions challenging the Appealed Decision;

ii. Claims IV and V are not admissible where the Appellants request the Panel to declare eligible to compete in FIL competitions not only the Individual Athletes, but also their entourage, as well as all other Russian luge athletes, coaches and officials. The Panel finds, in fact, that no legal basis for such action is offered, and in any case, that the request is vague and generic, as it seeks a benefit (declaration of eligibility) of unnamed individuals, who are not parties to the present arbitration.

101. As a result, the Appeal is admissible only to the extent it is directed against the Appealed Decision (request for relief II: para. 69 above – "Claim II"), as it was filed by the Appellants within the deadline of 21 days of its adoption, and in the portions of Claim IV and Claim V making reference only to the Individual Athletes.

VII. SCOPE OF THE PANEL'S REVIEW

102. According to Article R57, first paragraph of the CAS Code:

"The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. (…)".

103. On the basis of the foregoing, the Panel notes that it hears the case *de novo* and is not limited to considerations of the evidence that was adduced before the FIL Ordinary Congress which approved the Appealed Decision.

VIII. APPLICABLE LAW

104. The law applicable in the present arbitration is identified by the Panel in accordance with Article R58 of the CAS Code.

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

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

106. In light of the foregoing, the *"applicable*

regulations" in the present case for the purposes of Article R58 of the CAS Code are those adopted by FIL. Austrian law applies subsidiarily.

107. Of specific relevance in the present case is Article 4.5.8 of the FIL Statutes, as the basis on which the Appealed Decision was adopted. Such provision reads as follows:

"In the following cases, which lie outside the sphere of influence of the FIL, such as in particular

- *Terrorism, violent persons, riot, revolution, offensive or defensive war, civil war, strike, boycott, blockade, fire, embargo, sabotage, hostage taking, nuclear or chemical poisoning hazards,*
- *Natural disasters of any kind, including floods, earthquakes, thunderstorms, volcanic eruptions, and temperatures and precipitation that affect health,*
- *Pandemic, epidemic, and other community-harming health risks,*

the Executive Board can take appropriate measures to ensure safe, peaceful, integrity and rule-abiding activities, especially at FIL-sanctioned athletic competitions and at meetings of all FIL organs and other FIL bodies, if necessary, in place of the Congress or another competent FIL organ.

Appropriate organizational measures in this sense may include but are not limited to:

- *Suspension of all statutory rights of member federations, clubs, athletes, coaches, officials, or other persons in the FIL or in its affiliated member federations and clubs for a definite or indefinite period of time with regard to individual or all activities for the FIL.*
- *Withdrawal of the rights to hold FIL-sanctioned competitions at individual or all sports venues of a country as well as to hold other events of FIL bodies at individual or all venues of a country or to relocate FIL events to another time and / or to other venues or to another country after the awarding of these events.*
- *other measures that the Executive Board deems appropriate to ensure the safety, integrity and fairness of FIL events or FIL meetings and the fulfillment of the purposes of the Federation in accordance with the Statutes.*

The measures can only be taken the persons concerned can be proven to have had a causal personal responsibility/support/assistance/participation in the cases described above and if the measure is proportionate.

In the event of an occurrence that has given rise to the adoption of measures in the above cases, the Executive Board may involve the Ethics Commission in the assessment of any organizational measures to be imposed.

The Executive Board is obliged to immediately revoke the measures it has taken if the reason for the measure taken no longer exists. If the measure is still valid until the next ordinary Congress, the latter shall decide on the continuation of the measure or its amendment or repeal. The Congress shall vote on this measure without regard to compliance with the formal requirements for the summons and agenda".

IX. MERITS

A. The dispute

108. The dispute before this Panel concerns (and is limited to: para. 100(i) above) the Appealed Decision adopted by the FIL Congress on 18 June 2025, which

confirmed, pursuant to Article 4.5.8, last paragraph of the FIL Statutes, the effects of the Emergency Resolution and rejected the creation and implementation of an AIN program for the 2026 OWG and the qualifying events, that would allow the Russian athletes and their entourage to compete under strict neutrality criteria. On the one hand, the Appealed Decision is challenged by the Appellants, who in essence dispute it as an unjustified and disproportionate discrimination based on nationality, and request that the Appealed Decision is set aside (Claim II) and that the Individual Athletes are declared to be *"immediately entitled to take part in all international FIL-sanctioned events in the sport of luge under the same conditions as all other athletes and officials affiliated to the International Luge Federation, including in the qualification process for the Olympic Winter Games Milano-Cortina 2026"* (Claim IV, in the portion considered admissible: para. 101 above) or *"immediately authorised to participate as neutral athletes under the designation 'AIN' (Athletes with Individual Neutrality) in all international FIL-sanctioned luge events, including the qualification process for the Olympic Winter Games Milano-Cortina 2026"* (Claim V, in the portion considered admissible: para. 101 above). On the other hand, the Appealed Decision is defended by the Respondent, which indicates the existence of a legitimate objective sought by the exclusion of Russian athletes from luge competitions recognized by FIL.

109. In light of the foregoing, the claims submitted by the Appellants raise a number of issues, mainly concerning the existence of the conditions under Article 4.5.8 of the FIL Statutes for the continuation of the effects of the Emergency Resolution and the denial of the adoption of an AIN program.

110. Before turning to the merits of these issues, the Panel needs to address two preliminary points, which have been raised by the Respondent: the first has an overarching impact on the examination of the Appeal by this Panel, to the extent the Respondent underlined the need to defer to the freedom of association of FIL and, in that regard, to respect the discretion enjoyed by FIL to adopt rules of organization and implement them; the second concerns specifically the Individual Athletes and regards their standing to appeal.

111. As a result, the Panel will consider those two points before any further examination of the Appeal.

B. The freedom of the association

112. The Panel is aware of the approach outlined in CAS 2020/A/7090 (and adopted in CAS 2022/A/8708, at para. 110) that *"[..] the power of a Panel such as this one does not extend to an evaluation of the merits or the substantive value of a decision, and that deference and respect to the autonomy of sporting federations … is of paramount importance in sports law"* and that *"deference to the autonomy and freedom of the association and the decisions its main bodies freely adopt should thus be considered a basic principle of sports law"*.

113. At the same time, however, this Panel underlines that this principle of deference and respect to the autonomy of associations is not absolute. In fact, the deference to be shown to sports governing bodies in their decision-making does not mean that such bodies cannot be held to account for their decisions. Therefore, in the Panel's view, a decision of a sports governing body

can be afforded deference and respect, but only subject to the obligation of such body to act fairly, in accordance with any applicable mandatory law(s) and with its own rules and regulations, and in a way that is not irrational, capricious, or arbitrary.

114. In this case, as a result of the Appeal, the task for the Panel is to decide whether the Appealed Decision violated the FIL Statutes or any mandatory rules or principles, rather than to review any discretion that the FIL might enjoy in organizing itself.

115. Therefore, the examination of the Appellants' claims is not prevented by any deference to be paid to the Respondent's freedom of organization.

C. Standing to appeal of the Individual Athletes

116. The Respondent denies the standing of the Individual Athletes to challenge the Appealed Decision, since only direct members (*i.e.*, national federations) of FIL can challenge Congress resolutions.

117. The Panel remarks that standing to sue (or to appeal) is attributed to a party which can validly invoke the rights which it puts forward, on the basis that it has a legally protectible and tangible interest at stake in litigation. This corresponds to the Swiss legal notions of *"légitimation active"* or *"qualité pour agir"*, as confirmed by the case-law of the SFT (decision 4P.282/2001of 3 April 2002, at 4b). According to CAS jurisprudence, parties which have a direct, personal and actual interest are considered to have legal standing to appeal to the CAS (e.g. CAS 2016/A/4924 & 4943). At the same time, however, the Panel notes that not only the direct addressee of a decision, but also a third party can invoke standing, provided it is directly affected. As CAS 2016/A/4924 & 4943, para. 85 put it, it *"is consistent with the general definition of standing that parties, who are sufficiently affected by a decision, and who have a tangible interest of a financial or sporting nature at stake, may bring a claim, even if they are not addressees of the measure being challenged"*.

118. The Panel remarks, with respect to the Appeal in the portion seeking the setting aside of the Appealed Decision (Claim II), that the Individual Athletes were not the addressees of the decisions adopted at the FIL Congress of 2025. Nothing in the Appealed Decision, suggests in fact that it was taken with the specific and personal circumstances of the Individual Athletes in mind, as they are not direct members of FIL. The Individual Athletes are, however, indirectly affected by the Appealed Decision, even though unspecifically, as their eligibility (as Russian athletes) to compete in FIL-sanctioned events was excluded by the Appealed Decision.

119. In addition, with respect to Claims IV and V, the Panel notes that the requests therein set forth are subject to the granting of the relief under Claim II: only in the event the Appealed Decision is set aside could the Individual Athletes, in theory, claim to be admitted to FIL competitions. As a result, the benefit they claim (to be admitted to the FIL competitions) is only the result of another event (the setting aside of the Appealed Decision), and is therefore indirect and conditional.

120. The matter of the Individual Athletes' standing, however, can be left open. In fact, Claim II remains in any case

admissible, and needs to be examined by the Panel, since it was brought by the RLF, while Claim IV and Claim V are bound to fail in any case (see paras. 143-145 below).

D. The Claims

121. In light of the foregoing, the Panel needs to examine Claim II, Claim IV and Claim V, as submitted by the RLF. The Panel will examine them in sequence.

a. Claim II

122. In Claim II, the RLF requested the Panel to set aside the Appealed Decision, and advances a number of grounds in support of its request. Much of the debate in this arbitration actually regarded the Appellants' claim that the Appealed Decision constitutes an unjustified and disproportionate discrimination based on nationality, and whether the conditions set forth in Article 4.5.8 of the FIL Statutes for the extension of the effects of the Emergency Resolutions are met.

123. As a result, the Panel finds it necessary to start its examination from Article 4.5.8 of the FIL Statutes, on which the Appealed Decision is based.

124. Under such provision, as amended at the 70th FIL Ordinary Congress in 2022 (para. 18 above), *"appropriate"* measures can be adopted by the FIL EB, acting *"in place of the Congress or another competent FIL organ"*, only in the event of cases which are outside the sphere of influence of FIL (such as *"offensive … war"*) in order to ensure, *inter alia*, *"safe, peaceful, integrity and rule abiding activities … at FIL-sanctioned … competitions"*. At the same time, the FIL EB is obliged to revoke such measures in the event the reasons for their adoption no longer exist. In the event the measures are still valid, the next Ordinary Congress is called to decide on their continuation, amendment or repeal. The conditions so set reflect the extraordinary nature of the measures that the FIL EB can adopt: indeed, Article 4.5.8 of the FIL Statutes allows a deviation (until the next Ordinary Congress) from the rules governing its activity, authorizing the FIL EB to adopt measures that would be outside its competence (e.g., the suspension of the membership rights of a member federation), but only in the event extreme situations arise and provided that the measures are *"appropriate"* to achieve the stated purpose.

125. In addition, under Article 4.5.8 of the FIL Statutes, the FIL EB is authorized to take *"appropriate"* measures, in order to ensure the safety, integrity and fairness of FIL events, only if the *"persons concerned can be proven to have had a causal personal responsibility / support / assistance / participation in the cases"* creating the need for FIL to adopt measures, and if the measures are *"proportionate"*. In other words, two conditions need to be satisfied for *"appropriate"* measures to be taken and for the Ordinary Congress to approve their continuation: (a) causal link between the persons concerned and the events giving rise to the need to adopt the measures, so that only those who created the case can be targeted by the measure; and (b) the proportionality of the measure.

126. As a result, the Appealed Decision must be examined in light of these two conditions, starting from the second: proportionality.

127. In its regard, the Panel notes that it is unnecessary for it to verify whether the Appealed Decision constitutes an unlawful discrimination based on nationality, if the case is justified by a legitimate objective, sought after by proportionate means. As evidenced by Article 4.5.8 of the FIL Statutes, in fact, the test of proportionality needs always to be satisfied, irrespective of any underlying discrimination. In any case, the Panel notes that the discriminatory nature of a measure (whether justified or not) such as a total exclusion from competitions of athletes based only on their nationality was at the basis of the CoA Award setting aside the EB Decision of March 2022, and has been recently confirmed by the CAS 8856 Award.

128. The principle of proportionality implies that there must be a reasonable balance between the measure and its stated purpose. To be observed, the principle of proportionality requires that (i) the measure taken by the governing body is capable of achieving the envisaged goal, (ii) the measure taken by the governing body is necessary to reach the envisaged goal, and (iii) the constraints which the affected person will suffer as a consequence of the measure are justified by the overall interest to achieve the envisaged goal. In other words, to be proportionate a measure must not exceed what is reasonably required in the search of the justifiable aim (CAS 2005/C/976 & 986, paras 139-140, citing CAS precedents, legal doctrine and Swiss jurisprudence).

129. As a result, in order to conduct a proportionality test, as described above, it is necessary to identify the objective pursued by the measures extended, and their effects, by the Appealed Decision.

130. The declared purpose sought by the Appealed Decision was the safety of luge competitions. The dangerous nature of the sport was repeatedly stressed at the Hearing, where the Respondent indicated that the participation of Russian athletes would increase the risk of incidents caused by the public or by other athletes. In other words, as underlined by the Respondent, the purpose of the exclusion of the Russian athletes was not based on their passports, in order to sanction the Russian Federation for its aggression of Ukraine; at the same time, the Respondent did not invoke the risk that any sporting success of Russian athletes be exploited for political reasons by the Russian propaganda as a justification for the exclusion of all Russian athletes. The Respondent emphasized in fact that the measures adopted under Article 4.5.8 of the FIL Statutes were not politically motivated.

131. The Panel confirms that safety, as well as the preservation of safe racing conditions, is a legitimate purpose. This is especially true with respect to luge, considered to be the fastest sport in the Winter Olympics, in which athletes race down an ice track at 150 km/h, relying on their reflexes and balance to steer the luge. In such extreme racing conditions any interference by spectators could produce the extremely dangerous consequences. The point, actually, is not disputed by the RLF; and at the Hearing Prof. Chetail agreed that safety is a legitimate purpose for the Appealed Decision. The Panel notes, in fact, that *"safe, peaceful, integrity and rule abiding activities … at FIL-sanctioned … competitions"* are expressly mentioned by

Article 4.5.8 of the FIL Statutes as purposes justifying the adoption of measures under it.

132. The Panel however disagrees with the Respondent that the overall exclusion of Russian athletes is a proportionate measure to achieve that purpose. More specifically, in the Panel's opinion, the measure exceeds what is reasonably required in the search of the mentioned justifiable aim.

133. In fact, even if it can be conceded that an increased danger of incidents could be caused by an indiscriminate participation of all Russian athletes, in the Panel's opinion less intrusive measures could be found to reconcile safety with the participation of certain Russian athletes. For instance, enhanced security controls can be implemented in order to avoid creating dangers, and the Respondent has not demonstrated that such measures (such as spectators' screening, bag searches, etc.), which are common to many sports, would impose an unbearable cost on organizers. In addition, the Panel notes that no incidents were reported in any sport to which Russian athletes participated in a neutral capacity, and that the two incidents mentioned by the Respondent (the waving of a Russian flag) were caused by a single German lady and occurred at the end of the track in luge competitions to which Russian athletes were not allowed to compete.

134. The Panel underlines in this respect an important point. The situation in 2025 cannot be compared to the situation existing immediately after the Russia-Ukraine War began. In 2022, in fact, urgent measures were suggested by the necessity to sanction the Russian aggression to a sovereign State. Over the years, then, an international consensus in the sporting world emerged that discriminatory and politically motivated measures targeting all Russian athletes were to be avoided, in order to allow the participation, under strict conditions, of those Russian athletes who were not supporting the war. This movement was led by the IOC, which adopted in March 2023 the IOC AIN Criteria, following the input of the UN Special Rapporteurs in the field of cultural rights and on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (para. 19 above) and consultation within the Olympic Movement (para. 21 above), and confirmed them in September 2025 also for the 2026 OWG (para. 28 above).

135. As a result, any consideration as to the original proportionality of the Emergency Resolution (adopted before the IOC AIN Criteria were issued) and of its extension for the years 2023 and 2024 appears to this Panel irrelevant: what is discussed in this arbitration is the continuation for the 2025-2026 season and in particular the 2026 OWG of the effects of measures adopted in 2022. Measures which were proportional when they were adopted can become disproportionate if the context in which they operate evolves.

136. In light of the foregoing, the Panel holds that the Appealed Decision approved disproportionate measures, at least to the extent they were not limited to the exclusion of Russian athletes who support the war. Only in respect of those athletes the adoption of restrictions in search of the justifiable aim (ensure safety and safe racing conditions at FIL events) appears proportionate, in light of

the conflicts that their participation could cause. In this respect, the Panel accepts that participation of Russian athletes who do not qualify as "neutral" within the meaning of AIN criteria may provoke incidents jeopardizing the safety of competitions to a greater extent than participation of athletes who pass the AIN assessment and participate in neutral capacity.

137. The Panel notes, at the same time, that the Appealed Decision, if not limited to the Russian athletes who are found to support the Russia-Ukraine War, would be inconsistent also with the first condition set out by Article 4.5.8 of the FIL Statutes for the adoption of the measures therein contemplated: the existence of a causal link between the persons concerned and the events giving rise to the need to adopt the measures, so that only those who created the case can be targeted by the measure.

138. In that regard, the Panel notes that, as shown by the history of the adoption of Article 4.5.8 of the FIL Statutes (see paras 16-18 above), the necessity to establish a causal link between the person affected by the measure and the causes for the adoption of the measure was introduced to make Article 4.5.8 of the FIL Statutes compliant with Austrian law. In fact, the May 2022 Draft provided on the point that *"the measures can be taken regardless of whether the persons concerned can be proven to have had a causal personal responsibility / support / assistance / participation in the cases described above"*. Such portion of Article 4.5.8, then, was modified upon advice by an Austrian legal expert in the June 2022 Draft, with the substitution of the words *"can be taken regardless of whether"* with *"can only be taken if"* and with the addition of the sentence *"and if the measure is proportionate"*, to become the text approved at the 70th FIL Ordinary Congress as part of the FIL Statutes: *"the measures can only be taken if the persons concerned can be proven to have had a causal personal responsibility / support / assistance / participation in the cases described above and if the measure is proportionate"*.

139. In the Panel's opinion, thus, an overall ban is not suitable to exclude from competitions also persons who have no involvement, of whatever nature, in the Russia-Ukraine War, and it would imply a reading of Article 4.5.8 of the FIL Statutes contrary to its wording and to the intention of its drafters. With respect to athletes (and supporting personnel) the existence of a causal link between the reasons for the ban and the personal responsibility of the persons concerned can only be verified on a case-by-case basis. For instance, such connection with the Russia-Ukraine War could be established by reference to the support for it that the person in question may have expressed or to his/her service in the Russian army or in security forces.

140. In summary, in the Panel's opinion, the Appealed Decision can be enforced only to the extent it is consistent with Article 4.5.8 of the FIL Statutes, within the limits in which the restrictive measures which it extended for the 2026 OWG (and the qualifying events) are linked to the individual responsibility of the person concerned and proportionate.

141. In such regard, the Panel remarks that in the discussions at the 73rd Congress an option was mentioned to adopt the IOC AIN Criteria as indicators to verify the eligibility of Russian athletes to compete in a neutral position. The Panel finds

those criteria to be a benchmark for what can be considered to be proportionate to achieve the purposes sought by the Appealed Decision and to determine the existence of a connection between the athlete in question and the Russia-Ukraine War. More specifically, the criteria at stake are those established by the IOC for participation as AIN at the 2026 OWG. Only the exclusion of athletes not satisfying those criteria would be consistent with Article 4.5.8 of the FIL Statutes.

142. In summary, the Appealed Decision is to be set aside in part and declared to be enforceable to prohibit from luge competition recognized by FIL only the Russian athletes who do not satisfy the criteria established by the IOC for participation as AIN at the 2026 OWG. The Appealed Decision, in the portions where it excludes from FIL-sanctioned events also Russian athletes who are eligible under the IOC AIN Criteria, is to be set aside.

b. Claim IV and Claim V

143. In light of the foregoing, Claim IV cannot be entertained by the Panel. In fact, the participation of all Russian athletes, including the athletes who support the Russia-Ukraine War, to FIL-sanctioned events (object of Claim IV) must be denied, as the Panel found that the Appealed Decision can be enforced with respect to the Russian athletes who do not satisfy the criteria established by the IOC for participation as AIN at the 2026 OWG.

144. Similarly, Claim V cannot be entertained by the Panel either, because it deals with matters not covered by the Appealed Decision, which did not directly address the conditions of the Individual Athletes to compete as AIN, and its consideration would require an exercise by the Panel of some verifications for which it has no elements. In fact, establishing the required AIN procedure (in consideration of the criteria adopted by the IOC and the Panel's findings in the present Award) and applying it to individual athletes falls withing the autonomy of the FIL as an association existent under Austrian law. It is not for this Panel to override the FIL's association autonomy by ruling on the participation of the Individual Athletes *in lieu* of FIL.

145. As a result, Claims IV and V must be dismissed and the issues of the Individual Athletes' standing to submit them becomes moot.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Court of Arbitration for Sport has jurisdiction to rule on the appeal filed by the Russian Luge Federation, Aleksandr Gorbatsevich, Sofiia Mazur, Andrei Bogdanov, Iurii Prokhorov, Ekaterina Fomina and Polina Grigore on 8 July 2025.

2. The appeal filed by Aleksandr Gorbatsevich, Sofiia Mazur, Andrei Bogdanov, Iurii Prokhorov, Ekaterina Fomina and Polina Grigore on 8 July 2025 against the resolutions adopted on 18 June 2025 by the 73rd Ordinary Congress of the International Luge Federation is dismissed.

3. The appeal filed by the Russian Luge Federation on 8 July 2025 against the resolutions adopted on 18 June 2025 by the 73rd Ordinary Congress of the International Luge Federation, whereby it was decided (i) to continue the effects of the resolution adopted by the Executive Board of the International Luge Federation on 23 September 2022, extending its application to the qualification process for the Olympic Winter Games Milano-Cortina 2026, and (ii) not to implement a program allowing the participation of Russian athletes to competitions recognized by the International Luge Federation under the status of individual neutral athletes (AIN), is partially upheld.

4. The challenged resolutions adopted on 18 June 2025 by the 73rd Ordinary Congress of the International Luge Federation are set aside in part and are enforceable only to the extent they prohibit from competing at competitions recognized by the International Luge Federation the Russian athletes who do not satisfy the criteria established by the International Olympic Committee for participation as individual neutral athletes (AIN) at the 2026 Milano-Cortina Winter Olympic Games.

5. (…).

6. (…).

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

CAS 2025/A/11672
Roberto Santilli v. Projekt Warszawa Sp. Z.o.o.,
award of 27 January 2026

Volleyball; Club's termination of a contract of employment concluded with a coach; Applicable law ex aequo et bono; Admissibility of a request to call additional witnesses; Determination of the compensation due to the coach for termination with no cause ; Extent of the duty to mitigate considering ex aequo et bono; Burden of proof; Impact of procedural delay

Panel
Mr Jasper Wauters (Belgium), Sole Arbitrator

1. **Pursuant to Article 20.12 of the FIVB Sports Regulations 2025 and in accordance with the will of the parties, the CAS shall decide the appeal *ex aequo et bono* and in accordance with the Code of Sports-related Arbitration (CAS Code). Under FIVB Sports Regulations, a decision *ex aequo et bono* involves *"general considerations of justice and fairness without reference to any particular national or international law"*. The principle is defined as requiring a decision incorporating *"what is equitable and good"*.**

2. **Pursuant to Article R56 of the CAS Code, witnesses must be identified no later than in the party's written submissions. The late introduction of witnesses not previously named, without agreed-upon or panel-sanctioned exceptional circumstances, will be refused.**

3. **Pursuant to the principle of *pacta sunt servanda*, compensation is due to the injured party for the entire remainder of a fixed-term contract that is terminated without just cause. Any limitation to this principle constitutes an exception and must be applied restrictively because compensation should place the injured party in the position it would have been in had the contract been properly fulfilled.**

4. **Considering the *ex aequo et bono* principle, the duty to mitigate is limited to the application of the general principle of good faith in context. It does not impose a broad, proactive obligation to actively seek new employment. Rather, it is breached only where an injured party deliberately and intentionally acts in bad faith or foregoes employment opportunities without valid reason. The assessment of whether an injured party has met its mitigation obligations must be context-specific, taking into account factors such as the nature and level of the prior role, the individual's professional qualifications, market conditions, and the timing of the unlawful termination i.e. its detrimental effect on reputation.**

5. **The burden of proving that the injured party failed to mitigate its damages rests with the party that breached the contract, in accordance with the principle of *actori incumbit probatio*.**

6. **A delay of over 17 months in rendering the first instance decision had a direct and determinative impact on the compensation**

analysis, as the passage of time introduced questions of mitigation that would not otherwise have arisen.

I. THE PARTIES

1. Mr Roberto Santilli (the "Appellant") is an Italian professional volleyball coach with more than 20 years of experience in coaching volleyball at the professional level.

2. Projekt Warszawa Sp. Z.o.o. (the "Respondent") is a professional volleyball club based in Warsaw, Poland, and competing in the PlusLiga – the highest-ranking men's volleyball league in Poland.

II. FACTUAL BACKGROUND

3. On 12 May 2022, the Parties signed a contract (the "Contract"), by which the Respondent engaged the Appellant as a coach for its professional volleyball team for the 2022/2023 and 2023/2024 season, corresponding to a fixed duration, according to §5 of the contract, of 1 August 2022 to 31 May 2024 or the last day of the Polish volleyball league.

4. According to §4 of the Contract, the base remuneration of the Appellant was fixed at EUR 80,000 net of tax for each of the two seasons.

5. The season 2022/2023 started on 30 September 2022. However, on 28 November 2022, the Respondent's Vice President and Sports Director, Mr Piotr Gacek, informed the Appellant via WhatsApp that he was relieved of his role as the first coach of the Respondent's team. Following an unsuccessful settlement attempt and related compensation proposal by the Respondent, the Respondent sent a formal notification to the Appellant dated 21 December 2022, by which the Respondent terminated the Contract unilaterally with immediate effect. The Respondent referred to *"dissatisfactory sporting results"*, *"lack of adequate cooperation"* and *"lack of realistic prospects for improvement of the above"* as the justification for the termination.

6. On 25 January 2023, the Appellant filed a Complaint with the *Confédération Européenne de Volleyball* ("CEV"), claiming early termination of the Contract by the Respondent without just cause and requesting compensation in the amount of the residual value of the base remuneration under the Contract for the seasons 2022/2023 and 2023/2024, totalling EUR 122,064.80.

7. Around that same time in January 2023, the Appellant also engaged in discussions with the French volleyball club AS Cannes. The club was in a financially difficult period at the time, but a new investor had appeared who was planning to restructure the club. The Appellant became involved in the project and accepted a position as "High Performance Manager". While this position remained unpaid, the expectation was that it would turn into a remunerated position as soon as the financial difficulties would have been addressed and the related penalties that had been imposed by the French Volleyball League ("LNV") would be lifted. However, a series of decisions by the LNV maintained the penalties as the Club's financial situation did not sufficiently improve. The Appellant had some interactions with another club regarding a possible paid position and by

October 2023 also reached out to an agent he had worked with in the past to signal his interest in a new paid position but not much appeared to be available on the market at that time. Only by December 2023 would the LNV confirm that AS Cannes had sufficiently restructured its finances and it thus lifted its restrictions and penalties.

8. On 14 October 2024, more than a year and a half after the complaint was filed in January 2023 and equally 17 months after the last submission of the parties had been filed in early March 2023, the CEV issued its decision on the Appellant's complaint for compensation. It concluded that the Respondent had terminated the Contract without just cause and ordered that it pay compensation to the Appellant corresponding to the remaining remuneration for the 2022/2023 season (*i.e.*, EUR 42,064.8). However, the CEV dismissed the Appellant's complaint concerning the outstanding remuneration for the 2023/2024 season (EUR 80,000). The CEV held:

"With regard to the consequences of the termination of the Contract, taking into account the termination without just cause and ex aequo et bono considerations, the Coach shall be compensated for all damages suffered as a result of the unjustified early termination of the Contract. In principle, the Coach will be placed in the same financial position as if the Club had duly performed the contract without such termination. However, he must recognise that he would have had sufficient time to find employment for the 2023-2024 season. As he did not do so and did not provide any evidence that he was looking for a suitable position, this circumstance is taken into account in the calculation of the compensation as a duty to mitigate the damages".

9. On 31 October 2024, the Appellant filed a Request for Review with the Tribunal of the *Fédération Internationale de Volleyball* (the "FIVB") against the CEV's decision. The Appellant requested the FIVB Tribunal to confirm the CEV's decision concerning the Respondent's wrongful termination of the Contract and the Appellant's entitlement to indemnity. However, it requested that the FIVB Tribunal reverse the finding of the CEV regarding the amount of the compensation as the Appellant argued he had fulfilled his duty to mitigate and was entitled to compensation in the total amount of EUR 137,064.80. The Respondent, on the other hand, requested that the FIVB Tribunal uphold the CEV's decision.

10. On 24 July 2025, the FIVB Tribunal issued its decision, in which it partly dismissed the Request for Review by the Appellant:

"1. The Request for Review filed by Mr. Roberto Santilli is partly dismissed.

2. The decision rendered by the CEV dated 14 October 2024 (CC315-2023) is fully upheld, including the orders that

a) Projekt Warszawa Sp. z.o.o shall pay to Mr. Roberto Santilli the amount of EUR 42,064.80 net with five percent (5%) per annum interest calculated from 24 December 2022 until full payment;

b) Projekt Warszawa Sp. z.o.o shall pay to Mr. Roberto Santilli the amount of EUR 2,000.00 net as legal expenses; and

c) Projekt Warszawa Sp. z.o.o shall pay to Mr. Roberto Santilli the amount of EUR 400.00 as

reimbursement of the handling fee.

[…]".

11. The FIVB Tribunal first observed that considering the Parties' requests for relief, there was no dispute about the CEV's finding that the Respondent terminated the contract without just cause and that the Appellant was entitled to compensation in the amount corresponding to the outstanding remuneration for the 2022/2023 season.

12. However, with regard to the outstanding amount for the 2023/2024 season, the FIVB Tribunal dismissed the Appellant's request as it considered that the Appellant had failed to comply with his duty to mitigate as he could have done "much more" to find paid employment for that period. In particular, the FIVB Tribunal held as follows:

> *"[T]he FIVB Tribunal Judge observes that under general principles of fairness and justice, the law of damages as well as contract law and labour law, and according to jurisprudence of the FIVB Tribunal, any party has a duty to mitigate damages. Such mitigation duty corresponds to a duty to be active in trying to find a new job after a contract is terminated. A party (player/coach) should not merely sit idly by and wait to collect money from a club that he/she is not performing for. Thus, any amounts received by a party from another club (or similar organisation) after termination must be deducted from the amount requested from the breaching party. In addition, any amounts which the party might have earned by exercising reasonable care during the remaining term of the employment must also be deducted. Finally, the mitigation duty is subject to the circumstances of the case; for instance, a player cannot be expected to find another employment if the player was terminated too late into the season.*
>
> *[…]*
>
> *The Coach submitted evidence for discussions with the Italian club Gas Sales Bluenergy Piacenza for the head coach position 'during the summer of 2023'. However, he failed to provide evidence for his agent's further efforts allegedly made during the period March - September 2023. Discussions with just one club and unverified further efforts to find an employment as of December 2022 are not sufficient to fulfil his duty to mitigate damage. Moreover, it was the Coach's free choice to work (pro bono) for a second-league club in France and the same applies for his later (pro bono) engagement with the Vanuatu Volleyball Federation and his consultant position with the Australian company Suiko. Although all these engagements seem to be commendable, this does not fulfil his duty to mitigate damage, in particular for the 2023-2024 season, because he could have done much more".*

13. On this basis, the FIVB Tribunal upheld the CEV's decision and dismissed the Appellant's request of further compensation for the missed remuneration during the 2023/2024 season. It is this decision of the FIVB Tribunal that is the subject of this appeal proceeding.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

14. On 13 August 2025, the Appellant lodged a Statement of Appeal against the Respondent concerning the Decision of the FIVB Tribunal with the Court of Arbitration for Sport ("CAS"), pursuant to Article R48 of the Code of Sports-related Arbitration (2025 version) (the "Code"). The Appellant chose to proceed in English, to which the Respondent did not object.

15. On 20 August 2025, the FIVB informed the CAS that it did not intend to participate as a party in the present proceedings.

16. On 25 August 2025, the Appellant submitted his Appeal Brief.

17. On 26 August 2025, the CAS Court Office informed the Parties that the Respondent had failed to reply within the given deadline regarding the Appellant's suggestion for a Sole Arbitrator to decide the matter. The President of the CAS Appeals Arbitration Division then decided to submit the case to a sole arbitrator.

18. On 15 September 2025, the Respondent submitted its Response to the Statement of Appeal and to the Appeal Brief (the "Answer"). In its Answer, the Respondent called the following witnesses: Mr Andrzej Wrona (former player), Mr Piotr Graban (former coach), Mr Jakub Korpak (team manager) and Mr Piotr Gacek (vice-president of the Club).

19. By email of 16 September 2025, the CAS Court Office drew the attention of the Parties to Article R56 of the Code, according to which the Parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer, unless the Parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances.

20. On 6 October 2025, the Arbitral Panel was constituted pursuant to Articles R33, R52, R53 and R54 of the Code. Mr Jasper Wauters, attorney at law based in Geneva, Switzerland was appointed as Sole Arbitrator by the President of the CAS Appeals Arbitration Division.

