



2024/ADD/100 International Canoe Federation v. Yoana Georgieva

DECISION

delivered by the

**ANTI-DOPING DIVISION
OF THE COURT OF ARBITRATION FOR SPORT**

sitting in the following composition:

Single Judge: Ms Susan Ahern SC, Barrister-at-Law, Dublin, Ireland

in the procedure between

International Canoe Federation (ICF), Switzerland

Represented by M Dominique Leroux-Lacroix, Head of Legal Affairs, and Ms Ayesha Talpade, Senior Legal Counsel, International Testing Agency, Lausanne, Switzerland

Claimant

and

Yoana Georgieva, Bulgaria

Represented by Ms Elena Todorovska and Mr Boris Kolev, Attorneys-at-Law in Sofia, Bulgaria

Respondent

I. PARTIES

1. The International Canoe Federation (“ICF”) is the international governing body for the multidiscipline canoeing and kayaking sports.
2. Yoana Georgieva, (the “Athlete”) is an elite athlete from Bulgaria who has been competing in international-level canoe events since 2018.

Together the “Parties”.

II. FACTUAL BACKGROUND

3. ICF as a Signatory to the World Anti-Doping Code (“WADC”) has enacted the International Canoe Federation Anti-Doping Rules 2021 (“ICF ADR”). While ICF has delegated the implementation of the ICF anti-doping programme to the International Testing Agency (“ITA”), such delegation includes, *inter alia*, the Results Management and subsequent prosecution of Anti-Doping Rule Violations (“ADRVs”) arising out of anti-doping samples collected (or other non-sample cases) from athletes under the jurisdiction of the ICF. Notwithstanding such delegation ICF remains responsible for WADC compliance in connection with all aspects of the ICF ADR.
4. Pursuant to Article 8.1 of the ICF ADR, the ITA, on behalf of ICF, filed a Request to the Anti-Doping Division of the Court of Arbitration for Sport (the “CAS ADD”) to rule on the Athlete’s alleged ADRV.
5. The Athlete is considered to be an International Athlete-Level Athlete within the meaning of the ICF ADR.
6. Notwithstanding that the ITA is acting on its behalf, ICF, in accordance with the ICF ADR, is considered to be the party asserting any ADRV and for the purpose of any actions taken within the ADR Results Management process, including proceedings in front of the hearing body or in any other matter.
7. On 26 August 2023, the Athlete obtained the 2nd place in the B final of the Women’s K1 500m event at the 2023 ICF World Championships which meant that the Athlete consequently obtained an “*athlete quota place*” for the National Olympic Committee of Bulgaria (“NOC”) to participate in the 2024 Paris Olympic Games (“Paris Olympic Games”) as per the ICF Olympic Qualification System (“ICF OQS”).
8. The Athlete was included in the Bulgarian National Anti-Doping Agency (“BUL-NADO”) Registered Testing Pool (“RTP”). As part of the ICF’s testing program in the lead up to the Paris Olympic Games, the ITA decided to conduct no advance notice Out-of-Competition (“OOC”) tests on the Athlete and include her in the ICF RTP and was so advised of her inclusion in the RTP on 15 December 2023. Inclusion in an RTP meant that the Athlete was required to provide a daily 60-minute time slot where she would be available for unannounced Testing during a full hour.
9. The present proceedings arise as a result of alleged ADRVs committed by the Athlete in the context of an (attempted) OOC sample collection mission on 15 December 2023 in Kărdžali, Bulgaria.
10. The Athlete is charged with a violation of:

- (i) Article 2.3 of the ICF ADR, refusing or failing to submit to Sample collection, without compelling justification;

“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.”

and/or;

- (ii) Article 2.5 ICF ADR : Tampering or Attempted Tampering with any part of the Doping Control:

“2.5 Tampering or Attempted Tampering with any Part of Doping Control by an Athlete or Other Person

Tampering is defined as “*Intentional conduct which subverts the Doping Control process but which would not otherwise be included in the definition of Prohibited Methods. Tampering shall include, without limitation, offering or accepting a bribe to perform or fail to perform an act, preventing the collection of a Sample, affecting or making impossible the analysis of a Sample, falsifying documents submitted to an Anti-Doping Organization or TUE committee or hearing panel, procuring false testimony from witnesses, committing any other fraudulent act upon the Anti-Doping Organization or hearing body to affect Results Management or the imposition of Consequences, and any other similar intentional interference or Attempted interference with any aspect of Doping Control.*” (emphasis added).

Attempted Sample Collection on 15 December 2023

11. Under the ICF’s delegated Testing Authority, the ITA instructed the Sample Collection Authority, Clearidium, to collect an OOC sample from the Athlete. The mission was to take place without advanced notice and during the Athlete’s designated one-hour time slot.
12. For 15 December 2023, the Athlete had indicated on her Whereabouts Filing in the ADAMS system (to which the Sample Collection Authority had access) that:
 - a. her daily 60-minute time slot for that day was from 19.30 to 20.30 at “*Selo Enchev, yazovir Kardzhali, Kardzhali, Kărdžali, Bulgaria*” Training Camp; and
 - b. her overnight accommodation and regular daily address for 15 December 2023 was also at the Training Camp. (Note the same details were provided for 14 December 2023).
13. On 15 December 2023, at approximately 19.30, Doping Control Officer Mr Nikolay Kostadinov (“DCO”) and the Blood Control Officer Ms Valentina Florova (“BCO”) arrived at the Selo Enchev, yazovir Kardzhali, Kardzhali, Kărdžali, Bulgaria (the “Training Camp” or “Kardzhali”) to collect a sample from her during her designated one-hour time slot for that day.
14. The factual basis of the Sample Collection is contested in numerous areas and on various grounds and will be considered further herein. In essence the ICF contended that evasion and/or tampering of sample collection occurred while the Athlete insists that this is a case of mistaken identity.
15. On 7 February 2024, the ITA informed the Athlete that her conduct during the Sample Collection on 15 December 2023 could amount to an ADRV under Article 2.3 and/or 2.5 of the ICF ADR and invited to provide her written explanation.

16. On 9 February 2024, the Athlete provided her response (“First Explanation”), namely that she denied the commission of any ADRV, asserting that on 14 December 2023, she attended an awards ceremony in Sofia, where she won the *‘IKAR for breakthrough in world sport’* and that on 15 December 2023, she had *“commitments at the university of Plovdiv [...] where [she] had to conduct consultations on various subjects and check exam dates”* and was unable to travel back to the Training Camp (her whereabouts location for 15 December 2023) *“due to extremely bad weather and the warnings not to travel”*. The Athlete stated that she had forgotten to change her whereabouts information due to the *“euphoria and excitement from the award received”* and had no reason to hide from the doping control as she had been tested four times in December 2023 already.
17. On 17 April 2024 the ITA issued the Notice of Charge to the Athlete for violations of Article 2.3 and/or 2.5 of the ICF ADR, on 19 April 2023. Thereafter, the Bulgarian Canoe Federation (“BCF”) confirmed to the ITA that the Athlete was at an awards ceremony in Sofia on 14 December 2023 and at her university on 15 December 2023 and was not at the Training Camp on that date. The ITA confirmed that it did not challenge that on 14 December 2023, Ms Georgieva along with her coach, was in Sofia to receive an award.
18. On 2 May 2024, the Athlete supplemented her explanation (“Second Explanation”) and denied that she was present at the Training Camp on 15 December 2023 or had committed an ADRV. She reiterated that she *“had an appointment at the University of Plovdiv”* on 15 December 2023, that the weather turned bad and she spent the night in her sister’s house in Plovdiv.
19. With the exception of the fact the Athlete was in Sofia on 14 December 2023 to collect an award, the ICF challenged the veracity of the Athlete’s explanations.
20. The Athlete was provisionally suspended on 10 June 2024 and the ITA referred the matter to the CAS ADD.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

21. On 10 June 2024, the ITA submitted to the CAS Court Office its Request for Disciplinary Proceedings under Article 8.1 of the ICF ADR (the “Request”) and in accordance with Rule A13 of the Arbitration Rules – CAS Anti-Doping Division (“CAS ADD Rules”). Further it noted that *“Considering that Ms Georgieva is scheduled to compete at the 2024 Paris Olympic Games which commence on 26 July 2024, as per A19.5 of the CAS ADD Rules the ICF respectfully requests that the proceedings are dealt with in an expedited manner with a view to obtain the Award (or at least the operative Award) before 15 July 2024.”*
22. On 11 June 2024, the CAS ADD Office notified the Athlete of the Request and the request for the proceedings to be expedited and requested the Athlete to confirm by 13 June 2024 whether she agreed with the Claimant’s request for expedition together with other details regarding the proceedings. Also on 11 June 2024, WADA confirmed that it did not wish to be a party to the proceedings.
23. On 13 June 2024, the Athlete confirmed her agreement with the proceedings progressing on an expedited basis in accordance with Article A19.5 of the ADD Rules and a decision be rendered by no later than 15 July 2024.
24. On 14 June 2024, the CAS ADD Office *inter alia* invited the Parties to liaise and propose an expedited calendar by 18 June 2024, failing which such procedural calendar would be set forth by the Division President or the Single Judge (if constituted).

