CAS 2021/A/8263 Russian Anti-Doping Agency v. Abdusalam Gadisov; CAS 2021/A/8381 World Anti-Doping Agency v. Russian Anti-Doping Agency & Abdusalam Gadisov

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: James Drake K.C., Barrister/ Arbitrator, London, United Kingdom

in the arbitration between

Russian Anti-Doping Agency, Moscow, Russian Federation
Represented by Mr Graham Arthur, Solicitor, GM Arthur, Liverpool, United Kingdom

Appellant in CAS 2021/A/8263

and

Abdusalam Gadisov, Makhachkala, Russian Federation
Represented by Messrs Roman Kudinov and Ralph Obeid, Attorneys-at-law, Leolex, Sion, Switzerland

Respondent in CAS 2021/A/8263

World Anti-Doping Agency, Montreal, Quebec, Canada
Represented by Messrs Nicolas Zbinden, Attorney, Kellerhals Carrard, Lausanne, Switzerland and Ross Wenzel, WADA General Counsel, Lausanne, Switzerland

Appellant in CAS 2021/A/8381

and

Russian Anti-Doping Agency, Moscow, Russian Federation
Represented by Mr Graham Arthur, Solicitor, GM Arthur, Liverpool, United Kingdom

First Respondent in CAS 2021/A/8381

Abdusalam Gadisov, Makhachkala, Russian Federation
Represented by Messrs Roman Kudinov and Ralph Obeid, Attorneys-at-law, Leolex, Sion, Switzerland

Second Respondent in CAS 2021/A/8381

I. PARTIES

1. The Russian Anti-Doping Agency ("RUSADA") is the National Anti-Doping Organisation ("NADO") in the Russian Federation and a signatory to the World Anti-Doping Code ("WADC"). Its registered office is in Moscow, Russian Federation. From time to time it issues anti-doping rules in accordance with the WADC including the "All-Russian Anti-Doping Rules of June 18, 2015" (the "2015 ADR") and the "Russian Anti-Doping Rules of 24 June 2021" (the "2021 ADR").

2. The World Anti-Doping Agency ("WADA") is a Swiss private law foundation with its registered seat in Lausanne, Switzerland and its headquarters in Montreal, Canada. WADA was created in 1999 to promote, coordinate and monitor the fight against doping in sport. WADA publishes the WADC, which provides the framework for anti-doping policies, rules, and regulations for sports organisations and related public bodies throughout the world.

3. Mr Abdusalam Gadisov (the "Athlete") is a Russian wrestler, four-time champion of Russia, two-time European champion, and one-time world champion (in 2014 in Tashkent). He was also the silver medallist at the 2015 World Championships in September 2015 in Las Vegas, United States of America.

II. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts, matters and circumstances drawn from the Parties' evidence and written and oral submissions.

5. On 6 August 2015, the Athlete underwent an out-of-competition doping control during which he provided a sample of urine. The sample was separated into two separate sample bottles which were given the reference numbers A3868936 (the "A Sample") and B3868936 (the "B Sample") (collectively, the "Sample"). The Sample was transported to the WADA-accredited laboratory in Moscow, Russian Federation (the "Moscow Laboratory"). The Moscow Laboratory analysed the A Sample, the results of which were reported as negative.

6. In May 2019, at the request of WADA, the Sample was sent for re-analysis to the Swiss Laboratory for Doping Analyses, a WADA-accredited laboratory in Lausanne, Switzerland (the "Lausanne Laboratory"), the director of which is Dr Tiia Kuuranne. The Lausanne Laboratory re-analysed the A Sample and in a report dated 3 April 2020 signed by Dr Kuuranne (supplemented by letter dated 30 June 2020) reported an adverse analytical finding ("AAF") by reason of the presence of a long-term metabolite ("M3") of dehydrochloromethyltestosterone ("DHCMT") in an indicative estimated concentration of 7 pg/mL.

7. DHCMT is a non-specified anabolic androgenic steroid which was prohibited at all times under S1.1 of the WADA 2015 Prohibited List. It is sometimes referred to as 'oralturinabol' and 'turinabol'. DHCMT is not a threshold substance.

8. By letter dated 19 May 2020, RUSADA notified the Athlete of the AAF and informed him that the finding represented a potential violation of Article 2.1 of the 2015 ADR. The Athlete was provisionally suspended from the date of the letter.