21. Both Parties requested a hearing, which was scheduled for 19 November 2025.

22. By email of 27 October 2025, the CAS Court Office invited the Parties to provide the CAS Court Office, on or before 3 November 2025, with (i) the names of all persons who will be attending the hearing (including witnesses and interpreters, if any); (ii) their email addresses; and (iii) a back-up phone number.

23. On 3 November 2025, the Respondent submitted a list of witnesses to participate in the hearing. The list included the following names:

- Mr Gacek
- Mr Paramey
- Mr Kmita
- Mr Wojtaszek

24. Other than Mr Gacek, none of these witnesses had previously been named by the Respondent in its Answer of 15 September 2025.

25. On 3 November 2025, at the same time as it submitted its own list of witnesses, the Appellant objected to Mr Paramey, Mr Kimta and Mr Wojtaszek being heard as witnesses by the Respondent.

26. On 6 November 2025, the Sole Arbitrator informed the Parties that the Respondent's application to call additional witnesses was denied, pursuant to Articles R55(1) and R56(1)

of the Code since: (a) the witnesses were not previously listed in the Answer; (b) the Respondent has not demonstrated any exceptional circumstances that would justify calling witnesses not previously identified in the Answer; and (c) the proposed testimony does not appear relevant to the issues in dispute. Accordingly, Mr Paramey, Mr Kmita and Mr Wojtaszek were not authorized to testify at the hearing.

27. By email of 6 November 2025, the Respondent submitted a reconsideration request concerning the denial of witnesses Mr Paramey, Mr Kmita and Mr Wojtaszek. The Sole Arbitrator denied the Respondent's application and maintained his decision denying the Respondent's application to call additional witnesses.

28. On 19 November 2025, the hearing took place via videoconference.

29. The following persons attended the hearing on behalf of the Appellant, who also participated himself in the hearing:

- Dr. Stephan Netzle, counsel
- Mr Meriaux, sports consultant, witness
- Mr Novi, sports agent, witness
- Mr Serniotti, head coach at AS Cannes from 2023 to 2025, witness

30. The following persons attended the hearing on behalf of the Respondent:

- Mr Michal Gniatkowski, counsel
- Mr Gacek, Vice President and Sports Director of the Respondent and witness

31. Prior to the opening statements of the Parties, the parties stated that they did not have any objections to the nomination of the Sole Arbitrator. However, the Respondent made a procedural objection concerning the Sole Arbitrator's decision not to admit certain of the witnesses that had been requested by the Respondent on 3 November 2025.

32. The Sole Arbitrator dismissed the Respondent's objection, referring to the reasons mentioned in its communication of 6 November 2025. As noted by the Sole Arbitrator at the hearing, the reasons for this decision are further elaborated in this Award.

33. Following the opening statements by the Parties, the Sole Arbitrator proceeded with the hearing of the witnesses. Those witnesses were cross-examined by the Parties and also the Sole Arbitrator posed some questions to some of the witnesses. The relevant statements of the witnesses and replies are briefly summarised in the following paragraphs.

Mr Meriaux (sports consultant, witness called by the Appellant):

34. Mr Meriaux confirmed that he was part of a group of people, including in particular the Appellant and Australian business man, Mr Carracher who wanted to invest into AS Cannes and restructure the club. Mr Meriaux explained that he knew the Appellant from his days as head coach of the Australian national volleyball team as did the new investor, Mr Carracher. Mr Meriaux was working at the time for the Paris Olympics and advised on the restructuring effort on the side without being remunerated for his advice.

35. Mr Meriaux stated that the role of the Appellant at AS Cannes was not that of a coach, but rather that of technical advisor or director of performance, which could support the coaching staff.

36. Mr Meriaux discussed the overall financial situation of AS Cannes during 2023 explaining that it was more serious than originally anticipated and explained that the club's financial difficulties became clearer during the summer of 2023 as the club was involved in a series of proceedings before the *Commission d'Aide et de Contrôle des Clubs Professionnels* ("CACCP") of the LNV. Mr Meriaux confirmed that by October 2023, it must have been clear to the Appellant that AS Cannes could not offer the Appellant a paid position for the 2023/2024 season.

37. Mr Meriaux stated that he never discussed financial remuneration related matters with the Appellant directly as that was not his role but he confirmed that the idea of the persons involved in the restructuring efforts of the club, including himself and the club's investor, Mr Carracher, was that the Appellant would receive a paid position at AS Cannes once its financial difficulties had been remedied.

Mr Novi (sports agent, witness called by the Appellant):

38. Mr Novi is an agent who assisted the Appellant in the past in finding suitable positions and who works with volleyball clubs as well as players and coaches. He testified about his relationship with the Appellant in the lead-up to the 2023/2024 season. Mr Novi explained that the Appellant approached him to help him find a paid position as head coach in October 2023. Mr Novi explained that he reached out to volleyball club Olympiakos but did not receive a response. Mr Novi further stated that he screened the market but did not find any alternative job positions for the Appellant. Mr Novi explained that was not a big surprise because most clubs look for coaching staff in April/May so that the coach has the opportunity to work with the players before the start of the season. By October, most clubs will have filled their coaching positions. He also explained that, considering the highly qualified professional profile of the Appellant and his sporting merit as a coach, he could not look for just any coaching position available, but that it would have to be a position at a high-level club, which would correspond to the Appellant's professional qualifications.

39. Mr Novi further explained that finding a coaching position does not usually involve sending our resumes to all potential clubs, but that this rather includes screening the market for open positions and making targeted approaches. Doing so, Mr Novi explained, he did not find job alternatives for the Appellant after he was contacted. Mr Novi also noted that once a coach's contract is terminated early by his club, it becomes more burdensome to find him another club as it taints the profile of the coach in a way. The early dismissal of the Appellant by the Respondent had thus not been helpful to the chances of finding a new position for the Appellant, according to Mr Novi.

Mr Serniotti (head coach at AS Cannes 2023-2025, witness called by the Appellant):

40. Mr Serniotti was recommended by the Appellant to act as head coach of AS Cannes and signed an employment contract in April 2023. He testified about his work as head coach at AS Cannes and his professional relationship with the Appellant during their time together at the club. Mr Serniotti noted that he and the Appellant discussed technical matters concerning coaching and team activities in his role as High Performance Manager.

41. Mr Serniotti did not have discussions with the Appellant about the Appellant's own position, including whether he was remunerated at AS Cannes or expected to be so remunerated in the future.

Mr Gacek (Vice President and Sports Director of the Respondent, witness called by the Respondent):

42. Mr Gacek was the Vice President of the Respondent at the time of the termination of the contract and interacted regularly with the Appellant during his time as head coach at the Respondent. He mainly testified about the Appellant's performance when he was head coach at the Respondent. Mr Gacek stated that there had been a low level of communication between the Appellant and the players of the team, which Mr Gacek described as not exemplary of a good relationship between the team and its coach. Mr Gacek also noted that the Appellant did not appear to have sufficient trust in players and staff. Mr Gacek described the relationship between the coach and the players as being on two opposite sides. Mr Gacek noted that in the context of the Appellant's release as head coach, the club had offered the Appellant payment for the remainder of the 2022/2023 season. However, the Appellant did not accept this proposal and requested payment also for the 2023/2024 season.

43. Mr Gacek confirmed that the Respondent did not question the decision of the FIVB Tribunal confirming the CEV's decision that the Respondent terminated the contract with the Appellant without just cause.

44. Following the witness statements, the Appellant was given the floor. He explained that it was never his intention to just sit by idly during the remaining time of his contract after it was terminated early and that he was actively involved in the AS Cannes restructuring project with the expectation that it would involve a paid role for himself as High Performance Manager. He said that it was only by October 2023 that it became clear that the restructuring could take more time and that he decided to seek out other opportunities which he discussed with Mr Novi.

45. Following these interventions, the Sole Arbitrator raised a number of questions with the parties to clarify their legal positions.

46. At the end of the haring the parties expressed their satisfaction with the hearing and considered that their right to be heard was respected. The Respondent reiterated its objection to the refusal to hear certain witnesses that had not been identified in the Respondent's Answer.

IV. THE PARTIES' SUBMISSIONS AND REQUESTS FOR RELIEF

A. The Appellant

47. The Appellant submits that the FIVB Tribunal correctly found that the Respondent terminated the Contract without just cause. While he does not question the FIVB Tribunal's decision to award compensation in the amount of the outstanding base remuneration for the 2022/2023 season, the Appellant challenges the FIVB Tribunal's decision by which it held that the Appellant was not entitled to further compensation for loss of his contractual base remuneration for the 2023/2024 season in the amount of EUR 80,000.

48. The Appellant submits that the Contract was for a fixed period of two sporting seasons and that the unlawful breach of that Contract entitles him to full compensation. The Appellant takes issue with the FIVB Tribunal's finding that he would have breached his "duty to mitigate" the damages resulting from the early termination of the Contract without just cause by not seeking paid employment during the second year of the Contract. He considers that he acted in good faith and complied with the duty to mitigate. According to the Appellant, while remuneration reasonably available must be taken into consideration when determining the amount of compensation following an unlawful termination of a contract, the duty to mitigate does not entail an obligation to proactively search for a new position. The Appellant contends that, given his professional qualifications and the circumstances at AS Cannes, it was reasonable for him to continue his unpaid role in the expectation of a paid position, and that he did not deliberately forgo other employment opportunities.

49. The Appellant explains that he formed part of a "rescue team", which sought to rehabilitate AS Cannes and bring it back to financial stability and, ultimately, sporting success. In his position as a High Performance Manager, the Appellant sought to help manage the club and its sporting decisions. According to the Appellant, his activity at AS Cannes was carried out with the purpose of creating a paid job position for himself. The Appellant noted that the intention of the persons involved in the restructuring was to increase the club's budget but that due to the precarious financial situation of the club at the time, the French rules governing clubs' finances prohibited a budget increase.

50. The Appellant argues that he had agreed with the principal new investor of the club, Mr Carracher, that once the club would be on a more solid financial basis and permitted to increase its budget, a paid position would be created for the Appellant.

51. On this basis, the Appellant requests the following:

"(1) The CAS shall declare that the present Appeal is admissible, and the CAS has jurisdiction to decide the present dispute.

(2) The CAS shall uphold item 2 and 3 of the FIVB-Decision.

(3) The Respondent shall pay the Appellant an amount of EUR 80,000.00 net, plus interest of 5% since 24 December 2022, until payment in full.

(4) The costs of this arbitration proceeding shall be borne by the Respondent.

(5) The Respondent shall pay a fair contribution to the legal fees and other expenses of the Appellant".

B. The Respondent

52. The Respondent considers that the ruling of the FIVB Tribunal upholding the CEV's decision is in line with the principle of fairness and provides a reasonable settlement under the principle of *ex aequo et bono*. The Respondent agrees that the Appellant was entitled to compensation as is clear from the fact that the Club did not appeal the decisions of either the CEV or FIVB Tribunals.

53. However, the Respondent considers that the Club should not be blamed for the fact that the Appellant was unable to find job offers that met his expectations or that he felt a moral obligation to help AS Cannes and thus decided to work without pay. Therefore, according to the Respondent, the decisions of the CEV and FIVB Tribunals fairly balanced the legitimate interests of both parties and fully complied with the principles of *ex aequo et bono* adjudication.

54. The Respondent recalls that the club justified the dismissal of the Appellant because of the team's insufficient performance. It argues that it cannot be so that as a result of the principle of *pacta sunt servanda* it would not be possible to terminate any contract early, even if the person whose contract was terminated failed to properly fulfil any of their contractual obligations or fulfilled them in an inadequate and questionable manner.

55. The Respondent further argues that the burden of proof rests with the person asserting a claim or attempting to prove a fact and that it is therefore not for the Respondent to prove that the Appellant insufficiently sought employment. Rather, according to the Respondent, it was on the Appellant to demonstrate that he looked for alternative employment, where he sought employment, under what conditions and with what results. It argues that the Appellant failed to present any new evidence in this regard. The Respondent asserts that the facts on the record show that the Appellant failed to actively look for a new paid position and did nothing to mitigate his loss.

56. On this basis, the Respondent requests the following:

> *"1. The Respondent states that the Statement of Appeal of the Appellant should be dismissed by the CAS and the FIVB Tribunal Decision should be upheld.*
>
> *2. The costs of this arbitration proceeding shall be borne by the Appellant.*
>
> *3. The Appellant shall pay a fair contribution to the legal fees and other expenses of the Respondent".*

V. CAS JURISDICTION

57. Article R47(1) of the Code provides as follows:

> *"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".*

58. In the present case, CAS jurisdiction derives from Article 20.12 of the FIVB Sports Regulations 2025, which reads as follows:

"Decisions of the FIVB Tribunal can only be appealed to the Court of Arbitration for Sport (CAS), Lausanne, Switzerland and any such appeal must be lodged with CAS within twenty-one (21) days from the receipt of the decision. The CAS shall decide the appeal ex aequo et bono and in accordance with the Code of Sports-related Arbitration, in particular the Special Provisions Applicable to the Appeal Arbitration Procedure".

59. Moreover, the jurisdiction of CAS was not disputed by the Respondent and is confirmed by the Parties with the signature of the Order of Procedure.

60. Accordingly, the CAS has jurisdiction in the present case.

VI. ADMISSIBILITY OF THE APPEAL

61. Article R49 of the Code provides, in its relevant parts, 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".

62. The Statement of Appeal was filed within the deadline of 21 days provided by Article 20.12 of the FIVB Sports Regulations 2025. It complies with all other requirements of Article R48 of the Code, including the payment of the CAS Court Office fee.

63. Furthermore, Respondent has not raised any objection regarding the admissibility of the appeal.

64. The appeal is therefore admissible.

VII. APPLICABLE LAW

65. Article R58 of the Code provides as follows:

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

66. Article 20.12 of the FIVB Sports Regulations 2025 determines that the CAS *"shall decide the appeal ex aequo et bono and in accordance with the Code of Sports-related Arbitration, in particular the Special Provisions Applicable to the Appeal Arbitration Procedure"*. Moreover, both Parties agreed that the Sole Arbitrator should decide this case *ex aequo et bono*.

67. The Sole Arbitrator notes that, in ordinary proceedings, Article R45 of the Code permits the CAS to decide matters *ex aequo et bono*. While no such express authorization is included in the specific rules for appeal procedures, Article R58 of the Code provides that the Panel shall decide the dispute according to the "applicable regulations" and, subsidiarily, to the rules of law chosen by the parties.

68. In the present case, these applicable regulations are the FIVB Sports Regulations 2025, as the appeal is directed against a decision of the FIVB Tribunal, which rendered its decision applying the FIVB Sports Regulations 2025. These in turn instruct the FIVB

Tribunal to decide *ex aequo et bono*. Moreover, as stated above, Article 20.12 of the FIVB Sports Regulations 2025 specifically refers the CAS Panel to a decision *ex aequo et bono*.

69. Sustained CAS jurisprudence further recognizes that a CAS Panel is authorized to render a decision *ex aequo et bono* in appeal procedures in particular where the Parties have so agreed. For example, in a similar situation where the rules of the federation so provided and the parties so agreed, CAS Panels have held as follows:

"In substance, it is generally considered that the arbitrator deciding ex aequo et bono receives 'a mandate to give a decision based exclusively on equity, without regard to legal rules. Instead, applying general and abstract rules, he/she must stick to the circumstances of the case'" (CAS 2009/A/1952, para. 12; CAS 2010/A/2234, para. 8; CAS 2009/A/1921, para. 10);

and

"This conclusion is also confirmed by the provision of Article 187(2) PILA which expressly provide that 'the parties may authorize the arbitral tribunal to decide ex aequo et bono.' Such an authorization has taken place in FIBA's adoption of Article 17 of the FAT rules and in the Appellant's recognition of the FAT Rules" (CAS 2010/A/2234, para. 8)[1].

70. The Sole Arbitrator further notes that Article 187(1) of the Swiss Federal Act on Private International Law ("PILA") provides that the arbitral tribunal must decide the case according to the rules of law chosen by the parties or, in absence of a choice, according to the rules of law with which the case has the closest connection. Article 187(2) PILA adds that the parties may authorize the arbitrators to decide *"en équité"*. Article 187(2) PILA is translated into English as "the parties may authorize the arbitral tribunal to decide *ex aequo et bono"*.

71. Considering these circumstances and the fact that the Parties in the present case not only agreed to, but requested a decision *ex aequo et bono*, the Sole Arbitrator renders his decision *ex aequo et bono*.

72. The FIVB Sports Regulations refer to the concept of *"ex aequo et bono"* in the context of dispute settlement before the FIVB Tribunal (Article 20.09) and in respect of the resolution of financial disputes between clubs, players, FIVB-licensed agents and coaches (Article 18.1(f)). According to these provisions, a decision *ex aequo et bono* involves *"general considerations of justice and fairness without reference to any particular national or international law"*. Considering the volleyball-specific context of the present dispute, the Sole Arbitrator considers this definition as important guidance for the application of the principle of *ex aequo et bono* to the specific circumstances of the case at hand.

73. Moreover, this understanding of *ex aequo et bono* appears to be in line with the definition established under sustained CAS jurisprudence. Previous CAS panels held that the principle of *ex aequo et bono*

[1] Article 17 of the FAR rules provides as follows: *"Awards of the FAT can only be appealed to the Court of Arbitration for Sport (CAS), Lausanne, Switzerland (…). The CAS shall decide the appeal ex aequo et bono and in accordance with the Code of Sports-related Arbitration, in particular the Special Provisions Applicable to the Appeal Arbitration Procedure"*.

requires a decision incorporating *"what is equitable and good"* (CAS 2020/A/6988, para. 131), according to the literal meaning of the expression. In addition, CAS Panels have considered that the arbitrator deciding *ex aequo et bono* receives *"a mandate to give a decision based exclusively on equity, without regard to legal rules. Instead, applying general and abstract rules, he/she must stick to the circumstances of the case"* (CAS 2009/A/1952, para. 12; CAS 2010/A/2234, para. 8; CAS 2009/A/1921, para. 10; CAS 2020/A/6988, para. 133). In a similar vein, Black's Law dictionary defines the term *ex aequo et bono* as *"in justice and fairness; according to what is just and good; according to equity and conscience"*.

74. It is thus by applying such general considerations of justice and fairness that the Sole Arbitrator decides this dispute.

VIII. MERITS

A. Procedural objection regarding witnesses to be heard by the Parties

75. As a preliminary matter, the Sole Arbitrator considers it necessary to address the procedural objection by the Respondent with respect to the decision by the Sole Arbitrator not to hear certain witnesses at the hearing.

76. As explained above, in the Answer, under the heading "witnesses", the Respondent had listed four names of witnesses which it envisaged to call at the hearing. However, on 3 November 2025, in response to a request from the CAS Court office to confirm the final list of persons that would actually participate in the hearing, including witnesses, the Respondent submitted a list of witnesses only one of which, Mr Gacek, was actually included in the Answer. Three other names that appeared on the list of witnesses submitted on 3 November 2025, Mr Paramey, Mr Kmita and Mr Wojtaszek had not been included in the Answer.

77. The Sole Arbitrator recalls that Article R55(1) of the Code states that:

"Within twenty days from the receipt of the grounds for the appeal, the Respondent shall submit to the CAS Court Office an answer containing:

- *[…]*
- *any exhibits or specification of other evidence upon which the Respondent intends to rely;*
- *the name(s) of any witnesses, including a brief summary of their expected testimony; the witness statements, if any, shall be filed together with the answer, unless the President of the Panel decides otherwise;*
- *the name(s) of any experts it intends to call, stating their area of expertise, and state any other evidentiary measure which it requests"*.

78. Furthermore, Article R56 of the Code provides:

"Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer".

79. Furthermore, Article R57 of the Code regarding the Scope of Panel's Review – Hearing provides as follows:

"The Panel has discretion to exclude evidence presented by the parties if it was available to them or could reasonably have been discovered by them before the challenged decision was rendered. Articles R44.2 and R44.3 shall also apply".

80. Article R44.2, third paragraph, which applies in appeal proceedings pursuant to Article R57 of the Code, provides:

"The parties may only call such witnesses and experts which they have specified in their written submissions".

81. Articles R55(1), R56, R57 and R44.2(3) of the Code clearly establish the principle that the Parties' witnesses must be identified at the very latest in the Appeal Brief (for the Appellant) or in the Answer (for the Respondent). The Parties may only call such witnesses and experts which they have specified in their written submissions.

82. Article R56 of the Code provides for two exceptional cases in which the Parties are allowed to alter their submissions after the written stage of the procedure:

i. Where the Parties so agree; or

ii. the Panel authorizes it on the basis of exceptional circumstances.

83. In the present proceedings, these exceptions do not apply. The Appellant immediately objected to these witnesses being allowed to participate such that it is clear that there is no agreement between the Parties. In addition, neither in the communication of 3 November 2025, nor in subsequent communications or even at the time of the hearing did the Respondent even try to demonstrate the existence of exceptional circumstances which could justify that those witnesses be heard by the Sole Arbitrator even though they were not included in the Answer.

84. Accordingly, pursuant to Articles R57 and R44.2(3), R55(1) and R56 of the Code, the request to call additional witnesses, which had not been named in the Respondent's Answer of 15 September 2025 but only subsequently by email dated 3 November 2025, did not have any legal basis.

85. Moreover, and contrary to what the Respondent claims, the communication sent by the CAS Secretariat on 27 October 2025, by which it invited the Parties to provide the names and contact details of persons attending the hearing, including witnesses, does not mean that Parties are authorized to identify witnesses other than those referred to in their written submissions. Rather, this invitation of a purely administrative character seeks to enable the CAS Court Office to better prepare the modalities of the hearing. This invitation does not derogate from the clear rules established by Articles R57, R44.2, 55 and 56 of the Code.

86. Accordingly, the request by the Respondent to call witnesses Mr Paramey, Mr Kmita and Mr Wojtaszek is rejected.

B. Scope of appeal

87. The Sole Arbitrator considers it useful to clarify the scope of the present appeal. As explained above, the Appellant only partially appealed the FIVB Tribunal's

decision. The Appellant did not appeal the decision to the extent that it found that the Respondent had terminated the Contract without just cause and that the Appellant was entitled to compensation in the amount of the outstanding remuneration for the 2022/2023 season.

88. However, the Appellant challenged the FIVB Tribunal's decision to the extent that it found that the Appellant violated his obligation to mitigate the damages caused by the early termination of the Contract and therefore rejected his request to be awarded compensation for the 2023/2024 season in the amount of EUR 80,000.

89. In its Answer, the Respondent indicates that it does not dispute the FIVB's decision that that the Contract was terminated in a manner to require compensation:

"The termination of the contract was effective, which the Respondent does not dispute and did not dispute earlier in the proceedings. The Club agrees that the Respondent was entitled to compensation (which is clear from the fact that the Club did not appeal the decision in either of the previous instances). ***These decisions fairly balance the legitimate interests of both parties and fully comply with the principles of ex aequo et bono adjudication.*** *This method of deciding the case between Roberto Santilli and Projekt Warsaw fulfills a concept of justice, mentioned by the Appellant in point 29 of the Appeal Brief"* (emphasis in the original).

90. Accordingly, there is no dispute between the Parties in the present case concerning:

- the FIVB Tribunal's finding that the Respondent terminated the Contract with the Appellant without just cause;
- the FIVB Tribunal's finding that the Respondent pay the Appellant compensation in the amount corresponding to the unpaid remuneration for the 2022/2023 season (*i.e.*, EUR 42,064.8).

91. No appeal has been raised by the Parties regarding the above two items. The present dispute is thus concerned exclusively with the remaining question of whether the Respondent owes the Appellant additional compensation corresponding to the Appellant's base remuneration for the 2023/2024 season, amounting to EUR 80,000.

92. The subsequent assessment by the Sole Arbitrator will thus focus on the disputed aspect of this case, which relates to the amount of compensation due as a result of the termination of the Contract.

C. The amount of compensation due to the Appellant for the 2023/2024 season

93. The issue at the heart of the present dispute is the question whether the FIVB Tribunal was correct to limit the amount of the compensation for the early termination of the Contract to the first year of the Contract or whether compensation is also due for the second year of the Contract related to the 2023/2024 season.

94. The starting point for the Sole Arbitrator's analysis is the Contract that was signed between the parties in May 2022. The principle of *pacta sunt servanda* determines that validly concluded

contracts are to be honoured by the Parties to the contract. This embodies an elementary and universally agreed principle fundamental to all legal systems. Relatedly, it is widely recognized that where a party breaches its contractual obligation, compensation is due as a remedy. In such a situation, the other party is generally to be placed in the position it would have been in if the contract had been properly fulfilled. The Sole Arbitrator thus considers that *"general considerations of justice and fairness"* (Article 20.09 FIVB Sports Regulations 2025) require the defaulting party to place the injured party in the position it would have been in had the breach of contract not occurred. The Sole Arbitrator notes that both the CEV Tribunal and the FIVB Tribunal reached a similar conclusion. In the case at hand, there is no dispute over the fact that the Respondent terminated the Contract without just cause and that it owes the Appellant compensation.

95. As a result, in principle, it is fair and equitable that compensation is due for the entire remainder of the Contract, thus including for the second year.

96. Given the fundamental nature of the principle of *pacta sunt servanda*, the Sole Arbitrator is reluctant to accept important limitations to the application of the principle in a particular case. Any such limitation would necessarily have to be an exception to the rule and thus needs to be applied restrictively.

97. In the current proceeding, the Appellant is appealing from the decision of the FIVB Tribunal that considered that the Appellant was under a "duty to mitigate" the damages resulting from the unlawful breach of the Contract by the Respondent. In application of this alleged "duty to mitigate", the FIVB Tribunal considered that it would be unfair to require the Respondent to compensate the Appellant for the second year of the Contract because it considered that the Appellant could have done "much more" to find gainful employment in that second year.

98. The Sole Arbitrator disagrees with the FIVB Tribunal's reliance on the "duty to mitigate" and with the way it applied this notion to the facts of this case.

99. First, contrary to the well-established nature of the principle of *pacta sunt servanda*, it is much less certain whether there exists such a basic principle of a "duty to mitigate" damages irrespective of specific legal requirements under the laws of a particular country and what that "duty" actually requires of a party. To the extent that there exists a principled "duty to mitigate", it is no other than the particular application of the general principle of good faith in a particular situation, whether contract-based or tortious. The good faith principle requires that even the injured party is to behave in a reasonable manner and cannot act in such a way as to aggravate the damage or to deliberately and intentionally forego ways in which the damage could be mitigated. No party is entitled to act in bad faith and benefit from it.

100. This same principle of good faith finds expression in the laws of certain countries. For example, as reflected in CAS Jurisprudence:

"[D]eriving from Article 337c (2) of the [Swiss Civil Code ("SCO")]: 'the duty of mitigation is related to the rule that the employee must permit

a set-off against the amount of compensation for what he saved because of the termination of the employment relationship, or what he earned from other work, or what he has intentionally failed to earn. Such a rule implies that, in accordance with the general principle of fairness, the injured player must act in good faith after the breach by the club … This principle is aimed at limiting the damages deriving from breach and at avoiding that a possible breach committed by the club could turn into an unjust enrichment for the injured party. The wording of art. 337c (2) SCO, with reference to what the employee intentionally failed to earn, suggests that the duty to mitigate should not be considered satisfied when, for example, the player deliberately fails to search for a new club or unreasonably refuses to sign a satisfying employment contract, or when, having different options, he deliberately accepts to sign the contract with worse financial conditions, in the absence of any valid reason to do so' (CAS 2015/A/4346)" (CAS 2020/A/6990, para. 170 (emphasis added). See also CAS 2020/A/7175, paras. 103-105).

101. In other words, any "duty to mitigate" is limited to an examination of good faith behaviour by the injured party in the specific circumstances of the situation.

102. Second, once it is established that the principle of *pacta sunt servanda* was breached, complete compensation (*restitutio in integrum*) is due. If the party that is responsible for breaching the contract such that it is required to pay compensation is of the view that the other party failed its good faith obligation and is thus not entitled to the normal full compensation, the burden of proof rests with the party breaching the contract, in accordance with the general principle of *actori incumbit probatio*. It is for the party that asserts a certain fact to carry the burden of proof of such facts. This principle is also well established in CAS jurisprudence: *"in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them (..). The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some fact and persuade the deciding body, it must actively substantiate its allegations with convincing evidence (e.g. CAS 2003/A/506, para. 54; CAS 2009/A/1810 & 1811, para. 46; and CAS 2009/A/1975, paras. 71ff)"* (CAS 2019/A/6670, para 93).

103. In this case, it was thus for the Respondent to demonstrate that the Appellant failed his good faith obligation during the time that followed the unlawful breach of the contract. This is fully consistent with established CAS Jurisprudence. For example, in CAS 2020/A/6994, the CAS held:

"The Panel observes that the Employment Contract was terminated on 26 December 2018, with the termination being effective as of 31 December 2018. Since the date of termination until the end of the 2019 season, the Coach remained unemployed. The Club sustains that the Coach failed to comply with his duty to mitigate the damages in accordance with long-standing CAS jurisprudence and Article 337c (2) of the SCO, as he did not become employed with another club after the termination of the Employment Contract. However, the Panel observes that the Club has failed to provide any evidence in support of such allegations. Based on the general principle of burden of proof, which lies on a party raising the argument (Article 8 of the Swiss Civil Code), it was for the Club to substantiate its claim in this respect. The Club has not demonstrated that the

Coach deliberately refused to enter into an employment relationship or negotiations with other clubs after the termination of the Employment Contract. […] *In the absence of any evidence that the Coach deliberately failed to find new employment after the termination of the Employment Contract, the Panel holds that there is no proof that the Coach has acted in bad faith or intentionally failed to mitigate the damages. Therefore, the Panel is of the opinion that no remuneration appears to exist which the Coach earned after the termination of the Employment Contract and by which he could mitigate the compensation owed to him by the Club"* (CAS 2020/A/6994, paras. 162-166. See also CAS 2020/A/7605, paras. 230-232; CAS 2022/A/8685, para. 77).

104. It is with these principles in mind that the Sole Arbitrator examines the facts before him and determines what constitutes a fair and just outcome.

105. First, it is undisputed that the Respondent terminated the Contract without just cause. In principle, the Respondent thus owes the Appellant the contractually agreed amount of the Appellant's base remuneration as compensation, including the amount corresponding to the 2023/2024 season. This is so because, in the case of a breach of contract, the other party is generally to be placed in the position it would have been in if the contract had been properly fulfilled.

106. Second, the CEV and FIVB Tribunals considered that the Respondent does not owe compensation for the 2023/2024 season because they found that the Appellant failed to comply with his duty to mitigate the damages by accepting and keeping an unpaid position at AS Cannes in the lead-up to the 2023/2024 season.

107. In particular, the CEV Tribunal considered that the Appellant had *"sufficient time to find employment for the 2023-2024 season"* but did not do so and *"did not provide any evidence that he was looking for a suitable position"*. It considered that this circumstance is to be taken into account in the calculation of the compensation as part of his duty to mitigate the damages. Similarly, the FIVB Tribunal found that the *"mitigation duty corresponds to a duty to be active in trying to find a new job after a contract is terminated"* and that a party *"should not merely sit idly by and wait to collect money from a club that he / she is not performing for"*. It found that *"it seems reasonable for a coach to find a new (paid) employment during half a year after termination and starting such employment at the beginning of a new season"*. It discussed the evidence submitted by the Appellant about his efforts to find a new employment and his expectations of future paid work at AS Cannes but considered that *"although all of these engagements seem to be commendable, this does not fulfil his duty to mitigate damage, in particular for the 2023-2024 season, because he could have done much more"*.

108. The Sole Arbitrator disagrees. As a preliminary matter, the Sole Arbitrator is also concerned about the time it apparently took for the CEV Tribunal to address this matter. This failure to provide a prompt resolution is all the more problematic in this case because the passage of time raised the issue of the alleged duty to mitigate which would not have been an issue had it not been for the CEV Tribunal waiting to issue its decision until October 2024. Relying on the alleged lack of action by the Appellant in the period after the filing of

the claim, the CEV Tribunal refused to grant full compensation. The very slow pace of the proceeding regarding a fairly straightforward matter thus had a direct and determinative impact on the rights of one of the parties.

109. In any case, the Sole Arbitrator does not share the views of the CEV and FIVB Tribunals for a number of reasons.

110. To start, the CEV and FIVB Tribunals applied an overly expansive reading of the concept of the "duty to mitigate" which, as noted above is limited to a possible breach of the good faith obligation by the Respondent. Second, both Tribunals appeared to erroneously consider that the burden of proof was on the Appellant to demonstrate that he acted diligently in an effort to mitigate the damage, as no evidence from the Respondent to this effect appears to have been examined. Third, the Sole Arbitrator considers that their assessment of the facts on the record was incomplete and that the consequences attached to the finding that the Appellant failed his duty to mitigate are equally in error. In particular, at no point did the Tribunals examine if the facts supported a conclusion of bad faith or of the Appellant intentionally foregoing revenue or employment. Moreover, even if the Tribunals were of the view that the Appellant could have done more to find employment, they did not examine the extent of the remuneration the Appellant could have received, considering the specific circumstances of the case. They bluntly and erroneously decided that no compensation of any kind was due for the 2023-2024 season.

111. The Sole Arbitrator thus agrees with the Appellant that these decisions are in error and need to be set aside.

112. Turning to the evidence submitted by the parties in the context of this CAS proceeding, the Sole Arbitrator notes that the Appellant presented a credible story of what happened after the early termination of the Contract when the Appellant accepted an unpaid position as part of the rescue team of former French volleyball champion AS Cannes with a view to bringing it back to the first division and to restructure the club which included creating a new position for the Appellant as High Performance Manager. The Sole Arbitrator briefly recalls some of the facts that are supported by the evidence on the record.