25. On 18 June 2024, the Parties provided an agreed draft expedited procedural schedule for the consideration of the CAS ADD.
26. On 19 June 2024, the CAS ADD Office noted that the Parties were unable to agree to the nomination of a Single Judge and therefore the Single Judge would be appointed by the Division President pursuant to Article A16 of the ADD Rules.
27. On 20 June 2024, the CAS ADD informed the Parties that pursuant to Article A16 & A17 of the CAS ADD Rules, on behalf of the President of the CAS ADD Division, the Panel had been constituted as follows:
- Single Judge: Ms. Susan Ahern, Barrister in Dublin, Ireland.
28. On 21 June 2024, the Parties were informed by the CAS ADD Office that the procedural calendar proposed by the Parties (below) was confirmed by the Single Judge and they were invited to confirm if a hearing was necessary by 3 July 2024;
- The Athlete shall file her response to ICF's petition on by 1 July 2024
 - The ICF shall file its Rejoinder (if needed) by 4 July 2024
 - The Athlete shall file her Response to the Rejoinder (if needed) by 8 July 2024
 - CAS ADD hearing if requested by the Parties on 12 July 2024 starting at 9.00 CET
 - Notification of the CAS ADD (operative part) award by 15 July 2024
29. On 1 July 2024, the Athlete's Answer was filed and duly provided by the CAS ADD Office to the Claimant on the following day. The Claimant was invited to file its Rejoinder by 4 July 2024.

Confidential Witness Application

30. On 3 July 2024, the ICF sought the leave from the Single Judge to introduce a confidential/anonymous witness statement into the proceedings, as provided for in the 2023 CAS Guidelines for the hearing of vulnerable witnesses and testifying parties in CAS Procedures (the "Guidelines") giving outline details. The Athlete was granted until noon on 4 July 2024 to comment on the request. In the interim the ICF deadline to file its additional submissions was stayed.
31. On 4 July 2024, the Athlete responded objecting to the ICF's request to introduce a confidential/anonymous witness statement into the proceedings, giving reasons and providing evidence. On the same day, the CAS Court Office notified the Parties that (i) the Single Judge would rule on the request and (ii) that the Single Judge invited the Claimant by noon on 8 July 2024, to elaborate the reasons for the protection of their proposed new witness and to submit supportive evidence. In this regard, the Parties were advised that the Single Judge would have regard to the provisions of Clause 14 of the Guidelines, which provides:
- "CAS Panels may allow anonymous witness testimony involving vulnerable witnesses, where appropriate. When determining whether anonymous testimony is appropriate in a particular instance, CAS Panels should balance the need to protect vulnerable witnesses with the rights of the parties, including the right to a fair trial. In particular, such a witness should justify their request for anonymity as to the adverse party, by sufficient proof that disclosure of the witness' identity would create a serious potential threat to the personal safety of the witness (or their relative(s))."*
32. On 5 July 2024, the Athlete sought clarification on the deadline for the Parties to provide their previously requested joint hearing schedule and witness statements in light of the stay on the date for the Claimant to file its Rejoinder. The Athlete also expressed deep concerns arising from the changes to the procedural calendar that had been previously agreed by the Parties and Single Judge in order to obtain a timely decision prior to the Olympic Games in Paris. The

CAS ADD Office confirmed in reply that the deadlines for the Parties to provide their joint hearing schedule and for the Athlete to provide her witness statements for the hearing are stayed until further notice from the CAS ADD Office.

33. On 8 July 2024, the ICF elaborated on the reasons why it requested protection of the confidential witness. It indicated that in the intervening period between its request and this response that the confidential witness had agreed to disclose her name and identity and to come forward as a named witness in these proceedings. Therefore, the ICF sought leave to file a corresponding witness statement meeting the conditions set out in Article A19.2(2) of the CAS ADD Rules and providing reasons.
34. On 8 July 2024, the CAS ADD Office again wrote to the Parties on behalf of the Single Judge who had considered the ICF's request and confirmed that the introduction of the new witness was permitted. In addition, the procedural calendar was reactivated and the ICF required to file its Rejoinder by 9 July 2024 at noon and the Athlete to file her Response to the Rejoinder by 10 July 2024 before 18:00 CET.
35. On 9 July 2024, the Athlete wrote to object to the new procedural timetable, noting *inter alia* that the timeframe for the Athlete's response was too short given counsel obligations and obtaining the "*expected testimonies of the new witness at the time when the last submission of the Athlete will be due*". They proposed changing the hearing date from 12 July to 16 July 2024.
36. Also on 9 July 2024, the ICF wrote to the CAS ADD Office to confirm that it would not be filing a Reply to the Answer filed by the Athlete on 1 July 2024, but reserved its right to address all allegations raised by the Athlete directly at the hearing. It also requested receipt of the witness statements of the Athlete's five witnesses. Consequently, the CAS ADD Office confirmed on behalf of the Single Judge, that the filing of a Rejoinder was now moot, relevant documents and witness statements to be provided by 10 July 2024 and that the Parties will be permitted to answer their allegations orally during the hearing which was reconfirmed to take place on 12 July 2024.
37. On 10 July 2024, the witness statements of the Athlete's witnesses were provided. Further, the witness statement of the formerly confidential witness, Olimpiya Dusheva, a former Bulgarian canoe-kayak athlete, was also submitted by the ICF.
38. On 10 July 2024, the CAS ADD Office sent the Order of Procedure to the Parties. The Parties signed and returned the Order of Procedure on 11 July 2024.
39. On 12 July 2024, a video hearing was held. The Single Judge was assisted by Mr Fabien Cagneux, Managing Counsel of the ADD, and joined by the following:

For the Claimant:

- Ms. Dominique Leroux-Lacroix, ITA Head of Legal
- Ms. Ayesha Talpade, ITA Senior Legal Counsel
- Mr. Nikolay Kostadinov, Witness (DCO)
- Ms. Valentina Florova, Witness (BCO)
- Mr. Nikita Sharapov, Witness (DCO Manager)
- Ms Zlatka Chervenкова - Translator
- Mr Ivan Shotlekov - Translator

For the Athlete:

- Dr. Boris Emilov Kolev, Counsel for the Athlete
- Ms. Elena Vladimirova Todorovska, Counsel for the Athlete
- Ms. Pamela Ivanova, Witness (athlete)
- Mr. Angel Stoyanov, Witness (athlete)
- Ms. Yoana Bachvarova, Witness (athlete)
- Mr. Tsvetan Ivanov, Witness (coach)

40. On 13 July 2024, the Athlete provided, at the request of the Single Judge, a marked up copy of the drawing with an indication from the witness Ms. Yoana Bachvarova thereon.

IV. SUBMISSIONS OF THE PARTIES

A. The Claimant

41. The Athlete is charged with a violation of Article 2.3 in that she evaded, refused or failed to submit to sample collection without compelling justification;
- The ICF submitted that all elements of the violation have been established:
 - That the DCOs correctly and properly identified and notified the Athlete:
 - o Notification of the requirement to give a Sample was made by the DCOs in compliance with the International Standard for Testing & Investigations (“ISTI”) (Section 5.4.1) and whether the Athlete signs the notification or not is a technical matter.
 - o The DCOs did what they should have done in seeking and then locating the Athlete and properly made the notification. The mission occurred in the Athlete’s one hour whereabouts timeslot and there was “*no basis upon which they could make a mistake.*”
 - That the Athlete was continuously chaperoned but found a way to escape and could no longer be located.
 - The burden is not on the ICF to establish where the Athlete was hiding, it is sufficient to demonstrate only that the Athlete was evading sample collection.
 - The DCOs must do what is reasonable possible to notify the Athlete and apply common sense if an athlete runs away. The DCOs used their best efforts but they do not have police powers to enter. Nor it is their duty to check each and every door after they had already found and notified the Athlete.
 - This is not a case of mistaken identity but one where the National Federation, coaches and athletes have agreed to collude to protect the Athlete because she has qualified for the Olympic Games:
 - o The version of events put forward by the Coach is impossible, as a person cannot be in two places at the same time.
 - The Athlete’s behaviour would in any event and subsidiarily also qualify as an evasion.
 - The Athlete cannot rely upon the advice of the coach as a means of avoiding the breach as the CAS caselaw provides that such evasion, even on the recommendation of a coach was committed knowingly and with specific intent and therefore constitutes a violation (relying upon CAS 2016/O/4854 para. 64 and CAS 2014/A/3869).

- There was no compelling justification for the Athlete not providing the Sample (relying upon CAS 2008/A/1557) and that what constitutes compelling justification must be interpreted restrictively (relying upon CAS 2013/A/ 3341 para. 2 and CAS 2016/A/4631 para. 77-78).

42. The Athlete is charged with a violation of Article 2.5 in that she tampered or attempted to tamper with any part of the Doping Control:

- The ICF submitted that all elements of the violation have been established:
- Tampering includes *inter alia* the preventing of the collection of a Sample and procuring false testimony from witnesses. CAS jurisprudence provides that it is not necessary for the Doping Control Process to be actually subverted for a breach of Article 2.5 to arise.
- By disappearing after notification and by knowingly allowing another athlete to falsely and incorrectly state that she was the one who was notified by the DCO and by procuring what can only be false testimony from her sister alleging that the Athlete was in Plovdiv on the evening of 15 December 2023 and not at the Training Camp, it has indubitably established that the Athlete has committed an ADRV under Article 2.5 of the ICF ADR.
- The *bona fides* of the Athlete's coach is called into question on the basis that he came up with an unbelievable story that the DCO had notified another athlete, giving rise to the only logical conclusion that the both the Athlete and her coach had something to hide. Reliance was placed on CAS 2017/A/5422 that allows inferences to be drawn from the established facts where there is a gap in the evidence. The only inference that can be drawn from the facts is that the Athlete has committed multiple ADRVs.