9. On 21 May 2020, in an undated "Explanation Note" the Athlete responded to the letter from RUSADA by which, inter alia, the Athlete denied his guilt. The Athlete did not request the analysis of his B Sample.

10. On a date unknown, RUSADA requested an opinion from Dr Christiane Ayotte, Director of the Doping Control Laboratory of the Institut National de la Recherche Scientifique ("INRS"), in respect of the analytical data from the Moscow Laboratory relating to the Athlete's Sample. RUSADA informed the Athlete that it had done so in a letter dated 24 July 2020.

11. On 3 August 2020, Dr Ayotte provided her expert opinion which RUSADA forwarded to the Athlete on 21 August 2020, asking the Athlete to *"submit his explanations on the way the prohibited substance entered your body in 2013"*.

12. On 27 August 2020 (dated in error 27 June 2020), the Athlete replied to RUSADA providing his explanation in a further "Explanatory Note".

13. On 21 and 29 October 2020, in emails to the Athlete, RUSADA repeated its request that the Athlete provide an explanation as to how the prohibited substance entered his body.

14. On 2 November 2020, the Athlete replied saying: *"The matter is I do not know how I can comment these 'violations' as I haven't violated anything. Your organization has been monitoring this and confirming for a long period of time. I do not know what has happened"*.

III. THE DECISION OF THE DADC

15. As was foreshadowed in RUSADA's notice to the Athlete of 19 May 2020, RUSADA forwarded the case file to its Disciplinary Anti-Doping Committee (the "DADC").

16. The Athlete requested a hearing before the DADC, which hearing took place on 27 May 2021 in Moscow.

17. By its decision No. 124/2021 dated 27 May 2021 (and communicated to RUSADA on 10 August 2021) (the "Appealed Decision"), the DADC determined that the Athlete had not committed an anti-doping rule violation ("ADRV") pursuant to the 2015 ADR. It is sufficient for present purposes to note the following passage from the decision:

"28. Taking into account that:

• The negligible concentration of metabolite is on the verge of reliability, which significantly increases the probability of the false positive results of studying the sample;

• No information has been given to the Committee about the Limit of Detection (LOD) for initial (screening) and confirmatory analysis;

• The kinetics of the concentration of metabolite of Dehydrochlormethyltestosterone in the Athlete's samples has not been disclosed;

• Athlete's samples preceding sample A3868936, were researched by various WADA-accredited laboratories, and they are 'clean';

• In the initial research of sample A3868936, presence of metabolite of Dehydrochlormethyltestosterone has not been confirmed;

• Previously, the Athlete has not committed violations of anti-doping rules and requirements;

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

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

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

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

18. On 10 August 2021, RUSADA formally received the Appealed Decision.

19. On 16 August 2021, WADA received a copy of the Appealed Decision; further, upon request, WADA received elements of the case file by email from RUSADA on 13 September 2021.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

20. RUSADA and WADA challenge the Appealed Decision in these appeals.

21. On 26 August 2021, RUSADA filed its Statement of Appeal with the Court of Arbitration for Sport (the "CAS") against the Appealed Decision in CAS 2021/A/8263 in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the "CAS Code"). By its Statement of Appeal, RUSADA requested that the matter be referred to a sole arbitrator, and further requested an extension of its time-limit to file its Appeal Brief until 30 September 2021.

22. On 30 August 2021, the CAS Court Office sent the Statement of Appeal to the Athlete and, amongst others, invited the Athlete to state, no later than 2 September 2021, whether he consented to the extension sought by RUSADA. The Athlete was further informed that his silence in this regard would be deemed as acceptance of the Appellant's request.

23. On 15 September 2021, the CAS Court Office informed the Parties that, in light of the absence of any objection by the Athlete as regards the extension of time requested by RUSADA in which to file its Appeal Brief, such request was granted.

24. On 30 September 2021, RUSADA filed its Appeal Brief in CAS 2021/A/8263, in accordance with Article R51 of the CAS Code.

25. On 4 October 2021, WADA filed its Statement of Appeal before the CAS against the Appealed Decision in CAS 2021/A/8381 in accordance with Articles R47 and R48 of the CAS

Code. The respondents to this appeal are RUSADA and the Athlete. Together with its Statement of Appeal, WADA requested that the matter be referred to the same sole arbitrator as for the appeal in CAS 2021/A/8263 and that the two proceedings be consolidated.