113. In January 2023, the Appellant interacted with the leading personnel of AS Cannes, including its president, Mr Zaragoza, the club's new investor, Mr Carracher, as well as sports consultant Mr Meriaux with a view to bringing AS Cannes back to the top level. This core team, including the Appellant, set out to restructure and rebuild AS Cannes, which experienced severe financial difficulties at the time. The Appellant had a strong relationship with the principal new investor, Mr Carracher, as well as with Mr Meriaux, both of whom he knew from his days as head coach of the Australian national volleyball team.

114. During these discussions, the Appellant submitted a draft arrangement providing for consultancy services at AS Cannes in the role of "High Performance Manager" for the men's volleyball club 2023. The arrangement included a fee proposal establishing a base remuneration of EUR 5,300 per month.

115. It appears that in light of AS Cannes' precarious financial situation, no positive response was provided to the proposal. Nevertheless, and based on the prospect of a potentially paid position as soon as the financial situation of the club would have been consolidated, the Appellant started acting as "High Performance Manager" at the AS Cannes in March 2023, albeit without remuneration. In this role, the Appellant advised the club on the transfer of players and coaching staff and was involved in overseeing and developing a sporting strategy of AS Cannes for the season 2023/2024.

116. In May 2023, in his role as High Performance Manager, the Appellant contacted Mr Roberto Serniotti for a job as head coach at AS Cannes and following discussions with the Appellant, Mr Serniotti joined AS Cannes in a paid position as the head coach of the men's volleyball team.

117. Around that same time, the Appellant was contacted by Italian professional volleyball club Gas Sales Bluenergy Piacenza about a coaching position for the 2023/2024 season. However, the discussion did not go very far as the Appellant seemed committed to see the project at AS Cannes through. No negotiations regarding financial compensation related to such a potential coaching position took place.

118. It is important to put these discussions also in the context of what was happening at AS Cannes at the same time. The CACCP belongs to the Direction Nationale d'Aide et de Contrôle de Gestion ("DNACG"), which is the body responsible for financial control of clubs in professional French volleyball. In 2022, the CACCP had examined the club's difficult financial position and imposed a maximum wage bill of EUR 397,000 for the 2022/2023 season and partially banned the club from recruiting. It also required the club to clear its liabilities over three seasons following a particular payment schedule. The CACCP also imposed a precautionary administrative relegation measure (subject to the successful completion of the 22/23 financial year).

119. Following an audit by the CACCP on 16 May 2023, the CACCP considered that the situation of the club had not developed positively and that it had failed to respect a number of the obligations previously imposed by the CACCP. In its decision of 3 June 2023 (communicated to the club on 27 June 2023), the CACCP confirmed the administrative relegation of the club to the federal division and refused to grant the club approval to continue to play in the Ligue B Masculine ("LBM") – the second tier French volleyball league – for the 2023/2024 season.

120. The club unsuccessfully appealed this decision to DNACG's Higher Council in July 2023. It appealed also this decision before the French National Olympic and Sporting Committee ("Comité national olympique et sportif français" or "CNOSF") which organized a conciliation hearing on 5 September 2023. During the hearing, AS Cannes made a number of commitments and was, in return, permitted to participate in the LBM championship for the 2023/2024 season.

121. In light of this agreement, the LNV Bureau requested the CACCP to re-

examine the club's situation and, if necessary, to impose any budget or salary related constraints. Upon renewed examination of the club's financial position in October 2023, the CACCP found "significant issues" that could jeopardize the continuity of the club's activities or even constitute a state of insolvency. Accordingly, in its decision of 19 October 2023, the CACCP took note of the club's submitted payroll for the 2023/2024 season of EUR 435,000 and imposed a total ban on recruitment for the 2023/2024 season.

122. Moreover, the CACCP decided to exclude the club from the play-off stages of the LBM championship for the 2023/24 season and to foresee an administrative relegation, both as precautionary measures.

123. By the middle of October 2023, it thus became clear that despite the ambitious plans for the restructuring of AS Cannes, the club's financial position remained very problematic and it was not allowed to recruit new people. It was thus clear that the club was not– and would not be – in a position to provide the Appellant a paid position for the 2023/2024 season.

124. At that time, the Appellant contacted Mr Novi, a sports agent with whom the Appellant had already worked in the past as well and who he knew to have good contacts in the volleyball world. Mr Novi screened the market for job opportunities for the Appellant but did not succeed in finding him a paid position as the transfer market for coaches in professional volleyball usually closes in May/June such that it was difficult to find a volleyball club that was still looking to fill a position in October.

125. The Appellant continued to assist AS Cannes on a voluntary basis throughout the 2023/2024 season.

126. On 20 December 2023, upon another re-examination of the club's finances, the CACCP considered that the documents produced demonstrated significant efforts made by the club and its investors over the last few months to establish the club's financial situation and to draw up an action plan. Moreover, the CACCP found that the club's forecast for 30 June 2024 would enable it to cover part of its liabilities. Considering in particular the guarantees provided by Mr Carracher, the CACCP thus decided on 20 December 2023 to cap the club's wage bill at the proposed amount of EUR 436,000 for the 2023/2024 season and to impose a partial recruitment ban for the 2023/2024 season. The CACCP noted that this decision meant that the club may not request any recruitment exceeding the wage bill cap.

127. Moreover, the CACCP decided to undo both the administrative relegation and the exclusion of the club from the play-offs of the LBM championship for the 2023/2024 season which had been taken as a precautionary measure in its decision dated 17 October 2023.

128. On 21 April 2024, AS Cannes won the LBM and was promoted to the first league (the so-called Marmara SpikeLigue) for the 2024/2025 season.

129. Throughout the summer of 2024, the Appellant assisted Mr Serniotti in managing the player market for the 2024/2025 season, but left the club before the 2024/2025 season started.

130. When asked the question by the Sole Arbitrator why the Appellant did not take up the paid position as head coach of AS Cannes himself rather than recommending Mr Serniotti, the Appellant explained that he could not do so as he did not meet the minimum requirements to obtain a license to coach in the LNV. He indicated that he had faith in the rescue project until the middle of October 2023 when an appeal against a negative decision of the LNV was unsuccessful and confirmed the dire financial situation of AS Cannes.

131. The evidence shows that the Appellant did contact an agent he worked with before and who he knew to have good contacts in the volleyball world and that this agent started sending out some feelers but was unable to find a suitable offer.

132. The Sole Arbitrator thus considers that the Appellant continued to participate in the world of volleyball at a high level and had a not unreasonable expectation that the 2021 French champion club AS Cannes would be able to offer him a paid position once the new investors would have succeeded in the planned financial restructuring of the club. In addition, he was in touch with other clubs and with an agent about possible alternative employment when it sounded unrealistic to find paid employment at AS Cannes.

133. The Sole Arbitrator is of the view that under the circumstances of the specific case, the Appellant could not reasonably have been expected to look for or accept just any job as a volleyball coach. The Appellant is a highly decorated professional volleyball coach with more than 20 years of experience in coaching volleyball at either national first leagues or in a coaching position at national volleyball teams (including in Australia and Germany). Among his sporting merits are several national championship wins as well as successes at the international level, *e.g.*, the win of the Bronze medal at the World Championships in Poland 2014 as Counselor and Assistant Coach for the German Senior National Team. As explained above, the duty to mitigate applies within reasonable limits and depends on the circumstances of the individual case, including the type of work previously performed, age and previous training of the injured person, and difficulties in finding a new job. According to the uncontested statement of the Appellant, no suitable job offers were available to him in the lead-up to the 2023/2024 season. The Appellant explained that by the time it was clear that no paid position would be available to him at AS Cannes, no coaching position meeting his professional qualifications was available. This was confirmed by Mr Novi, who screened the market for job openings but did not succeed in identifying job opportunities for the Appellant.

134. Furthermore, according to the witness testimony of Mr Novi – which remained uncontested by the Respondent – the early termination of the contract by the Respondent had a detrimental impact on the reputation of the Appellant, which complicated the search for an alternative opportunity. This aggravating circumstance must be taken into account when assessing whether the Appellant's conduct was reasonable.

135. Finally, as noted above, considering the above circumstances, the Appellant's pursuit of his unpaid role as High

Performance Manager at AS Cannes does not appear unreasonable. While the club faced severe financial difficulties in the lead-up to the 2023/2024 season, this does not *ipso facto* justify the assumption that the Appellant "sat on his hands" and unduly sought to enrich himself to the detriment of the Respondent. It was not unreasonable of the Appellant to expect that once budgetary restrictions imposed by the LNV would have been lifted, the budget would be increased, enabling a paid position for the Appellant. Nor does it seem unreasonable to have put his confidence in the new investor. After all, the decision by the LNV of 20 December 2023, which overturned the relegation decision for the 2023/2024 season, concluded that *"the documents produced demonstrate the significant efforts made by the club and its investors over the last few months to establish the club's financial situations, draw up an action plan and begin restructuring the club"*. It further pointed to relevant investment and capability of the club to cover its liabilities. It does not therefore appear unreasonable by the Appellant to accept an unpaid role at AS Cannes in the legitimate expectation of a paid position, once the club's financial difficulties had been sorted.

136. In contrast, the Respondent provided no evidence of any kind related to the alleged lack of compliance by the Appellant of its stated "duty to mitigate". Nothing. This is all the more problematic since the burden of proof that an alleged duty to mitigate was violated by the Appellant rested with the Respondent. The Respondent chose instead to return time and again to the irrelevant story of why the Appellant had been dismissed and argued that it must be possible to terminate a contract early. The witness it called at the hearing testified only on one thing: the performance of the Appellant during his time at the Respondent. However, given that it was undisputed that the Contract had been terminated without just cause and thus unlawfully by the Respondent, the circumstances of the dismissal were not at issue in this proceeding.

137. It appears that the Respondent considers it can derive some degree of fairness out of the circumstances related to the dismissal of the Appellant considering essentially that it would be unfair to hold the Respondent to full compensation for having fired an allegedly underperforming coach. The Sole Arbitrator considers this understanding to be in error. Once it is established that the Contract was terminated unlawfully, it is clear that the behaviour of the Appellant was not a justification for termination. Nor did the Respondent raise any matters that suggested that during his time with the Respondent the Appellant would have acted in bad faith such that a pattern of behaviour could have been established. That was never even argued. Whatever lack of sporting performance the Appellant may be blamed for in the eyes of the Respondent, it is not relevant to the question of whether the Appellant acted in good faith after the unlawful termination of the Contract.

138. The Respondent could have, but did not present evidence of volleyball clubs in Poland or other European countries that were changing coaches in the April/May 2023 or September/October 2023 period, which potentially could have contacted the Appellant. The Respondent could have, but did not present evidence on the number of

agents that normally approach the Respondent when it is looking for a new coach to suggest that these could have approached the Appellant as well with job offers.

139. The Respondent could have, but did not present evidence on how coaches also get hired in the September/October window.

140. The Respondent could have, but did not present evidence on the average remuneration amounts of top level coaches to confirm that the Appellant would have been able to recover the entire amount of the 2023/2024 season that he was entitled to under the Contract also elsewhere.

141. Therefore, the Sole Arbitrator does not consider there to be any evidence that the Appellant, being the injured party, deliberately and intentionally refused to seek alternative employment, refused to sign a satisfactory contract or otherwise acted in bad faith. It is not for the injured party to go out of his way to find new employment with a view to mitigating the damage caused by the Respondent who simply bears the consequences of the unlawful termination of the contract. And if the Respondent considered that it should have been entitled to terminate the Contract early because of a lack of sporting performance, it could have, but again did not, include any sporting goals in the Contract that were required to be met within a certain period. The Respondent signed the Contract without any such clauses.

142. In sum, based on general considerations of justice and fairness, and taking into account the specific circumstances of the case, the Sole Arbitrator finds that the Appellant is entitled to the full amount of compensation he was entitled to under the Contract, including the missed base remuneration for the 2023/2024 season in the amount of EUR 80,000.

ON THESE GROUNDS

The Court of Arbitration for Sport pronounces that:

1. The appeal filed on 14 August 2025 by Mr Roberto Santilli against Projekt Warszawa Sp. Z.o.o. with respect to the decision issued on 24 July 2025 by the FIVB Tribunal is upheld.

2. The decision issued on 24 July 2025 by the FIVB Tribunal is confirmed, save for para. 2 (a) which is amended as follows:
   a) Projekt Warszawa Sp. z.o.o shall pay to Mr. Roberto Santilli the amount of EUR 122,064.80 (one hundred twenty-two thousand sixty-four euros and eighty cents) with five percent (5%) per annum interest calculated from 24 December 2022 until full payment.

3. (…).

4. (…).

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

CAS 2025/A/11755
World Athletics (WA) v. Ethiopian National Anti-Doping Office (ETH-NADO) & Diribe Welteji Kejelcha
award of 26 February 2026

Athletics (middle-distance); Doping (failing to submit to sample collection); Admissibility of the appeal; Assessment of the evidence; Evasion, refusal/failure to submit to a test; Departures from international standards; Athlete's conduct; Compelling justification; Disciplinary sanctions

Panel
Ms Marianne Saroli (Canada), Sole Arbitrator

1. **The time limit for appealing the decision of a national anti-doping organisation before the CAS runs from the date of notification or, if the entity was not a party to the first-instance proceedings, from the receipt of the case file. In this context, an unsigned document marked with the date of the hearing cannot be considered an official decision.**

2. **The assessment of the evidence is crucial when the existence of an anti-doping rule violation or its intentional nature is disputed. In this respect, substantial difficulties of interpretation during the hearing undermine the reliability of testimonies and lend credibility to the possibility that miscommunication also affected the out-of-competition test attempt. Likewise, similar witness accounts must be regarded with appropriate caution if there is reason to suspect that the stakeholders may have conferred with each other. Ultimately, the statements of doping control officers do not benefit from a presumption of accuracy, but must be appreciated in their context.**

3. **Evading sample collection entails the deliberate avoidance of an officer in order to escape notification altogether. In such cases, formal notification need not be established, and no defence of compelling justification is available. By contrast, a refusal to submit to sample collection requires proof that the athlete was duly notified and thereafter intentionally failed to comply. In those circumstances, the defence of compelling justification remains available. A failure to submit likewise requires proof of notification, but may arise from either negligent or intentional conduct, and the defence of compelling justification is equally applicable.**

4. **Proper notification cannot be called into question by alleged minor departures from international standards that cannot reasonably be viewed as causative, such as presenting an official letter and expired badge in lieu of formal identification documents, failing to warn the athlete of the full consequences of a violation, and drafting a report instead of signing a refusal form. In the same vein, the brevity of the out-of-competition test attempt is not decisive.**

5. **A failure to submit to sample collection must be retained when it**

is not established on a balance of probabilities standard that the athlete deliberately and unequivocally refused to undergo a test. The fact that she raised objections regarding the timing of the visit and her need for recovery amid discussions marred by confusion and frustration do not undermine this finding.

6. The defence of compelling justification must be interpreted restrictively and cannot succeed when it remains "physically, hygienically and morally possible" for the athlete to provide a sample. This includes objections to the laboratory analysing the sample, instructions from team officials to attend a meeting and delay reporting to the control station, mental distress or panic attacks and sudden illness where departure from testing was voluntary. For the same reasons, the obligation to submit to testing "at any time" notwithstanding preferred designated timeslots encompasses periods when athletes may be sleeping or recovering, the right to raise objections does not suspend the obligation to provide samples and language barriers do not render compliance impossible.

7. The standard four-year period of ineligibility may be reduced to two years in cases involving a failure to submit to sample collection, provided that the violation is not intentional. It takes effect on the date of the final hearing decision, unless there are substantial delays that are not attributable to the athlete nor any legitimately complex investigative work. It is accompanied by the disqualification of competitive results, unless fairness requires otherwise.

I. PARTIES

1. World Athletics ("WA" or the "Appellant") is the international federation governing the sport of athletics worldwide, with its headquarters in the Principality of Monaco. It is represented in these proceeding by the Athletics Integrity Unit ("AIU"), which has delegated authority for results management and hearings on behalf of WA pursuant to Rule 1.2 of the World Athletics Anti-Doping Rules in force from 1 January 2024.

2. Ethiopian National Anti-Doping Office ("ETH-NADO" or the "First Respondent") is the national anti-doping agency in Ethiopia.

3. Mrs. Diribe Welteji Kejelcha (the "Athlete" or the "Second Respondent") is an Ethiopian elite middle-distance athlete and Olympian. She has achieved podium finishes at World Championships and, at all material times, competed at the highest international level. The Athlete was subject to the Ethiopian National Anti-Doping Office Rules 2021 ("ADR") and the World Anti-Doping Code 2021 ("WADC") throughout the relevant period. The Athlete has been in the international Registered Testing Pool ("RTP") since 1 January 2023.

II. FACTUAL BACKGROUND

A. Introduction

4. This Appeal arises from a decision issued on 27 August 2025 by the independent hearing panel of ETH-NADO (the "Hearing Panel"), which acquitted the Athlete of an alleged anti-doping rule violation ("ADRV") under Article 2.3 of the ADR for refusing or failing to submit to sample collection. The Hearing Panel found that ETH-NADO had failed to prove that the Athlete's conduct constituted a clear and unequivocal refusal, that a violation under Article 2.3 requires intentional conduct which had not been demonstrated, and that the Sample Collection Personnel ("SCP") failed to comply with mandatory documentation and notification procedures, including properly issuing a *"Refusal to Submit to Sample Collection Form"* and clearly warning the Athlete of the possible consequences of non-compliance. It further concluded that the Athlete's conduct reflected a willingness to cooperate rather than an explicit refusal, and that the charge could therefore not be substantiated.

B. The out-of-competition testing mission of 25 February 2025

5. On 25 February 2025, ETH-NADO initiated an unannounced out-of-competition testing mission involving the Athlete. The purpose of the mission was to collect a blood sample (the "Event").

6. ETH-NADO assigned three SCP to the mission, namely Mr. A. as lead doping control officer, Dr. B., and Mr. C.

7. At approximately 11:30, the SCP arrived at the Athlete's residence, which was located within a gated property.

8. Upon arrival, the SCP made contact with the Athlete's husband, Mr. Tamiru Waqo, and an exchange took place between them. During that time, the Athlete was allegedly asleep inside the residence.

9. Shortly thereafter, the Athlete emerged from the residence, and a further exchange took place between her and the SCP.

10. The SCP subsequently departed from the Athlete's residence without collecting a sample.

11. No blood sample was collected from the Athlete during this visit, and no written notification form or refusal form was completed or signed on site.

12. Following their departure from the Athlete's residence, the SCP prepared written reports at the ETH-NADO office (the "Report").

13. The Parties disagree as to the duration and content of the exchange between the Athlete and the SCP, including whether the SCP properly identified themselves and presented official identification, whether the Athlete was adequately informed of the consequences of non-compliance, and the circumstances in which the SCP ultimately departed from the residence.

C. The Proceedings before the hearing panels of the ETH-NADO

14. On 10 March 2025, ETH-NADO notified the Athlete of an alleged ADRV pursuant to Article 2.3 of the ADR (Evading, Refusing or Failing to Submit to Sample Collection), and

imposed an optional provisional suspension under Article 7.4.2 of the ADR.

15. In its notification letter, ETH-NADO required the Athlete to provide *"a full and detailed written explanation for the alleged facts"* by no later than 15 March 2025. It also stated that the Athlete's *"written explanation for the alleged facts of rule violation"* would constitute her *"opportunity to make written submissions to lift the Provisional Suspension"*. ETH-NADO added that, upon review of her explanation, should it remain satisfied that the ADRV had been committed, it would issue a formal notice of charge.

16. On 14 March 2025, the Athlete filed a request for the lifting of the provisional suspension, with her explanations.

17. On the same date, ETH-NADO filed its response to the Athlete's application.

18. On 15 March 2025, a hearing took place before a panel appointed by ETH-NADO (the "Provisional Suspension Panel") to determine whether the provisional suspension should remain in force. At the hearing, the parties addressed not only the question of provisional suspension but also, in summary, the merits of the alleged ADRV. The Athlete, appearing with her lawyer, presented her defense to the substance of the charge as well as her arguments to lift the provisional suspension. ETH-NADO's representative opposed the lifting of the provisional suspension and maintained that the Athlete had committed an ADRV under Article 2.3.

19. By majority decision dated 16 March 2025, the Provisional Suspension Panel ordered that the provisional suspension be lifted (the "Provisional Suspension Decision"), determining that there was *"demonstrable lack of fault or negligence"* on the Athlete's part and that it was *"debatable to prove the refusal"*, making it *"clearly unfair to impose provisional suspension prior to the final hearing"*.

20. On 21 May 2025, ETH-NADO formally charged the Athlete with an ADRV pursuant to Article 2.3 of the ADR, without imposing a provisional suspension.

21. On 16 June 2025, the Athlete filed her defense to the charge.

22. On 23 June 2025, ETH-NADO filed its reply to the Athlete's defense, asserting that the alleged ADRV was established.

23. On 15 July 2025, a procedural directions hearing was held before the Hearing Panel[1], which directed that the substantive hearing be scheduled for 30 July 2025. That hearing was subsequently adjourned and rescheduled to 12 August 2025.

24. On 12 August 2025, the substantive hearing took place before the Hearing Panel. The Athlete argued that she had neither refused nor failed to submit to

[1] For the merits proceedings, a new panel was constituted. Mr. Yirsaw Zewdie, who had chaired the Provisional Suspension Panel, appointed Mr. Million Alemu as Chairperson, together with Professor Tefera Abula (who had served on the Provisional Suspension Panel) and Mr. Samuel Seleshi as panel members, collectively, the Hearing Panel.

sample collection, and that communication difficulties, including alleged language barriers, together with procedural deficiencies, prevented ETH-NADO from establishing an ARDV under Article 2.3 of the ADR. ETH-NADO relied on the testimony of the SCP to support its assertion that the Athlete had refused and/or failed to submit to sample collection.

25. On the same day, the Hearing Panel announced the Appealed Decision, concluding that there was insufficient evidence to establish that the Athlete had committed an ADRV under Article 2.3 of the ADR.

26. In its written reasons, dated 27 August 2025 and communicated to WA on 30 August 2025, the Hearing Panel held, *inter alia*, that ETH-NADO's case relied on circumstantial evidence and that mandatory requirements of the International Standard for Testing and Investigations ("ISTI") had not been complied with, including the absence of a *"Refusal to Submit to Sample Collection Form"* and insufficient evidence that the Athlete had been warned of the consequences of refusal.

27. It is against the Appealed Decision that WA has filed the present Appeal before the Court of Arbitration for Sport ("CAS").

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

28. On 9 September 2025, WA filed a Statement of Appeal with the CAS against the Appealed Decision, together with a request for provisional measures (the "Request"). In light of the imminent commencement of the World Championships in Tokyo, in which the Athlete was scheduled to participate, WA sought in its Request a decision by 11 September 2025.

29. On the same day, the CAS Court Office notified the Statement of Appeal and the Request to the Respondents and invited them to submit their position on the Request by 11 September 2025 at 10:00 CEST.

30. On 11 September 2025, the Athlete filed her comments on the Request. The ETH-NADO did not submit any comments.

31. On 12 September 2025, the President of the CAS Appeals Arbitration Division upheld the Request and suspended the Athlete *"for the duration of this arbitration procedure"*, considering, *inter alia*, that there were *"strong prospects that the Appeal will ultimately succeed"* (the "CAS Order").

32. On 10 October 2025, the Parties informed the CAS Court Office that they had agreed on the appointment of Ms. Marianne Saroli as sole arbitrator, whereas WA and the Athlete indicated their availability for an in-person hearing in Lausanne on 15 and 16 January 2026.

33. On 31 October 2025, pursuant to Article R54 of the Code of Sports-related Arbitration (the "Code"), and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office confirmed the appointment of the Sole Arbitrator as follows:

Sole Arbitrator:

Ms. Marianne Saroli, Attorney-at-Law in Montreal, Canada

34. On 11 November 2025, following an agreed-upon extension of time, WA filed its Appeal Brief, in accordance with Article R51 of the Code.

35. On 17 November 2025, the CAS Court Office acknowledged that WA and the Athlete expressed a preference for an in-person hearing in Lausanne, while ETH-NADO requested that the hearing be held virtually, without objecting to the other parties attending in person.

36. On 25 November 2025, the CAS Court Office, on behalf of the Sole Arbitrator, informed the Parties that a hearing would be held on 16 January 2026 in person in Lausanne, with ETH-NADO attending by videoconference.

37. On 27 November 2025, ETH-NADO filed its Answer, in accordance with Article R55 of the Code.

38. On 15 December 2025, following an agreed-upon extension of time, the Athlete filed her Answer, in accordance with Article R55 of the Code.

39. On 16 December 2025, the CAS Court Office acknowledged receipt of the Respondents' respective Answers. The Parties were further reminded that, pursuant to Article R56 of the Code, unless otherwise agreed by them or ordered by the Sole Arbitrator due to exceptional circumstances, they would no longer be authorized to supplement or amend their requests or arguments, nor to produce new exhibits or specify additional evidence following the submission of the Appeal Brief and the Answers.

40. On 1 January 2026, the Athlete signed and returned the Order of Procedure in this Appeal.

41. On 6 January 2026, ETH-NADO signed and returned the Order of Procedure in this Appeal.

42. On 9 January 2026, WA signed and returned the Order of Procedure in this Appeal.

43. On 16 January 2026, a hybrid hearing took place in person in Lausanne and by videoconference. The Sole Arbitrator was assisted by Ms. Amelia Moore, Counsel to the CAS, and joined by the following:

<u>For WA:</u>

- Mr. Nicolas Zbinden, Counsel
- Ms. Louise Reilly SC, Counsel
- Mr. Robert Kerslake, Counsel
- Ms. Laura Gallo, AIU
- Mr. A., Witness (by videoconference)
- Dr. B., Witness (by videoconference)
- Mr. C., Witness (by videoconference)
- Ms. X., Witness (by videoconference)
- Mr. Y., Witness (by videoconference)
- Mr. Z., Interpreter.

<u>For ETH-NADO:</u>

- Mr. Nigatu Mekonnen, RM Law Implementation and Enforcement

Lead Executive (by videoconference)

- Mr. Mekonnen Yidersal, Director General of ETH-NADO (by videoconference)
- Ms. Fantaye Gezahegn, Deputy Director General of ETH-NADO (by videoconference)
- Mr. Wondale G/Hana, Legal Service Head (by videoconference)

For the Athlete:

- Mr. Paul Greene, Attorney
- Mr. Ryan Lipes, Attorney
- Ms. Diribe Welteji Kejelcha, Second Respondent
- Mr. Yigermal Melkam, Attorney (by videoconference)
- Mr. Tamiru Waqo, Witness (by videoconference)
- Mr. Kibru Birisso, Witness (by videoconference)
- Ms. Kume Welteji, Witness (by videoconference)

44. At the outset of the hearing, the Parties confirmed that they had no objection to the constitution of the Panel and the way the proceedings had been conducted thus far. At the conclusion of the hearing, the Parties confirmed that their right to be heard had been fully respected.

45. The Sole Arbitrator clarifies that Mr. Yonas Mekonnen had initially been listed as a witness to testify at the hearing. However, during the hearing, the Parties informed the Sole Arbitrator that they had agreed that his testimony was not necessary and, in the interest of procedural economy and time, decided not to call him.

IV. SUBMISSIONS OF THE PARTIES

A. WA

46. In its Appeal Brief, WA sought the following relief:

"World Athletics respectfully requests the CAS to rule as follows:

1. The Appeal of World Athletics is admissible.

2. The Decision dated 27 August 2025 rendered by the Ethiopian Anti-Doping Agency Hearing Panel is set aside.

3. Diribe Welteji Kejelcha is found to have committed an anti-doping rule violation under Article 2.3 of the Ethiopian Anti-Doping Agency Anti-Doping Rules 2021.

4. Diribe Welteji Kejelcha is sanctioned with a period of ineligibility of four (4) years, starting on the date on which the CAS award enters into force, with credit for any period of provisional suspension effectively served.

5. All competitive results obtained by Diribe Welteji Kejelcha from and including 25 February 2025 (i.e. the date of the anti-doping rule violation) until the date of the CAS award are disqualified, with all resulting consequences (including forfeiture of medals, points and prizes).

6. The arbitration costs shall be borne by the Ethiopian Anti-Doping Agency or, in the alternative, by the Respondents jointly and severally.

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

47. WA's submissions, in essence, may be summarized as follows:

a. The Appealed Decision is wrong

48. WA challenges the Appealed Decision, which acquitted the Athlete of an ADRV under Article 2.3 of the ADR for refusing or failing to submit to sample collection. WA submits that this Appealed Decision is wrong and should be set aside, with a four-year period of ineligibility imposed on the Athlete.

b. WA's account of the Event

49. On 25 February 2025, at approximately 11:30, three SCP arrived at the Athlete's residence pursuant to a routine out-of-competition testing mission ordered by ETH-NADO.

50. The SCP were met at the property gate by Mr. Tamiru Waqo, who informed them that the Athlete was sleeping and complained that they had arrived outside her designated 60-minute testing window indicated in ADAMS. The SCP identified themselves as DCOs of ETH-NADO, explained their authority to test at any time and at any place under the ADR and ISTI, and insisted on speaking directly with the Athlete. They warned Mr. Tamiru Waqo that refusal to allow access would have serious consequences. After approximately eight minutes of discussion, during which Mr. Tamiru Waqo continued to object on the basis of the timing, he permitted the SCP to enter the property grounds.

51. The Athlete then emerged from the residence, and the SCP introduced themselves and explained the purpose of their visit. The interaction with the Athlete herself lasted approximately two minutes. The Athlete immediately echoed her husband's complaints, stating that the SCP had come outside her designated timeslot and therefore could not test her. The SCP explained that testing could occur at any time and warned her of the consequences of refusal. Despite these explanations, the Athlete maintained her position and refused to comply.

52. The conversations occurred primarily in Amharic, with Dr. B., also speaking in Oromiffa, the Athlete's native language. At no point did the Athlete or Mr. Tamiru Waqo express difficulty understanding the communications.

53. Given the Athlete's refusal and the increasingly hostile atmosphere, the SCP determined there was no purpose in remaining further and departed without collecting a sample. The total time spent on the property was approximately ten minutes. Upon returning to ETH-NADO offices, the SCP prepared the Report documenting the refusal.

c. Article 2.3 ADRV is established

54. An ADRV under Article 2.3 of the ADR is established where three requirements are satisfied: (i) the Athlete was notified by a duly authorized person; (ii) the Athlete refused or failed to submit to sample collection; and (iii) there was no compelling justification for the refusal or failure. WA submits that all three requirements are established in this case.

i. *First requirement: notification by a duly authorized person*

55. The Athlete was properly notified by duly authorized persons. In this regard, CAS jurisprudence establishes that there is no specific formal requirement for notification and a hearing panel needs only to be satisfied that the Athlete was aware of the requirement to provide a sample. In this case, the Athlete knew the SCP were present to test her, as evidenced by her immediate complaint about their arrival outside her designated timeslot. Even on her own version of events at first instance, she accepted that she was duly notified.

ii. *Second requirement: refusal or failure to submit*

56. Article 5.2.2 of the ADR provides that a national anti-doping organization ("NADO") may require any athlete to provide a sample *"at any time and at any place"*. The evidence of the SCP establishes that the Athlete refused to submit to sample collection. All three SCP aver that upon meeting the Athlete, she immediately complained about their arrival outside her timeslot and refused to provide a sample. Despite explanations that testing could occur at any time and warnings about consequences, the Athlete maintained her refusal.

57. The Athlete claimed at first instance that she *"immediately attempted to comply, opening the door and requesting the DCO return, but was ignored"*. This account, corroborated by her husband, sister, and manager, lacks credibility and must be rejected because it is implausible that experienced SCP would refuse to test a willing athlete. There is no logical explanation for why the SCP would depart if the Athlete asked them to collect a sample. Moreover, this version contradicts the SCP's documented persistence in gaining access to the Athlete, which is inconsistent with simply leaving. The SCP are senior, experienced officials with years of experience and no motivation to fabricate events. While the Athlete also claimed a language barrier existed, yet she is demonstrably proficient in Amharic and was also addressed in Oromiffa during the Event. This undermines the credibility of her evidence.

58. Against this backdrop, WA stresses that CAS jurisprudence consistently affords significant weight to the testimony of doping control officer ("DCO") as independent and impartial witnesses with no vested interest in the outcome. Multiple CAS awards establish that DCO testimony is *"principally credible and trustworthy"* and can only be rebutted through *"very substantial counter evidence"*. No such substantial counter-evidence was produced in this case. Even if the evidence were insufficient for a refusal, failing to submit to sample collection is still an ADRV, and the evidence in this case is clear that the Athlete did so.

iii. *Third requirement: no compelling justification exists*

59. The Athlete bears the burden of proving compelling justification. CAS jurisprudence has consistently rejected compelling justification in cases involving concerns about the testing laboratory, religious beliefs about urine sampling, team orders to delay reporting, depression and anxiety,

mistaken belief about retirement status, and sudden illness during training.

60. Likewise, the Athlete's argument about testing outside her allotted time cannot be considered a valid reason for refusal, given that Articles 5.2.2 of the ADR and 4.5.5 of the ISTI state that samples may be collected at any time and that athletes cannot refuse testing on the grounds that it occurs outside a specified timeframe.