43. The ICF sought the following reliefs from the Single Arbitrator:

- "1. *The ICF's application is admissible.*
2. *Ms Yoana Georgieva is found to have committed Anti-Doping Rule Violations under Articles 2.3 and/or Article 2.5 of the ICF Anti-Doping Rules.*
3. *Mr Yoana Georgieva is sanctioned with a period of Ineligibility of up-to 6 years.*
4. *The period of Ineligibility commences on the date of the CAS ADD Award with credit given for the period of Provisional Suspension effectively served by the Athlete.*
5. *All competitive results of Ms Yoana Georgieva from 15 December 2023 until the date of imposition of Provisional Suspension are Disqualified including forfeiture of medals, points and prizes.*
6. *The costs of the proceedings, if any, shall be borne by Mr Yoana Georgieva.*
7. *The ITA is granted an award for its legal and other expert costs.*
8. *Any other prayer for relief that the Panel deems fit in the facts and circumstances of the present case."*

B. The Athlete

44. The Athlete denies completely that she has committed an ADRV in violation of either Article 2.3 and/or Article 2.5 of the ICF ADR.

- The burden is upon the ICF to demonstrate the occurrence of an ADRV by the Athlete to the comfortable satisfaction of the tribunal. The alleged ADRVs are very serious and this seriousness needs to be taken into consideration when evaluating the evidence presented such that it should be to the maximum possible extent closer to proof beyond a reasonable doubt. Otherwise the Athlete may suffer irreparable harm to both her career and her reputation.

- The restricted powers of the investigating authorities of the governing bodies of sport must not be considered a justification for attributing an excessive emphasis on the reliability of evidence produced by anti-doping personnel hired by private sample collection agencies.
- The DCO and BCO breached the notification requirements of the WADA ISTI.
 - o The DCOs initially termed the testing mission on the Athlete as a “*Failed Notification*” later changed to “*Unsuccessful attempt for doping test*”. The initial categorisation is an admission that the Athlete was not properly notified. Given the relative experience of the DCOs they may have either evaluated the facts in an erroneous way or could have been later influenced to change the report.
- There are numerous inconsistencies and contradictions in the statements and reports relating *inter alia* to: the identification of the Athlete; the timelines recounted in the DCOs supplemental reports versus the witness statements; inconsistencies in the accounting of certain events between the DCO and BCO statements. Consequently, the reliance placed upon the DCOs reports and evidence is insufficient to be considered reliable evidence which accurately described the events on 15 December 2023.
- There may also have been a financial incentive on the DCOs to complete successful missions resulting in ADRVs.
- This is a case of mistaken identity and it was the athlete Yoana Bachvarova who was notified and not the Athlete. There was no proper identification of the notified athlete and the case can be distinguished from CAS 2015/A/4163 as the previous visual image of the athlete the doping control officers had in that case is missing in this case.
- A maximum this should be considered as a case involving a Missed Test.

45. The Athlete sought the following reliefs from the Single Arbitrator:

“Considering the above stated arguments and the evidence submitted, we would like respectfully to ask the Single Arbitrator to issue a decision which:

- 1. to reject entirely the ICF’s application;*
 - 2. to award the costs of the proceedings, if any, to (sic) the ICF;*
- and*
- 3. To grant the Respondent an award for her legal and other expert costs.”*

V. JURISDICTION

46. Article A2 of the CAS ADD Arbitration Rules (“CAS ADD Rules”) provide that in relation to jurisdiction:

“CAS ADD shall be the first instance authority to conduct proceedings and issue decisions when an alleged anti-doping rule violation has been filed with it and for imposition of any sanctions resulting from a finding that an anti-doping rule violation has occurred. CAS ADD has jurisdiction to rule as a first-instance authority on behalf of any WADC signatory which has formally delegated its powers to CAS ADD to conduct anti-doping proceedings and impose applicable sanctions”.

47. The ICF has appointed the CAS ADD to act as the International Federation’s first instance hearing panel as of 1 January 2021 with the coming into force of the 2021 ICF ADR and more precisely as per Articles 8.1.1 of the ICF ADR:

“8.1.1 Fair, Impartial and Operationally Independent Hearing Panel

The ICF has delegated its Article 8 responsibilities (first instance hearings, waiver of hearings and decisions) to the CAS Anti-Doping Division (CAS ADD). The procedural rules of CAS ADD pertaining to the hearing of first instance shall apply. CAS ADD will ensure that the Athlete or other Person is provided with a fair hearing within a reasonable time by a fair, impartial and Operationally Independent hearing panel in compliance with the Code and the International Standard for Results Management.”

48. Further, Article A2 of the CAS ADD Rules provides that the CAS ADD has jurisdiction to rule as a first-instance authority on behalf of any sports entity which has formally delegated its powers to the CAS ADD to conduct anti-doping proceedings and impose applicable sanctions.

49. The applicable rules to these proceedings are the ICF ADR which apply *inter alia* to all athletes who are members of any ICF National Federation or who participate in ICF events as provided for in the Introduction to the ICF ADR:

“These Anti-Doping Rules shall apply to:

(a) the ICF... (b) each of its National Federations...(c) the following Athletes, Athlete Support Personnel and other Persons:

(i) all Athletes and Athlete Support Personnel who are members of the ICF, or of any National Federation, or of any member or affiliate organization of any National Federation (including any clubs, teams, associations, or leagues);

(ii) all Athletes and Athlete Support Personnel who participate in such capacity in Events, Competitions and other activities organized, convened, authorized or recognized by the ICF, or any National Federation, or by any member or affiliate organization of any National Federation (including any clubs, teams, associations, or leagues), wherever held;...”

50. The Athlete is a member of the Bulgarian Canoe Federation (“BCF”) a National Federation (“NF”) of the ICF, regularly competes in ICF events and is an International Level Athlete. It is undisputed that the Athlete was bound by the provisions of the ICF ADR (edition of 1 January 2021) at the time of the commission of the alleged ADRVs.

51. The determination of the proper forum to hear a first instance dispute is procedural in nature and, consequently, governed by the ICF ADR. The ICF has appointed the CAS ADD to act as the ICF’s first instance hearing panel pursuant to the ICF ADR and its authority to determine the matter is not contested by the Athlete. In view of the foregoing, the CAS ADD, has jurisdiction to hear and determine the ADRVs alleged against the Athlete pursuant to Articles 2.3 and/or 2.5 of the ICF ADR and determine these proceedings.

52. In accordance with the agreement of the Parties the present proceeding were conducted in an expedited manner pursuant to Article A19.5 of the CAS ADD Rules.

VI. APPLICABLE LAW

53. Article A20 CAS ADD Rules provide as follows:

“The Panel shall decide the dispute according to the applicable ADR or the laws of a particular jurisdiction chosen by agreement of the parties or, in the absence of such a choice, according to Swiss law”.

54. In accordance with its Introduction section, ICF ADR apply to all athletes who are members of the International Canoe Federation, to each NF and all Athletes and Athlete Support Personnel who are *inter alia* members of the ICF, a NF and/or who participate in Events,

Competitions and other activities organised, convened, authorised or recognised by the ICF or any NF or by virtue of an accreditation or license are subject to the authority of ICF or of any NF, who as a condition of their participation in the sport have agreed to be bound by the ICF ADR.

55. The applicable ADR is the ICF ADR which provides at Article 24.2 the ICF ADR shall be interpreted as an independent and autonomous text and not by reference to any existing law or statutes. It incorporates the World Anti-Doping Code (“WADA Code”) and the International Standards which “*shall be considered integral parts of the Anti-Doping Rules and shall prevail in case of conflict*”.
56. In the Order of Procedure, the Parties agreed that:
“In accordance with Article A20 of the Rules, the Single Judge shall decide the dispute in accordance with the World Anti-Doping Code and the applicable anti-doping rules or with the laws of a particular jurisdiction chosen by agreement of the parties or, in the absence of such a choice, according to Swiss law.”
57. The Single Judge therefore confirms that the WADC in conjunction with the ICF ADR, apply to this case. The ICF being seated in Switzerland, Swiss law applies subsidiarily to the present dispute.

VII. MERITS

58. All the evidence, including the submissions of the Parties were considered in their totality by the Single Arbitrator. This Decision, however, sets out only those matters which are necessary to the determination of whether or not the alleged ADRVs have been committed by the Athlete.

A. *The Legal Framework*

(a) Burdens and standards of proof

59. Under Article 3.1 ICF ADR the burden of proof is on the ICF to establish, to the comfortable satisfaction of the hearing body, that an ADRV has occurred. Article 3.1 defines the comfortable satisfaction standard as greater than a mere balance of probability but less than proof beyond a reasonable doubt as follows:

“3.1 Burdens and Standards of Proof

ICF shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether ICF has established an antidoping 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.” (emphasis added).