26. On 8 October 2021, the CAS Court Office sent WADA's Statement of Appeal to RUSADA and the Athlete and, amongst other things, invited them to state whether they agreed to consolidate the two procedures, and whether they agreed to WADA's suggestion to submit WADA's appeal to the same sole arbitrator in both.

27. On 11 October 2021, the Athlete requested an extension of time until 1 November 2021 to file his Answer in CAS 2021/A/8263.

28. On 12 October 2021, RUSADA stated that it had no objection regarding the extension requested by the Athlete in CAS 2021/A/8263 and further confirmed that it had no objection either to the consolidation requested by WADA, nor to WADA's request to submit the proceedings to a sole arbitrator.

29. On 18 October 2021, the Athlete requested a further extension of time to file his Answer in CAS 2021/A/8263, this time until 12 November 2021.

30. On 19 October 2021, the CAS Court Office, following RUSADA's agreement to the extension requested by the Athlete, granted such request.

31. On 20 and 22 October 2021, the Athlete informed the CAS Court Office that he had requested the Laboratory Documentation Package ("LDP") in respect of the Sample from WADA and requested that his time to file his Answer in CAS 2021/A/8263 be extended until 19 November 2021.

32. On 26 October 2021, the CAS Court Office, following RUSADA's agreement to the extension of time requested by the Athlete to file his Answer in CAS 2021/A/8263, granted such request.

33. On 5 November 2021, WADA filed its Appeal Brief in CAS 2021/A/8381 in accordance with Article R51 of the CAS Code.

34. On 16 November 2021, the Athlete informed the CAS Court Office that he had not received the LDP and requested a further extension of time to file his Answer until 17 December 2021.

35. On 19 November 2021, the CAS Court Office, in the absence of any objection by RUSADA to the extension requested by the Athlete, granted such request.

36. On 30 November 2021, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division had decided to submit the respective proceedings to a sole arbitrator, and that furthermore, the two proceedings would be submitted to the same sole arbitrator. The CAS Court Office further informed the Parties that the President of the CAS Appeals Arbitration Division had decided that it would be for the sole arbitrator to decide whether to consolidate the two proceedings.

37. On 3 December 2021, the Athlete informed the CAS Court Office that he had received the LDP only on 24 November 2021 and requested a further extension of time until 7 January 2022 to file his Answer in CAS 2021/A/8381.

38. On 20 December 2021, following an objection by WADA to the further extension requested by the Athlete to file his Answer in CAS 2021/A/8381, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division had granted the Athlete's request for an extension of time until 31 December 2021.

39. On 31 December 2021, the Athlete requested a further extension of time until 13 January 2022 to file his Answer in CAS 2021/A/8381.

40. On 7 January 2022, following objection by WADA to the Athlete's further request for an extension of time to file his Answer in CAS 2021/A/8381, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division had decided to grant the Athlete's request for extension of time until 11 January 2022.

41. In accordance with Article R55 of the CAS Code, the Athlete filed his Answer on 11 January 2022 in CAS 2021/A/8381 and on 21 March 2022 in CAS 2021/A/8263.

42. RUSADA did not file an Answer in CAS 2021/A/8381.

43. On 10 May 2022, in accordance with Article R54 of the CAS Code, the CAS Court Office, on behalf of the President of the CAS Appeals Arbitration Division, informed the Parties that the arbitral tribunal appointed to decide both CAS 2021/A/8263 and CAS 2021/A/8381 was constituted as follows:

    Sole Arbitrator: James Drake K.C., Barrister and Arbitrator, London, United Kingdom.

44. On 17 May 2022, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to consolidate the proceedings CAS 2021/A/8263 Russian Anti-Doping Agency v. Abdusalam Gadisov and CAS 2021/A/8381 World Anti-Doping Agency v. Russian Anti-Doping Agency & Abdusalam Gadisov, pursuant to Article R52 of the CAS Code.

45. On 11 July 2022 (RUSADA), 13 July 2022 (the Athlete) and 14 July 2022 (WADA), the Parties signed and returned the Order of Procedure, issued by the CAS Court Office on behalf of the Sole Arbitrator.