61. Additionally, the Athlete is an experienced international-level athlete with extensive exposure to out-of-competition testing and education regarding her anti-doping obligations. Notably, WA relies on the testimonies of Mr. Y. and Ms. X., DCOs with ETH-NADO, who conducted an out-of-competition test on the Athlete on 18 July 2024 outside her designated timeslot. According to Mr. Y., when he arrived at the Athlete's residence, she was asleep and remarked that the test was taking place outside her designated window. Mr. Y. explained that, under the ADR and the ISTI, testing may occur at any time and is not limited to an athlete's designated time slot. The Athlete acknowledged this explanation and proceeded to comply fully with the sample collection without objection. Furthermore, on 21 October 2024, approximately four months prior to the Event, the Athlete attended an anti-doping education session during which she was expressly informed that she could be tested *"at any time and at any place"*, and that designated windows in ADAMS do not restrict testing authority. Thus, the Athlete was aware of her obligation to submit to testing irrespective of her designated window and cannot reasonably assert confusion or misunderstanding in relation to the Event.

d. The Appealed Decision contains fundamental flaws

62. First, the Appealed Decision erred in finding that the SCP's failure to prepare a *"Refusal to Submit to Sample Collection Form"* signed by the Athlete was fatal to the charge. There is no formal requirement for such notification under Article 2.3. It suffices that the Athlete was informed of the requirement to provide a sample, which is undisputed. While Article 5.4.3 of the ISTI provides that the DCO *"shall have the Athlete sign an appropriate form"*, in cases where no form is signed, the refusal or failure is assessed on the evidence. Here, the evidence is compelling and was documented accurately. Even if the absence of a signed form were a relevant departure, the burden falls on the Athlete to show this departure could reasonably have caused the ADRV. The Athlete's own evidence is that she was willing to provide a sample, and therefore demonstrating the absence of a form had no causal impact. Moreover, based on the SCP's account, the Athlete's refusal was already communicated with hostility before any form would have been presented.

63. Secondly, the Appealed Decision erred in requiring proof that the Athlete was expressly warned that a refusal *"will result in a four-year period of ineligibility"*. Article 5.4.1(e)(iii) of the ISTI provides that *"the Athlete should be advised of the possible Consequences"*, rather than specifying that such advice *"shall"* be

given. Even assuming that the requirement were mandatory, it would remain for the Athlete to establish that any departure caused the alleged ADRV. CAS panels have imputed knowledge of consequences to experienced athletes (*CAS 2019/A/6148).* In any event, the evidence of the SCP is that both the Athlete and her husband were expressly warned of the possible consequences of refusal.

64. Thirdly, the Appealed Decision erred in concluding that, because the Athlete did not expressly state *"I refuse to provide a sample"*, the charge could not be established. No such express wording is required to constitute a refusal. The Athlete's conduct amounted to a refusal. In any event, even if it did not, the evidence clearly establishes that she failed to submit to sample collection.

e. The appropriate sanction is four years

65. Article 10.3.1 of the ADR provides that an ADRV under Article 2.3 results in a four-year period of ineligibility. In cases involving a failure to submit to sample collection, the period may be reduced to two years if the Athlete establishes that the ADRV was not intentional. WA's primary position is that the Athlete refused to submit to sample collection. Such conduct is inherently intentional and therefore excludes any reduction of the applicable four-year period. In the alternative, even if the ADRV were characterized as a failure rather than a refusal, there is no basis to conclude that the conduct was unintentional. No exceptional circumstances exist that would justify a departure from the four-year sanction.

66. Also, pursuant to Article 10.10 of the ADR, all competitive results obtained by the Athlete from 25 February 2025 until the start of the period of ineligibility should be disqualified, with all resulting consequences, including the forfeiture of medals, points, and prizes.

B. ETH-NADO

67. In its Answer, ETH-NADO sought the following relief:

> *"1. Ethiopia Anti-Doping Authority unequivocally requests the same reliefs that have been requested, in paragraphs 1 to 5 and 7,20 by Appellate from the CAS.*
>
> *2. Ethiopia Anti-Doping Authority highly believed that World Athletics be granted a significant contribution to its legal and other costs relate to this case.*
>
> *3. However, the First Respondent disagrees with the claim that Ethiopia Anti-Doping Authority should be severally or jointly responsible with the Second respondent for the court costs and legal fees in this case.*
>
> […]
>
> *26. Besides the above grounds, the First Respondent also respectfully requests the CAS Panel to seriously consider the Ethiopian Anti-Doping Authority's (EADA) financial position, as mandated by Article R64.5 of the CAS Code. As a government-funded NADO operating within a country with insignificant overall budgetary capacity,*

EADA receives a low allocation focused solely on core activities-namely Service Provisions, Education, Training and public mobilization, Testing, Intelligence and Investigation, Study and Research-with absolutely no budget allocated for the Result Management Process, including panel member payments at any level?3, Consequently, the First Respondent argues that demanding a cost contribution, compounded by severe currency exchange difficulties, would effectively cripple the Authority's ability to execute its essential budgeted anti-doping duties".

68. ETH-NADO's submissions, in essence, may be summarized as follows:

a. Alignment with WA

69. ETH-NADO does not contest the factual background as set out in the *"I. Introduction"* and *"II. Background to the Appeal"* sections of the Appeal Brief. It fully aligns itself with, and supports, WA's submissions regarding: (i) the existence of an ADRV; (ii) the legal and factual errors contained in the Appealed Decision; (iii) the determination of the applicable sanction; and (iv) the evaluation of the witness evidence.

70. Moreover, ETH-NADO adopts the witness statements of Mr. A., Dr. B., and Mr. C. as its own.

71. Save for the allocation of costs, ETH-NADO seeks the same relief as requested by WA.

i. Confirmation of the factual background

72. ETH-NADO confirms that the factual account set out by WA concerning the Event accurately reflects the evidence provided by the SCP. ETH-NADO relied on the same factual account in its charge against the Athlete and during oral submissions before the Hearing Panel.

ii. Establishment of the 2.3 ADRV

73. ETH-NADO fully supports WA's submissions that all three requirements of Article 2.3 ADRV are satisfied. From the outset of these proceedings, ETH-NADO has maintained that the Athlete refused to submit to sample collection or, at a minimum, failed to do so after having been duly notified by authorized personnel, without advancing any compelling justification.

iii. The Appealed Decision contains fundamental flaws

74. ETH-NADO endorses WA's submissions identifying fundamental legal errors in the Appealed Decision, which improperly excused the Athlete's refusal or failure to submit by elevating minor procedural issues over the substantive obligation imposed by Article 2.3 of the ADR.

(a) Failure to consider the objectives of the ADR

75. ETH-NADO's mandate is to implement and enforce the ADR nationally and internationally, with the objective of protecting clean sport while safeguarding athletes' rights. By excusing a clear failure or refusal to submit to testing, the Appealed Decision undermines these objectives and is inconsistent with the

fundamental purpose of the ADR.

(b) Misinterpretation of notification and procedural requirements

76. The Appealed Decision concluded that notification was invalid due to the absence of the Athlete's signature, an allegedly insufficient explanation, and the brevity of the Event. This reasoning reflects a misapplication of the ISTI. Indeed, the Appealed Decision erred in holding that the absence of the Athlete's signature on a refusal or non-compliance report invalidated notification. Article 5.4.3 of the ISTI requires documentation of refusal and it does not require an athlete's signature for notification or refusal to be valid. The ISTI expressly anticipates that athletes may refuse to sign non-compliance documentation. As such, the obligation of the DCO is to report the non-compliance to the testing authority, which was done in this case through the Report. No reasonable anti-doping system would require athletes to validate their own refusal by signature. The SCP complied with their obligations, and the Appealed Decision's conclusion to the contrary is legally flawed.

77. Further, the Appealed Decision placed undue emphasis on the Event's duration, characterizing it as overly brief and the SCP's departure as *"premature"*. The SCP testified that they remained on the Athlete's property for about ten minutes, during which they notified both her husband and the Athlete herself. Given the Athlete's elite status, experience, and extensive prior testing history, this duration was more than sufficient. Likewise, the SCP's departure from the Athlete's residence was a reasonable response to conditional compliance, escalating hostility, and the inability to proceed with sample collection. The ISTI does not require SCP to stay on site indefinitely in such circumstances.

(c) Over-reliance on the Athlete's narrative

78. The Athlete's statements, directly and through her husband, amounted to conditional compliance, insisting that testing occur only within her ADAMS timeslots. Such conduct is incompatible with the principles underpinning the no advance notice testing regime and constitutes a refusal or, in the alternative, a failure to submit to sample collection within the meaning of Article 2.3 of the ADR.

79. The Appealed Decision failed to appreciate that refusal may be established through conduct, not merely explicit verbal statements. The Athlete's behavior, combined with SCP testimony that she stated she would not provide a sample outside her timeslot, satisfies this standard. The Appealed Decision effectively required proof approaching certainty, criticizing the absence of video evidence and discounting SCP reports and testimony.

80. Furthermore, the Appealed Decision improperly treated the Athlete's request for additional sleep as a legitimate exercise of her rights. Sleep or recovery time is not a compelling justification for refusing, failing or delaying testing. The Athlete immediately engaged with the SCP, indicating she was alert, awake and aware.

b. Sanction

81. ETH-NADO fully endorses WA's position that a four-year period of ineligibility constitutes the appropriate sanction. It also supports the conclusion that all competitive results obtained from 25 February 2025 until the commencement of the period of ineligibility should be disqualified, together with all resulting consequences, including the forfeiture of medals, points, and prizes, in accordance with Article 10.10 of the ADR.

c. Clarification regarding the composition of the Provisional Suspension Panel

82. WA observed in its written submissions that Mr. Yirsaw Zewdie, who chaired the Provisional Suspension Panel and was in the minority in that decision, did not chair the merits proceedings and questioned the reason for the change in composition.

83. ETH-NADO clarifies that Mr. Yirsaw Zewdie, was not removed. Rather, pursuant to Article 8.1.2.2 of the ADR, under which *"the Chair shall appoint three (3) members (which may include the Chair) to hear the case"*, Mr. Yirsaw Zewdie exercised his authority to appoint another chairperson. Following the issuance of the formal charge on 21 May 2025, Mr. Yirsaw Zewdie was copied in his capacity as the official responsible for constituting the panel. On 22 May 2025, acting on his own initiative, he appointed Mr. Million Alemu as Chairperson, together with Professor Tefera Abula and Mr. Samuel Seleshi as panel members. Upon inquiry, Mr. Yirsaw Zewdie explained that due to professional commitments he was unable to chair the merits proceedings in a timely manner and therefore appointed a successor to avoid delay. ETH-NADO had no involvement in the selection or appointment of the panel members. This is further consistent with the fact that Mr. Yirsaw Zewdie was similarly unavailable to chair a subsequent case for the same reason. ETH-NADO thus submits that the panel composition was determined independently by the official vested with that authority under the ADR.

C. The Athlete

84. In her Answer, the Athlete sought the following relief:

> *"A. Find that the WA cannot meet its burden to prove that Diribe committed an antidoping rule violation since notification by a duly authorized person never took place, and, in any event, Diribe did not refuse or fail or submit to sample collection.*
>
> *B. Find, in the alternative, if a sanction is issued that Ms. Kejelcha's sanction is two (2) years backdated to 25 February 2025.*
>
> *C. Order any other relief to Ms. Kejelcha that this CAS Panel deems to be just and equitable including an award of costs and fees associated with this case".*

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

a. The Appealed Decision is correct

86. The Hearing Panel conducted a full hearing on 12 August 2025, received evidence from all parties, and issued a

reasoned decision. WA's disagreement with the Appealed Decision's findings does not render them incorrect. The Hearing Panel was entitled to assess witness credibility, weigh the evidence, and reach the conclusions it did. Moreover, the Athlete underlines that a majority of the Provisional Suspension Panel initially decided to lift the provisional suspension on 16 March 2025. This demonstrates that from the earliest stage, independent adjudicators reviewing the evidence, had serious doubts about whether an ADRV had been established.

87. While the CAS Order subsequently granted provisional measures for the duration of this Appeal, that decision was made on an urgent, preliminary basis without a full hearing. The CAS Order's assessment of *"strong prospects"* of success does not bind the Sole Arbitrator on the merits and does not diminish the significance of the Appealed Decision's ultimate finding of no ADRV.

b. The Athlete's account of the Event

88. The Athlete's version of the Event differs significantly from that presented by the SCP.

89. On the morning of 25 February 2025, the Athlete was asleep when the SCP arrived at her residence. The Athlete emphasizes that she had been up late the previous night due to a family medical emergency and had completed an early morning training session before going to sleep. When awakened by her husband, she was disoriented and tired. Her husband met the SCP at the gate and informed them that the Athlete was sleeping and that they had arrived outside her designated 60-minute testing window indicated in ADAMS. According to the Athlete and her witnesses, Mr. Tamiru Waqo ultimately permitted the SCP onto the property grounds after they insisted on speaking with her.

90. When the Athlete emerged from her residence, she was *"rubbing her eyes"* and asked questions about why the DCOs were there outside her designated testing window. The Athlete states that the interaction was rushed, that she received insufficient explanation, particularly in her native language, Oromiffa, and that the SCP appeared impatient and unwilling to provide clarification.

91. The Athlete categorically denies refusing to provide a sample. She states that when the SCP began walking toward their vehicle to leave, she followed them to the gate, and called out loudly, asking them to return and take the sample. According to the Athlete, all three SCP heard her, one of them looked back at her, but they continued to their vehicle and drove away without responding. The Athlete's husband, sister, and husband's nephew all corroborate this account. They state they heard one of the SCP say *"this is what we need"* when the Athlete began asking questions about the timing, suggesting the SCP were looking for an excuse to record a refusal.

93. Immediately after the SCP departed from her residence, at approximately 11:50, roughly twenty minutes after their arrival, the Athlete contacted her manager, Mr. Yonas Mekonnen, to report what had occurred and to seek

guidance. She told him that the SCP had left without taking a sample and asked: *"Can the testing team leave without taking sample once I wake up?"* Mr. Yonas Mekonnen confirms receiving such phone call, stating that the Athlete sounded upset and weary, and that she told him she had been prepared to submit to sample collection and had never refused. According to Mr. Yonas Mekonnen's statement, he immediately tried to call a liaison person with the Ethiopian National Anti-Doping Office. However, the number he had for that liaison person was wrong, so he called a medical team member with the Ethiopian Athletics Federation. Mr. Yonas Mekonnen understands that the medical team member spoke with the liaison person after he called.

94. The Athlete emphasizes that she had no intention to refuse or evade testing. Her record demonstrates consistent cooperation with anti-doping authorities throughout her career. Any alleged refusal is based on misinterpretation of her actions and words during a confusing and procedurally deficient encounter.

c. No Article 2.3 ADRV was committed

95. The Athlete denies that she committed an ADRV under Article 2.3 of the ADR. She submits that she did not refuse or fail to submit to sample collection and that the procedural deficiencies during the Event, combined with communication difficulties, mean that no ADRV can be established. The Hearing Panel was correct to acquit her, and the Appealed Decision should be upheld.

i. Alleged departures from the ISTI by the SCP

96. The Athlete submits that the SCP failed to comply with mandatory requirements under the ISTI, and these failures are fatal to the charge against her.

(a) Failure to properly identify and notify

97. The Athlete submits that WA cannot establish an ADRV since notification never took place. In particular, the SCP failed to properly identify themselves by showing official identification documents as required by Article 5.3.3 of the ISTI. While the SCP claim they *"identified themselves verbally"*, the Athlete disputes whether official ETH-NADO identification documents were actually shown to her.

98. Moreover, the Athlete contends that the notification process was deficient. The SCP neither prepared nor presented a notification form, specifically, a *"Refusal to Submit to Sample Collection Form"*, for the Athlete to sign, as required by Article 5.4.3 of the ISTI, which provides that *"the DCO/Chaperone shall have the Athlete sign an appropriate form to acknowledge and accept the notification"*. No such step was taken.

99. The Athlete contends that this is not just a technical or formal deficiency. The purpose of the notification form is to provide clear and accurate documentation of the events, confirming that the Athlete understood she was being requested to provide a sample, was aware of the possible consequences, and made a

conscious decision to refuse. In the absence of such documentation, the case relies solely on contested recollections and interpretations of a brief and stressful encounter. In this respect, Articles 5.4.6 and 5.4.8 of the ISTI set out specific requirements for documenting notification and any failure to comply. Failure to follow these mandatory procedures by the SCP deprived the Athlete of important procedural safeguards, creating fatal uncertainty about what actually occurred and what was communicated.

(b) Failure to provide adequate warning of consequences

100. Article 5.4.1(e)(iii) of the ISTI provides that the Athlete should be advised of the possible consequences for a non-compliance. The Appealed Decision correctly found that there was no evidence that the Athlete was given a clear warning that refusal or failure to provide a sample would result in a four-year period of ineligibility.

101. The SCP's general evidence that they mentioned the consequences is insufficient. An athlete facing potential career-ending sanctions is entitled to clear, specific warnings about what those sanctions will be. Without such clarity, particularly in a situation involving potential communication difficulties, the Athlete cannot be said to have made an informed decision.

(c) The departures from the ISTI are causative

102. The burden is on WA to prove that an ADRV occurred. Where the SCP have failed to follow mandatory procedural requirements designed to ensure clear communication, proper notification, and adequate documentation, those failures undermine the ability to establish that an ADRV occurred at all.

ii. No clear explicit refusal

103. The Appealed Decision correctly found that there was no evidence of a clear, explicit refusal by the Athlete to provide a sample. WA has effectively conceded that the Athlete never stated words to the effect of *"I refuse to provide a sample"*.

104. The Athlete submits that in the absence of such explicit refusal, and given the procedural deficiencies and communication difficulties, it cannot be established that she refused to submit to sample collection. Her complaints about the timing of the visit and expressions of confusion do not constitute refusal. At most, they reflect an athlete seeking clarification about her rights and the procedures being followed. The Athlete's evidence, that she asked the SCP to return and collect the sample, directly contradicts any suggestion that she refused. WA's characterization of this evidence as *"implausible"* does not make it so. The Athlete and her witnesses have provided consistent accounts of what occurred.

iii. Communication and language difficulties

105. The Athlete submits that significant communication difficulties contributed to the breakdown of the Event. While the SCP claim that all communications were clear and that they even spoke in Oromiffa, the Athlete's experience was different.

106. The Athlete had just been woken from

sleep. She was confronted with unexpected visitors at her gate. The Event was brief and occurred in stressful circumstances. The combination of these factors, early morning timing, unexpected nature of the visit, stress, and the rushed exchange, created genuine difficulties in ensuring clear mutual understanding.

107. The Athlete is not claiming complete inability to speak Amharic. Rather, she submits that the specific circumstances of this encounter created communication difficulties that, combined with the procedural failures of the SCP, resulted in a misunderstanding rather than a willful refusal.

iv. The Athlete's consistent record of cooperation

108. The Athlete has been tested on numerous occasions throughout her career, both in-competition and out-of-competition, including on multiple occasions outside her designated 60-minute timeslot. She highlights that on every single prior occasion, she cooperated fully with sample collection.

109. This unblemished record of cooperation strongly supports the Athlete's account that she did not intend to refuse on 25 February 2025. If she had wanted to evade or refuse testing, she had numerous prior opportunities to do so. Her consistent cooperation demonstrates that any alleged refusal on this occasion must have resulted from miscommunication and procedural failures, not from any intention to evade anti-doping control.

v. The weight to be given to SCP testimony

110. WA places significant reliance on the principle that SCP testimony should be afforded substantial weight. However, this principle does not relieve the WA of its burden of proof, nor does it mean that SCP testimony is automatically accepted without scrutiny. The Athlete submits that the account provided by the SCP contains inconsistencies and gaps, particularly in relation to the specific warnings allegedly given and the precise nature of the communications. Furthermore, the SCP failed to comply with mandatory procedural requirements, thereby undermining their overall credibility and professionalism. Also, the Athlete stresses that the documentation was prepared only after the Event rather than at the scene, reducing its evidentiary reliability.

111. Although three SCP were present, their accounts are strikingly similar, raising concerns as to whether their evidence was coordinated. In any event, the SCP have an institutional interest in defending their conduct and justifying their decision to depart without collecting a sample. The Athlete has provided *"substantial counter-evidence"* through her own testimony and that of her supporting witnesses. The Hearing Panel was correct to prefer this evidence, particularly given the procedural failures by the SCP.

vi. No compelling justification required

112. The Athlete submits that the question of compelling justification only arises if it is first established that she refused or failed to submit to sample collection. Given the SCP's departures from the ISTI, communication difficulties, and

absence of clear refusal, no ADRV has been established, and the question of compelling justification does not arise. However, to the extent necessary, the Athlete submits that her genuine belief based on the designated timeslot in ADAMS that the SCP were not entitled to test her at that time could constitute a relevant consideration. While WA emphasizes that the Athlete had been educated about testing at any time and had been tested outside her window on prior occasions, the fact remains that ADAMS includes designated timeslots for a reason, and an athlete who receives contradictory information, i.e., a designated window on one hand, education about testing at any time on the other, may genuinely misunderstand her obligations in a specific stressful encounter.

d. In the alternative, any failure should be considered non-intentional

113. Even if the Athlete were found to have failed to submit to sample collection, such failure was not intentional within the meaning of Article 10.3.1 of the ADR. The Athlete submits that, at most, the incident resulted from confusion and miscommunication caused by the early morning timing of the visit, when she had only just woken up, the unexpected nature of the test conducted outside her designated timeslot, and communication difficulties arising in a stressful situation. She further contends that procedural shortcomings on the part of the SCP contributed to uncertainty. These circumstances demonstrate that any failure was at most negligent, not intentional. Consequently, if an ADRV were to be found, the maximum sanction should be two years.

V. JURISDICTION

114. 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 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".

115. In the absence of a specific arbitration agreement, CAS has jurisdiction to hear an appeal only where the statutes or regulations of the sports-related body whose decision is challenged expressly recognize CAS as an arbitral body of appeal.

116. In the present case, WA relies on Article 13.2.3.1 of the ADR, which provides as follows:

"In cases under Article 13.2.1, 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****"* [emphasis added].

117. As WA is the relevant international federation within the meaning of Article 13.2.3.1 of the ADR, and noting that the Respondents did not contest CAS jurisdiction, the Sole Arbitrator is satisfied that CAS has jurisdiction to hear the present Appeal.

118. In any event, the Parties expressly confirmed CAS jurisdiction by signing the Order of Procedure, and all Parties

participated fully in the arbitral proceedings.

VI. ADMISSIBILITY

119. 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 in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties".*

120. Article 13.6.1 of the ADR further provides as follows:

> *"The time 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".*

121. WA submits that it received notification of the Appealed Decision on 30 August 2025 and received the complete case file on 1 September 2025. The Athlete, for her part, challenges the admissibility of the Appeal, arguing that the Appealed Decision was issued on 12 August 2025 rather than on 27 August 2025. The Athlete also relies on a different version of the Appealed Decision from that identified and produced by WA.

122. The 43-page document submitted by the Athlete is unsigned and dated 12 August 2025, corresponding to the date of the hearing before the Hearing Panel. By contrast, the document relied upon by WA appears to be the official notification of the Appealed Decision as it contains a summary of the decision, bears the signature of the ETH-NADO representative, and is dated 27 August 2025. There is no evidence on file that the Appealed Decision was formally notified to WA prior to that date. On that basis, the Sole Arbitrator is satisfied that the Appealed Decision was issued on 27 August 2025 and notified to WA on 30 August 2025.

123. Therefore, the Sole Arbitrator is satisfied that the Appeal is admissible, as it was filed within 21 days from the date in which WA received the case file.

VII. APPLICABLE LAW

124. Article R58 of the Code provides as follows:

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

125. The Sole Arbitrator notes that the present Appeal is directed against the Appealed Decision concerning an alleged ADRV in application of the ADR. This Appealed Decision was issued by the Hearing Panel, appointed pursuant to Article 8.1 of the ADR.

126. Accordingly, the Sole Arbitrator concludes that the *"applicable regulations"* for the purposes of Article R58 of the Code are those of the ADR. The Sole Arbitrator's conclusion is further supported by the fact that the application of the ADR is not disputed by the Parties, who also explicitly refer to these regulations in their respective submissions.

127. Moreover, since ETH-NADO as the organization that has issued the Appealed Decision is seated in Ethiopia, the law of Ethiopia is subsidiarily applicable.

VIII. MERITS

128. According to Article R57 of the Code:

"The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. […]*".*

A. Issues to be determined

129. In order to resolve this Appeal, the Sole Arbitrator must first determine whether, on 25 February 2025, the Athlete committed an ADRV under Article 2.3 of the ADR for refusing or failing to submit to sample collection. In this context, the Sole Arbitrator must also consider whether the SCP complied with the applicable ISTI standards governing out-of-competition testing and, if not, whether any departure is material to the determination of the alleged ADRV under Article 2.3 of the ADR. If an ADRV under Article 2.3 is established, the Sole Arbitrator must then determine the appropriate consequences pursuant to the ADR.

130. The resolution of these issues requires the Sole Arbitrator to assess highly contested facts based on conflicting witness accounts, to evaluate the credibility and reliability of the evidence adduced by the Parties, and to apply the relevant legal standards to the facts as found.

B. Legal framework

a. Burden and standard of proof and the conduct prohibited under Article 2.3

131. Article 3.1 of the ADR sets out the applicable burden and standard of proof:

"3.1 Burdens and Standards of Proof

ETH-ADA shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether ETH-ADA has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation which is

made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules place the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, except as provided in Articles 3.2.2 and 3.2.3, the standard of proof shall be by a balance of probability".

132. Article 2.3 of the ADR provides that it is a violation for an athlete to evade, refuse, or fail to submit to sample collection without compelling justification after notification by a duly authorized person. In the present case, WA alleges that the Athlete refused to submit to sample collection or, in the alternative, failed to do so. As such, WA bears the burden of establishing, to the Sole Arbitrator's comfortable satisfaction, that the Athlete committed an ADRV. If an ADRV is established, the burden shifts to the Athlete to prove, on a balance of probabilities, that such ADRV was not intentional for the purposes of Article 10.3.1 of the ADR.

C. Evidentiary assessment and credibility determinations

133. To determine whether the Athlete has committed an ADRV under Article 2.3 of the ADR, the Sole Arbitrator must first assess the reliability and credibility of the evidence presented by the Parties. This credibility assessment is not a peripheral exercise but it is rather central to the resolution of the issues in this case.

a. Translation and language issues

134. The Sole Arbitrator observed substantial difficulties with interpretation during the course of the hearing of this Appeal. The interpreters appeared at times to struggle with accurately conveying both questions from counsels and responses from witnesses, resulting in frequent requests for clarification, repeated and reformulated questions, and instances where answers appeared incongruent with the questions asked. These difficulties give rise to two distinct concerns.

135. The first is that they impair the reliability of the testimony received at the hearing itself. The Sole Arbitrator cannot have complete confidence that all nuances of witness evidence have been accurately conveyed. The second concern is that they lend credibility to the possibility that miscommunication also affected the Event. If trained interpreters experienced difficulty during a formal hearing in a controlled environment, it is plausible that communication between the SCP and the Athlete during the Event was similarly imperfect.

136. These observations must, however, be kept in proper perspective. Parties bear responsibility for securing adequate translations under the Code. Moreover, the concern about miscommunication on 25 February 2025 is addressed through a separate incident that arose during the hearing itself, to which the Sole Arbitrator now turns.

137. During cross-examination, WA's counsels presented the Athlete with a text written in Amharic and asked her to read it. The Athlete froze and stated

she could not read it despite her earlier testimony in examination-in-chief that she could *"understand Amharic"* and *"read and write in Amharic"*. This inconsistency requires careful consideration.

138. The incident does not, in the Sole Arbitrator's view, wholesale undermine the Athlete's credibility. The Athlete's native language is Oromiffa. Written and spoken proficiency are different skills, and the inability to read a language does not preclude oral comprehension or conversational ability. What the incident does indicate is that the Athlete's command of Amharic may be more limited than the circumstances might otherwise have suggested. She attended anti-doping education sessions and gave media interviews in Amharic, but she cannot read the language.

139. This finding is significant in two respects. First, it supports the possibility that communications conducted in Amharic during the Event may have been challenging for the Athlete. The SCP initially spoke to Mr. Tamiru Waqo and the Athlete in Amharic. Dr. B. subsequently switched to Oromiffa. However, the initial exchanges had already occurred in Amharic, and the direct interaction with the Athlete in Oromiffa was brief. Second, to the extent the Athlete raised language barriers as part of her defense, the incident confirms that those barriers were plausible rather than fabricated or exaggerated.

b. The Athlete's evidence

140. The Athlete presented four corroborating witnesses, and the Sole Arbitrator has considered their evidence carefully but assesses it with appropriate caution.

141. All four witnesses have direct personal, familial, or financial interests in an outcome favorable to the Athlete. Mr. Tamiru Waqo is her husband; Ms. Kume Welteji is her sister who is residing in her home; Mr. Kibru Birisso is her husband's nephew and was staying at the residence at the time; and Mr. Yonas Mekonnen is her manager with a direct financial interest in her ability to compete and earn prize money. While interests of this kind do not automatically render testimony unreliable, they warrant closer scrutiny, particularly when weighed against the evidence of doping control professionals who have no apparent personal stake in the outcome.

142. In this respect, the Sole Arbitrator notes the similarity of these witnesses' accounts. Three of the four witnesses independently described the Athlete as *"rubbing her eyes"* upon emerging from the residence and reported that one of the SCP stated *"this is what we need"* before departing, using closely aligned wording. These witnesses further characterized the interaction as lasting only a few minutes and presented substantially similar sequential descriptions of the events. While consistency may, in some circumstances, support reliability, the degree of similarity in language and structure among witnesses who reside together and who, most likely, discussed the Event in the period following 25 February 2025 requires caution. The Sole Arbitrator cannot exclude the possibility that the

accounts were influenced, consciously or unconsciously, by subsequent exchanges between the witnesses prior to the preparation of their formal statements. In these circumstances, the uniformity of the evidence does not, in itself, enhance its persuasive value.

143. Mr. Kibru Birisso's evidence that he was washing clothes approximately two meters from the encounter and heard everything that transpired, yet said nothing and took no action when he allegedly witnessed the SCP unjustly departing despite the Athlete's alleged expressed willingness to be tested, is difficult to accept at face value. Ms. Kume Welteji's acknowledgment that she does not speak Amharic well, combined with the fact that she had just returned from grocery shopping and may not have been present for the full encounter, also limits the weight that can be placed on her account. Mr. Yonas Mekonnen was not present at the Event and can testify only to what the Athlete told him. His reference to *"numerous other complaints from my athletes"* about testing during recovery time suggests a pre-existing grievance that may have influenced his interpretation of what the Athlete communicated to him.

c. The SCP's evidence

144. The Sole Arbitrator notes that the SCP are individuals acting in the course of their official duties and have no apparent personal or professional interest in the outcome of these proceedings. As consistently recognized in CAS jurisprudence, DCOs are generally presumed to act in good faith and without motive to fabricate allegations against an athlete (see, e.g., CAS 2016/A/4700). No evidence has been adduced in this case to suggest bias, conflict of interests or animus on their part. In these circumstances, their evidence warrants, in principle, significant weight.

145. That presumption of good faith, however, does not mean that every aspect of their testimony must be accepted uncritically. The Sole Arbitrator must still assess their evidence in light of the context and all the circumstances in this case. In this regard, Mr. A., Dr. B., and Mr. C. provided mutually consistent accounts. They each stated that upon emerging from the Athlete's residence, the Athlete immediately objected to the timing of the visit, asserted that she could not be tested outside her designated window, and declined to provide a sample despite explanations and warnings regarding the consequences of refusal.

146. Nonetheless, the Sole Arbitrator has identified some departures from the ISTI, which are addressed below, as well as aspects of the SCP's evidence that must be treated with caution. At the hearing, all three testified that they felt scared and feared for their safety due to the hostility of the Athlete and her husband, and that this fear motivated their departure. The Sole Arbitrator does not find this assertion particularly credible. The SCP were three adult men attending a residential compound during daylight hours. The Athlete had just awoken and was described as appearing tired. No weapons, physical violence, or objectively dangerous conduct was alleged. In particular, the Report contains no reference to fear for safety

or to any threatening behavior. If the SCP had genuinely feared for their safety, one would expect this to have been recorded immediately and prominently. Namely, the Sole Arbitrator notes that the SCP did not call ETH-NADO supervisors before departing the Athlete's residence, created no documentation at the scene, and left after only a few minutes of direct interaction with the Athlete. These procedural shortcomings are of relevance and are addressed below.

147. The credibility concerns on the SCP's side are, however, of a qualitatively different character from those affecting the Athlete's witnesses. The SCP's issues concern how they characterized the atmosphere at the residence, frustration rather than actual fear, and whether they managed the situation with optimal professionalism. They do not undermine the core of their account, namely that the Athlete raised objections about timing and did not provide clear, unconditional agreement to be tested.

148. In this regard, the Sole Arbitrator recalls the approach articulated in CAS 2023/A/9992 at para. 186:

> *"*[…] *where there is a conflict between the evidence of a DCO and an athlete, there is no presumption in favour of the DCO evidence. That is correct. It is, of course, a matter for the Panel to form a view on the evidence and weigh it according to its context and circumstances".*

149. Consistent with that guidance, the Sole Arbitrator has evaluated the evidence contextually and without presumption, accepting certain elements of the SCP's testimony while rejecting others that are not supported by the evidentiary record or by objective circumstances.

d. Final remarks

150. The Sole Arbitrator has carefully reviewed all written submissions, documentary exhibits, witness statements, oral testimony, and legal authorities relied upon by the Parties.

151. Before proceeding to apply the legal framework to the facts, the Sole Arbitrator wishes to make observations about the nature and quality of the evidence in this case, and about the manner in which the proceedings were conducted.

152. The evidence before the Sole Arbitrator consisted of highly conflicting accounts of what transpired during the Event, accounts that diverged not only on the central question of what the Athlete said and did, but on such basic matters as who was present, where they were standing, what was said and by whom, and in which language. These accounts were further complicated by the involvement of two distinct African languages, and elements of both, which created persistent difficulties throughout the evidentiary process. The translation challenges observed during the hearing, which affected the accuracy and reliability of testimony in ways that the Sole Arbitrator has described above, were not the product of any failure on the part of the Parties or their counsels but rather reflect the inherent difficulty of conducting complex legal proceedings across significant linguistic and cultural distance. For these reasons, the Sole Arbitrator has based her findings only on those elements of the record that she considers reliable, coherent, and sufficiently corroborated to support

the conclusions set out below.