60. CAS jurisprudence provides guidance on the meaning and application of the comfortable satisfaction standard of proof. The test of comfortable satisfaction “*must take into account the circumstances of the case*” (CAS 2013/A/3258 para. 122) and those circumstances include “[t]he paramount importance of fighting corruption of any kind in sport and also considering the nature and restricted powers of the investigation authorities of the governing bodies of sport as compared to national formal interrogation authorities” (CAS 2009/A/1920; CAS 2013/A/3258).

61. Further, the gravity of the particular alleged wrongdoing is relevant to the application of the comfortable satisfaction standard in any given case. In CAS 2014/A/3625 (para. 132), the panel stated that the comfortable satisfaction standard is “*a kind of sliding scale, based on the allegations at stake: the more serious the allegation and its consequences, the higher certainty (level of proof) the Panel would require to be ‘comfortably satisfied’*”.
62. Once an ADRV has been established, the burden of proof then shifts to the Athlete to prove either that the ADRV should not be considered as such, or that the ADRV was unintentional or that the applicable period of Ineligibility should be reduced, suspended or eliminated on the grounds provided for in the ICF ADR. The Athlete’s evidentiary threshold is the balance of probability standard.

(b) Means of Proof

63. With regard to the means of proof, Article 3.2 of the ICF ADR confirm that facts related to ADRVs may be established by “*any reliable means, including admissions*” and is not intended to be limited. The Comment to Article 3.2 ICT ADR explains that:
- “*For example, the ICF may establish an anti-doping rule violation under Article 2.2 based on the Athlete’s admissions, the credible testimony of third Persons, reliable documentary evidence...*”
64. The Single Arbitrator must therefore determine if ICFs evidence and means of proving the ADRV for Evasion and/or Tampering are reliable. Taking into consideration all the relevant circumstances of the case, the Single Arbitrator must be persuaded that ICFs evidence is credible and sufficiently reliable to meet the comfortable satisfaction threshold.
65. A further rule of proof that “shall” be applied, pursuant to Article 3.2 is as set out in Article 3.2.3 of the ICF ADR:
- “*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 the ICF shall have the burden to establish that such departure did not cause the Adverse Analytical Finding or the whereabouts failure: (...)*
- (iv) *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 the ICF shall have the burden to establish that such departure did not cause the whereabouts failure.*”

B. Anti-Doping Rule Violations

- (i) *Evading, Refusal or Failure to Submit to Sample Collection*
66. The ICF asserts based upon the facts and evidence of what transpired during the course of the OOC Testing mission on the evening of 15 December 2023, that the Athlete evaded, refused and/or failed to submit to Sample Collection and/or there was intentional interference with the Doping Control such that Tampering occurred. ICF’s case is substantially built on the reports, witness statements and testimonies of the two doping control officers, the DCO, Mr. Nikolay Kostadinov and the BCO/Doping Control Chaperone, Ms. Valentina Florova (together the “DCOs”). They also replied upon the witness statement of Ms. Olympia Dusheva a former athlete.

67. The ICF asserted that the reliability of the evidence they submitted enabled them to meet their evidentiary burden of proving that the Athlete had committed the ADRVs of which she was accused. Therefore, the burden of proof had shifted to the Athlete (on a balance of probabilities).
68. The Athlete's defence is to a large degree based on the statement and evidence of the Respondent herself, the witness statements of her sister together with the witness statements and testimony given at the hearing by Ms. Pamela Ivanova, Mr. Angel Stoyanov, Ms. Yoana Bachvarova, and Mr. Tsvetan Ivanov.
69. The Athlete contends that the anti-doping test notification that took place on 15 December 2023 was made to another athlete, who had the same first name, (namely to Yoana Bachvarova), and not to her. Consequently, there was no evasion or refusal in terms of Article 2.3 ICF ADR as the Athlete had never been notified. This was a case of mistaken identity. And in any event, the notification itself did not meet the ISTI requirements (Section 5.4) as if it had the DCOs would have been aware it was not the Athlete they notified but a different athlete, Yoana Bachvarova.
70. It is not contested that the Athlete's whereabouts for 15 December 2023 were notified on the ADAMS system as being at the Training Camp, and the one-hour timeslot was for between 19:30 and 20:30. In fact, the Athlete admits that she did not update her whereabouts for this date and she should have when her plans changed.
71. The crux of this case is whether the Athlete was notified for testing on 15 December 2023 by the DCOs or whether she was absent from the Training Camp and another athlete, specifically Yoana Bachvarova, was notified mistakenly in her stead. The notification by the DCOs is at the heart of the matter. Establishing who was notified is an essential first step and this is bound up with the manner in which the identification and notification took place. This occurred at the beginning of the process and it is not the case that the ICF had somehow established that an ADRV had occurred and had somehow not complied with an International Standard, rather the nature of the error was such that it prevented the ADRV being established in the first instance.
72. The Single Judge considers that the following matters need to be determined in this case in order to assess if the Claimant has met its burden pursuant to Article 3.1 of the ICF ADR:
- (i) *Notification - was the Athlete notified and/or notified in accordance with the ISTI?*
 - (ii) *Was the Athlete continuously chaperoned following notification?*
73. **The Notification**
- (i) *Was the Athlete notified and/or notified in accordance with the ISTI?*
74. The ICF claim the notification process was carried out correctly and in accordance with the ISTI, that the DCO had called out to the Athlete by her full name and therefore, it was simply not possible that anyone else apart from the Athlete was asked to come for an anti-doping test. Further, there was no language barrier as the DCO spoke in Bulgarian to the Athlete, nor was there any misidentification as the DCO had looked up a photograph of the Athlete beforehand, and had clearly identified that the person notified by him was Ms Georgieva and therefore she was present at the Training Camp.
75. In contrast, the Athlete submitted that the DCOs breached the notification requirements of the ISTI, in that they failed to properly identify the Athlete, they had no prior knowledge of what she looked like, the lighting was poor and that only her first name was called and that

this is a case of mistaken identity as the Athlete was not at the Training Camp on 15 December 2023. Further, at no stage did the DCOs attempt to contact the Athlete by phone to clarify the position.

76. The DCOs each gave evidence that upon arrival at the Training Camp at round 19:30 on 15 December 2023, they approached the first building in the sleeping quarters, as there was a light on upstairs on the second floor. This building came to be understood as Bungalow No. 3. The DCOs evidence was not that they knew this particular Bungalow to be the location of the Athlete but rather this “*random room*” was their target starting point because this was the first room with lights on.
77. It is undisputed that behind the entrance door to Bungalow No. 3, Pamela Ivanova, another athlete, was present and opened the door to the DCOs when they knocked, sometime around 19:35.
78. Mr. Nikolay Kostadinov, the DCO, gave the following contemporaneous account of the notification of the Athlete which commenced around 19:36 on 15 December 2023:
- Ms. Ivanova answered the door, and the DCO asked her in Bulgarian if she was “Yoana Georgieva”. He recalled that “*she answered negative and called the athlete by the nickname “Yo” and another woman came out*”. His evidence was that the Athlete came out from another room as did another man, the athlete Angel Stovanov, and a dog.
 - The DCO asked the woman if she was “Yoana Georgieva” and she confirmed her own identity: “*from the other room arrived another girl. I asked if she is Yoana Georgieva and when I received confirmation I introduced myself as DCO, showed my accreditation and informed her that we are send (sic) to test her*”.
 - The DCO explained that “*She [the presenting athlete] agreed and answered (sic) me that she have to inform her coach and walk out from her room directing (sic) to another building. Me and Valentina were walking after her when she went into another room. From that moment we did not saw her again. From the same room came out a man who introduced himself as the coach of the team...*”
 - The DCO further noted in his Unsuccessful Attempt Report (18 December 2023); “*When I introduced myself to the athlete as a DCO and told her that we have to test her she agreed and answered that she just want to inform her coach and from the room where we spoke she went into another building escorted by me and my chaperone but from that moment she start hiding and never again shown up...After I inform the athlete that I am dco and she has to be tested she hid in a different room in another building...*”
79. In his statement of 15 May 2024, the DCO further described the events that occurred following the notification of the Athlete:
- “*I recall that Ms Georgieva was wearing sports bottoms and a top in bright colours. She put on bright pink slippers and a large dark jacket with a hoodie and left the apartment to find her coach. She then walked down the stairs, while myself and Ms Florova followed behind her in order to continuously chaperone the Athlete. At the bottom of the stairs Ms Georgieva turned down a little path, and went to another small building approximately 10 meters away. This was a smaller building with only one door for entrance and exit. Ms Georgieva told myself and Ms Florova to wait just a moment and she went inside. From that moment I did not see her again that night...Ms Florova and I waited outside this building for a couple of minutes until another man came out from the same door and introduced himself as the Head Coach of the team...*”
 - At the hearing, the DCO confirmed that he was aware the Athlete was going to find her coach and that was “*not a problem*”. He did not ask the Coach if the DCOs could enter the coaches’ bungalow, but remained outside, on the basis that the Coach had said the Athlete was not there and later the Training Centre Manager also confirmed to the DCOs that the

Athlete was not at the Training Camp. He was not aware that there were two athlete's with the name Yoana in the Training Camp.