46. A hearing took place on 6 October 2022. With the agreement of all Parties, the hearing was conducted in a hybrid fashion, with some participants taking part in person in Lausanne and others remotely via Webex. The following persons took part in the hearing:

    a. The Sole Arbitrator:

        i. Mr James Drake K.C.

    b. RUSADA:

        i. Mr Graham Arthur, Counsel

    c. WADA:

        i. Mr Nicolas Zbinden, Counsel

        ii. Mr Ross Wenzel, General Counsel, WADA

iii. Dr Tiia Kuuranne, Director, Lausanne Laboratory

iv. Dr Christiane Ayotte, Director, INRS.

d. The Athlete:

i. Mr Ralph Obeid, Counsel

ii. Mr Roman Kudinov, Counsel

iii. Dr Douwe de Boer, Expert Witness

iv. Dr Azamat Temerdashev, Expert Witness

v. The Athlete

vi. Ms Anna Gurieva, Interpreter for the Athlete

e. CAS Court Office:

i. Ms Carolin Fischer, Counsel

47. At the conclusion of the hearing, the Parties confirmed that they had had a full and fair opportunity to present their respective cases, that their right to be heard had been fully respected, and that they had no objection to the manner in which the proceedings had been conducted.

V. THE PARTIES' SUBMISSIONS

48. In considering and deciding upon the Parties' claims in this Award, the Sole Arbitrator has taken into account and carefully considered all of the submissions made and evidence adduced by the Parties. The following represents a summary of the Parties' principal submissions.

A. RUSADA's Submissions

49. RUSADA addressed the procedural complaints, the Appealed Decision, the liability on the part of the Athlete, and the consequences or sanctions that should be imposed in the event that the Athlete was found liable.

Procedural Matters

50. RUSADA's response to the procedural complaints raised by the Athlete was to submit that these matters were not pressed at the hearing of the appeal and, in any event, have been cured by the *de novo* nature of the CAS hearing.

The Appealed Decision

51. In the submission of RUSADA, the DADC was wrong to decide that the Athlete had not committed an ADRV. In doing so, the DADC misconstrued the applicable rules and instruments.

a. The principal basis on which the DADC concluded that RUSADA had not established that DHCMT was present in the Athlete's sample was because it had not explained whether or not the level of DHCMT was above the relevant Limit of Detection ("LOD"). On that basis, the DADC took the view that it could not be sure that there was enough reliable evidence for it to find that an ADRV had been committed.

b. That is a misappreciation as to what LOD is and what it is not. The 2019 International Standard for Laboratories (the "ISL") refers to the term 'Limit of Detection'. It is defined as the *"analytical parameter of assay technical performance; lowest concentration of an analyte in a sample that can be routinely detected, but not necessarily identified or quantified, under the stated test method conditions"*. The LOD is therefore a measure of the performance of the initial testing procedure. It is not a concentration beneath which a prohibited substance cannot be reliably detected. It is not, as the DADC understood it to be, a 'floor', cut-off, or some similar low threshold.

c. The DADC drew attention to an absence of information regarding LOD on the basis that, in effect, it is saying 'we have not been told what the LOD for DHCMT is and so we cannot know whether a concentration of 6 picograms/mL can be relied upon'.

d. RUSADA submitted that the answer is that the Lausanne Laboratory identified that the sample contained DHCMT in accordance with WADA TD2015IDCR and has reported an AAF based on the presence of DHCMT in the A Sample. The result can therefore be relied upon because it is based on data acquired from the confirmation procedure of the A Sample together with positive and negative quality control samples in the same analytical batch.

e. The DADC was wrong to conclude that *"the negligible concentration of metabolite was on the verge of authenticity"*. DHCMT is not a threshold substance; all that is required for the purposes of an ADRV therefore is the presence of any quantity of the prohibited substance.

f. The DADC was wrong to rely on the fact that samples tested prior to the Sample were *"clean"*. That is entirely irrelevant to the issue of liability for an ADRV in respect of the Samples.

g. The DADC was wrong to rely on the fact that the Athlete had been found not to have committed any ADRVs prior to the date on which the Samples were taken. That is entirely irrelevant to the issue of liability for an ADRV in respect of the A Sample.

Liability

52. As to liability, RUSADA submitted as follows:

a. The analysis undertaken by the Lausanne Laboratory shows the presence of DHCMT in the Athlete's A Sample. This presence constitutes an ADRV pursuant to Article 2.1 of the 2015 ADR which provides that the *"presence of a prohibited substance or its metabolites in an Athlete's Sample"* constitutes an ADRV.

b. Article 2.1.2 of the 2015 ADR provides that *"sufficient proof of anti-doping rule violation under Article 2.1 is established by … [the] presence of a Prohibited Substance*

or its Metabolites … in an Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analysed".

c. In this case, DHCMT has been found to be present in the Athlete's A Sample in circumstances where the Athlete waived analysis of his B Sample and the B Sample was not analysed.

d. The analysis carried out by the Lausanne Laboratory was compliant with the ISL.

e. Accordingly, the Athlete has committed an ADRV arising from the presence of a prohibited substance in the A Sample.