153. The Sole Arbitrator also wishes to acknowledge the quality of advocacy in these proceedings. Counsels on all sides conducted themselves with professionalism, diligence, and mutual respect throughout what were at times difficult and emotionally charged proceedings. Their written submissions were thorough and their oral advocacy measured.

154. Finally, the Sole Arbitrator does not reach the conclusions set out below without an appreciation of their significance for the Athlete. She is a young, successful woman who has achieved remarkable results at the highest level of her discipline. The finding that she committed an ADRV, and the consequences that flow from it, will have a profound impact on her career and her life. The Sole Arbitrator is not indifferent to that reality. However, the rules that govern elite sport exist to protect the integrity of competition and the rights of all athletes who compete within them. Those rules must be applied consistently and without regard to the personal circumstances of the individual before the tribunal, however sympathetic those circumstances may be. It is with that obligation in mind, and with a genuine appreciation of the difficulty of the Athlete's position, that the Sole Arbitrator has reached the conclusions that follow.

D. Did the Athlete commit an ADRV under Article 2.3?

155. Article 2.3 of the ADR provides the following:

"2.3 Evading, Refusing or Failing to Submit to Sample Collection by an Athlete

Evading Sample collection or refusing or failing to submit to Sample collection without compelling justification after notification by a duly authorized Person".

156. The Comment to Article 2.3 of the WADC clarifies that evading and refusing contemplate intentional conduct, whereas failing to submit may be established on the basis of either intentional or negligent conduct.

157. CAS jurisprudence has further clarified these distinctions. Evading sample collection entails the deliberate avoidance of a DCO in order to escape notification altogether. In such cases, formal notification need not be established, and no defense of compelling justification is available. By contrast, a refusal to submit to sample collection requires proof that the athlete was duly notified and thereafter intentionally failed to comply. In those circumstances, the defense of compelling justification remains available. A failure to submit likewise requires proof of notification, but may arise from either intentional or negligent conduct, and the defense of compelling justification is similarly applicable. These principles are reflected, *inter alia*, in CAS 2023/A/9568 and CAS 2008/A/1564.

158. It follows that three requirements must be satisfied to establish the alleged ADRV for refusing or failing to submit to sample collection. WA bears the burden of proving each of these requirements to the Sole Arbitrator's comfortable satisfaction. Each will be examined in turn.

a. First requirement: notification by a duly authorized person

159. The first element of Article 2.3 requires notification of the Athlete by a duly authorized person. The Athlete submits, however, that notification never took place, alleging failures by the SCP to show official identification, to provide adequate warnings of consequences, and to complete the required documentation.

160. The SCP, for their part, maintain that they properly identified themselves as DCOs of the ETH-NADO, duly notified the Athlete, and adequately warned her of the consequences.

i. Alleged ISTI departures and their consequences

161. The Athlete submits that the SCP committed multiple departures from the ISTI during the Event, which could reasonably have caused the conduct that forms the basis of the alleged ADRV.

162. With respect to departures from the ISTI, Article 3.2.3 of the ADR provides that:

> *"**3.2.3.** Departures from any other International Standard or other anti-doping rule or policy set forth in the Code or these Anti-Doping Rules shall not invalidate analytical results or other evidence of an anti-doping rule violation, and shall not constitute a defense to an anti-doping rule violation; provided, however, if the Athlete or other Person establishes that a departure from one of the specific International Standard provisions listed below could reasonably have caused an anti-doping rule violation based on an Adverse Analytical Finding or whereabouts failure, then ETH-ADA shall have the burden to establish that such departure did not cause the Adverse Analytical Finding or the whereabouts failure:*
>
> *(i) A departure from the International Standard for Testing and Investigations related to Sample collection or Sample handling which could reasonably have caused an anti-doping rule violation based on an Adverse Analytical Finding, in which case ETH-ADA shall have the burden to establish that such departure did not cause the Adverse Analytical Finding;*
>
> *(ii) A departure from the International Standard for Results Management or International Standard for Testing and Investigations related to an Adverse Passport Finding which could reasonably have caused an anti-doping rule violation, in which case ETH-ADA shall have the burden to establish that such departure did not cause the anti-doping rule violation;*
>
> *(iii) A departure from the International Standard for Results Management related to the requirement to provide notice to the Athlete of the B Sample opening which could reasonably have caused an anti-doping rule violation based on an Adverse Analytical Finding, in which case ETH-ADA shall have the burden to establish that such departure did not cause the Adverse Analytical Finding;*
>
> *(iv) A departure from the International Standard for Results Management related to Athlete notification which could reasonably have caused an anti-doping rule violation based on a*

whereabouts failure, in which case ETH-ADA shall have the burden to establish that such departure did not cause the whereabouts failure".

(a) Identification

163. In relation to the notification of athletes, Article 5.4.1 of the ISTI requires that, upon initial contact, the SCP *"shall ensure the Athlete* […] *is informed" inter alia* that:

> *"a) That the Athlete is required to undergo a Sample collection;*
>
> *b) Of the authority under which the Sample collection is to be conducted;*
>
> *c) Of the type of Sample collection and any conditions that need to be adhered to prior to the Sample collection;*
>
> *d) Of the Athlete's rights, including the right to:*
>
> *(i) Have a representative and, if available, an interpreter accompany them, in accordance with Article 6.3.3(a);*
>
> *(ii) Ask for additional information about the Sample collection process;*
>
> *(iii) Request a delay in reporting to the Doping Control Station for valid reasons in accordance with Article 5.4.4;*
>
> *e) Of the Athlete's responsibilities, including the requirement to:*
>
> *(i) Remain within continuous observation of the DCO/Chaperone at all times from the point initial contact is made by the DCO/Chaperone until the completion of the Sample collection procedure;*
>
> *(ii) Produce identification in accordance with Article 5.3.4;*
>
> *(iii) Comply with Sample collection procedures (and the Athlete should be advised of the possible Consequences of a Failure to Comply); and* […]*".*

164. Article 5.4.2 of the ISTI further requires that, when contact is made, the SCP, *inter alia*, shall *"b) Identify themselves to the Athlete using the documentation referred to in Article 5.3.3;"*. In this respect, Article 5.3.3 states that the SCP *"shall have official documentation, provided by the Sample Collection Authority, evidencing their authority to collect a Sample from the Athlete, such as an authorization letter from the Testing Authority. DCOs shall also carry complementary identification which includes their name and photograph (i.e., identification card from the Sample Collection Authority, driver's license, health card, passport or similar valid identification) and the expiry date of the of the identification".*

165. In the present case, the SCP maintain that they verbally identified themselves as DCOs of the ETH-NADO upon arrival at the Athlete's residence. They state that they introduced themselves to the Athlete's husband at the gate and subsequently identified themselves as DCOs to the Athlete when she emerged from the residence. The Athlete and her witnesses, however, assert that no identification documents were ever produced. In this respect, the Sole Arbitrator notes that Mr. A. testified at the hearing that his identification badge had expired but that he carried an official letter evidencing his authority. He further

stated that Dr. B. and Mr. C. were wearing identification badges around their necks and showed those badges to the Athlete. When asked whether this information was reflected in the Report, Mr. A. acknowledged that it was not. He also explained that certain information contained in the Report, including the reference to the Athlete having provided her passport for identification, was *"pre-filled"* from office records. Moreover, Dr. B. testified at the hearing that he showed the Athlete his identification card *"from his pocket"*. This detail likewise does not appear in the Report.

166. The Sole Arbitrator notes that certain declarations made by the SCP during the hearing, together with their written statements and the Report describe in detail how the SCP identified and notified the Athlete and her husband upon arrival at the gate of the residence. For the avoidance of doubt, any identification or notification provided to the Athlete's husband is merely for context, as the only individual whose notification is legally relevant in these proceedings is the Athlete.

167. On the evidence before her, the Sole Arbitrator accepts that some form of identification was worn by at least Dr. B. and Mr. C., and that Mr. A. carried an *"official letter"*. That said, the notification and identification process as described does not appear to fully satisfy the strict requirements of Articles 5.3.3 and 5.4.2 of the ISTI, particularly given the inconsistencies between the hearing testimony and the Report. The Sole Arbitrator does not, however, need to resolve this factual dispute definitively. Even assuming that the identification requirements were not fully complied with, such a departure would not be causative within the meaning of Article 3.2.3 of the ADR. Indeed, there is no evidence that the Athlete challenged or questioned the SCP's identity or authority at the time of the Event. Nor does she claim that she doubted they were legitimate ETH-NADO officials. On the contrary, her explanations consistently indicate that her objections concerned the timing of the SCP's visit and the circumstances in which she was awakened, rather than any uncertainty as to their official status.

(b) Notification of the possible consequences

168. As to the disclosure of consequences, Article 5.4.1(e)(iii) of the ISTI provides that, among their responsibilities, athletes are required to *"[c]omply with Sample Collection procedures (and the Athlete should be advised of the possible Consequences of a Failure to Comply"*. The use of the word *"should"* as opposed to *"shall"* indicates a recommended practice rather than a mandatory obligation (*see* CAS 2018/A/5885 & 5936). As such, Article 5.4.1(e)(iii) does not *per se* impose a mandatory requirement whose failure would, in itself, establish a departure.

169. The Athlete submits that she never received proper notification of the possible consequences for an ADRV under Article 2.3 of the ADR. The SCP state that such warnings were given to both the Athlete and her husband. In particular, Dr. B. testified at the hearing to have informed the Athlete of the consequences but that *"she*

became very aggressive".

170. Based on the evidence available, the Sole Arbitrator accepts that a general warning was communicated to the Athlete, even if the precise period of ineligibility was not stated. In any event, even assuming that no explicit warning was given, such omission would not amount to a breach of a mandatory ISTI requirement, nor has any causative link been established within the meaning of Article 3.2.3 of the ADR. It is undisputed that the Athlete is an experienced international athlete, a member of the RTP since 2023, who attended anti-doping education shortly before the Event and had been tested outside her window on multiple prior occasions. She had also been specifically reminded on 18 July 2024 that testing could occur at any time and of the consequences of non-compliance. As observed in CAS 2019/A/6148, elite athletes are presumed to be aware of the serious consequences of refusing or failing to submit to sample collection. In those circumstances, the absence of an express warning, even if established, could not reasonably be said to have caused or materially contributed to the alleged ADRV.

(c) Notification and refusal forms

171. The Athlete further submits that the SCP never presented her with either a doping control notification form or a refusal form for signature. Article 5.4.3 of the ISTI provides, in mandatory terms, that the SCP shall have the athlete sign a form acknowledging notification. Where the athlete refuses to sign or evades notification, the SCP shall, if possible, inform the athlete of the consequences of failure to comply and document the relevant facts in a detailed report. This provision therefore imposes two obligations on the SCP in the event of non-compliance, namely to present the notification form for signature and, if the athlete refuses to sign or evades notification, to document the facts in a detailed report.

172. In the present case, the SCP acknowledge that no notification or refusal form was signed at the Athlete's residence. At the hearing, Mr. A. testified that he did not have his laptop with him to complete the documentation on site, although he had a tablet. He further stated that the SCP left the Athlete's residence without completing the paperwork because they considered the neighbourhood *"unfamiliar"* and *"dangerous"*. The Sole Arbitrator accepts that no notification or refusal form was prepared on site or signed by the Athlete. To that extent, the requirements set out in Article 5.4.3 were not complied with. Nonetheless, the Sole Arbitrator observes that while the purpose of Article 5.4.3 is to document notification, it does not itself constitute notification. With this, she further notes that the refusal form requirement can only be triggered by a non-compliance that has already occurred. A form that records non-compliance cannot logically cause the non-compliance it is intended to document. Non-compliance necessarily precedes any requirement to document it and cannot be caused by the absence of a form. Against that background, the Sole Arbitrator considers that the requirement is consequential in nature and is activated

by an athlete's conduct.

173. The Athlete further alleges that the SCP backdated the Report and failed to disclose that it was created thirteen days after the Event. The Respondents explain that, upon returning to the ETH-NADO office, the SCP prepared a short summary account in Amharic, which was subsequently transcribed into English in ETH-NADO's standard results management format and dated 25 February 2025. The Sole Arbitrator accepts that the Report was not completed on site but rather after the Event. The Athlete's claim about the date is noted, and the weight afforded to the Report will be assessed accordingly. That said, there is no evidence to suggest that its subsequent preparation involved fabrication or bad faith.

174. Lastly, any evidentiary limitations resulting from the SCP's failure to document at the scene are substantially mitigated by the Athlete's own spontaneous phone call to her manager, made approximately twenty minutes after the Event and prior to any legal proceedings. That call provides compelling evidence of the Athlete's state of mind and conduct on 25 February 2025. The departures from Article 5.4.3 of the ISTI are therefore established but do not satisfy the causation threshold under Article 3.2.3.

(d) Duration of the Event

175. Pertaining to the brevity of the Event and the alleged SCP's premature departure from the Athlete's residence, the Sole Arbitrator notes that the Parties dispute the precise duration of the Event. The SCP maintain that they remained on the property for approximately ten minutes in total, including approximately eight minutes with Mr. Tamiru Waqo and approximately two minutes of direct interaction with the Athlete. The Athlete and her witnesses contend that the encounter was very brief, lasting only a few minutes. The Sole Arbitrator does not consider it necessary to resolve this factual dispute with precision. What is undisputed is that the direct interaction between the SCP and the Athlete was brief, lasting at most a few minutes, and that no sample was collected.

176. The significance of this brevity must be addressed against the fact that the ISTI does not explicitly prescribe a minimum duration for sample collections. Nor does it impose *per se* an express obligation on a SCP to remain at an athlete's residence for a specified period. In the absence of an explicit mandatory requirement, the Sole Arbitrator considers that the brevity of the Event cannot constitute a departure within the meaning of Article 3.2.3 of the ADR. While a longer interaction, consultation with supervisors, or more sustained engagement in Oromiffa, may have represented preferable or best practice, best practice is not automatically synonymous with a mandatory standard.

(e) Final remarks

177. The Sole Arbitrator accepts that certain departures from the ISTI occurred and that the SCP did not exercise the highest degree of diligence in the present case. However, the evidence

does not establish that any of those departures could reasonably be regarded as causative within the meaning of Article 3.2.3 of the ADR.

178. That finding should not be interpreted as minimizing the binding character or significance of the ISTI standards. Compliance with those standards is essential to preserving the integrity of the sample collection process. But while departures occurred, the Sole Arbitrator considers they could not have reasonably caused the conduct that forms the basis of the alleged ADRV.

iv. *Conclusion*

179. Although the Parties' accounts diverge as to the precise manner in which notification was made, certain core facts are not contested. Indeed, it is undisputed that three SCP attended the Athlete's residence at approximately 11:30 on 25 February 2025 for the purpose of testing, and they departed without collecting a sample. It is also reported that the Athlete called her manager at approximately 11:50 to inform him that *"DCOs came to test her that morning, but they left without taking a sample even though* [she] *was prepared to give them the sample"*. This phone call is inconsistent with any suggestion that the Athlete was not informed of the SCP's presence or of the purpose of their visit.

180. Also, the Sole Arbitrator observes that the Athlete raised no claim that she doubted the SCP were actual ETH-NADO officials or that she was uncertain of their identity or authority or of the purpose of their attendance. As recognized in CAS 2008/A/1470, Article 5.4.1 of the ISTI does not require any particular form of communication. Notification is effective where the athlete is aware that duly authorized DCOs are present to collect a sample. On the evidence, that threshold is met. Adopting the terminology used in CAS 2008/A/1470 at para. 45, the identified procedural shortcomings *"cannot put into question the fact"* that the SCP *"passed the information"* to the Athlete that they were acting on behalf of ETH-NADO for the purpose of collecting a sample. In other words, the essential elements of notification, regarding the authority and purpose of the visit, was conveyed to her. Moreover, Article 5.2 of the ADR expressly authorizes ETH-NADO to conduct out-of-competition testing while ETH-NADO confirmed the appointment and authority of the SCP to collect a sample from the Athlete pursuant to the testing mission number 3452024388.

181. For the purposes of the first requirement set out in Article 2.3 of the ADR, the Sole Arbitrator finds therefore that the Athlete was notified by duly authorized persons on 25 February 2025.

b. Second requirement: whether the Athlete's conduct constituted refusal or failure to submit

182. The resolution of this element, the central question in this case, turns on whether the Event amounted to a refusal or failure by the Athlete to submit to sample collection, or whether the circumstances instead demonstrate an intention to comply that was frustrated by misunderstanding or confusion.

i. Was there refusal?

183. A refusal requires proof that the Athlete, whether by words or conduct, deliberately signaled an unwillingness to comply with sample collection. It is not necessary that the word *"refuse"* be expressly used, as refusal may be inferred from conduct. However, refusal is, by its nature, intentional. The burden therefore rests on WA to establish, to the comfortable satisfaction of the Sole Arbitrator, that the Athlete deliberately refused to submit to testing.

184. Against this backdrop, WA relies on the SCP's evidence, submitting that the Athlete immediately and persistently objected to the timing of the visit, maintained that she could not be tested outside her designated timeslot, and never provided any indication of willingness to comply. At the hearing, Mr. A. testified that when asked to provide a sample, the Athlete said "*I can't now, I am resting"* and, after being warned of the consequences she *"repeated that it was her resting period"*. Dr. B. testified that the SCP were *"close to begging the Athlete to take the test"*. The SCP maintain that the Athlete never indicated willingness to comply and that, had she been willing to submit, they would have collected a sample.

185. The Athlete, on the other hand, disputes this characterization. She explains that she had been awake late the night before the Event due to a family medical emergency, had completed several hours of demanding training early that morning, and was sleeping when the SCP arrived at approximately 11:30. She states that when her husband woke her, she got out of bed and came to the door to talk to the SCP. She acknowledges that she had questions for the SCP because the visit occurred outside her designated testing window during her recovery time. She states that she asked: *"Why is the testing happening given my recovery time? Why is this happening always? Is there any possibility this could happen outside my recovery time?"*. She asserts that despite her questions, she *"never refused to provide a sample"* and *"was prepared to provide a sample on that day too"*. She further states that as the SCP were departing, she followed them at the compound gate and asked them *"why they are leaving without taking sample once I wake up"*. She affirms that all three SCP could hear her, that one of them looked at her, and that they nonetheless closed the car door and drove away. Approximately twenty minutes later, she called her manager and asked him: *"Can the testing team leave without taking sample once I wake up?"*. This account is corroborated by her husband, her sister, her husband's nephew, and her manager.

186. While the Sole Arbitrator has already determined, for the limited purpose of assessing the notification requirement under Article 2.3, that the Athlete was aware that the SCP were at her residence on 25 February 2025 to conduct testing, that finding does not automatically resolve the separate question of whether she refused to submit to sample collection. Although the fact that no sample was ultimately collected might, at first glance, suggest a refusal, the totality of the evidence does not support a finding of a clear and intentional refusal to submit.

187. First, the evidence establishes that the final exchange between the Parties

took place in two languages and, as became apparent during the hearing, was marked by translation difficulties, misunderstandings, and heightened emotions. This creates a grey area as to how the final moments of the Event unfolded. On this point, the Parties' accounts of the decisive moments diverge significantly. The Athlete maintains that she followed the SCP toward the gate and requested that the test proceed, but that the SCP departed without collecting a sample. Conversely, the SCP assert that they perceived the situation as escalating, felt unsafe, and concluded that no sample would be forthcoming, prompting their departure.

188. Second, while the Sole Arbitrator accepts that the atmosphere became tense and that the Athlete was frustrated at having been approached during her recovery period, frustration or emotional reaction does not automatically amount to a deliberate refusal to provide a sample. She does not find credible the SCP's assertion that they felt endangered or that their departure was motivated by immediate concerns for personal safety. At the same time, she is not persuaded that the Athlete followed the SCP to the gate and clearly, loudly, and unconditionally requested that the sample be taken without any reference to her preferred testing window. In circumstances where the precise content and tone of the final exchange remain uncertain, it is difficult to conclude that the Athlete expressed a clear and unequivocal refusal.

189. In this context, the Sole Arbitrator attaches particular relevance to the phone call between the Athlete and her manager approximately twenty minutes after the SCP had departed from her residence. Her question to him, *"Can the testing team leave without taking sample once I wake up?"*, is not *per se* consistent with a prior, conscious decision to refuse testing. The absence of clarity in the Athlete's own understanding is relevant to the assessment of intent. This is reinforced by the fact that Dr. B. recognized the need to switch to the Athlete's native language during their exchange.

190. Moreover, the SCP's evidence focuses substantially on the husband's statements and conduct. Although such evidence provides contextual background, it underscores the uncertainty as to whether the perception of refusal (if any) arose from the Athlete herself or from her husband's interventions. For the purposes of Article 2.3, what is decisive is the Athlete's own words and conduct. The Sole Arbitrator cannot comfortably exclude the possibility that the husband's conduct materially influenced the SCP's perception of the situation.

191. Taking these elements together, the Sole Arbitrator considers that the SCP's decision to depart was more likely the result of escalating frustration and a breakdown in communication during the Event, compounded by the Athlete's frustration at being approached during her designated rest period and outside her preferred testing window, rather than actual concerns for their personal safety. As such, the evidence does not show that the testing process was terminated in response to a clear, unequivocal, and definitive refusal by the Athlete herself.

192. In light of the evidence before her, the Sole Arbitrator is not comfortably satisfied that a deliberate refusal has been established. This conclusion does not entail full acceptance of the Athlete's account, aspects of which have been found unreliable. Rather, it reflects the reality that the evidence does not permit a finding of deliberate, knowing refusal to the required standard. The confirmed language barriers, the brevity of the Event, the limited communication in Oromiffa, the absence of written documentation filed on site, and the residual uncertainty as to what was precisely said, understood, and intended by the Parties prevent a finding, to the required standard, that the Athlete deliberately and knowingly refused to submit to testing.

193. While the standard of comfortable satisfaction does not require proof beyond reasonable doubt, it nonetheless requires affirmative satisfaction that intentional unwillingness has been established. Even taking into account the credibility concerns identified above, the evidence does not positively establish that the Athlete consciously decided not to submit to testing, or explicitly refused.

ii. Was there failure?

194. The absence of a proven refusal does not end the analysis. Article 2.3 also prohibits *"failing to submit to sample collection"*. As mentioned earlier, a failure must involve at least negligent conduct and may also be intentional. Unlike refusal, it does not require proof of a deliberate declaration of unwillingness as it is sufficient that, following notification, the athlete did not comply with the obligation to submit to testing.

195. The Sole Arbitrator finds, to the standard of comfortable satisfaction, that the Athlete failed to submit to sample collection within the meaning of Article 2.3 of the ADR, and that this finding is compelled by several independent and mutually reinforcing grounds.

196. First, if the phone call was compelling in assessing whether there was a refusal, it is equally compelling in establishing that the Athlete failed to submit to sample collection. The Athlete states in her witness statement that she *"was prepared to provide a sample on that day too"* but being prepared to provide a sample is not the same as ensuring that a sample is collected. The Athlete's own account establishes that she asked questions about recovery time and timing, that the SCP departed from her residence, and that no sample was collected. The account she gave to her manager contained no mention of having submitted to sample collection or ensured a sample was collected. Even accepting that the Athlete followed the SCP to the gate, the fact remains that no sample was collected and that the Athlete did not ensure a sample was collected before the SCP departed from her residence.

197. Then, the Athlete's obligation upon notification was to ensure that a sample was collected immediately. As stated in CAS 2005/A/925, the duty to submit to testing is non-negotiable and absolute once notification has been given, and is independent of any procedural disagreement. If an athlete

has objections, the correct course is to comply with the test under protest and pursue complaints through proper channels afterward. An athlete cannot unilaterally terminate the testing process on the basis of a procedural dispute. In CAS 2008/A/1564, an athlete who called his NADO just four minutes after the DCO's departure to seek rectification was nonetheless found to have committed an ADRV, as he had failed to comply immediately when notified. In the present case, the Athlete raised questions about timing and recovery but did not ensure that a sample was collected immediately.

198. Moreover, the obligation to submit to sample collection is personal, non-delegable, and absolute. The Athlete could not condition submission on the timing of the visit, on her need for recovery, or on her being fully awake. Her questions about whether testing could happen *"outside my recovery time"* and her reference to *"once I wake up"* demonstrate a misunderstanding of this obligation. This misunderstanding explains why the Athlete did not deliberately refuse but it does not excuse the failure to submit. The confirmed language barriers, the brevity of the Event, the limited communication in Oromiffa, the confusion created by the husband's interventions, and the Athlete's tiredness and frustration, provide context for understanding what occurred. However, whatever difficulties these circumstances created during the Event, the fact remains that no sample was collected and that the Athlete did not ensure one was collected. That failure is what Article 2.3 prohibits.

199. In essence, the Athlete's obligation upon notification was to provide immediate, clear and unconditional agreement to submit to testing, to ensure that a sample was collected immediately after notification, and, if she had objections, to pursue them afterwards. She fulfilled none of these obligations. The Sole Arbitrator therefore finds that the Athlete failed to submit to sample collection within the meaning of Article 2.3 of the ADR.

200. Consequently, the second element of Article 2.3 is established.

c. Third requirement: absence of compelling justification

201. The third element of an Article 2.3 ADRV requires that the failure to submit to sample collection occurred without *"compelling justification"*.

202. The burden of establishing compelling justification rests with the Athlete, should she seek to rely on this defense.

203. As a matter of principle, CAS jurisprudence has consistently held that the requirement of compelling justification must be assessed on an objective basis. As stated in CAS 2013/A/3279, the relevant *"question is not whether the Athlete was acting in good faith, but whether objectively he was justified by compelling reasons to forego the test"*.

204. In addition, the requirement of compelling justification must be interpreted restrictively. A failure to submit sample collection must have been *"unavoidable"* (*AAA 04.02.09 USADA v. Page*, para. 10.5; *NADP Tribunal Jones v. WRU*, decision dated 9 June 2010, para. 57) and where it remained *"physically, hygienically, and*

morally possible" for the athlete to provide a sample, the defense of compelling justification cannot succeed (CAS 2005/A/925).

205. This restrictive interpretation is further reflected in the wording of the provision itself. The use of the term *"compelling"* underscores the exceptional nature of the circumstances required. As noted in CAS 2019/A/6302 at para. 75, the defense is to be examined with particular strictness.

206. Indeed, CAS panels have rejected claims of compelling justification in a wide range of circumstances, including objections to the laboratory analyzing the sample (CAS 2005/A/925), religious objections to urine sampling (CAS A6/2006), instructions from team officials to attend a meeting and delay reporting to the doping control station (CAS 2008/A/1557), mental distress or panic attacks (CAS 2016/A/4631), mistaken belief of retirement (*RYA v. Johnston*), and sudden illness where departure from testing was voluntary (*CCES v. Boyle*). These cases illustrate that the threshold is particularly high and that the defense must be construed restrictively.

207. Turning to the present case, the Athlete's asserted justification, to the extent it has been articulated, relates to the timing of the testing attempt and her personal condition at the time. She relies on the fact that she had completed a demanding training and required recovery, that she had been awake late the night before due to a family medical situation, that she was exhausted and asleep when the SCP arrived, that the testing occurred outside her designated 60-minute timeslot, that she wished to ask questions regarding the timing of the test, and that language or communication difficulties caused confusion. However, whether considered individually or cumulatively, these circumstances do not meet the high threshold required to establish compelling justification.

208. First, the fact that the Event occurred outside the Athlete's designated timeslot cannot constitute compelling justification. Article 5.2.2 of the ADR and Article 4.5.5 of the ISTI make clear that athletes may be subject to testing at any time. Reliance on the designated window is therefore incompatible with the anti-doping framework. In any event, the Athlete and her manager accepted that she remained subject to testing outside her declared timeslots.

209. Second, the need for sleep or recovery from training does not amount to compelling justification. The obligation to submit to testing *"at any time"* necessarily encompasses periods when athletes may be sleeping or recovering.

210. Third, while the Athlete may have been fatigued due to events the night before, this did not render compliance physically impossible. On the contrary, the evidence indicates that the Athlete was able to get out of bed, come to the door, engage in conversation with the SCP, and, according to her own account, follow them toward the gate. Objectively, it was *"physically, hygienically and morally possible"* for her to provide a sample.

211. Fourth, although the Athlete was entitled to raise objections or seek

clarification, that entitlement does not suspend the obligation to comply with sample collection. As recognized in CAS 2005/A/925, where an athlete objects to aspects of the testing process or harbors uncertainty, the appropriate course is to comply under protest and pursue any challenge thereafter. The right to question the procedure does not constitute compelling justification for failing to submit where compliance remains physically and practically possible.

212. Fifth, language and communication difficulties, while now acknowledged and relevant to understanding the interaction during the Event, do not amount to compelling justification. The evidence shows that one member of the SCP addressed the Athlete in Oromiffa, her native language. Language barriers may explain confusion, but they do not render compliance impossible.

213. Applying the objective standard articulated in CAS 2013/A/3279, the question is not whether the Athlete believed she was justified, but whether compelling justifications, viewed objectively, excused the failure to submit. Objectively assessed, none of the circumstances relied upon deprived the Athlete of the ability to comply. It remained physically, hygienically, and morally possible for her to provide a sample. While fatigue and communication difficulties may have created challenges, they did not render compliance impossible. This conclusion is reinforced by the Athlete's experience and knowledge. Approximately four months prior to the Event, she attended an anti-doping education session confirming that testing may occur at any time. She had previously been tested outside her declared timeslot on multiple occasions, including shortly before the Event, and had complied.

214. The Sole Arbitrator therefore concludes that the Athlete has not established compelling justification for her failure to submit to sample collection.

215. Consequently, the third element of Article 2.3 is satisfied.

d. Conclusion on the ADRV

216. Considering the foregoing, the Sole Arbitrator is comfortably satisfied that: (i) the Athlete was notified by duly authorized persons; (ii) she failed to submit to sample collection; and (iii) there was no compelling justification for that failure. The Sole Arbitrator accordingly finds that the Athlete committed an ADRV under Article 2.3 of the ADR on 25 February 2025 for having failed to submit to sample collection. As the ADRV has been established, the Sole Arbitrator must now determine the appropriate consequences.

E. Consequences

a. Period of ineligibility

217. Article 10.3.1 of the ADR provides as follows:

> *"**10.3.1** For violations of Article 2.3 or 2.5, the period of Ineligibility shall be four (4) years except: (i) in the case of failing to submit to Sample collection, if the Athlete can establish that the commission of the anti-doping rule violation was not intentional, the period of*

Ineligibility shall be two (2) years; (ii) in all other cases, if the Athlete or other Person can establish exceptional circumstances that justify a reduction of the period of Ineligibility, the period of Ineligibility shall be in a range from two (2) years to four (4) years depending on the Athlete or other Person's degree of Fault; or (iii) in a case involving a Protected Person or Recreational Athlete, the period of Ineligibility shall be in a range between a maximum of two (2) years and, at a minimum, a reprimand and no period of Ineligibility, depending on the Protected Person or Recreational Athlete's degree of Fault".

218. Pursuant to Article 10.3.1 of the ADR, the period of ineligibility for a violation of Article 2.3 is four years. In cases involving a failure to submit to sample collection, the period may be reduced to two years if the athlete establishes that the violation was not intentional.

i. Assessment of intent

219. Several factors point toward the finding of intentional conduct.

220. The Athlete possessed extensive knowledge of her anti-doping obligations. She had attended an education session four months prior to the Event, during which she was expressly informed that testing could occur at any time. She had previously been tested outside her designated window on eight occasions and had been specifically reminded, on 18 July 2024, that testing authority is not limited to the 60-minute timeslot reflected in ADAMS. Moreover, she is an experienced international-level athlete who has been included in the RTP since 2023. In these circumstances, she is presumed to know, and in all probability does know, that failing to submit to testing constitutes a serious ADRV.

221. Nonetheless, on careful consideration, the Sole Arbitrator finds that the Athlete has established on the balance of probabilities that her failure was not intentional.

222. The most probative evidence is the phone call between the Athlete and her manager. In that call, made shortly after the SCP's departure, the Athlete asked: "*Can the testing team leave without taking sample once I wake up?"*. Both the content and the immediacy of this question are significant as they reveal that the Athlete did not understand herself to have clearly committed an ADRV. An athlete who knew that her conduct constituted a violation, or who was aware of a significant risk that it might do so and nonetheless consciously disregarded that risk, would not be expected to pose such a question and seek clarification from her manager as she would already know the answer. Notwithstanding certain credibility concerns arising elsewhere in the evidence, the Sole Arbitrator considers that the Athlete's account of having asked this question was credible and not fabricated.

223. The Athlete's prior record of compliance on eight previous out-of-window testing occasions further supports the conclusion that the failure on 25 February 2025 was aberrational rather than deliberate. There is no evidence suggesting any motive to evade testing on this occasion. On the contrary, the evidence indicates that the Athlete had consistently returned negative samples, and there is no

indication that she feared the outcome of a test.

224. The Sole Arbitrator is nevertheless satisfied that the Athlete acted negligently. The assessment of negligence is objective. An athlete of her caliber and experience should have known, on the basis of her anti-doping education, prior testing history, and the reminder she received on 18 July 2024, that she was required to submit immediately, irrespective of timing. While the language barriers are acknowledged in assessing intent, they do not negate the objective standard of care expected of an elite athlete included in the RTP.

225. Negligence, however, is distinct from intent. The Sole Arbitrator finds that the Athlete has discharged her burden of establishing, on the balance of probabilities, that her failure to submit was not intentional.