80. Ms. Valentina Florova, the BCO/Chaperone, gave the following account of the notification of the Athlete:

- Ms. Ivanova who opened the door of the Bungalow *"shouted by name and from the other room came a girl and my colleague asked if she was Yoana Georgieva. She confirmed and then Nikolay introduced himself as DCO and told her that we have to test her. She told him that she just have to inform her coach and then she left the room and directed to another building. We walked after her and she went into a room from which a few minutes later a man came out [the coach]..."*
- The BCO in her witness statement (12 May 2024) stated that *"Mr Kostadinov introduced himself, showed Ms Georgieva a white piece of paper in English, and said that we were there to test Ms Yoana Georgieva. Mr Kostadinov said her first name and surname. Ms Georgieva replied "yes, that's me...ok...I'll inform my coach now". Ms Georgieva put on a pair of pink nike sliders slippers, put a boodie on her head, and when outside and down the stairs. Mr Kostadinov and I followed her. However, when she got to the bottom of the stairs she took a large step like a jump, started walking faster, turned and went into a small one storey bungalow about 7/8 steps away and did not come out"*.
- At the hearing the BCO's evidence was that they were four steps behind the presenting athlete when she went to inform her coach. They did not knock on the door of the coaches Bungalow but waited and when the coach came out they also did not ask to enter the building. At no stage did either of the DCOs call the Athlete on the phone.

81. Mr Nikita Sharapov, the DCO Manager, gave the following account:

- At the time of the WhatsApp® messaging with the DCO he was in a different time zone. He had however assigned the DCOs to this particular Testing Mission.
- He clarified that the protocol employed once an athlete is notified is that they should be accompanied wherever they go. The DCO/Chaperone should stay with the athlete and see where they go and have them in their direct vision until they arrive at the Doping Control Station where they fill in the relevant papers.
- The phone call he had with the DCO at 20:01 hours on 15 December 2023 was to advise the DCO to find the Athlete if possible. If that was not possible, to get the supplemental form and include all the details and get the Coach to sign the form and also the other athlete.
- DCOs should do their best to find a missing athlete and where they cannot then to document what occurred including with pictures. In his view the DCOs had done their best in the circumstances. When pressed about whether they should have entered the coaches bungalow, he confirmed that they should have done their best to enter, as that was what was expected.

82. The Claimant also relied upon the witness statement of Olimpiya Dusheva, an athlete and one time training partner of the Athlete. The Single Judge considered the content of the Ms. Dusheva's witness statement, which also detailed information that went beyond the scope of these proceedings. Ultimately, the Single Judge concluded that the information contained therein did not reveal firsthand information of the events of 15 December 2023, as the witness was not present at the Training Camp on that date. Further, the persons referenced but unidentified and/or persons identified in this witness statement, who may have been able to corroborate the statement of Ms. Dusheva were not presented to the tribunal. Therefore, this witness statement did not contribute to supporting the Claimant's case.

83. Ms. Pamela Ivanova who is an athlete and member of the national Bulgarian canoe-kayak team, gave evidence that:
- Around 19:30 the DCOs called to the door of Bungalow No. 3. The DCOs appeared as silhouettes when she opened the door as it was dark outside and there was no light on in front of the Bungalow. Her recollection was that they did not introduce themselves, *"...The two persons did not introduce themselves, did not ask me for any documents, did not want to enter, and they only asked me if I was Yoana. While they were at the door I called loudly "Yo" (this way we call the little Yoana), she came out of the room and I went on cooking for the dogs...Yoana said something with these people and went somewhere and the man and woman stayed in front of the door"*.
 - The Yoana sharing the Bungalow with her was Yoana Bachvarova.
 - During the hearing Ms. Ivanova confirmed that Mr. Stoyanov left the Bungalow to go back to his own room, which was also on the second floor, while the DCOs and Yoana Bachvarova were still at the door. While she was still in the kitchen, she saw that Yoana Bachvarova left and the DCOs stayed on the terrace in front for about *"two minutes"* or in any event a *"short time"*.
 - She confirmed that the location of the coach's bungalow – *"The coach is close to our bungalow in another one located around 25-30 meters and road before our bungalow should be passed and then the door of the coach is from the side of the bridge of the restaurant."*
84. Mr. Angel Stoyanov, another athlete and member of the national Bulgarian canoe-kayak team, gave evidence that:
- He had just arrived in Bungalow No.3 to use the washing machine when the DCOs knocked on the door which was opened by Pamela Ivanova. They were *"looking for Yoana. Pamela called her and Yoana Bachvarova went to the door. She went out almost instantly. I left my clothes for being washed and also went out and get to my room. The persons were in front of the door and they were obviously waiting for Yoana"*.
 - He observed that *"The conversation between Yoana and the man and the woman lasted very shortly"*
 - He later became aware they were DCOs, as he himself was also tested later that evening. In evidence, Mr. Stoyanov confirmed that he could not recollect by what name Yoana had been called by the DCOs and also confirmed that he had not seen the Athlete at the Rowing Campus that day.
85. Ms. Yoana Bachvarova, who was a member of the U18 Bulgarian canoe-kayak National Team gave evidence that:
- After dinner, she was in her room getting ready to go out with her boyfriend for a coffee in Kardzhali, *"when I heard someone calling me. People at the door were a man and a woman...They asked me if I was Yoana and I said I was so they gave me a doping form. I was encountering such thing for the first time so I said that I would like to ask my coach. They agreed and I headed to the coach in the other bungalow. It is around 30 meters from mine. I knocked on the door, the coach came out and I told him that I was asked for doping. He said to me that it was impossible and if I was sure that the people were looking for me or for the other Yoana. I told him that they had talked with me and I had sked them to go and inform him. The man and the woman were not with me..."*
 - At the hearing Ms Bachvarova when asked if she had been shown a notification document by the DCO and responded that she was *"not sure and I got nervous because I was not tested before"*. She could not recall if she had been shown an authorisation by the DCOs, but she confirmed she was required for testing and she told the DCOs she had to inform the coach.

86. Each of Ms. Ivanova, Mr Stoyanov and Ms. Bachvarova gave evidence that the particular evening was dark and the weather was inclement in that it was cold, raining heavily and windy. The photographs taken by the BCO on that night confirm that it was dark and wet.
87. Mr. Tsvetan Ivanov (the “Coach” or “Mr Ivanov”) gave evidence that:
- He was in his bungalow with the coach of the men’s team and “*after 19:30 Yoana Bachvarova came, knocked on the door and told me that she was wanted for doping control. I said there was no way to (sic) want her, because I know that she was not in the testing pool so I supposed that the control was targeting Yoana Georgieva because often there were people coming to test her. I told Yoana not to bother, to take a rest and that I would take care to settle the matter with the doping control officers... When I met the doping control officers they did not ask me for my ID card or another document showing my identity. We started talking and during the conversation my guess that they were searching for Yoana Georgieva was confirmed...*”
 - He informed the DCOs that the Athlete “*she was probably in Plovdiv in the university and that I had heard her over the phone an hour ago and that she told me that she had just finished her business with her children (sic) from the university...*”.
 - He told them that he and the Athlete had been in Sofia the previous evening where she was presented with a sports IKAR for breakthrough athlete and “*she asked me to let her be absent the next day to get her things done with the university...*”
 - The Coach insisted to the DCOs that they had notified another female athlete with the same name “Yoana” but a different surname “Bachvarova”. He was sure they did not know there were two Yoana’s and therefore he “*instantly and instinctively called Yoana Bachvarova over the phone so she would come to the restaurant of the Rowing Campus*”. He then learned that she had gone to a café downtown, without having informed him, and he got angry with her and told her to return to the Training Camp immediately.
 - Later in the restaurant he was asked to sign a document by the DCOs but as it was in English and he could not read it, and the DCO said he did not have to sign it, then he did not. He noted that Yoana Bachvarova was not tested that evening.

The Athlete’s Explanation

88. Yonana Georgieva, the Athlete, explained in her First and Second Explanations to the ICF where she was on 14 and 15 December 2023 which gave rise to her not being at the Training Camp for her whereabouts testing slot on those dates.
- The Athlete admitted she had not updated her whereabouts and should have done so when her plans changed.
 - She was adamant that she was in Plovdiv on 15 December 2023 dealing with University matters as supported by the corroborating evidence of her Coach that she had requested that date off from training in order to address some exam related issues at the University. Even though her Coach had informed the DCOs that she was in Sofia, the place she had been on 14 December 2023 to collect an IKAR award, in her Second Explanation she clarified that she had “*no idea why my coach told them that I was in Sofia, when he knew that I was a student in Plovdiv and I had warned him that I was going to the university...*”
 - The Athlete submitted that she went to Plovdiv, her University town on 15 December 2023 where she was due to meet her professor A., to discuss her “*program for taking exams and tests, which are related to exemption from exams in various subjects*” as she studied by correspondence. While she missed the initial morning meeting as she was late, that meeting was rescheduled and took place later in the “*afternoon in front of the national television, where she*

had commitments and we met when she was free, but it was already late and as the weather worsened (snowing) I stayed in Plovdiv with my sister.”