Sanctions

53. The submissions made on behalf of RUSADA in relation to sanctions may be summarised in the following way.

a. On the basis that the ADRV has been established, the mandatory sanction is a period of ineligibility of four years, as provided for in Article 10.2 of the 2015 ADR, unless the Athlete can establish that the ADRV *"was not intentional"*.

b. If the Athlete can establish that the ADRV was not intentional then the mandatory sanction is reduced to two years. This period may be reduced further if the Athlete can establish that he acted with "No Significant Fault or Negligence" as that term is defined in the 2015 ADR.

c. In each respect, the burden is on the Athlete.

d. In order to establish that he acted unintentionally the Athlete must show, on the balance of probabilities, that he did not know he was committing an ADRV, or did not know that there was a significant risk that his conduct might constitute or result in an ADRV or, if he was aware of such a risk, that he did not manifestly disregard that risk. The Athlete must do this by reference to the conduct that resulted in the DHCMT entering his system.

e. In order to establish that he acted with No Significant Fault or Negligence the Athlete must establish how the DHCMT entered his system. In his explanations, the Athlete does not address how the DHCMT entered his system. As a result, the Athlete cannot show that he acted unintentionally or that he acted with No Significant Fault or Negligence because he cannot establish the conduct that led to the ADRV arising or the means by which he ingested the DHCMT.

f. The Athlete was provisionally suspended from 19 May 2020 to 27 May 2021, a period of one year and eight days. Article 10.10.3.1 of the 2015 ADR permits this period to be credited against the period of ineligibility.

54. RUSADA sought the following relief:

"113. RUSADA respectfully requests that:

113.1 The Decision be set aside.

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

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

113.5 Costs be awarded to RUSADA in accordance with Rule 64.4 and Rule 64.5".

B. WADA's Submissions

55. WADA's overarching submissions were:

a. Any procedural irregularities have been cured by this appeal.

b. The Appealed Decision *"is fundamentally flawed"* in that, for reasons that were irrelevant the DADC found that an ADRV had not been established despite the fact that DHCMT had been correctly identified in the Athlete's A Sample.

c. The ADRV has been established on the evidence.

d. The Athlete should have received a period of ineligibility of four years.

Procedural Matters

56. WADA response to the procedural complaints raised by the Athlete was to submit that none of the complaints in fact amounted to a procedural irregularity, that these matters were not pressed at the hearing of the appeal and, in any event, have been cured by the de novo nature of the CAS hearing.

The Appealed Decision

57. WADA submitted that the decision of the DADC was flawed for the following reasons:

a. The DADC concluded that the ADRV was not established on the basis that *"no information has been given to the Committee about the Limit of Detection (LOD) for initial (screening) and confirming analysis …".*

b. This element is irrelevant. The limit of detection ("LOD") only relates to the validation of the method for the initial testing procedure (see WADA TD2019MRPL, para. 2.0). It is irrelevant to the specific analysis of samples, and does not relate in any way to the confirmation procedure, which is concerned with the identification of the prohibited substance.

c. The ISL explicitly clarifies that *"if successfully identified, a Non-Threshold Substance can be reported at a concentration below the estimated LOD of the Initial Testing Procedure or the LOI of the Confirmation Procedure".*

d. The DADC was therefore fundamentally wrong to place any weight on the fact that the Lausanne Laboratory's LOD of the initial testing procedure was not known to it.

e. The DADC was wrong to rely on the fact that samples tested prior to the Samples were *"clean"*. That is entirely irrelevant to the issue of liability for an ADRV in respect of the Sample.