226. The Athlete having established that her failure was not intentional, the applicable period of ineligibility under Article 10.3.1 of the ADR is two years.

b. Commencement of ineligibility period and credit for provisional suspension

227. Article 10.13 of the ADR provides as follows:

> ***"10.13 Commencement of Ineligibility Period***
>
> *Where an Athlete is already serving a period of Ineligibility for an anti-doping rule violation, any new period of Ineligibility shall commence on the first day after the current period of Ineligibility has been served. Otherwise, except as provided below, the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date Ineligibility is accepted or otherwise imposed".*

228. It follows that, as a general rule, the period of ineligibility commences on the date of the final hearing decision.

229. Article 10.13.1 of the ADR, however, establishes an exception to that general rule:

> *"**10.13.1** Delays Not Attributable to the Athlete or other Person*
>
> *Where there have been substantial delays in the hearing process or other aspects of Doping Control, and the Athlete or other Person can establish that such delays are not attributable to the Athlete or other Person, ETH-ADA or its Hearing Panel, if applicable, may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. All competitive results achieved during the period of Ineligibility, including retroactive Ineligibility, shall be Disqualified".*

230. Accordingly, where (i) substantial delays in the hearing process or other aspects of doping control are established, and (ii) such delays are not attributable to the athlete, the adjudicatory body has discretion to determine an earlier commencement date. The Sole Arbitrator must therefore examine whether those conditions are met in the present case.

231. *In casu*, the Athlete requested that the commencement of the period of ineligibility be backdated to 25 February 2025. While the Sole

Arbitrator does not consider it appropriate to backdate to 25 February 2025 for the reasons set out below, she must still assess whether an earlier commencement at a later date could apply in the specific circumstances of this case.

232. Following the Event on 25 February 2025, ETH-NADO notified the Athlete of the alleged ADRV and imposed a provisional suspension on 10 March 2025. In its notification letter, ETH-NADO required the Athlete to provide *"a full and detailed written explanation for the alleged facts"* by 15 March 2025. The letter expressly stated that the explanation sought was directed at both the merits of the alleged ADRV and the question of provisional suspension, and that upon review of such explanation, ETH-NADO would issue a notice of charge if it remained satisfied that an ADRV had been committed. On 14 March 2025, the Athlete timely filed a written application seeking the lifting of the provisional suspension, which included her explanation. A hearing was held on 15 March 2025, during which the parties addressed not only the provisional suspension but also, in summary, the merits of the alleged ADRV. On 16 March 2025, the provisional suspension was lifted. By that time, ETH-NADO had received the Athlete's explanation in both written and oral form and continued to maintain its position that an ADRV had been committed. Despite this, ETH-NADO did not issue a formal notice of charge until 21 May 2025, some 66 days later.

233. Against this background, the Sole Arbitrator notes that Article 7.1 of the International Standard for Results Management ("ISRM") provides that:

"7.1 ***If, after receipt of the Athlete*** *or other Person's* ***explanation*** *or expiry of the deadline to provide such explanation,* ***the Results Management Authority is (still) satisfied that the Athlete*** *or other Person* ***has committed (an) anti-doping rule violation(s), the Results Management Authority shall promptly charge the Athlete*** *or other Person with the anti-doping rule violation(s) they are asserted to have breached"* (emphasis added).

234. For purposes of Article 7.1, the Sole Arbitrator finds that ETH-NADO received the Athlete's explanation no later than 16 March 2025, the date of the Provisional Suspension Decision. By that date, ETH-NADO had the benefit of the Athlete's written application, her oral testimony at the hearing, and the Provisional Suspension Panel's preliminary assessment. As such, it is reasonable to assume that ETH-NADO was, by that date, in a position to determine whether it remained satisfied that the Athlete had committed the alleged ADRV. With this in mind, the Sole Arbitrator must therefore assess whether the 66-day interval between 16 March 2025 and 21 May 2025 can be considered *"prompt"* under Article 7.1 of the ISRM in the specific circumstances of this case. While neither the WADC nor the ISRM provides an explicit definition of *"prompt"*, it is generally understood to mean as soon as reasonably possible, taking into account the relevant facts and circumstances.

235. The present case involved no

laboratory analysis, no scientific complexity and no technical evidentiary issues requiring expert evidence or extended investigation. All relevant facts were known from the outset, and the dispute essentially hinged on the credibility and interpretation of a discrete interaction that occurred on a single morning. In the particular context of this unique case, the Sole Arbitrator therefore finds that the delay of 66 days between receipt of the Athlete's explanation and issuance of the formal charge cannot be considered prompt.

236. The Sole Arbitrator does not suggest that ETH-NADO was required to issue the charge immediately upon receipt of the Athlete's explanation. Some administrative interval is inherent in any results management process, and prompt action is not always realistic. However, in circumstances where all relevant information was already available, a delay of 66 days exceeds what can reasonably be characterized as prompt in the context of this specific type of ADRV. This conclusion is reinforced by the overall pace at which the first instance proceedings were otherwise conducted. Once the notice of charge was issued on 21 May 2025, all subsequent stages moved with considerable speed, namely the Athlete filed her response on 16 June 2025, ETH-NADO replied on 23 June 2025, procedural directions were issued on 15 July 2025, and the hearing and Appealed Decision followed within less than a month. The entire proceedings from charge to first instance decision took less than three months. The charge delay of 66 days is thus disproportionate when measured against the pace at which every other stage of the first instance proceedings was conducted. Additionally, ETH-NADO has offered no justification for such delay. The Sole Arbitrator therefore concludes that this delay constitutes a substantial delay not attributable to the Athlete within the meaning of Article 10.13.1 of the ADR.

237. Yet, the finding of a substantial delay does not conclude the analysis. The Sole Arbitrator must also consider the Comment to Article 10.13.1 of the WADC, which cautions that in *"cases of anti-doping rule violations other than under Article 2.1, the time required for an Anti-Doping Organization to discover and develop facts sufficient to establish an antidoping rule violation may be lengthy, particularly where the Athlete or other Person has taken affirmative action to avoid detection. In these circumstances, the flexibility provided in this Article to start the sanction at an earlier date should not be used"*. The underlying rationale is that an anti-doping organization should not be penalized for legitimately complex investigative work.

238. The present case, however, does not involve the type of prolonged investigative process or extensive development of facts contemplated by the Comment to Article 10.13.1. The delay occurred during the results management phase rather than from any investigative steps needed to substantiate the ADRV. As such, the rationale underlying the Comment does not apply, and the Sole Arbitrator's exercise of discretion under Article 10.13.1 is not precluded.

239. Having established that a substantial

delay not attributable to the Athlete occurred, the Sole Arbitrator must next determine the appropriate commencement date pursuant to Article 10.13.1 of the ADR. Subject only to the express limitation that the period of ineligibility may not commence earlier than the date of sample collection or the date on which another ADRV last occurred, Article 10.13.1 does not prescribe a mathematical formula for backdating, nor does it require that any retroactive commencement correspond precisely to a quantified number of days.

240. While Article 10.13.1 could, in principle, permit backdating as early as 25 February 2025, the Sole Arbitrator considers that any exercise of discretion must be proportionate to the procedural delay actually established and to the circumstances of the case as a whole. The purpose of this provision is to prevent an athlete from being prejudiced by delays for which they are not responsible and it is not intended to grant an unwarranted benefit or to disregard the actual sequence of events.

241. In the particular circumstances of this case, the Sole Arbitrator determines that the 66-day delay provides a practical reference point and considers it appropriate to backdate the commencement of the period of ineligibility by 66 days. Extending the commencement date beyond this 66-day delay, however, would exceed the corrective purpose of Article 10.13.1 and would not be proportionate to the delay actually demonstrated.

242. With that determination made, the Sole Arbitrator must now establish the operative commencement date of the period of ineligibility, taking into account Article 10.13.2 of the ADR, which provides:

*"**10.13.2** Credit for Provisional Suspension or Period of Ineligibility Served*

***10.13.2.1** If a Provisional Suspension is respected by the Athlete or other Person, then the Athlete or other Person shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed. If the Athlete or other Person does not respect a Provisional Suspension, then the Athlete or other Person shall receive no credit for any period of Provisional Suspension served. If a period of Ineligibility is served pursuant to a decision that is subsequently appealed, then 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".*

243. In this regard, the Sole Arbitrator observes that the Athlete was provisionally suspended by ETH-NADO from 10 to 16 March 2025 (a period of seven days). She was then subject to a further provisional suspension ordered by the CAS Order, from 12 September 2025 until the issuance of this Award. There is no indication that the Athlete failed to comply with either of these provisional suspensions.

244. Pursuant to Article 10.13.2 of the ADR, the Athlete is entitled to receive credit for these periods. As such, the Athlete's period of ineligibility is deemed to have begun on 12 September 2025, reflecting the provisional suspension, which is still in

force. A credit for the seven days of provisional suspension served from 10 to 16 March 2025 shall be further applied to the period of ineligibility.

245. In light of the unexplained delay of 66 days, the Sole Arbitrator considers it appropriate to backdate the period of ineligibility by 66 days from the date of 12 September 2025. As such, the Sole Arbitrator fixes the commencement date of the period of ineligibility to 8 July 2025.

246. Consequently, the Athlete's two-year period of ineligibility shall run from 8 July 2025, with credit for the seven days of provisional suspension served from 10 to 16 March 2025 to be applied. This means that the athlete's suspension should end on 30 June 2027 in principle, if served without any disruption(s).

c. Disqualification of Results

247. The Sole Arbitrator, having exercised her discretion to commence the period of ineligibility as of 8 July 2025 pursuant to Article 10.13.1 of the ADR, shall apply the final sentence of that provision, which provides that *"[a]ll competitive results achieved during the period of Ineligibility, including retroactive Ineligibility, shall be Disqualified"*. Thus, all competitive results obtained by the Athlete on or after 8 July 2025 are mandatorily disqualified, with all resulting consequences, including forfeiture of medals, points, and prizes.

248. In addition, Article 10.10 of the ADR provides:

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

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

249. It follows from Article 10.10 of the ADR that all competitive results obtained from the date of the ADRV, i.e., 25 February 2025, through the day before the commencement of the backdated period of ineligibility shall also be disqualified, with all resulting consequences. The Sole Arbitrator sees no basis, in the circumstances of this case, to depart from the general rule.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by World Athletics with the Court of Arbitration for Sport on 9 September 2025 against the Ethiopian Anti-Doping Office and Diribe Welteji Kejelcha with respect to the decision rendered on 27 August 2025 by the Ethiopian National Anti-Doping Office Hearing Panel is partially upheld.

2. The decision rendered on 27 August 2025 by the Ethiopian National Anti-Doping Office Hearing Panel is set aside.

3. Diribe Welteji Kejelcha is found to have committed an anti-doping rule violation under Article 2.3 of the Ethiopian National Anti-Doping Office Rules 2021 for failing to submit to sample collection.

4. Diribe Welteji Kejelcha is sanctioned with a period of ineligibility of two (2) years commencing on 8 July 2025, in accordance with Article 10.13.1 of the Ethiopian National Anti-Doping Office Rules 2021, with credit for the provisional suspension effectively served by Diribe Welteji Kejelcha between 10 and 16 March 2025 (seven days).

5. All competitive results obtained by Diribe Welteji Kejelcha during the period from and including 25 February 2025 through the date of this Award shall be disqualified.

6. (…).

7. (…).

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

CAS 2025/A/11915
Russian Ski Association (RSF) & Saveliy Korostelev & Lana Prusakova & Maria Travinicheva & Artiom Galunin & Ekatarina Tkachenko & Daniil Sadreev & Russian Paralympic Committee (RPC) & Alexey Bugaev & Varvara Voronchikhina & Anastasiia Bagiian & Ivan Golubkov & Polina Novakovskaia & Mikhail Slinkin v. International Ski Federation (FIS)
award of 20 February 2026 (operative part of 11 December 2025)

Skiing; Eligibility of Russian athletes in FIS qualification events for the Milano-Cortina 2026 Olympic Games; Competence of the FIS Council to amend eligibility rules; Burden of proof to establish a prima facie case of discrimination; Establishment of a prima facie case of discrimination; Secret ballot decisions not immune from review; Establishment of legitimate interest to justify discrimination; Consequences of discrimination on the athletes' eligibility

Panel
Mr André Brantjes (The Netherlands), President
Mr Efraim Barak (Israel)
Mr Benoît Pasquier (Switzerland)

1. **The FIS Statute provides the FIS Council with the statutory power to *"establish and amend the FIS Rules and Regulations, including the International Competition Rules"*. Therefore, the FIS is competent to amend eligibility rules to permit or deny participation of athletes.**

2. **The burden of proof to establish a *prima facie* case of discrimination lies with the athletes. The right to non-discrimination is generally perceived as an accessory right, *i.e.*, it applies only in relation to the enjoyment of other rights and privileges granted. Accordingly, to establish a *prima facie* case of discrimination, the athletes not only have to establish the ground they are allegedly being discriminated on, but also the rights or privileges they claim to be deprived of. Should the athletes be successful in establishing a *prima facie* case of discrimination, the burden shifts to the federation.**

3. **The FIS Statutes (art. 5.2) and the FIS Universal Code of Ethics (art. 1(4)) impose a clear statutory and/or regulatory duty on FIS not to discriminate on the basis of nationality. Thus, the incorporation of a statutory prohibition on nationality-based discrimination creating a blanket ban restricting participation solely on the basis of an athlete's nationality must be found *prima facie*, discriminatory.**

4. **The use of a secret ballot procedure does not render a federation's decision unimpeachable. The federation remains bound by its own statutory duties and may be required to justify the substance of the decision at appeal.**

5. **The burden of proof to justify a statutory prohibition on nationality-based discrimination lies with the federation. To this effect, the federation would have to establish that the measure adopted pursues a legitimate objective and that it is a necessary, reasonable and proportionate means of attaining such legitimate objective. In this**

respect, an Athlete with Individual Neutrality (AIN) participation regime – already implemented across multiple sports – would be more proportionate than a blanket ban. In any event, failure to advance any justification, evidence or arguments including those related to the safety and/or integrity of the federation's competitions is fatal to the defence of a *prima facie* discriminatory measure.

6. CAS cannot grant positive relief (such as ordering reinstatement) to unnamed individuals who are not parties to the arbitration, even where the underlying decision is set aside. Furthermore, lifting a blanket ban does not automatically grant qualification rights. The setting aside of an exclusionary decision lifts the ban, but athletes must independently satisfy all general eligibility requirements and qualify through sporting merit. Finally, the AIN framework and the International Paralympic Committee (IPC) framework operate independently. The International Olympic Committee's AIN framework does not apply to the Paralympic context, as the IPC operates its own membership and eligibility framework. The treatment of Olympic and Paralympic athletes may therefore differ where distinct institutional frameworks govern their respective participation.

I. PARTIES

1. The Russian Ski Association (the "RSF") is the national governing body for the sport of skiing in Russia. The RSF is a member of the International Ski and Snowboard Federation (the "FIS") and the Russian Olympic Committee (the "ROC") and has its registered office in Moscow, Russian Federation.

2. Mr Saveliy Korostelev, Ms Lana Prusakova, Ms Maria Travinicheva, Mr Artiom Galunin, Ms Ekaterina Tkachenko and Mr Daniil Sadreev (the "Athletes") are professional ski athletes from Russia who compete in various skiing disciplines. The Athletes are affiliated with the RSF.

3. The Russian Paralympic Committee (the "RPC") is the national paralympic committee representing Russia. The RPC is a full member of the International Paralympic Committee (the "IPC") and has its registered office in Moscow, Russian Federation.

4. Mr Alexey Bugaev, Ms Varvara Voronchikhina, Ms Anastasiia Bagiian, Mr Ivan Golubkov, Ms Polina Novakovskaia and Mr Mikhail Slinkin (the "Para-Athletes") are professional para-athletes from Russia who compete in various skiing disciplines. The Para-Athletes are affiliated with the RSF and are members of the RPC.

5. The International Ski and Snowboard Federation (the "Respondent" or the "FIS") is the world governing body for the sports of skiing and snowboarding, recognized by the International Olympic Committee (the "IOC"). The FIS is an association registered in accordance with Swiss law and has its registered office in Oberhofen/Thunersee, Switzerland.

6. The RSF, the Athletes, the RPC and the Para-Athletes are jointly referred to as the "Appellants" and together with the FIS as the "Parties".

II. INTRODUCTION

7. The present appeal arbitration proceedings revolve around a resolution whereby the majority of the FIS Council on 21 October 2025 voted "no" by secret ballot (the "Challenged Decision") to the question *"Should FIS permit athletes from Russia and Belarus to participate as AIN in FIS qualification events for the Milano-Cortina 2026 Olympic Winter Games and Paralympic Games in strict compliance with the IOC eligibility criteria for AIN, provided each NSA shall retain discretion to determine whether athletes from the concerned nations may take part in qualification events held within its jurisdiction?"*

8. The Appellants are appealing the Challenged Decision, requesting that it be declared null and void, or alternatively, is set aside.

9. The Appellants request that the FIS be ordered to allow, respectively to facilitate without any delay the participation of the Athletes and all other athletes, support personnel and officials from Russia as *Athletes with Individual Neutrality* ("AIN") in all FIS events, including the qualification events for the Milano Cortina 2026 Olympic Winter Games as well as in the said Games themselves, in compliance with the IOC eligibility criteria for AIN.

10. The Appellants request that the FIS be ordered to allow the Para-Athletes and all other Russian para-athletes, support personnel and officials, to participate in all FIS events, including the qualification events for the Milano Cortina 2026 Paralympic Winter Games, as well as in the said Games themselves, under the same conditions as any other para-athletes, according to the decision of the IPC of 27 September 2025.

11. The FIS requests the appeal to be dismissed.

III. FACTUAL BACKGROUND

12. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the Parties and the evidence examined in the course of the proceedings and at the hearing. This background information is given for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.

13. On 24 February 2022, with the assistance of Belarus, the Russian Federation invaded Ukrainian territory, resulting in a military conflict.

14. On 25 February 2022, the IOC Executive Board (the "IOC EB") issued the following statement, *inter alia*, condemning the Russian Federation's invasion of Ukraine as a violation of the Olympic Truce:

"The Executive Board (EB) of the International Olympic Committee (IOC) reiterated today the IOC's strong condemnation of the breach of the Olympic

Truce by the Russian government and the government of Belarus through its support in this. The respective UN resolution was adopted by the UN General Assembly on 2 December 2021 by consensus of all 193 UN Member States. The Olympic Truce began seven days before the start of the Olympic Games, on 4 February 2022, and ends seven days after the closing of the Paralympic Games.

The IOC EB today urges all International Sports Federations to relocate or cancel their sports events currently planned in Russia or Belarus. They should take the breach of the Olympic Truce by the Russian and Belarussian governments into account and give the safety and security of the athletes absolute priority. The IOC itself has no events planned in Russia or Belarus.

In addition, the IOC EB urges that no Russian or Belarussian national flag be displayed and no Russian or Belarussian anthems be played in international sports events which are not already part of the respective World Anti-Doping Agency (WADA) sanctions for Russia. […]".

15. On 28 February 2022, the IOC EB issued the following statement:

"The Olympic Movement is united in its mission to contribute to peace through sport and to unite the world in peaceful competition beyond all political disputes. The Olympic Games, the Paralympic Games, World Championships and World Cups and many other sports events unite athletes of countries which are in confrontation and sometimes even war.

At the same time, the Olympic Movement is united in its sense of fairness not to punish athletes for the decisions of their government if they are not actively participating in them. We are committed to fair competitions for everybody without any discrimination.

The current war in Ukraine, however, puts the Olympic Movement in a dilemma. While athletes from Russia and Belarus would be able to continue to participate in sports events, many athletes from Ukraine are prevented from doing so because of the attack on their country.

This is a dilemma which cannot be solved. The IOC EB has therefore today carefully considered the situation and, with a heavy heart, issued the following resolution:

1. *In order to protect the integrity of global sports competitions and for the safety of all the participants, the IOC EB recommends that International Sports Federations and sports event organisers not invite or allow the participation of Russian and Belarusian athletes and officials in international competitions.*

2. *Wherever this is not possible on short notice for organisational or legal reasons, the IOC EB strongly urges International Sports Federations and organisers of sports events worldwide to do everything in their power to ensure that no athlete or sports official from Russia or Belarus be allowed to take part under the name of Russia or Belarus. Russian or Belarusian nationals, be it as individuals or teams, should be accepted only as neutral athletes or neutral teams. No national symbols, colours, flags or anthems should be displayed.*

Wherever, in very extreme circumstances, even this is not possible on short notice for organisational or legal reasons, the IOC EB leaves it to the relevant organisation to find its own way to effectively address the dilemma described above.

In this context, the IOC EB considered in particular the upcoming Paralympic Winter Games Beijing 2022 and reiterated its full support for the International Paralympic Committee (IPC) and the Games.

[…]

The IOC EB, assisted by the IOC Task Force, continues to closely monitor the situation. It may adapt its recommendations and measures according to future developments".

16. On 1 March 2022, the FIS issued the following statement:

"The FIS Council met today to discuss the International Olympic Committee's Executive Board recommendation that all International Federations not allow the participation of Russian and Belarusian athletes in their competitions. The recommendation followed escalating security and safety issues faced by the athletes and local organisers.

The IOC EB stated: 'In order to protect the integrity of global sports competitions and for the safety of all the participants, the IOC EB recommends that International Sports Federations and sports event organisers not invite or allow the participation of Russian and Belarusian athletes and officials in international competitions.'

To ensure the safety and security of all athletes at FIS competitions, the FIS Council decided unanimously, in line with the IOC recommendation, that with immediate effect, no Russian or Belarusian athlete shall participate in any FIS competition at any level through the end of the 2021-2022 season.

The FIS Council does not take the decision lightly not to allow any athlete to participate in any competition and is only doing so in accordance with the FIS Statutes, which states 'FIS shall conduct its activities in a politically neutral manner', which is a cornerstone of the FIS values adopted by its 140 member nations.

FIS calls on its National Ski Associations to support the involved athletes as they travel back to their homes and for the full support of the international ski community during these difficult times.

The Council expressed its deepest and sincerest hope that the conflict in Ukraine will come to an end quickly and that the international sports community can begin the process of healing and once again compete with all athletes and nations present.

As previously announced, FIS, in solidarity with the Ski Federation of Ukraine, is providing immediate financial, logistical and technical support to Ukrainian athletes and teams until they are safely able to return home" (emphasis in original).

17. According to the minutes of the FIS Council meeting of 5 July 2022, the FIS Council reaffirmed the ban imposed on Russian and Belarussian athletes to participate in FIS competitions outside their home nations and that *"*[i]*t will be revisited once there is a change in circumstances".*

18. On 14 September 2022, Ms Alexandra Xanthaki, United Nations Special Rapporteur in the field of cultural rights, and Ms E. Tendayi Achiume, United Nations Special Rapporteur

on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, sent a letter to Mr Thomas Bach, President of the IOC at that time, indicating, *inter alia*, as follows:

"We understand the relocation or cancellation of events planned in the Russian Federation and Belarus, as well as the recommendation not to display the Russian or Belarussian national flags and not to play the Russian or Belarussian anthems in international sports events, as sanctions that can be considered as legitimate, as they directly target these States or their official representations.

We express serious concern, however, about the recommendation to ban Russian and Belarusian athletes and officials such as judges from international competitions, based solely on their nationality, as a matter of principle. This raises serious issues of non-discrimination. A number of international sports federations immediately followed the recommendation of the Executive Committee. While we acknowledge that the Executive Committee recommended that Russian and Belarusian athletes could be accepted under certain circumstances as neutral athletes or neutral teams, we remain concerned that this only applied in situations where the full restriction of their participation was not possible.

We also appreciate the objective sought by the Executive Committee to protect the integrity of global sports competitions and the safety of all the participants. We remind, however, that although such concerns may be legitimate objectives under international law to justify differential treatment, the least restrictive measures must always be sought and envisaged in the first instance.

In connection with the above alleged facts and concerns, we would like to remind the Executive Committee of the International Olympic Committee that sporting bodies should commit themselves to protecting and respecting internationally recognized human rights. They should meet their responsibilities to protect rights and minimize harms to rights by adopting human rights policies that apply to athletes, judges, events, and competitions (from bidding processes to game time), fans, journalists, and others. They should also commit themselves to reviewing and revising their policies, including eligibility regulations. Sport governing bodies should review, revise and revoke eligibility rules and regulations that have negative effects on athletes' rights. Please refer to the Annex on Reference to international human rights law attached to this letter which cites international human rights instruments and standards relevant to these matters.

As it is our responsibility under the mandates provided to us by the United Nations Human Rights Council to seek to clarify all cases brought to our attention, we would therefore be grateful for your observations on the following matters: […]*".*

19. The FIS Council meet on 22 October 2022. The minutes of said meeting provide as follows:

"[…] *Hannah Kearney and Martti Jylha reported on an athlete poll, which saw 53% in favour of keeping the ban on Russia and Belarus athletes. However, it was noted that there was a big discrepancy between the Nordic disciplines and other disciplines with*

the Nordic athletes overwhelmingly in favour of keeping the ban.

It was questioned how athletes FIS points and quotas should be handled if the athletes are not permitted to compete.

The Council agreed with a vote that Russian and Belarusian athletes and teams are not allowed to participate in any FIS competitions for the upcoming season.

The Council agreed to not appoint any FIS Officials (TD and Judges) to FIS Competitions in the upcoming season.

The Council agreed with a majority vote that Russian and Belarusian administrative officials will be allowed to continue to participate in meetings in order to maintain an active dialogue with Russian and Belarussian administrative officials

The Council decided that, subject to a review by discipline, Russian and Belarusian athletes FIS points and quotas will be frozen until such time they will be allowed to start, they will have the same ranking and quotas as of March 1, 2022" (emphasis in original).

20. The FIS Council meet on 17 March 2023. The minutes of said meeting provide as follows:

"President Eliasch explained that nothing has changed for FIS in terms of Russia and Belarus athlete and team participation. In terms of any Russian or Belarusian officials attending upcoming meetings, the FIS Council decided Russian and Belarusian delegates cannot attend physically but can follow the Technical Committee Meetings remotely without the option to speak or vote if technically possible".

21. On 28 March 2023, following a request of the 11th Olympic Summit on 9 December 2022 to explore a pathway for athletes with a Russian or Belarussian passport to return to international competitions as AIN and a four-month consultation period with the Olympic Movement stakeholders, the IOC EB issued the following recommendations to international federations and international sports event organisers:

"1. Athletes with a Russian or a Belarusian passport must compete only as Individual Neutral Athletes.

2. Teams of athletes with a Russian or Belarusian passport cannot be considered.

3. Athletes who actively support the war cannot compete. Support personnel who actively support the war cannot be entered.

4. Athletes who are contracted to the Russian or Belarusian military or national security agencies cannot compete. Support personnel who are contracted to the Russian or Belarusian military or national security agencies cannot be entered.

5. Any such Individual Neutral Athlete, like all the other participating athletes, must meet all anti-doping requirements applicable to them and particularly those set out in the anti-doping rules of the IFs.

6. The sanctions against those responsible for the war, the Russian and Belarusian states and governments, must remain in place:

a. No international sports events organised or supported by an IF or NOC in Russia or Belarus.

b. No flag, anthem, colours or any other identifications whatsoever of these countries displayed at any sports event or meeting, including the entire venue.

c. No Russian and Belarusian government or state official can be invited to or accredited for any international sports event or meeting.

[…]

The IOC EB confirmed that these recommendations do not concern the participation of athletes and their support personnel with a Russian or Belarusian passport at the Olympic Games Paris 2024 or the Olympic Winter Games Milano Cortina 2026. The IOC will take this decision at the appropriate time, at its full discretion, and without being bound by the results of previous Olympic qualification competitions".

22. The FIS Council met on 24 and 25 May 2023. The minutes of said meeting provide, *inter alia*, as follows:

"Another frequent theme both internally and externally are the sanctions of Russian and Belarussian athletes. FIS has consistently said throughout the conflict that it is important to have as much information available before discussing any change to the current sanctions. With that in mind, FIS will not make any decision at this council meeting and the sanctions will remain in place. The President underlined that international federations are the governing bodies of their respective sports and as such should be the decision-makers with regards to sanctions, and not governments, directly or indirectly.

[…]

The Council agreed that current FIS policy regarding Russian and Belarussian participation will remain in force until further notice.

[…]

The other development relates to the participation of Russian and Belarussian athletes in international sports.

The latest recommendation from the IOC is that these athletes should be allowed to return to competition as neutrals.

FIS will not decide on this issue until October, but the President stated that what we can agree on is sport must remain autonomous, that the neutrality of international competition is a precious thing, and that athletes must never be weaponized for political purposes" (emphasis in original).

23. On 25 October 2023, the IOC issued an updated Q&A document, in which it, *inter alia*, addressed the question *"What has changed since 28 February 2022 when the IOC Executive Board (EB) recommended no participation or Russian and Belarussian athletes and officials?"* as follows:

"These were the two reasons for the protective measures; to ensure the security and integrity of competitions and to ensure that qualification to take part in an international competition was based on sporting merit and not on political decisions such as denial of visas or

threatening of athletes, National Federations or National Olympic Committees (NOCs).

Firstly, the most important thing that has changed since February 2022 is that participation of neutral athletes with Russian and Belarusian passports in competitions and international competitions has already been implemented and works. This is happening almost every day in a number of sports. It is most prominently evident in tennis, but also in cycling, table tennis, ice hockey, handball, football and in other leagues in the United States, in Europe and elsewhere on other continents. There have been no security incidents in any of those competitions, or none that the IOC is aware of.

Moreover, the governments on whose territory the competitions are taking place are issuing visas with very few exceptions. In other countries they are even issuing working permits where it is necessary, for these players and athletes.

Second, the other major thing that changed was the letter the IOC received from two Special Rapporteurs from the United Nations Human Rights Council, who advised that a blanket ban on Russian and Belarusian athletes would be discriminatory and a flagrant violation of human rights".

24. The minutes of the FIS Council meeting of 21 December 2023 provide as follows:

"President Eliasch provided an update following the IOC decision to allow athletes from Russia and Belarus to participate in the 2024 Olympic Games in Paris under a neutral flag. Following the update, it was made clear that no decision would be made today, this was just to provide the Council with latest information on the matter".

25. On 15 June 2024, the IOC published a list of AINs confirmed as eligible and invited to compete at the Paris 2024 Olympic Games.

26. The FIS Council met on 4 July 2024. The minutes of the said meeting provide as follows:

"[President Eliasch] *informed that in terms of the position of Russia there have been no changes and regarding of the plan of the IOC to allow athletes from Russia and Belarus to participate as neutral athletes at the Olympic Games in Paris and also Milano-Cortina. Belarus in the meantime has requested to be treated differently and this is being considered by the IOC. FIS Council members point out, that there are still governmental restrictions in place which have to be considered as well. FIS will continue to follow the IOC guidelines and should there be any changes the FIS Council will be informed accordingly".*

27. The FIS Council met on 8 November 2024. The minutes of said meeting provide as follows:

"The Council was informed regarding IOC recommendations to allow eligible Belarusian and Russian athletes to participate as Individual Neutral Athletes at select FIS events for the upcoming season. This follows the IOC's recommendations being applied to the upcoming Milano Cortina 2026 Winter Olympics.

Various Council Members expressed their opinions with regards to the participation of Belarusian and Rusian athletes. The President agreed to update the Council following further discussion with the IOC regarding implementation of any Individual

Neutral Athletes Policy and the timing of this".

28. On 19 September 2025, the IOC issued the eligibility conditions under which athletes with a Russian or Belarussian passport could participate in the Milano Cortina 2026 Olympic Winter Games:

"Strict eligibility conditions based on the ***recommendations issued by the IOC EB on 28 March 2023 for IFs and international sports event organisers*** *will be applied for the AINs, who are athletes with a Russian or Belarusian passport. Like all the other athletes at the Olympic Games, the AINs will also have to comply with the rules and regulations applicable at the Olympic Games, including on anti-doping. They will also have to sign the Conditions of Participation applicable to all athletes participating in the Milano Cortina 2026 Games. This contains a commitment to respect the Olympic Charter, including "the peace mission of the Olympic Movement".*

The AINs will be invited by the IOC in accordance with the following eligibility conditions for AINs at Milano Cortina 2026, namely:

- *Qualified athletes with a Russian or Belarusian passport will be entered and compete as AINs.*
- *Teams of athletes with a Russian or Belarusian passport will not be considered.*
- *Athletes who actively support the war will not be eligible to be entered or compete. Support personnel who actively support the war will not be entered.*
- *Athletes who are contracted to the Russian or Belarusian military or national security agencies will not be eligible to be entered or to compete. Support personnel who are contracted to the Russian or Belarusian military or national security agencies will not be entered.*
- *Any such AIN, like all the other participating athletes, will have to meet all anti-doping requirements applicable to them in the lead-up to and at the Milano Cortina 2026 Olympic Winter Games, and particularly those set out in the IFs' anti-doping rules.*

The practical application of today's IOC EB decision can be found in the 'Principles Relating to the Implementation of the Participation for Individual Neutral Athletes and their Support Personnel with a Russian or Belarusian Passport at the Milano Cortina 2026 Olympic Winter Games', which is a ***separate document and can be found here****.*

As was the case for ***the Paris 2024 Olympic Games****:*

1. *An Individual Neutral Athlete Eligibility Review Panel (AINERP) will be established to evaluate the eligibility of each athlete who obtains, or who could obtain, a qualification place for the Milano Cortina 2026 Olympic Winter Games, and that of their support personnel.*

The Panel will be composed of three members:

- ***Ms Nicole Hoevertsz****, IOC Member, Chair of the Panel*

- ***Mr Pau Gasol**, IOC Ethics Commission and Athlete representative*

- ***Morinari Watanabe**, International Sports Federation representative*

The work of the AINERP will be supported by the IOC Chief Ethics and Compliance Officer, who will act as the Secretary of the AINERP.