- The Athlete explained that she did not return to the Training Camp on 15 December 2023 as it was late, the weather was extremely bad, and there were warnings not to travel – “...*The synoptic situation will worsen over Southeastern and Eastern Bulgaria until the morning on Friday. Rainfall there will be accompanied by strong gusts of wind. There will even be stormy conditions over extreme southeastern areas...*” (Metro Balkans forecast for 15 December 2023 – “*appeals to drivers to drive carefully and at an appropriate speed, keeping the necessary distance and not take risky overtaking*”).
- She explained that she was an inexperienced driver, her driving license was issued on 5 January 2023.
- She also explained that she had no reason to hid from doping control, it was part of her career and she had had multiple tests including in the preceding period: “*I have been tested many times so far and since December alone I have been tested 4 times and there have (sic) never been any problems. I know that doping control is part of my sport and I would never risk my career as an athlete, due to non-compliance with the rules. Even more now, when the Olympics are coming up, and I managed to get a quota.*”

89. The ICF challenged the explanation of the Athlete on the basis that on 15 December 2023 the weather in both Plovdiv and Kardzhali was quite normal, they supported this with print out readings from Krumovo, Plovdiv International Airport Station and a Weather Archive in Kardzhali. They also emphasised that the Athlete’s coach had been able to travel back from Sofia to the Training Centre in Kardzhali after the award ceremony on 14 December, that the DCOs travelled from Sofia to Kardzhali on 15 December and that “*by the Athlete’s own statement she was able to travel from Sofia to Plovdiv (approximately 150 kms) on 14 December or 15 December 2023 but was yet somehow inexplicably unable to travel the additional 94 kms from Plovdiv to the Training Camp...*”
90. In fact, on the Single Judges reading of the Athlete’s statement, it said that she had travelled from Kardjali to Sofia and back to Kardjali and then from Kardjali to Plovdiv on 14 and 15 December 2023 respectively, so in effect there were two separate journeys. Further, the evidence of the weather on 15 December 2023 from both parties was not so precise that it could be relied upon to support either party’s contention. However, what was clear to the Single Judge was that the Athlete did not feel competent enough as a driver to deal with the prevailing weather conditions in Plovdiv on 15 December 2023 and it was her subjective view which was being presented in evidence and not that of a more experienced driver.
91. A statement from the Athlete’s sister Gergana Petkova Georgieva, who lives in Plovdiv, was submitted in which she confirmed that her sister stayed with her on the night of 15 December 2023 and they were able to catch up in person as she had been unable to attend the IKAR award ceremony the previous day in Sofia which was disappointing for Yoana. She also stated that the “*weather turned quite bad and she [the Athlete] was very tired from the emptions, the travel, and the strain of her university commitments. We decided that it was not reasonable for her to travel to Kardzhali again and I suggested that she stay and sleep at our place...We hadn’t seen each other for a long time and we had a lot to talk about.*”
92. The ADAMs testing record for the Athlete demonstrated that she had been tested 15 times between 2 August 2020 and 26 October 2023 and four times in 2024.
93. The Single Judge has considered all the evidence in this case. There are a number of factors which have bearing on the determination of the Single Judge in this regard, the starting point

for which is the assessment of whether the ICF has demonstrated to the comfortable satisfaction of the tribunal that the alleged ADRVs have been committed.

94. The commencement for this assessment is at the beginning of the Testing Mission for the Athlete, with the notification of the Athlete. In this regard it is useful to review the requirements for notification under the ISTI.

- *What are the notification requirements for Out-Of-Competition Testing under the ISTI?*

95. Section 5 of the ISTI sets out that the overarching notification objective is to ensure that an athlete who has been selected for Testing is properly notified with no advance notice, that the rights of the athlete are maintained, that there are no opportunities to manipulate the Sample, and that the notification is documented.

96. The notification of athletes process starts when the Sample Collection Authority initiates the notification of selected athletes and ends when the athlete arrives at the Doping Control Station. The main activities described in Article 5.2 ISTI are:

- “a) *Appointment of DCOs, Chaperones and other Sample Collection Personnel sufficient to ensure No Advance Notice Testing and continuous observation of Athletes notified of their selection to provide a Sample;*
- b) *Locating the Athlete and confirming their identity;*
- c) *Informing the Athlete that they have been selected to provide a Sample and of their rights and responsibilities;*
- d) *Continuously chaperoning the Athlete from the time of notification to the arrival at the designated Doping Control Station; and*
- e) *Documenting the notification, or notification attempt.” (Emphasis added)*

97. Once the DCO and Chaperone have been appointed a core requirements for No Advance Notice Testing, is to clearly identify the athlete who is to be the subject of the Testing:

“5.3.4 The Testing Authority or otherwise the Sample Collection Authority shall establish criteria to validate the identity of an Athlete selected to provide a Sample. This ensures the selected Athlete is the Athlete who is notified. If the Athlete is not readily identifiable, a third party may be asked to identify them and the details of such identification documented.(...)”

5.3.5 The Sample Collection Authority, DCO or Chaperone, as applicable, shall establish the location of the selected Athlete and plan the approach and timing of notification, taking into consideration the specific circumstances of the sport/ Competition/ training session/ etc. and the situation in question.

5.3.6 The Sample Collection Authority, DCO or Chaperone, as applicable, shall document Athlete notification attempt(s) and outcome(s).” (Emphasis added)

98. The ICF contended that the Requirements for Notification of Athletes in Article 5.4.1 of the ISTI were met by the DCOs. There are nine (9) requirements set out in Article 5.4.1 which include informing an athlete they have to undergo Sample collection, the athlete’s rights (including requesting a delay in reporting e.g. to locate a representative) and responsibilities (including to produce identification and to remain within continuous observation by the DCO/Chaperone at all times) and details regarding hydration etc.

99. The ISTI further sets out the requirements of the DCO/Chaperone when contact is made with the selected athlete including with regard to identification, documenting the notification and chaperoning:

Article 5.4.2 “a) *keep the Athlete under observation at all times*”; b) *identify themselves and*
c) *to “Confirm the Athlete’s identity as per the criteria established in Article 5.3.4. Confirmation of the Athlete’s identity by any other method, or failure to confirm the identity of the Athlete, shall be documented and reported to the Testing Authority...”*

Article 5.4.3: *“The DCO/Chaperone shall have the Athlete sign an appropriate form to acknowledge and accept the notification. If the Athlete refuses to sign that they have been notified, or evades the notification, the DCO/Chaperone shall, if possible, inform the Athlete of the Consequences of a Failure to Comply... When possible, the DCO shall continue to collect a Sample. The DCO shall document the facts in a detailed report and report the circumstances to the Testing Authority...”*

100. It is not disputed that the DCO did identify himself and the purpose for which the DCOs were there and provided an authorisation letter. There was no evidence presented that the DCOs had met or tested the Athlete previously.
101. In terms of the identification of the Athlete (in Bungalow No. 3 on 15 December 2023), the evidence was that the DCO had previously Googled® the Athlete to see her photograph – he *“googled [the Athlete] beforehand and confirm that she matched her photographs online”*. This prior identification has to be considered in light of the other actions of identification of the Athlete at the Bungalow. For example, notwithstanding having looked up a photograph of the Athlete, the DCO first asked Ms. Ivanova if she was Yoana Georgieva and then asked the presenting athlete if she was Yoana Georgieva demonstrating a lack of visual recognition. The Athlete submitted that there were considerable physical differences between Ms. Ivanova and the Athlete (Ms. Ivanova being 10cm shorter and of dark hair colouring when compared to the Athlete) while there were less differences between the Athlete and Ms. Bachvarova, who had similar hair colouring but Ms. Backvarova was taller. The DCO did not have a copy of the Athlete’s photograph with him at the time of notification (unlike in CAS 2015/A/4163).
102. When the presenting athlete was asked by the DCO if she was Yoana Georgieva, she confirmed that she was and took receipt of an English language document from the DCO, which she refers to as *“a doping form”*. Neither the accounts of the DCO, BCO or Ms. Bachvarova reveal that the presenting athlete was asked during this engagement to provide her identification (Article 5.4.2(c) ISTI), nor to sign a document identifying herself, nor was she asked to sign any document at that juncture reflecting the fact that she had been notified for testing (which is a mandatory requirement under Article 5.4.3 ISTI). Almost one of the first questions asked by the DCO Manager Mr. Sharapov when the DCO contacted him by WhatsApp® about the situation (at 19:58) was *“Did she sign the notification?”* to which the answer was *“No”*.
103. There were conflicting accounts between on the one side the DCO’s who say that “Yoana Georgieva” was the athlete who was sought by name, and on the other side that “Yoana” or “Yo” was sought, as referenced variously by the three athletes in Bungalow No. 3. On balance it is more probable than not that the DCO did refer to the full name of “Yoana Georgieva” to Ms. Ivanova who opened the Bungalow door and in turn it was Ms. Ivanova who called out the nickname “Yo” which resulted in the emergence of the presenting athlete from her room. The DCOs were outside the Bungalow front door on the terrace. The night was dark, wet and windy as variously confirmed by numerous witnesses and photographs. It is not unreasonable to conclude that in the circumstances that even if the full name of Yoana Georgieva was used by the DCO, which is contested, that the Athlete’s full name might not have been heard by the athletes or the fact that there was a ‘Yoana’ residing in Bungalow No. 3 already that it was misperceived. Indeed, Ms Bachvarova indicated that she was nervous because she had not been tested before which could have contributed to her positive response to the DCO.
104. For No Advance Notice Testing Out-of-Competition, it is a fundamental requirement to (i) locate the target athlete and confirm their identity and (ii) to informing the target athlete that they have been selected to provide a Sample and of their rights and responsibilities.