2. The AINERP and the IOC administration have been delegated the authority to invite an Individual Neutral Athlete, and their support personnel, to participate in the Milano Cortina 2026 Olympic Winter Games.

Once the athletes' invitations have been sent, the IOC will publish the list of the AINs who have been invited to participate.

3. The AINERP will monitor the conduct of, and respect for the Principles of Participation by, all AINs and support personnel who are deemed eligible and who participate in the Milano Cortina 2026 Olympic Winter Games, including on their return after the Games.

4. The AINERP will bring any matter to the IOC Disciplinary Commission for any measures or sanctions to be applied should the conduct of any AIN or their support personnel be considered contrary to the Olympic Charter, the Milano Cortina 2026 Conditions of Participation or the Principles of Participation.

The following protocol elements with regard to the participation of AINs in Milano Cortina will continue to apply:

- *This is **the flag of the AINs** and this is **the anthem**. The anthem has no lyrics and was produced solely for this purpose. Both were already used at the Paris 2024 Olympic Games. During the victory ceremonies, the AIN flag will be flown and the AIN anthem will be played.*

- *Medals won by the AINs will not appear in the NOC medal table.*

- *AINs will not participate in the parade of delegations (teams) during the Opening Ceremony, since they are individual athletes. But an opportunity will be provided for them to experience the event.*

- *The decision regarding the participation of AINs in the Closing Ceremony will be taken during the Games, taking into consideration that it is not teams that take part in the Closing Ceremony, but all the athletes jointly together"* (emphasis in original).

29. On 27 September 2025, the IPC published the following statement on its website regarding the full reinstatement of the rights and privileges of the national paralympic committees of Belarus and the Russian Federation:

"On Saturday (27 September) at the IPC General Assembly in Seoul, South Korea, IPC member organisations voted not to maintain the partial suspensions of the National Paralympic Committees of Belarus and Russia.

Having both been partially suspended at the 2023 IPC General Assembly for breaches of their constitutional membership obligations, this decision means NPC Belarus and NPC Russia now regain their full rights and privileges of IPC membership, in accordance with the IPC Constitution. The IPC will work with the two members involved to put practical arrangements in place for this as soon as reasonably possible.

In reaching their decisions, IPC member organisations made up of National Paralympic Committees, International Federations and International Organisations of Sport for the Disabled attending the 2025 IPC General Assembly first voted against a motion to fully suspend NPC Russia (111-55 with 11 abstentions). IPC member organisations then voted against a motion to partially suspend NPC Russia (91-77 with 8 abstentions), meaning the NPC regained its full IPC membership rights. For a motion to be passed, a majority of 50%+ 1 of all votes cast was required".

30. On 21 October 2025, the FIS Council convened. All 22 Council members were present. Item 8 on the agenda for discussion was *"AIN OWG 2026"*, concerning the AIN participation at the Milano Cortina 2026 Olympic Winter Games. By way of secret ballot, the majority of the FIS Council voted "no" to the following resolution (the Challenged Decision):

"Should FIS permit athletes from Russia and Belarus to participate as AIN in FIS qualification events for the Milano-Cortina 2026 Olympic Winter Games and Paralympic Games in strict compliance with the IOC eligibility criteria for AIN, provided each NSA shall retain discretion to determine whether athletes from the concerned nations may take part in qualification events held within its jurisdiction?".

31. The FIS Council met on 21 October 2025. Summary minutes of said meeting provide as follows:

"At the FIS Council meeting, President Johan Eliasch clarified the process regarding the participation of Russian and Belarusian athletes in qualification events for Milano Cortina.

The importance of following the FIS statutes were emphasised, and it was noted that Article 5.2 of the FIS statutes stipulate that the FIS activities shall be conducted in a politically neutral manner. It was further noted that the Olympic Charter have similar wording. Recent developments were discussed, including the IPC's removal of its ban on Russian and Belarusian athletes, and a tribunal decision in bobsleigh finding that excluding neutral athletes is discriminatory. The Council also reviewed the survey results from more than 50% of the full member federations, which showed a 60/40 split of yes/no opinions in favour of Russian and Belarusian athletes participating in FIS qualification events as AIN.

The anti-doping program for Russian athletes was confirmed to have continued uninterrupted, with international agencies conducting testing to ensure compliance.

Council members expressed a range of views, with some advocating for continued exclusion due misuse of sport for political purposes, while others stressed the need to avoid discrimination based on nationality.

<u>Voting question</u>

Should FIS permit athletes from Russia and Belarus to participate as AIN in FIS qualification events for the Milano-Cortina 2026 Olympic Winter Games and Paralympic Games in strict compliance with the IOC eligibility criteria for AIN, provided each NSA shall retain discretion to determine whether athletes from the concerned nations may take part in qualification events held within its jurisdiction?

Result

The majority of the Council voted with NO".

32. On the same date, FIS published the following statement on its website:

"The FIS Council convened this Tuesday and voted not to facilitate the participation of athletes from Russia and Belarus as Individual Neutral Athletes (AIN) in FIS qualification events for the Milano Cortina 2026 Olympic Winter Games and Paralympic Games.

The International Olympic Committee's AIN regime has been set out as a possible pathway for athletes from Russia and Belarus to compete in the Olympic Games, with each International Federation remaining responsible for the decision on whether to allow these athletes to take part in its existing qualification system" (emphasis in original).

33. On 23 October 2025, the IPC published the following statement on its website:

"In September 2025, the IPC General Assembly voted not to maintain the partial suspension of the National Paralympic Committees (NPCs) of Belarus and Russia, reinstating both NPCs' full membership rights and privileges. This decision, amongst other things, means Para athletes from both countries are free to compete in the Paralympic Games, subject to their qualification for the Games in accordance with the rules of the relevant international federation.

The international federation for each sport on the Paralympic Games programme is responsible for determining the qualification pathway for its sport, as well as the eligibility of athletes to compete in those qualification pathway competitions.

Following the IPC General Assembly's decision, the IPC has received confirmation from each of the four international federations with sports on the Milano Cortina 2026 Paralympic Winter Games programme – the International Ski and Snowboard Federation (FIS), International Biathlon Union (IBU), World Curling and World Para Ice Hockey – that, in practice, no athletes from the two nations are likely to qualify for March's Games:

- *Para alpine skiing, Para cross-country skiing and Para snowboard: The FIS Council voted on Tuesday (21 October) not to facilitate the participation of athletes from Belarus and Russia in its qualification events for Milano Cortina 2026.*
- *Para biathlon: IBU has confirmed that the Belarusian and Russian Biathlon Federations remain suspended from its competitions as per the IBU Congress decision of September 2022.*
- *Para ice hockey: While Russia can now compete in Para ice hockey competitions as a result of September's*

IPC General Assembly decision, World Para Ice Hockey has confirmed that it is not possible in practice for the nation to qualify for March's Games. Belarus does not currently have a Para ice hockey team competing at the international level.

- *Wheelchair curling: In January 2025, World Curling announced it had extended the exclusion of Belarus and Russia from its competitions until the end of the 2024-2025 season. This means teams from both nations cannot qualify for the Milano Cortina 2026 Paralympic Winter Games.*

Andrew Parsons, IPC President, said: 'In the same way that the IPC fully respects the decision of the IPC General Assembly not to maintain the partial suspensions of NPC Belarus and NPC Russia, we also fully respect the decisions of each international federation regarding the sports they govern.

'The positions of FIS, IBU and World Curling currently mean that athletes and teams from Belarus and Russia cannot compete in their events, making it impossible for them to qualify for the Milano Cortina 2026 Paralympic Winter Games.

[…]".

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

34. On 5 November 2025, the Appellants filed a joint Statement of Appeal with the Court of Arbitration for Sport ("CAS"), appealing the Challenged Decision in accordance with Articles R47 and R48 of the 2025 edition of the Code of Sports-related Arbitration (the "CAS Code"). In this submission, the Appellants nominated Mr Efraim Barak, Attorney-at-Law in Tel-Aviv, Israel, as arbitrator and requested a concrete expedited calendar to be implemented.

35. On 7 November 2025, the FIS confirmed to accept the jurisdiction of CAS and agreed with the expedited calendar proposed by the Appellants.

36. On the same date, on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office confirmed that the following expedited calendar was implemented:

- *"Appellants' Appeal Brief: 12 November 2025*
- *FIS Answer: 26 November 2025*
- *Oral hearing: No later than 3 December 2025 (depending on the Panel's availabilities)*
- *Award (operative part): No later than 10 December 2025"* (emphasis omitted)

37. On 11 November 2025, the FIS nominated Mr Benoît Pasquier, Attorney-at-Law in Zurich, Switzerland, as arbitrator.

38. On 12 November 2025, the Appellants filed their joint Appeal Brief in accordance with Article R51 of the CAS Code.

39. On 17 November 2025, following a request of the Appellants, Mr Pasquier disclosed the information requested, following which no further information was requested and no challenge was filed.

40. On 20 November 2025, pursuant to Article R54 of the CAS Code and on behalf of the President of the CAS Appeals Arbitration Division, the arbitral tribunal appointed to decide these proceedings was constituted as follows:

President:
Mr André Brantjes, Attorney-at-Law, Amsterdam, the Netherlands;

Arbitrators:
Mr Efraim Barak, Attorney-at-Law, Tel-Aviv, Israel;
Mr Benoît Pasquier, Attorney-at-Law, Zurich, Switzerland

41. On 24 November 2025, on behalf of the Panel, the CAS Court Office invited the FIS to inform (i) which of the witnesses called by the Appellants it wished to cross-examine; and (ii) which of the witness statements it was prepared to accept as evidence in chief without the need for cross-examination.

42. On 26 November 2025, the FIS filed its Answer in accordance with Article R55 of the CAS Code.

43. On 27 November 2025, the FIS informed the CAS Court Office as follows with respect to the witnesses called by the Appellants:

"We confirm that the Respondent does not intend to cross-examine any of the witnesses. Please note that the Respondent accepts their evidence insofar as it relates to the impact of the exclusion. However, the Respondent reserves its position regarding the content of the witness statements pertaining to 'political or military involvement'. The Respondent does not have the requisite knowledge in this regard and cannot therefore accept or deny these statements. These are matters that would be required to be checked by an independent third party in accordance with the IOC guidance regarding Individual Neutral Athlete status, if the CAS were to order participation under an AIN program".

44. On 27 November 2025, the CAS Court Office informed the Parties, on behalf of the Panel, that no witnesses would be heard at the hearing. The Parties were also provided with a tentative hearing schedule and informed that any comments in this regard were to be addressed at the outset of the hearing.

45. On 28 November and 1 December 2025 respectively, the Appellants and the FIS returned duly signed copies of the Order of Procedure provided to them by the CAS Court Office on 27 November 2025.

46. On 1 December 2025, a hearing was held by videoconference. At the outset of the hearing, the Parties confirmed that they had no objection to the constitution and composition of the Panel.

47. In addition to the members of the Panel and Ms Delphine Deschenaux-Rochat, CAS Counsel, the following persons attended the hearing:

a) For the Appellants:

   1) Mr Claude Ramoni, Counsel;
   2) Ms Monia Karmass, Counsel;

3) Mr Ricardo Suescun, Counsel.

b) For the FIS:

1) Mr David Rundle, Counsel;
2) Mr Suhail Mayor, Counsel;
3) Ms Irina Tuca, Counsel;
4) Ms Aoife Keane, General Counsel;
5) Ms Charlotte Varela, In-house Counsel.

48. No witnesses or experts were heard. The Parties were given full opportunity to present their cases, submit their arguments and answer the questions posed by the members of the Panel.

49. Before the hearing was concluded, the Appellants and the FIS expressly stated that they had no objection to the procedure conducted by the Panel and that their right to be heard had been respected.

50. On 2 December 2025, the CAS Court Office notified the operative part of the present Award to the Parties and published a press release on its website.

51. On 3 December 2025, the FIS filed a request for interpretation in accordance with Article R63 of the CAS Code.

52. On 5 December 2025, the Appellants filed their comments with respect to the FIS' request for interpretation of the Award.

53. On 8 December 2025, the CAS Court Office informed the Parties as follows:

"I inform the Parties that the Deputy President of the CAS Appeals Arbitration Division has decided to partially grant the Respondent's request for interpretation of the award rendered on 2 December 2025 as follows:

- *The Respondent's request for the Panel to clarify its position 'with respect to Russian athletes in the Paralympics who are not individually named in paragraph 4' is granted.*

- *The Respondent's request for the Panel to clarify the 'apparent inconsistency between paragraph 2 and paragraph 3 of the Award' is granted.*

- *The Respondent's request for the Panel to clarify the status of Belarusian para-athletes as opposed to Russian para-athletes is denied on the grounds that it is not within the Panel's jurisdiction in CAS 2025/A/11915 to interpret another Panel's decision.*

- *The Respondent's request for the Panel to clarify whether paragraph 2 of the Award rendered in CAS 2025/A/11931 'permits Belarusian athletes to compete in all FIS events and qualification events, and if so, how this aligns with the Russian Award' is denied on the grounds that it is not within the Panel's jurisdiction in CAS 2025/A/11915 to interpret another Panel's decision"* (emphasis in original).

54. On 11 December 2025, the CAS Court Office issued a new operative part of the Award, with an amended para. 2 of the operative part. The President of the Panel, on behalf of the Panel, further provided the following response to the FIS' request for interpretation:

> *"On behalf of the Panel in* CAS 2025/A/11915 Russian Ski Association (RSF) et al. v. International Ski and Snowboard Federation (FIS)*, I refer to the request for interpretation filed by the Respondent on 2 December 2025, which was partially granted by the Deputy President of the CAS Appeals Arbitration Division on 8 December 2025.*
>
> *While the Deputy President of the CAS Appeals Arbitration Division granted two requests for interpretation, the Panel believes that the second request contains two limbs that are best addressed separately.*
>
> *These three elements of the Respondent's request for interpretation are answered by the Panel below.*
>
> ***i. The Respondent's request for the Panel to clarify the 'apparent inconsistency between paragraph 2 and paragraph 3 of the Award'***
>
> *1. The Respondent submitted as follows in its request for interpretation in this respect:*
>
> *'Furthermore, we seek clarification in respect of an apparent inconsistency between paragraph 2 and paragraph 3 of the Award. Whilst paragraph 2 limits the application of the AIN criteria only to 'FIS qualification events for the Milano-Cortina 2026' games, paragraph 3 allows the six named individual athletes to compete in 'all FIS events, including qualification events for the Milano Cortina 2026' games (our emphasis), provided they comply with the AIN eligibility requirements.'*
>
> *2. The Panel clarifies that paragraph 2 of the operative part of the Award contains an unintended inconsistency with paragraph 3 and should refer to 'all FIS events, including the qualification events for the Milano Cortina 2026 Olympic Winter Games'.*
>
> *3. The operative part has been amended accordingly and will be notified to the Parties by the CAS Court Office.*
>
> ***ii. The Respondent's request for the Panel to clarify its position 'with respect to Russian athletes in the Paralympics who are not individually named in paragraph 4'***
>
> *4. The Respondent submitted as follows in its request for interpretation in this respect:*
>
> *'Paragraph 4 concerns only the six named Russian para-athletes and appears to allow them to participate 'under the same conditions as any other para-athletes'. Based on our reading of*

the press release, we assume that this means 'under the same conditions as those recommended by the International Paralympic Committee', i.e. without the AIN framework being applied. […]'

5. *The Panel clarifies that the Respondent's interpretation that the reference in paragraph 4 of the operative part of the Award to 'under the same conditions as any other para-athletes' means 'under the same conditions as those recommended by the International Paralympic Committee', i.e. without the AIN framework being applied, is correct.*

iii. The Respondent's request for the Panel to clarify its position 'with respect to Russian athletes in the Paralympics who are not individually named in paragraph 4'

6. *The Respondent submitted as follows in its request for interpretation in this respect:*

   'Paragraph 4 concerns only the six named Russian para-athletes and appears to allow them to participate 'under the same conditions as any other para-athletes'. Based on our reading of the press release, we assume that this means 'under the same conditions as those recommended by the International Paralympic Committee', i.e. without the AIN framework being applied. However, there is no specific provision for the remaining para-athletes (i.e. not the six individually named). Please can you clarify the Panel's position with respect to Russian athletes in the Paralympics who are not individually named in paragraph 4?'

7. *The Panel clarifies that paragraph 4 of the operative part of the Award only applies to the 6 individual para-athletes that challenged the Appealed Decision. The reference to 'and all other athletes, support personnel and officials from Russia' in Appellant's request for relief no. IV is intentionally not included in paragraph 4 of the operative part of the Award.*

8. *The Panel found that it could partially grant the generic negative relief requested (setting aside the Appealed Decision) in the Appellants' request for relief no. II (which relief is partially granted in paragraph 2 of the operative part of the Award) and that it could also grant the specific positive relief requested beyond setting aside the Appealed Decision in the Appellants' request for relief no. IV to para-athletes that challenged the Appealed Decision and who are parties in the arbitration. However, the Panel considered that in reference to relief no. IV such positive relief could not be granted with respect to unnamed individuals that did not challenge the Appealed Decision and who are not parties in the arbitration.*

9. *The Panel sees no reason why persons other than the 6 para-athletes that challenged the Appealed Decision, i.e. 'all other athletes, support personnel and officials from Russia', should not be able to participate in all FIS events, including the qualification events for the Milano Cortina 2026 Winter Paralympic Games, in view of the fact that the Appealed Decision is partially set aside (paragraph 2 of the operative part of the Award). However, the Panel is not in a position to make such pronunciation with respect to unnamed persons that are not parties in the arbitration in the operative part of the Award.*

10. *For the avoidance of doubt, the above interpretation also applies to paragraph 3 of the operative part of the Award, albeit that the AIN framework is applicable there".*

V. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

55. The following summaries of the Parties' positions are illustrative only and do not necessarily comprise every submission advanced. The Panel confirms, however, that it has carefully considered all the submissions made by the Parties, whether or not there is specific reference to them in the following summaries.

A. The Appellants' Joint Appeal Brief

56. The Appellants' submissions in their joint Appeal Brief, in essence, may be summarised as follows:

Breach of the FIS Statutes – no legal basis

- Article 8.2.1 of the FIS Statutes grants certain rights to its member associations. Article 8.4.4 of the FIS Statutes grants the FIS Council the authority to *"temporarily suspend a Member Association (and to impose such further conditions as the Council may deem reasonable)"*, but this is only in cases expressly listed in Article 8.4.4 of the FIS Statutes.

- The FIS needs to comply with its own Statutes. When the FIS Statutes expressly grant members a right, any restriction to such right must be based on a proper legal basis in the FIS Statutes. In the case at hand none of the specific conditions allowing a suspension or limitation of the rights of the RSF are met.

- Be it as it may, the Challenged Decision does not make any reference to any provision in the FIS Statutes that would grant the FIS Council the authority to issue the Challenged Decision.

- Based on the foregoing, the Challenged Decision must be annulled.

Violation of fundamental rights, including non-discrimination, and professional freedom

- The refusal to allow the Appellants to take part in FIS-sanctioned competitions, even as AIN, without any individual assessment or proof of

misconduct, is not only disproportionate, but it constitutes a direct and unlawful form of discrimination, in breach of the FIS Statutes, the Olympic Charter, and binding international human rights instruments.

- The blanket exclusion of Russian athletes violates the core principles set forth in Articles 5.2 and 6.1.2 of the FIS Statutes and in the FIS Universal Code of Ethics, pursuant to which various forms of racism are prohibited and pursuant to which the FIS shall conduct its activities in a politically neutral manner. The Challenged Decision is therefore incompatible with its own Statutes and Code of Ethics.

- The FIS acknowledges the direct application of the Olympic Charter. Pursuant to Fundamental Principles 4 and 6 of the Olympic Charter, the practice of sport is a human right and must be respected without restriction and shall not be limited on the ground of nationality.

- The ongoing blanket exclusion, which singles out Russian nationals in response to state conduct, constitutes a politicized measure that targets individuals for the geopolitical actions of their government, precisely what the Olympic Charter and the IOC Code of Ethics intend to prevent.

- This case also violates international human rights instruments and international sports law. While international human rights treaties are binding on states, they also establish universal standards that apply horizontally to private actors such as international sports federations when their decisions affect fundamental rights. The IOC itself has formally endorsed the United Nations Guiding Principles on Business and Human Rights ("UNGPs") and required all Olympic Movement constituents, including FIS, to align their operations accordingly. On the basis of Fundamental Principles 1 and 4 and Article 1 of the IOC Code of Ethics the FIS and its officials are both legally and normatively bound to respect international human rights law.

- As an association seated in Switzerland, the FIS is directly subject to the European Convention on Human Rights ("ECHR"), which forms an integral part of Swiss law and must apply its standards when exercising regulatory or disciplinary authority, particularly where individual rights are affected. This obligation was reaffirmed in *Semenya v. Switzerland*. Yet, the Challenged Decision violates at least Articles 8 (right to private life), 10 (freedom of expression), 11 (freedom of association) and 14 (prohibition of discrimination). The current exclusion amounts to a denial of the right to work and participate in the sport profession because of national

origin, without any indication that such restriction is necessary or proportionate in a democratic society. Under the jurisprudence of the European Court of Human Rights ("ECtHR"), even when interference is permitted in principle, it must meet the criteria of lawfulness, legitimacy, necessity, and proportionality. Here, the exclusion fails all four tests.

- The prohibition of discrimination is enshrined in the UN Charter (Article 1), the Universal Declaration of Human Rights ("UDHR" Article 2), the International Covenant on Civil and Political Rights ("ICCPR" Articles 2 and 26), the International Covenant on Economic, Social and Cultural Rights ("ICESCR" Article 2), the ECHR (Article 14) and the International Convention on the Elimination of All Forms of Racial Discrimination ("ICERD" Article 1). Any difference of treatment based solely on nationality is presumptively unlawful unless narrowly tailored to a legitimate aim. The blanket exclusion of Russian nationals, without similar treatment of athletes from other conflict-engaged nations, is a violation of Articles 2 and 7 of the UDHR. This was confirmed by the UN Special Rapporteurs in their letter to the IOC where they advised that a blanket ban on Russian and Belarussian athletes would be discriminatory and a flagrant violation of human rights. The IOC recognized that this letter constituted a major change. The Athletes and the Para-Athletes also testified about this discriminatory treatment. The Challenged Decision fails both tests required to permit a discriminatory measure, as the resolution contains no explanation or justification for its refusal to the application of the AIN programme. Even if one were inferred, e.g., to protect "safety" or "political neutrality", no evidence was provided to support it. There is no demonstrable threat posed by Russian athletes, and no similar restriction is applied to athletes from other nationalities.

- The ECtHR has consistently held that Article 14 of the ECHR is engaged whenever a protected right is restricted in a discriminatory manner. Under the ECtHR's "ambit doctrine", the right to non-discrimination applies to a wide array of fields, including employment, professional activities, and freedom of association, all of which are directly impacted by the Challenged Decision. Under this doctrine, the protection against discrimination does not require that another substantive right under the ECHR be violated. It is sufficient that the facts of the case fall "within the ambit" of a protected right, even if that right is not itself infringed. The broader reading of Article 14 of the ECHR reinforces the unlawfulness of the blanket exclusion under international human rights law, by confirming

that even a discriminatory denial of access to sport, as a component of professional life, is subject to strict scrutiny under the ECHR.

- The measure also violates the autonomous guarantee of equal protection under Article 26 of the ICCPR, which prohibits unjustified distinctions even in the absence of a separate rights violation. These protections are especially robust when applied to professional opportunities, personal identity, and individual dignity.

- The ban further infringes upon Article 8 of the ECHR, which encompasses the right to personal development and professional activity. Athletes are denied the opportunity to participate in international events, including Olympic qualification, during the narrow window of their peak performance years. This exclusion irreparably harms their sporting careers, training access, competitive development, and income potential.

- In conclusion, the Challenged Decision violates multiple fundamental rights. It is discriminatory, arbitrary, and grossly disproportionate. Such a measure must be annulled.

Violation of Swiss law

- Article 28 of the Swiss Civil Code (the "SCC") provides that any person whose personality rights are unlawfully infringed may apply to the competent authority to end the infringement. The Challenged Decision refusing their participation even under neutral (AIN) status, unlawfully infringes the Appellants' personality rights, including their economic liberty and their right to personal fulfilment through sporting activity.

- Under Article 28(2) of the SCC, such infringement is presumed unlawful unless the FIS proves a justifying ground (consent of the affected persons, an overriding private or public interest, or a legal provision), which is inexistent here. Accordingly, the Challenged Decision is illicit and should be declared null and void to put an end to this unlawful and continuing infringement.

Violation of EU Competition Law

- The Challenged Decision also raises serious concerns under European competition law, particularly Articles 101 and 102 of the Treaty on the Functioning of the European Union ("TFEU").

- As the European Commission and the Court of Justice of the European Union (the "CJEU") have repeatedly affirmed, even private regulatory bodies in sport must comply with EU competition law where their decisions produce economic effects and are not strictly necessary for the organisation of sport. As a dominant regulatory

body in the sport and disciplines of ski, FIS holds a monopoly over access to the professional ski market for athletes and national federations within Europe and beyond. Its decisions thus fall within the scope of EU competition law, particularly where they produce effects in the internal EU market. CAS has recognised the applicability of EU competition law to sports federations when regulatory measures have an economic effect on market access.

- The categorical exclusion of all Russian athletes from FIS competitions, including Olympic qualification events, is not a proportionate or necessary measure to achieve any legitimate sporting aim. The blanket exclusion functions as an unjustified barrier to market access, depriving a category of athletes of their professional livelihood solely on the basis of nationality, with no opportunity for individual assessment. This constitutes a restriction of competition. The FIS' refusal to allow Russian athletes to participate as neutral athletes, despite clear IOC and IPC guidance and successful precedents in other sports, amounts to an abuse of dominance. The measure must therefore be annulled.

Breach of the principle of proportionality

- In line with CAS jurisprudence, any restrictive measure must satisfy the three-prong proportionality test: i) suitability, the measure must be capable of achieving its stated aim; ii) necessity, the measure must be the least restrictive means available; and iii) proportionality *strictu sensu*, the burden imposed must not outweigh the legitimate interest pursued. None of these requirements is fulfilled.

- As to suitability, there is no credible evidence that the presence of Russian athletes would mean a political statement by the Appellants or any disruption in any FIS sanctioned competition. The FIS has not identified a single incident involving misconduct or political statement by any Russian participant. Any possible claim that Russian participation poses a high risk and are part of a political statement in sport is based on abstract assumptions, not verified facts. Russian athletes have participated without incident in major international events across a variety of sports (e.g., fencing, judo, tennis, gymnastics) including at the Paris 2024 Olympic Games. In this sense, the IPC General Assembly voted to lift the partial suspension of the NPCs of Belarus and Russia. If both the IOC and the IPC have repeatedly affirmed through their recommendations and actions that maintaining a suspension on Russian athletes is neither proportionate nor appropriate, then persisting with a full exclusion would be wholly

untenable from a proportionality standpoint.

- As to necessity, even assuming a risk exists, proportionality demands that less restrictive means be assessed and adopted where feasible. Yet the FIS Council not only failed to pursue alternatives, but it expressly rejected the adoption of a neutral athlete participation regime (AIN), despite the clear precedent and encouragement provided by the IOC. As to the Athletes, they have confirmed to be ready to comply with the neutrality criteria imposed by the IOC. The refusal to adopt the AIN model for Russian athletes competing in Olympic FIS disciplines shows that exclusion was not designed to be minimally invasive but was aimed to punitively and arbitrarily exclude entirely on the basis of nationality. As to the Para-Athletes, the IPC reinstated the RPC's full membership rights and privileges, therefore allowing para-athletes from Russia, including the Para-Athletes, to compete under the same conditions as all other para-athletes. The FIS Council's refusal to allow the participation of Russian athletes cannot be considered "appropriate" where legitimate, less restrictive alternatives are possible.

- As to proportionality *strictu sensu*, although the first exclusion is technically reviewed by the FIS Council, in practice it functions as an indefinite ban. The FIS Council has failed, year after year, to meaningfully reassess the factual and legal basis of the measure, despite substantial changes in circumstances, including the IOC's and IPC's revised stance, the reintegration of Russian athletes under neutral status across multiple disciplines in other sports, and the absence of any security incidents. This pattern reflects no careful reconsideration, but mechanical review, rendering the measure arbitrary in nature. The impact of the sustained exclusion is severe, particularly for the Para-Athletes, who were already excluded from the Beijing 2022 Paralympic Winter Games. This results in a gross imbalance between the real and documented harm inflicted on the Appellants and the abstract, unsubstantiated risks the measure purports to address.

- Given that the Challenged Decision fails each prong of the established test, the exclusion is legally unsustainable and must be annulled in full.

Disregard of recent precedents

- The Challenged Decision directly contradicts final and binding decisions of CAS and internal tribunals of international federations.

- In CAS 2022/A/8856, CAS ruled that the exclusion of Russian athletes and teams from European Table Tennis Union (the "ETTU") events was disproportionate, pointing out

that the ETTU had not sufficiently explored less restrictive alternatives that could achieve the same objectives without infringing the rights of the athletes involved. The decision emphasized that while the ETTU had valid concerns about maintaining the safety and integrity of competitions, those concerns were not proven and could have been addressed in less severe ways, remarking that blanket exclusion shall be the last resort.

- In CAS 2025/A/11592, CAS analysed the validity of a decision by the International Luge Federation (the "FIL") that maintained the suspension of Russian athletes. The CAS panel determined that the overall exclusion of Russian athletes was a disproportionate measure to achieve the FIL's objectives, as it emphasized that the FIL could have pursued its goals through less severe measures. It was pointed out that alternatives, like the AIN one, could effectively address the FIL's concerns while still respecting the rights of Russian athletes.

- In a decision issued by the Appeals Tribunal of the International Bobsleigh and Skeleton Federation (the "IBSF") about the actions taken by the IBSF to exclude Russian athletes from participating in events, the IBSF Appeals Tribunal remarked the IOC's recent shift in position about blanket bans and stated that such blanket ban was unsupportable and in violation of the principles of Olympism.

57. On this basis, the Appellants submit the following requests for relief in their joint Appeal Brief:

"I. The appeal is upheld.

II. The decision issued on 21 October 2025 by the International Ski and Snowboard Federation (FIS)'s Council is null and void, alternatively is set aside.

III. The International Ski and Snowboard Federation (FIS) is ordered to allow, respectively to facilitate without any delay the participation of Mr Saveliy Korostelev, Ms Lana Prusakova, Ms Maria Travinicheva, Mr Artiom Galunin, Ms Ekaterina Tkachenko, Mr Daniil Sadreev and all other athletes, support personnel and officials from Russia as Individual Neutral Athletes (AIN) in all FIS events, including the qualification events for the Milano Cortina 2026 Olympic Winter Games as well as in the said Games themselves, in compliance with the IOC eligibility criteria for AIN.

IV. The International Ski and Snowboard Federation (FIS) is ordered to allow, Mr Alexey Bugaev, Ms Varvara Voronchikhina, Ms Anastasiia Bagiian, Mr Ivan Golubkov, Ms Polina Novakovskaia, Mr Mikhail Slinkin, para-athletes, and all other Russian para-athletes, support personnel and officials, to participate

in all FIS events, including the qualification events for the Milano-Cortina 2026 Winter Paralympic Games, as well as in the said Games themselves, under the same conditions as any other para-athletes, according to the decision of the International Paralympic Committee of 27 September 2025.

V. The International Ski and Snowboard Federation shall bear all the arbitration costs, if any, and be ordered to reimburse the minimum court office fee of CHF 1,000, as well as any other advances of costs, if any paid by the Russian Ski Association & al.

VI. The International Ski and Snowboard Federation shall be ordered to pay Russian Ski Association & al. a contribution towards the legal costs and other costs incurred in the framework of these proceedings in an amount to be decided by the Panel".

B. The FIS' Answer

58. The submissions of the FIS in its Answer, in essence, may be summarised as follows:

- The Appellants' arguments erroneously conflate two distinct concepts: i) whether the FIS Council had the statutory power to make the Challenged Decision in the first place; and ii) the merits of how the FIS Council exercised that power. The Appellants frame their case on the basis that the FIS Council lacked any legal basis under the FIS Statutes to make the Challenged Decision, when in reality they disagree with how the FIS Council exercised its clear statutory competence. The FIS Council had express authority under the Statutes to make the Challenged Decision, it satisfied all procedural requirements for a valid FIS Council decision, and the Appellants' substantive objections to the Challenged Decision do not transform it into a decision made without any legal basis.

- In responding to the appeal on the merits, the FIS notes that it is unable to speak to the reasons, rationale and considerations behind the FIS Council members' votes. Given that the vote was held by secret ballot, such matters are only known to the individual FIS Council members. The FIS is not able to (and nor would it be appropriate for the FIS to) put forward a position which purports to represent their views, let alone the FIS Council's majority view. The use of a secret ballot is an essential procedural safeguard aimed at protecting the FIS Council members' ability to vote freely and without having to justify the option expressed.

Breach of the FIS Statutes – no legal basis

- Unlike suggested by the Appellants, the rights granted by Article 8.2.1.2 of the FIS Statutes are not unqualified, nor should they be considered in a vacuum. The right granted is expressly

preconditioned on eligibility. The Challenged Decision had the effect of adding a rule, made by a governing body (the FIS Council), restricting the eligibility for participation. That interpretation would not limit the RSF from challenging the rule, where there is appropriate ground to do so. Here, as considered below, the Appellants challenge it on the grounds that it breaches the provisions of Article 5.2 of the FIS Statutes.

Violation of fundamental rights, including non-discrimination, and professional freedom

- It is not accepted that the FIS Council, in making its decision, directly violated its own statutes. As a decision-making body, the FIS Council took into account the relevant considerations (being the scope of the relevant provision of the Statutes) and considered their application to the set of facts before it on which it was asked to decide. It is evident that the FIS Council did consider Article 5.2 of the FIS Statutes, the requirement for political neutrality, the issue of discrimination, and recent decisions dealing with those principles before voting.