105. The notification attempts documented by the DCOs are consistent in that they do not disclose that any identification other than a verbal confirmation was requested from the presenting athlete nor are they accompanied by any notification form that the presenting athlete was given to sign. The ICF submitted that the signing by an athlete of the notification for testing was technical in nature and not fundamental. However, section 5.4.3 of the ISTI, which falls under the general category of '*Requirements for Notification of Athletes*', makes it an obligation that is placed upon the DCO/Chaperone that they "*shall have the Athlete sign an appropriate form to acknowledge and accept notification*". This mandatory language does not bear the hallmarks of a technicality and it reinforces the importance of confirming the proper identification of the athlete that is subject to Testing, no doubt as it goes to the heart of establishing a potential ADRV under Article 2.3 and/or 2.5 ICF ADR.
106. The English language document given to the Athlete by the DCO was not produced in evidence. Both the Athlete and Yoana Bachvarova required the assistance of a translator at the hearing and all other elements of the doping control process on 15 December 2023 were conducted in the Bulgarian language, a fact highlighted by the ICF as mitigating against any misunderstanding. This language dichotomy was not resolved to the satisfaction of the Single Judge.
107. It is also notable that the clothing the Athlete/presenting athlete was wearing only became a feature of the case later in the process, as described in the witness statements of each of the DCOs (15 May 2024) and at the hearing. What the Athlete/presenting athlete was wearing does not feature in any of the contemporaneous or post-mission reports of the DCOs. The BCO identified by reference to a photograph of the Athlete that "*This is probably the first woman that was notified...*" When Yoana Bachvarova returned to the Training Centre from town, she went first to Bungalow No. 3 and passed the BCO *en route*, greeted her to which the BCO, by her admission, did not respond, on the basis she could not see whom it was as they were wearing a hoodie. These factors contribute to the impression formed by the Sole Judge, that the DCOs may have been genuinely mistaken that it was the Athlete that they first notified on 15 December 2023.
108. It is also of relevance that the Athlete's evidence was that it could not have been her who was notified for Testing on 15 December 2023 as she was not at the Training Camp on that night but was in Plovdiv and stayed the night with her sister, and with the permission of her Coach.
109. Based on the evidence of all the witnesses, and the documentation, it is clear that the presenting athlete on 15 December 2023 was not at any point asked to sign a nor was she asked to show identification to verify that she was the Athlete and the specific person the DCOs wished to Test. The DCOs proceeded on the basis of a verbal confirmation from the presenting athlete that she was Yoana Georgieva. This also contrasts with the fact the DCOs presented the Coach with "*a testing order for Yoana Georgieva for the period 11-17 December 2023*". The Single Judge is not comfortably satisfied that the DCOs sufficiently confirmed the identity of their target athlete, 'Yoana Georgieva' as required under Article 5.4.2(c) ISTI, and also finds that the requirements for notification pursuant to Article 5.4.3 ISTI were not met.
110. For completeness, while no specific criteria to validate the identity of an athlete selected to provide a Sample (whether by ICF, ITA, BUG-NADO or Clearidium) was identified in this case, the absence of such criteria does not relieve the testing entity from its obligation to validate the identity of the athlete they are selecting for testing as "*This ensures the selected Athlete is the Athlete who is notified*". It is a fundamental requirement and the whole testing process is premised upon having the right athlete identified to provide the Sample. That was not achieved in this case.

111. The Athlete submitted that the DCOs breached the notification requirements of the ISTI, in that they initially termed the testing mission on the Athlete as a “Failed Notification” which categorisation clearly constituted an admission that the Athlete was not properly notified. The argument was raised that given the relative experience of the DCOs they may have either evaluated the facts in an erroneous way or could have been later influenced to change the report to “Unsuccessful attempt for doping test”.
112. No evidence was produced by the Athlete in support of her allegation that the DCOs may have been under some sort of influence to alter their report to complete successful missions resulting in ADRVs generally or in this particular case. This proposition was an unsubstantiated hypothesis and one which the Single Judge finds to be without any merit whatsoever. There was no evidence of collusion or bias on the part of the DCOs whatsoever. In relation to the terminology change as between the reports; A “*Failed Notification*” is not a defined term in the ISTI. Where an athlete cannot be located within their 60-minute time slot as indicated on their Whereabouts Filing, then the ISTI (see Comment to Article 4.8.8.5 (d)) recommends that the DCO should file an Unsuccessful Attempt Report (as defined in the WADA Code). Consequently, the Single Judge finds that nothing turns on the nomenclature used by the DCOs in their initial report, other than the fact that the heading used at that juncture was incorrect and later corrected.
113. While the non-identification of the Athlete was in the view of the Single Judge sufficient of itself to determine this matter, for completeness, the Single Judge also considered the additional requirement under the ISTI that notified athletes must be kept under observation from the time they are notified until the end of the Sample Collection Session (section 5.4.2(a) ISTI) i.e. they must be chaperoned.

(ii) Was the Athlete continuously chaperoned following notification?

114. The ICF submitted that the Athlete had run away and hidden after she was notified that she was selected for testing. She did this by informing the DCOs that she wanted to find her coach. As having a representative present at the sample collection session is the right of an athlete as per Article 5.4.1(d)(i) of the ISTI, the DCOs permitted her to leave the Bungalow to find her coach. It was submitted by the ICF that the DCOs followed the Athlete down the stairs in order to ensure that she would be continuously chaperoned. However, instead of locating her coach and immediately submitting to Sample Collection, the Athlete found a way to escape into another building and could no longer be located. The evidence of the DCOs was that they continuously chaperoned the Athlete and that she went and hid in the coaches’ bungalow and did not re-emerge.
115. In his contemporaneous evidence, the DCO stated that the Athlete: “*She answered just to inform her coaches and got down the stairs and went in another building. After few minutes her coach Tsvetan Ivanov told me she is not here, she is in Sofia, and she has exams but forgot to change her whereabouts*”. He also later recalled how he and the BCO followed the Athlete to the nearby bungalow of the coach, to “*continuously chaperone the Athlete*”, she entered that building having told them “*to wait just a moment*”, she went inside and never reemerged.
116. In the DCO’s WhatsApp® communications with the DCO Manager (“DCOM”) the following interaction took place between 19:58 and 20:01 hours on 15 December 2023:
- DCO “*They hid her*” ... “*I spoke with her, she told me just to go to inform the coach*”
- DCOM “*Go only with her to the coach...Do not leave her*”
- DCO “*Went fast into another building and all the people are telling me she is not here*”
- DCOM “*Find her. And take pics*”.

DCO *"They are telling me that she is not here" ... "And inspoke [sic] with different Yoana"*
DCOM *"Did she sign the notification?"*
DCO *"No"*
DCOM *"Try to find her"*
DCO *"Can I insist. What to do?" ... "For first time someone is hiding"*
 [voice call]

117. The BCO, stated in her contemporaneous evidence that after the presenting athlete was permitted to inform her coach she went directly to another building and they *"walked after her and she went into a room which a few minutes later a man came out [the coach]"*. In her witness statement the BCO referred to the presenting athlete as putting on slippers and a hoodie and then going down the stairs, followed by the DCOs. She described the manner in which the Athlete went to fetch her coach as being one of expedition in that she *"started walking faster, turned, and went into a small one storey bungalow about 7/8 steps away and did not come out"*. Sequentially, the BCO confirmed that the DCO introduced himself to the coach, said they were looking for the Athlete to which the coach replied that the Athlete was in Sofia for exams. When it was explained by the DCO that he had spoken to Yoana Georgieva *"In this moment the coach told Nikolay that probably he spoke with another person with the name Yoana, because there are two girls with the same name..."*
118. The Athlete submitted that the DCOs did not meet the requirement for the continuous and uninterrupted chaperoning of the Athlete from the time of notification to the arrival of the Athlete at the designated Doping Control Station per the ISTI. Rather, that they remained outside the door of Bungalow No. 3, allowed the notified athlete to go find her coach and they did not follow her initially to the coaches' bungalow. When they did, they met her Coach, who informed them the Athlete was not at the Training Camp.
119. Ms. Bachvarova's evidence was that she knocked at the door of her Coach in the nearby bungalow, at which stage she was not accompanied by the DCOs. She informed her Coach that she was notified for doping control and that he said to her that was *"impossible"* and queried if they were not looking for the other Yoana. She stated that *"The coach told me that he would go and ask them whom they wanted and that I should rest. Due to this reason I stucked (sic) to my plan for the evening so we headed with the car of my boyfriend towards the cafeteria in the downtown of Kardzhali"*.
120. Ms Ivanova's evidence was that there was a short time or about two minutes before the DCOs left the terrace to follow the presenting athlete. Mr. Stoyanov's evidence was that when he exited Bungalow No. 3 to return to his room that Yoana Bachvarova was not there and the DCOs remained on the terrace.
- *What are the chaperoning requirements under the ISTI?*
121. The relevant provisions of the ISTI are set out hereunder:
- Article 5.4.2(a) ISTI requires that from the point contact is made with the notified athlete until the end of the Sample Collection Session, the DCO/Chaperone shall *"keep the Athlete under observation at all times"*.
 - Article 5.4.4 ISTI permits the DCO/Chaperone to allow the notified athlete to delay reporting to the Doping Control Station, subject to conditions:
" 5.4.4 The DCO/Chaperone may at their discretion consider any reasonable third-party request or any request by the Athlete for permission to delay reporting to the Doping Control Station following acknowledgment and acceptance of notification, and/or to leave the Doping Control Station temporarily after arrival. The DCO/Chaperone may grant such permission if the Athlete can be continuously

chaperoned and kept under continuous observation during the delay. Delayed reporting to or temporary departure from the Doping Control Station may be permitted for the following activities:

a) (...)

b) For Out-of-Competition Testing

(i) Locating a representative;...” (Emphasis added)

- Article 5.4.5 places the onus upon the DCOs to assess if they can continuously chaperone an athlete or not:

“A DCO/Chaperone shall reject a request for delay from an Athlete if it will not be possible for the Athlete to be continuously observed during such delay.”