- From the full confidential minutes of the FIS Council meeting of 21 October 2025 (the "Confidential Minutes"), it appears that: a) the FIS Council was repeatedly reminded of the requirement of Article 5.2 of the FIS Statutes and that a departure from political neutrality would require a change to the Statutes; b) the FIS Council considered fundamental principles of non-discrimination; c) the FIS Council considered legal and institutional developments; and d) there was extensive debate about the appropriate response to member associations and countries that do not themselves adhere to principles of political neutrality.

- Not all FIS Council members took part in the discussions, with a significant number not voicing their views. The FIS is not able to comment on the rationale adopted by the majority of the FIS Council members who voted "no". There is no evidentiary basis for the Appellants to claim, as they repeatedly did in the Appeal Brief, albeit through different formulations, that the Challenged Decision was a *"politicized measure that targets individuals for the geopolitical actions of their government"*.

- As noted during the meeting at which the Challenged Decision was made, the FIS Statutes contain near identical statements as in the Olympic Charter. To that extent, the points made above are repeated with respect to the Olympic Charter. Furthermore, the IOC publications that relate specifically to AIN participation are not binding on the FIS.

Instead, the IOC documents and the Olympic Charter clearly demonstrate that in reality, the FIS is an autonomous, self-governing body. It is therefore by reference to the FIS Statutes that the Challenged Decision should be assessed.

- The Appellants rely extensively on international human rights instruments, arguing that the FIS is directly bound by these conventions. This argument is misconceived. The Appellants' reliance on the doctrine of horizontal effect also does not assist them. This doctrine concerns the application of constitutional rights in private law relationships under certain domestic legal systems, but it does not establish that international human rights treaties directly bind private sports federations as a matter of Swiss law or international law. The FIS Council did consider IOC guidance and principles before making the Challenged Decision.

- The Appellants rely upon the IOC's 2022 Strategic Framework on Human Rights, but there is no express basis for how anything in this document forms a requirement for the FIS. The Appellants also fail to articulate which specific human rights provision they rely upon and how it applies. The FIS Council considered these principles (Article 5.2 of the FIS Statutes) before voting.

- Unlike suggested by the Appellants, in *Semenya v. Switzerland* the ECtHR did not impose Convention duties on the FIS. As held in CAS 2022/A/8856, *"international treaties on human rights are meant to protect individuals' fundamental rights vis-à-vis governmental authorities and, in principle, they are inapplicable per se to sports governing bodies, which are legally characterised as purely private entities"*. To the extent *Semenya* requires adequate State review of sports awards, that obligation falls on Switzerland and the Swiss Federal Supreme Court (the "SFT") in any subsequent review of this CAS award, not on FIS as a private federation. In any event, with the exception of Article 14 (the prohibition on discrimination) the claimed violations are not clarified.

- The Appellants rely upon Articles of the UDHR, prohibiting discrimination. Article 5.2 of the FIS Statutes contains a similar provision. Accordingly, the points made above, in respect of the FIS Statutes apply.

- As to the Appellants' reliance on the letter from the UN Special Rapporteurs, this statement is not binding, either on the FIS itself or as a human rights law in general. The letter does not reveal how, and if so what, international laws that fall within the Special Rapporteurs' remit would apply to the FIS. The letter also acknowledges

that differential treatment can be justified by legitimate concerns, where the least restrictive measures are sought. The letter is also not addressed at the FIS.

- With respect to the alleged interference with professional freedom, the Appellants have not articulated any legal basis on which the FIS is bound by the ECHR. Article 14 of the ECHR is not a free-standing right. It must attach to the enjoyment of other rights in the Convention. The Appellants failed to articulate, or provide authority for, how the underlying Convention right may be engaged.

Violation of Swiss law

- It is not accepted that failing to allow or refusing athlete participation even under AIN status should render the Challenged Decision null and void. In expressing this ground, the Appellants again rely upon the claim that refusal without proving various justifying grounds is a breach of the SCC. It is suggested that the FIS failed to demonstrate any valid motives that could constitute an overriding private or public interest. In reality, the minutes of the FIS Council meeting that preceded the Challenged Decision reveals a range of public interest considerations.

Violation of EU Competition Law

- The Appellants' arguments in this respect must be dismissed for three reasons.

- First, the scope of this arbitration is limited to whether the Challenged Decision was made *intra vires* under the FIS Statutes. CAS review should not extend to applying economic tests derived from European competition law.

- Second, the Challenged Decision was adopted by a secret ballot. This means the FIS cannot reconstruct or speculate on the individual reasoning behind their votes, including any economic or competition related considerations. The Appellants' attempt to impose tests requiring disclosure of such reasoning is incompatible with the governance framework and the confidentiality integral to the voting process.

- Third, the Appellants rely on CAS jurisprudence that concerned UEFA's multi-club ownership rules that involved direct economic effects on club ownership and transfer markets. In contrast, the present scenario concerns eligibility criteria for participation in a specific qualification pathway, a matter falling squarely within the FIS Council's regulatory competence under Article 11.3.1 of the FIS Statutes. The Challenged Decision does not prevent athletes from practising

their profession generally; it addresses participation in FIS-sanctioned events in accordance with the FIS Statutes.

Breach of the principle of proportionality

- The test invoked by the Appellants essentially serves to explore the underlying rationale for the Challenged Decision. However, again, the FIS is unable to speak to the reasons, rationale and considerations behind the FIS Council's members' individual votes.

- As to suitability, the Appellants contend that there is no credible evidence that the presence of Russian athletes would constitute a political statement or cause disruption in FIS-sanctioned competitions. The FIS cannot address the subjective considerations behind individual FIS Council members' votes. However, the summary minutes of the FIS Council meeting of 21 October 2025 demonstrate that the FIS Council considered Article 5.2 of the FIS Statutes, recent developments such as the IPC decision and the IBSF Appeals Tribunal ruling, as well as survey feedback from National Ski Associations.

- As to necessity, the Appellants argue that the FIS Council disregarded the AIN programme despite clear IOC precedent, excluding Russian athletes without offering an opportunity to demonstrate neutrality or compliance with IOC conditions, which they claim renders the exclusion disproportionate. While the FIS cannot speak to individual voting rationales, the minutes show that the FIS Council was fully aware of the AIN option and made a decision after weighing the relevant considerations.

- As to proportionality *strictu sensu*, the FIS recognises the consequences for the Appellants but maintains that the FIS Council acted within its statutory discretion, having reviewed the pertinent information. The Appellants' argument effectively seeks to subject the Challenged Decision to a proportionality review that would require disclosure of individual voting rationales. This is incompatible with the secret ballot procedure.

Disregard of recent precedents

- As expressed above, the FIS does not know why individual FIS Council members voted for the Challenged Decision. However, it is evident from the Confidential Minutes that the FIS Council considered recent legal and institutional developments before voting, including the IBSF Appeals Tribunal decision finding the exclusion of neutral athletes to be discriminatory. The consideration of other decisions does not affect the validity of a

decision taken within the FIS Council's statutory competence and procedure.

- The Appellants seek in prayer for relief IV an order requiring FIS to permit Russian para-athletes to participate *"under the same conditions as any other para-athletes, according to the decision of the International Paralympic Committee of 27 September 2025"*. This request is firmly rejected. Decisions of the IPC have no bearing on decisions the FIS must take.

- Moreover, the request effectively seeks to bypass the AIN framework entirely and permit Russian para-athletes who are connected with and/or supported by the Russian military and who support the war in Ukraine to compete in full national colours, displaying Russian flags and national symbols. This could significantly increase safety and security risks for all participants in FIS competitions and is not in line with IOC guidance or recent case law precedents.

59. On this basis, the FIS submits the following requests for relief in its Answer:

> *"74. If follows from the foregoing that there is no basis for the Appellants' allegations in the Appeal Brief, such that the Appellants are not entitled to the relief sought. The appeal should be dismissed.*
>
> *75. Moreover, the specific relief sought (as discussed in paragraphs 66-69) in recognising the decision of the IPC is wholly inappropriate and inadmissible.*
>
> *76. The Respondent requests that the Appellants bear all its costs and the costs of the arbitration".*

VI. JURISDICTION

60. Article R47 of the CAS Code provides, *inter alia*, as follows:

> *"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".*

61. Article 15.7.1 of the FIS Statutes provides as follows:

> *"Decisions of the Council and/or the President, which violate these Statutes and/or the Rules and Regulations or the law shall be subject to appeal to the Congress".*

62. Article 15.7.4 of the FIS Statutes provides as follows:

> *"Decisions of the Congress shall be subject to appeal to the CAS, according to the Code of Sports-related Arbitration".*

63. The Appellants acknowledge that, in principle, general decisions adopted by the FIS Council should first be appealed to the FIS Congress before becoming appealable to CAS.

However, the Appellants maintain that, with reference to legal doctrine, the obligation to exhaust internal legal remedies may be waived where such remedies do not exist, are ineffective, or are merely illusory. Given that the FIS Congress convenes only once every even year and in light of the imminent Milano Cortina 2026 Olympic and Paralympic Winter Games, requiring the Appellants to await the next FIS Congress, scheduled for 10-11 June 2026 in Belgrade, Serbia, would render any internal appeal illusory and devoid of any practical effect. On this basis, the Appellants submit that CAS is competent, because they have either exhausted the remedies available under the FIS Statutes or demonstrated their non-existence or ineffectiveness.

64. By letter to the CAS Court Office dated 7 November 2025, the FIS explicitly confirmed that it *"accepts the jurisdiction of the CAS"*. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the Parties.

65. It follows that CAS has jurisdiction to adjudicate and decide on the present dispute.

VII. ADMISSIBILITY

66. 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".

67. The FIS Statutes contain no specific time limit for appeals to be filed with CAS, as a consequence of which the 21-day deadline set forth in Article 49 of the CAS Code applies.

68. The Challenged Decision was published on the FIS' website on 21 October 2025. The appeal was filed on 5 November 2025, i.e. within the applicable 21-day deadline.

69. Furthermore, the Statement of Appeal and the Appeal Brief complied with all the requirements set out in Articles R48 and R51 of the CAS Code.

70. Consequently, the Panel finds that the appeal is admissible.

VIII. APPLICABLE LAW

71. 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".

72. The Parties agree that, given that the FIS has its registered seat in Oberhofen/Thunersee, Switzerland, the Panel shall apply the various rules

and regulations of the FIS, and, subsidiarily, Swiss law.

IX. MERITS

A. The Main Issues

73. Before engaging into an analysis of the actual merits of the proceedings, the Panel considers it necessary to carefully look at the Appellants' prayers for relief.

74. The Appellants' primary request is that the Challenged Decision be declared null and void, or that it be set aside (prayer for relief no. II). Whereas such negatively formulated prayer for relief may appear logical at first sight, upholding it would not directly benefit the Appellants. This is so because the Appellants were already prevented from taking part in international competitions before the Challenged Decision was rendered. Accordingly, by deciding against the resolution proposing to allow the participation of the Appellants, the FIS Council did not alter the situation of the Appellants. *De facto*, the FIS Council merely extended the *status quo*. Declaring null and void or setting aside the Challenged Decision would therefore also change nothing for the situation of the Appellants.

75. The core of the appeal is formulated in prayers for relief no. III and IV, whereby the Appellants seek a decision from the Panel that goes beyond setting aside the Challenge Decision, i.e., to order the FIS to allow the Athletes and the Para-Athletes to participate in FIS events again and have the chance to potentially qualify for the Milano Cortina 2026 Olympic Winter Games. These are positively formulated prayers for relief that, if upheld, would indeed directly benefit the Athletes and Para-Athletes.

76. The Panel finds that this distinction is relevant, because it considers that it can potentially uphold the negative relief requested by declaring the Challenged Decision null and void or set it aside, but that it can only potentially uphold prayers for relief no. III and IV with respect to the Athletes and Para-Athletes. The Panel finds that it cannot uphold such relief for *"all other athletes, support personnel and officials from Russia"* (prayer for relief no. III) or for *"all other Russian para-athletes, support personnel and officials"* (prayer for relief no. IV) insofar such persons did not appeal the Challenged Decision and are not parties to the present appeal arbitration proceedings.

77. That said, as confirmed in the response to the FIS' request for interpretation:

"The Panel sees no reason why persons other than the 6 para-athletes that challenged the Appealed Decision, i.e. 'all other athletes, support personnel and officials from Russia', should not be able to participate in all FIS events, including the qualification events for the Milano Cortina 2026 Winter Paralympic Games, in view of the fact that the Appealed Decision is partially set aside (paragraph 2 of the operative part of the Award). However, the Panel is not in a position to make such pronounciation with respect to unnamed persons that are not parties in the arbitration in the operative part of the Award".

78. Furthermore, the Panel finds that it can potentially uphold prayers for relief no.

III and IV with respect to the Athletes and the Para-Athletes, because these requests fell within the remit of the Challenged Decision and are therefore part of the scope of the present appeal arbitration proceedings.

79. Having clarified that, the remaining substantive issues to be addressed by the Panel are the following:

i. Was the FIS Council competent to render the Challenged Decision?

ii. Was the Challenged Decision discriminatory?

iii. What are the consequences thereof?

80. These issues will be addressed in turn below.

i. Was the FIS Council competent to render the Challenged Decision?

81. The primary argument of the Appellants is that the Challenged Decision does not make reference to any provision in the FIS Statutes that would grant the FIS Council the authority to issue the Challenged Decision and that it must therefore be annulled.

82. The FIS relies on Articles 11.3.2 and 11.3.3.2 of the FIS Statutes in affording the FIS Council the discretion to adopt the Challenged Decision.

83. The Panel observes that the competencies of the FIS Council are set forth in Article 11 of the FIS Statutes. In this respect, the Panel notes that the *"Council is accountable to the Congress and is the supreme authority of the FIS between the Congress meetings"*. Furthermore, *"*[t]*he Council takes all necessary decisions, provided that such decisions do not fall within the exclusive competence of the Congress"* (Article 11.3.1 of the FIS Statutes) and *"*[t]*he Council is responsible for the strategy and the overall conduct of business of FIS"* (Article 11.3.2 of the FIS Statutes).

84. Furthermore, Article 11.3.3 of the FIS Statutes provides for the following specific responsibilities of the FIS Council:

"The Council has the following specific responsibilities:

[…]

11.3.3.2. to establish and amend the FIS Rules and Regulations, including the International Competition Rules (ICR)".

85. The Panel finds that it is somewhat odd for the Appellants to challenge the jurisdiction of the FIS Council to rule on their reinstatement, because if such argument would be upheld, also the Panel would be deprived of the authority to do so and thus being forced to leave the exclusion pronounced before the Challenged Decision in place.

86. However, the Panel finds that this issue does not arise, because it is of the view that the FIS Statutes provides the FIS Council with the statutory power to potentially amend its rules and regulations to the effect of permitting Russian athletes and para-athletes to participate in FIS events again. The Panel agrees with the FIS that the Challenged Decision had the effect of

adding a rule restricting the eligibility for participation.

87. It is not in dispute between the Parties that the formal requirements of the Challenged Decision, such as quorum of the FIS Council (Article 11.4.2.1 of the FIS Statutes) and the legitimacy of rendering a decision by digital secret ballot (Article 18.1 of the FIS Statutes), were satisfied.

88. The Panel agrees with the FIS' argument that *"[t]he Appellants frame their case on the basis that the Council lacked any legal basis under the FIS Statutes to make the Challenged Decision, when in reality they disagree with how the Council exercised its clear statutory competence"*.

89. Having established the competence of the FIS Council to render the Challenged Decision and decide on the potential reinstatement of Russian athletes and para-athletes, the Panel will turn to the question whether the FIS Council exercised such competence in an appropriate and legally valid way.

ii. Was the Challenged Decision discriminatory?

90. The Appellants argue that the Challenged Decision was rendered in contravention of the FIS Statutes and in violation of fundamental rights, including the right to non-discrimination and the right to professional freedom.

91. Conversely, the FIS maintains that no rights were violated and that the Challenged Decision was perfectly legal.

a. The burden of proof and the test to be applied

92. Turning to the analysis of the Challenged Decision, the Panel notes that the Appellants invoke several human rights instruments but primarily rely on the FIS' own Statutes and regulations. The Panel observes that the FIS basically incorporated the right to non-discrimination and other human rights into its own regulatory framework. On this basis, the Panel considers it appropriate to first assess whether the Challenged Decision was issued in compliance with the FIS' own Statutes and regulations.

93. However, in dealing with the Appellants' challenge of alleged discriminatory measures adopted by the FIS, the Panel draws inspiration from the way in which the ECtHR dealt with such cases under Article 14 ECHR:

> *"Because the alleged defendant is in possession of the information needed to prove a claim, non-discrimination law allows the burden of proof to be shared with the alleged defendant (the shift of the burden of proof). Once the person alleging discrimination established a presumption of discrimination (prima facie discrimination), the burden then shifts to the defendant, which has to show that the difference in treatment is not discriminatory. This can be done either by proving that there was no causal link between the prohibited ground and the differential treatment, or by demonstrating that although the differential treatment is related to the prohibited ground, it has a reasonable and objective justification. If the alleged discriminator is unable to prove either of the two, they will be liable for discrimination"* (Handbook on European non-discrimination law, 2018 edition, p. 232).

"The Court has established an analytical framework in its case-law under Article 14. This analytical framework allows the identification of the Convention's operative concepts of discrimination. The test set out in the first Article 14 judgment, the Belgian Linguistics case of 1968, is still instrumental. To begin with, the concept of discrimination and the analytical approach of the Court hold that a difference in treatment must exist. Sometimes, the Court adds to its express delimitation of the analytical framework that it is different treatment of persons in analogous or relevantly similar situations that must exist. In other cases no express reference is made to this issue as part of the analytical approach, but it is generally implied and present in the reasoning of the Court. If the required difference in treatment and its basis are established the Court proceeds to the objective justification test. Under the objective justification test a violation occurs if the difference in treatment has no objective and reasonable justification. Such justification exists if the difference of treatment pursues a legitimate aim and if there is a reasonable relationship of proportionality between the means employed and the aim sought to be realised" (ARNARDÓTTIR, Non-discrimination Under Article 14 ECHR – The Burden of Proof (2007) 51 Scandinavian Studies in Law 13-39, p. 15).

94. As to the test to be applied and the burden of proof, the Panel finds that the burden of proof to establish a *prima facie* case of discrimination lies with the Appellants. The right to non-discrimination is generally perceived as an accessory right, i.e., it applies only in relation to the enjoyment of other rights and privileges granted. Accordingly, to establish a *prima facie* case of discrimination, the Appellants would not only have to establish the ground they are allegedly being discriminated on, but also the rights or privileges they claim to be deprived of.

95. This is very much in line with the approach applied in CAS jurisprudence in cases where alleged discriminatory regulations were challenged:

"The Panel notes that it was common ground in CAS 2014/A/3759 and CAS 2018/O/5794 & CAS 2018/A/5798 that the party seeking to challenge an allegedly discriminatory regulation bears the burden of establishing that the rule discriminates on the basis of a protected ground. It was also common ground in those cases that, if the regulation did so discriminate, the burden of proof shifted to the other party (the IAAF in those cases) to establish that the regulation was necessary, reasonable and proportionate. The Panel is of the view that the same approach should logically apply here" (CAS 2022/A/8856, para. 149).

96. Should the Appellants be successful in establishing a *prima facie* case of discrimination, the burden shifts to the FIS to potentially justify the difference of treatment. To this effect, the FIS would have to establish that the measure adopted pursues a legitimate objective and that the measure adopted is a necessary, reasonable and proportionate means of attaining such legitimate objective. Also, this is in line with CAS jurisprudence:

"Applying a similar approach to that applied in CAS 2014/A/3759 and CAS 2018/O/5794 & CAS 2018/A/5798, it follows that the ETTU therefore bears the burden of establishing that the ETTU EB Decision is a necessary, reasonable and

proportionate means of attaining a legitimate objective. If the ETTU is unable to discharge that burden, then the Panel must declare this element of the ETTU EB Decision to be invalid" (CAS 2022/A/8856, para. 155).

b. The establishment of a prima facie case of discrimination by the Appellants

97. As to the rights or privileges of the Appellants, they rely on Article 8.2.1 of the FIS Statutes, which provides as follows:

> *"8.2.1. All Member Associations are entitled:*
>
> […]
>
> *8.2.1.2. to participate in the FIS World Championships, FIS Competitions and other FIS Events when they are eligible to participate in accordance with applicable rules and regulations".*

98. Accordingly, the RSF and its members are in principle entitled to participate in FIS events, subject to the eligibility rules set forth in the relevant rules and regulations that apply to any athlete.

99. With the Challenged Decision, the FIS Council *de facto* decided to extend the blanket ban imposed on the participation of Russian athletes and para-athletes in FIS events. Accordingly, the conditional right granted by Article 8.2.1.2 of the FIS Statutes was denied to the Appellants, based purely on their Russian nationality.

100. Indeed, as to the ground of discrimination, the Appellants submit that they are discriminated based on their nationality. The Appellants maintain that Article 5.2 of the FIS Statutes provides them with a right not to be discriminated against.

101. Article 5.2 of the FIS Statutes provides as follows:

> *"FIS shall not allow any discrimination against national federations or individuals (competitors, officials, judges, delegates, etc.) on the grounds of race, gender, religion, sexual orientation, gender identity, political affiliations, languages or abilities. FIS shall conduct its activities in a politically neutral manner".*

102. The Panel observes that Article 5.2 of the FIS Statutes does not allow discrimination against national federations or individuals, but that it does not explicitly list nationality as one of the types of discrimination that are prohibited. However, the Panel notes that such type of discrimination is prohibited in the FIS Universal Code of Ethics.

103. Article 1(4) of the FIS Universal Code of Ethics provides as follows:

> *"The fundamental principles which shall govern all FIS activities, decisions, processes and regulations are*
>
> […]
>
> *Respect for human dignity, non-discrimination of any kind on whatever grounds, any rejection of all forms of harassment".*

104. Furthermore, Article 3.5.1. of the FIS Universal Code of Ethics provides as follows:

"The persons subject to this Code may not offend the dignity or integrity of a private person, group of persons or country through contemporaneous, discriminatory words or actions on account of race, colour, ethnic, national or social origin, gender, sexual orientation, language, religion, political or other opinion, wealth, or any other reason".

105. On this basis, the Panel finds that the FIS imposed a clear statutory and/or regulatory duty on itself not to discriminate, *inter alia*, based on nationality.

106. Although the Appellants argue that the Challenged Decision was a *"politicized measure that targets individuals for the geopolitical actions of their government"* and the FIS argues that the Appellants provided no evidential basis for such claim, the Panel finds that this is not relevant for present purposes. The test to establish a *prima facie* case of discrimination does not normally include the intent behind a measure, such rationale is only assessed if and when a *prima facie* case of discrimination is established.

107. The Panel notes that this is not a case of indirect discrimination where a certain measure may have had discriminatory effects. Indeed, the Challenged Decision is clearly aimed at directly depriving RSF and its members of the right to participate in FIS events. Since the Challenged Decision restricts the participation of Russian athletes and para-athletes in FIS events based only on their nationality, the Panel finds that it is established that the Challenged Decision is, *prima facie*, discriminatory.

c. The establishment that the measure adopted pursues a legitimate objective and that the measure adopted is a necessary, reasonable and proportionate means of attaining such legitimate objective

108. As set forth above, the conclusion that the Challenged Decision is, *prima facie*, discriminatory does not end the Panel's legal analysis.

109. However, in the matter at hand, no justification is set forth by the FIS as to why the blanket ban on Russian athletes and para-athletes was to be extended. There is also no indication by the FIS as to why, for example, the application of the AIN criteria would not be a less damaging approach for Russian athletes and para-athletes that is also suitable to attain the aim pursued.

110. This is largely the result of the way in which the Challenged Decision was rendered. The Challenged Decision was rendered by means of a resolution by secret ballot of the FIS Council on 21 October 2025. Rendering a decision in such way means that there are no grounds underpinning the decision. Each member of the FIS Council may have had their own reasons to vote in favour or against the resolution, none of which is reflected in the Challenged Decision.

111. While such manner of decision-making is perfectly legal, the Panel finds that it does not mean that a decision rendered by means of a resolution by secret ballot is unimpeachable or cannot be appealed, nor is this possibility denied by the FIS. This way of decision-making does not take away the FIS'

self-imposed duty not to allow discrimination on the basis of nationality. Indeed, the Appellants are perfectly entitled to appeal the Challenged Decision and to call FIS as a respondent in the present appeal arbitration proceedings before CAS.

112. Notwithstanding the fact that the Challenged Decision did not contain any grounds, the FIS can rely on the *de novo* doctrine to defend itself against any allegations made by the Appellants and to defend the Challenged Decision in the present appeal proceedings, even though the Challenged Decision itself did not contain any grounds.

113. The Panel notes that the FIS invoked such right only partially. For example, the FIS argues that the FIS Council did consider Article 5.2 of the FIS Statutes, the requirement of political neutrality, the issue of discrimination and recent decisions dealing with those principles before voting, but it argues that it cannot speak to reasons why the majority of the members of the FIS Council ultimately voted against the resolution.

114. The mere fact that the FIS Council considered Article 5.2 of the FIS Statutes and the issue of discrimination before rendering the Challenged Decision, which the Panel accepts it did, does not mean that this provision was complied with or that the prohibition of discrimination was not violated.

115. The summary minutes of the FIS Council meeting of 21 October 2025 and the Confidential Minutes provide insight into the matters discussed by the FIS Council, but the Panel finds that these documents do not contain a clear justification for the Challenged Decision. The Panel also finds that it is not its duty to dissect the summary minutes of the FIS Council meeting of 21 October 2025 and the Confidential Minutes for potential grounds that may justify the Challenged Decision. The burden of proof in this respect lies with the FIS and the FIS did not meet its burden of proof to bring forward alleged justifications and evidence. In particular, the Panel finds that there is no justification as to why participation of Russian athletes and para-athletes as AIN would not be more proportionate than a blanket ban.

116. Unlike other governing bodies did in matters where the participation of Russian athletes in international competitions was at stake (CAS 2022/A/8856, CAS 2025/A/11592 (based on the press release issued by CAS) and the Interim Order of the IBSF Appeals Tribunal of 19 October 2025), the FIS does not rely on arguments related to the safety and/or integrity of its competitions in trying to justify the Challenged Decision.

117. In the absence of any arguments and evidence being provided by the FIS as to the reasons underpinning the continuation of the blanket ban on Russian athletes and para-athletes, the Panel cannot even begin to assess whether the *prima facie* case of discrimination by the FIS may have been in pursuit of a legitimate objective in the circumstances, let alone to assess whether less intrusive measures were available that could reasonably have achieved the same legitimate objective.

d. Conclusion

118. On this basis, the Panel finds that the Challenged Decision is rendered in violation of Article 5.2 of the FIS Statutes and is to be set aside for being discriminatory. Because of this conclusion, it is not necessary to look at other arguments advanced by the Appellants on the basis of, for example, the ECHR and other sources of human rights instruments.

iii. What are the consequences thereof?

119. On the basis of the above findings, the Panel finds that the Appellants' request for relief no. II is to be partially upheld, i.e., the Challenged Decision is not declared null and void, as there was a legal basis for the FIS Council to decide on the eligibility of the Appellants, however, the Challenged Decision is partially set aside for being discriminatory against the Appellants. The Challenged Decision is confirmed only to the extent that it prohibits Russian athletes who do not satisfy the criteria established by the IOC for participation as AIN from competing at FIS events, including the qualification events for the Milano Cortina 2026 Olympic Winter Games.

120. With respect to Appellants' request for relief no. III, the Panel notes that the Appellants request the Panel to order the FIS to allow and facilitate the participation of the Athletes in all FIS events. Notably, and unlike request for relief no. IV with respect to the Para-Athletes, the Athletes do not request to participate under the same conditions as any other athletes, but they specifically request to participate in such events as AIN. The scope of the dispute with respect to the Athletes is therefore between participation as AIN and no participation. Participation as AIN is therefore the most favourable the Panel can award to the Athletes.

121. In the absence of a justification for the discriminatory treatment of the Athletes, the request of the Athletes to participate as AIN is therefore upheld. However, request for relief no. III is not entirely upheld. Indeed, the reference to *"all other athletes, support personnel and officials from Russia"* is intentionally omitted for the reasons set forth above (paras. 73-77 above).

122. The Panel also slightly deviates from request for relief no. III by adding a reference to *"and insofar they satisfy the eligibility requirements applicable to any other athletes"* in para. 3 of the operative part of the present Award to avoid any hypothetical confusion about allowing participation of the Athletes to FIS events. The blanket ban imposed on Russian athletes is lifted, but individual athletes, such as the Athletes, besides satisfying the AIN criteria, also still need to satisfy the other eligibility requirements that apply to any other athletes. For example, this Award is not to be interpreted as *per se* granting the Athletes the right to participate in the Milano Cortina 2026 Olympic Winter Games. Rather, like any other athletes, the Athletes can only participate in the Games if they qualify for the Games on sporting merit.

123. With respect to the Appellants' request for relief no. IV, the Panel notes that this is different. The Para-Athletes request the Panel to order the FIS to allow and facilitate the participation of the Para-Athletes in all FIS events.

Notably, and unlike request for relief no. III with respect to the Athletes, the Para-Athletes do not request to participate as AIN, but they specifically request to participate in such events under the same conditions as any other athletes. The scope of the dispute with respect to the Para-Athletes is therefore between participation under the same conditions as any other athletes and no participation. Participation under the same conditions as any other athletes is therefore the most favourable the Panel can award to the Para-Athletes. Furthermore, there is no specific or an alternative request of the Para-Athletes to participate as AIN. Also, unlike the IOC, the IPC has no AIN framework in place.

124. In this limited context, and unlike with respect to the Athletes, the FIS argues with respect to the Para-Athletes that participation without restrictions *"could significantly increase safety and security risks for all participants in FIS competitions and is not in line with IOC guidance or recent case law precedents"*. This argument is however not corroborated by any evidence or further substantiation, and the IOC has no direct involvement in the Paralympic Games.

125. The Panel finds that such stand-alone argument, without evidence, is clearly insufficient to rule that a blanket ban on the Para-Athletes is a proportionate means of achieving a legitimate objective. The Panel finds that it therefore has no viable alternative but to uphold the relief requested by the Para-Athletes.

126. Finally, the two afore-mentioned caveats with respect to request for relief no. III also apply with respect to request for relief no. IV. Accordingly, insofar the Para-Athletes request participation of *"all other Russian para-athletes, support personnel and officials"*, this is to be dismissed. Also, like the Athletes and any other athletes, the blanket ban imposed on Russian athletes is lifted, but individual athletes, such as the Para-Athletes, still need to satisfy eligibility requirements that apply.

127. Accordingly, the appeal is partially upheld and the Challenged Decision is partially set aside.

128. All other and further motions or prayers for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by the Russian Ski Association (RSF), Saveliy Korostelev, Lana Prusakova, Maria Travinicheva, Artiom Galunin, Ekaterina Tkachenko, Daniil Sadreev, the Russian Paralympic Committee (RPC), Alexey Bugaev, Varvara Voronchikhina, Anastasiia Bagiian, Ivan Golubkov, Polina Novakovskaia and Mikhail Slinkin on 5 November 2025 against the resolution rendered by the Council of the International Ski and Snowboard Federation (FIS) on 21 October 2025 is partially upheld.

2. The resolution rendered by the Council of the International Ski and Snowboard Federation (FIS) on 21 October 2025 whereby the majority voted "no" to the question *"Should FIS*

permit athletes from Russia and Belarus to participate as AIN in FIS qualification events for the Milano-Cortina 2026 Olympic Winter Games and Paralympic Games in strict compliance with the IOC eligibility criteria for AIN, provided each NSA shall retain discretion to determine whether athletes from the concerned nations may take part in qualification events held within its jurisdiction?" is partially set aside and confirmed only to the extent that it prohibits Russian athletes who do not satisfy the criteria established by the International Olympic Committee (IOC) for participation as individual neutral athletes (AIN) from competing at all FIS events, including the qualification events for the Milano Cortina 2026 Olympic Winter Games.

3. The International Ski and Snowboard Federation (FIS) is ordered to allow, respectively to facilitate without any delay the participation of Saveliy Korostelev, Lana Prusakova, Maria Travinicheva, Artiom Galunin, Ekaterina Tkachenko and Daniil Sadreev as Individual Neutral Athletes (AIN) in all FIS events, including the qualification events for the Milano Cortina 2026 Olympic Winter Games, provided they comply with the eligibility criteria for individual neutral athletes (AIN) established by the International Olympic Committee (IOC) and insofar they satisfy the eligibility requirements applicable to any other athletes.

4. The International Ski and Snowboard Federation (FIS) is ordered to allow Alexey Bugaev, Varvara Voronchikhina, Anastasiia Bagiian, Ivan Golubkov, Polina Novakovskaia and Mikhail Slinkin to participate in all FIS events, including the qualification events for the Milano-Cortina 2026 Winter Paralympic Games, under the same conditions as any other para-athletes.

5. (…).

6. (…).

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

Sélection de publications récentes relatives au TAS /Selected recent CAS publications/ Selección de publicaciones recientes del CAS

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- Rechtsprechung – Internationales,Field-of-Play-Doktrin bei Wertungsentscheidungen im Turnen, Spurt 3/2026, p. 272

- Rechtsprechung – Internationales, CAS-Ad-hoc-Schiedsspruch: Bindung bereits mit Mitteilung des Tenors, Spurt 3/2026, p. 275

- Rechtsprechung – Internationales, Revision eines CAS-Ad-hoc-Schiedsspruchs wegen nachträglicher Videoaufnahme, Spurt 3/2026, p. 279

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