122. Having considered the evidence of all the witnesses in the context of the notification of the presenting athlete in Bungalow No. 3 and how she was chaperoned following that notification, there are inconsistencies in the evidence as between that of the DCOs and the athlete witnesses in terms of the timing of when the DCOs followed the presenting athlete and also internally within the evidence of the DCOs.
123. The three athletes in Bungalow No. 3 in different ways communicated that there was a pause in time between when the presenting athlete left Bungalow No. 3 to inform her coach of the Testing and when the DCOs followed her. Ms. Bachvarova said she was alone when she reached the coaches’ bungalow, while the DCO said that the Athlete asked the DCOs to wait at the door - *“Ms Georgieva told myself and Ms Florova to wait just a moment and she went inside”*. This statement and the reference to *“she [the Athlete] went into another building escorted by me and my chaperone but from that moment she started hiding”* is inconsistent with the evidence of the presenting athlete and with the impression given by the DCOs that the presenting athlete was trying to run from them e.g., (i) as described to the DCOM in the WhatsApp® message that she *“Went Fast into another building”* and (ii) in the BCO’s account of the presenting athlete being in a hurry, walking fast and entering the coaches building at a run.
124. There is a clear disconnect between the evidence of the DCO and BCO with regard to the proximity of the DCOs when the presenting athlete entered the coaches’ bungalow. The BDO described the DCOs as being four steps behind the presenting athlete before she turned right into the front of the coaches’ bungalow and entered. The distance between the stairs to Bungalow No. 3 and the coaches’ bungalow buildings was a matter of a few meters and some further meters to the entrance door which was on the opposite side of the bungalow. In their evidence the DCOs confirmed that they physically encountered Mr. Ivanov at the corner of his bungalow nearest to the stairs they had descended from Bungalow No. 3, namely at the back end of the bungalow. This location was not in sight of the only entrance door to the coaches’ bungalow. Further, at the hearing the DCO gave evidence that *“in order to continuously chaperone the Athlete”* he and the BCO were one behind the other following the athlete down the stairs as it was narrow, and he was carrying a suitcase. A photograph of the stairs demonstrates that it is an industrial sized stairs with open threads and is exposed to the elements. It is considerably wider than a domestic scale staircase and was feeding the upper floor of at least two bungalow buildings (including Bungalow No.3).
125. It is an acceptable basis for the DCO to permit a delay to an OOC Doping Control for an athlete to locate a representative following acknowledgment and acceptance of notification (Article 5.4.4(b)), and it is possible for an athlete to be continuously observed during such delay (Article 5.4.5) and such delay shall be documented (Article 5.4.6). However, key elements of the process were missing in this case, including *inter alia*, the failure to explain to the notified athlete that she had to be chaperoned and what that entailed (i.e. continuous accompaniment), neither of the DCOs were by her side as she went to find her coach, and they did not

accompany or follow her into the coach's bungalow and/or request permission to enter the building once the coach emerged, an action they should have done their best to attempt as it was expected, according to the DCOM.

126. Yoana Bachvarova was 18 years of age when the DCOs called to Bungalow No. 3 on 15 December 2023. She had never been subject to anti-doping testing previously. That is what motivated her to seek out her coach and she obtained the prior permission of the DCOs to do so. Notwithstanding that the DCO was experienced with 80+ test missions to his credit, he had not dealt with a 'disappearing athlete' case before or "*hiding*" case as he believed it to be. Therefore, this was a novel situation for the DCO and when he consulted his DCOM asking what he should do and whether he could insist upon entering the coaches building, the notification and chaperoning process were already concluded.
127. On balance the Single Judge was not persuaded by the evidence of the DCOs that they, either individually or collectively, did continuously chaperone the presenting athlete in the manner that is contemplated under the ISTI. This enabled the circumstances to arise whereby the presenting athlete was out of their line of sight for a period and they did not take steps to ameliorate that situation by either seeking to follow her into the coaches' bungalow or insisting that the Coach let them enter and inform him of the consequences of not complying with any such request. Instead of either or both of the DCOs following the notified athlete immediately into the coach's bungalow or advising her that she could not go anywhere unaccompanied by a DCO, they just waited, they never asked to enter. Consequently, while it is accepted that the DCOs do not have police powers to enter, contrary to submissions that the DCOs must only do what is reasonably possible to notify the Athlete and apply common sense if an athlete runs away, the DCOs did not approximate using reasonable efforts (or as required under Article 4.8.8.5(d) ISTI to do "*what is reasonable in the circumstances to try to locate the Athlete*") to try to find the presenting Athlete who had entered a building with only one entrance/exit.
128. To address the ICF's argument that the version of events put forward by the Athlete's Coach is impossible, not least because given the timeline on 15 December 2023, a person cannot be in two places at the same time - the building into which the Athlete ran and hid has only one entrance/exit and there is no physical way in which she could have left the building and gone for coffee in Kardzhali without the DCOs, coach and/or Training Centre Manager seeing her leave the building. For completeness, as emerged in evidence at the hearing, this point can be explained by the fact that just outside of the entrance to the coach's bungalow there is a dirt track that is a shortcut to the car park which lay beneath the bridge which joined the path from said bungalow to the on-campus restaurant. The existence of this shortcut track was not disputed by the ICF. Having heard the evidence of Ms. Bachvarova that she used this track and reviewed a map and the photographs of the layout of the relevant aspects of the Training Camp the Single Judge is satisfied that it was entirely possible for Ms. Bachvarova to have left the coach's bungalow and taken the shortcut track to the car park without the DCOs seeing her departure given both the direct proximity of the track to the front entrance of the coaches bungalow, the fact it was nighttime and the physical location of the DCOs.
129. Consequently, the result is that there was a series of mistakes and irregularities in breach of the ISTI, together with some unfortunate actions / miscommunications on the part of Yoana Bachvarova which created the impression that the Athlete was attempting to hide from the DCOs, when in fact all the interaction had been with a different athlete, namely Yoana Bachvarova. These departures from the ISTI in the context of a whereabouts failure are fundamental in that the identity of the target Athlete not being properly established lead the DCOs to believe, genuinely, that a conspiracy was afoot to replace the Athlete with another athlete for the purposes of the test.

130. There were sufficient deficiencies in the OOC test identification and notification process of the Athlete on 15 December 2023 and sufficient varying accounts as to what transpired on that evening, and corroborated accounts that the Athlete was in another city on that evening, so as to create doubt in the mind of the Single Judge such that she is not comfortably satisfied that the Athlete was the athlete actually notified for OOC test on that evening and it is more likely than not that the athlete Yoana Bachvarova was identified instead and that this is a genuine case of mistaken identity. The ICF has not satisfied the Single Judge to the level of comfortable satisfaction that an ADRV in terms of Article 2.3 and/or Article 2.5 ICF ADR has occurred or that the Claimant discharged its burden of proof pursuant to Article 3.1.

VIII. COSTS

(...)

IX. APPEAL

135. Article 8 of the 2019 IBU ADR provides:

8.3 *At the end of the hearing, or on a timely basis thereafter, the CAS panel will issue a written decision that includes the full reasons for the decision and for any period of Ineligibility imposed, including (if applicable) a justification for why the greatest potential Consequences were not imposed.*

8.4 *The decision may be appealed to the CAS as provided in Article 13. Copies of the decision will be provided to the Athlete or other Person and to other Anti-Doping Organisations with a right to appeal under Article 13.*

136. Pursuant to Article A21 of the ADD Rules, this award may be appealed to the CAS Appeals Arbitration Division within 21 days from receipt of the notification of the final award with reasons in accordance with Articles R47 *et seq.* of the CAS Code of Sports-Related Arbitration, applicable to appeals procedures.

DECISION

The Court of Arbitration for Sport rules that:

1. The Request for Disciplinary Proceedings filed on 10 June 2024 by the International Canoe Federation against Yoana Georgieva is dismissed.
2. Yoana Georgieva is found not-guilty of an anti-doping rule violation pursuant to Articles 2.3 and/or 2.5 of the ICF Anti-Doping Rules.
3. The Provisional Suspension of 10 June 2024 imposed upon Yoana Georgieva is hereby lifted.
4. (...).
5. (...).
6. All other motions or prayers for relief are dismissed.

Lausanne, Switzerland

Operative Decision Date: 15 July 2024

Reasoned Decision Date: 23 May 2025

**THE ANTI-DOPING DIVISION
OF THE COURT OF ARBITRATION FOR SPORT**

Susan Ahern SC
Single Judge