Liability

58. On liability, WADA's submissions may be summarised in the following way:

a. Pursuant to Article 2.1 of the 2015 ADR, the presence of a prohibited substance, its metabolites or markers constitutes an ADRV.

b. Article 2.1.2 of the 2015 ADR adds that "*[s]ufficient proof of anti-doping rule violation is established by […] presence of a prohibited substance or its metabolites or markers in an Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analyzed"*.

c. Article 2.1.3 of the 2015 ADR provides that *"[e]xcepting those substances for which a quantitative threshold is specifically identified in the Prohibited List, the presence of any quantity of a prohibited substance or its metabolites or markers in an Athlete's Sample shall constitute an anti-doping rule violation"*.

d. DHCMT is a non-threshold substance prohibited at all times. Therefore, any concentration of DHCMT reported constitutes an ADRV.

e. It is important to note the process by which a sample is analysed in accordance with the ISL and the technical documents issued thereunder WADA TD2015IDCR and WADA TD2019MRPL. The analysis is performed in two phases. The first phase is the initial testing (or screening) procedure which is designed to identify whether the sample contains a prohibited substance. The second phase is the confirmation procedure in order to confirm the presence of a prohibited substance. In this context, where a non-threshold substance is involved, the confirmation procedure only requires identification of the prohibited substance. Indeed, non-threshold substances are substances *"for which identification, in compliance with* [WADA TD2015IDCR], *constitutes an Adverse Analytical Finding"*; and WADA TD2019MRPL adds that *"a confirmed identification of a Non-Threshold Substance at any concentration shall be reported as an Adverse Analytical Finding"*.

f. The Lausanne Laboratory re-analysed the A Sample in accordance with the above procedure. In a report dated 7 April 2020 and a later letter of 9 June 2022, the Lausanne Laboratory reported an AAF by reason of the presence of a metabolite of DHCMT in an estimated concentration of 7 pg/mL.

g. This analysis is consistent with the analysis conducted by the Moscow Laboratory in 2015. Subsequent to the McLaren Reports dated July and December 2016, in 2017 WADA was provided with the Moscow Laboratory's Laboratory Information Management System ("LIMS") data which recorded all samples analysed by the Moscow Laboratory until August 2015 and the prohibited substances detected in them (the "2015 LIMS"). In 2019, WADA also obtained a second version of the LIMS data (the "2019 LIMS").

h. Both the 2015 LIMS and the 2019 LIMS contained the following information in relation to the Athlete's A Sample (internal code 10133):

Id	code_int	id_substance	id_met	scr_conc	DT_scr
3755	10133	Dehydrochloromethyltestosterone	18-nor-17b-hydroxymethyl-17a-methyl-4-chlor-5b-androst-13-en-3a-ol	0.03	2015-08-10 10:45:56

i. It therefore appears that the Moscow Laboratory detected DHCMT in the Athlete's A Sample but failed to continue its analysis or report the positive result.

j. The ADRV has been established.

Sanctions

59. On the consequences that should follow from this, WADA submitted as follows:

a. According to Article 10.2.1.1 of the 2015 ADR, the period of ineligibility shall be four years where the violation does not involve a specified substance, unless the Athlete can establish that the violation was not intentional.

b. Article 10.2.3 of the 2015 ADR sets out that the term "intentional" requires that the Athlete *"engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk"*.

c. The Athlete bears the burden of establishing that the violation was not intentional. For this, save in exceptional cases, an athlete must establish how the substance entered his body: see *e.g.* CAS 2017/A/5248; CAS 2018/A/5570. This is not such an exceptional case where the Athlete has established lack of intent without establishing source of the prohibited substance. This means that the violation has to be deemed intentional.

d. The Athlete must therefore prove, by evidence and on the balance of probabilities, the origin of the DHCMT. In order to establish the origin of a prohibited substance by the required balance of probability, the Athlete must provide actual evidence as opposed to mere speculation. This he has not done. The Athlete has not put forward any explanation for his ADRV but has *"merely denied his guilt"*. That is insufficient.

e. As a result, the Athlete has not discharged his burden in this respect and the sanction for the Athlete's ADRV is four years.

60. WADA sought the following relief:

"34. WADA respectfully requests the Panel to rule as follows:

1. The appeal of WADA is admissible.

2. The decision rendered on 27 May 2021 by the Disciplinary Anti-Doping Committee of RUSADA in the matter of Abdusalam Gadisov is set aside.

3. Abdusalam Gadisov is found to have committed an anti-doping rule violation.

4. Abdusalam Gadisov is sanctioned with a four-year period of ineligibility starting on the date on which the CAS award enters into force. Any period of provisional suspension or ineligibility effectively served by Abdusalam Gadisov 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 Abdusalam Gadisov from and including 6 August 2015 are disqualified, with all resulting consequences (including forfeiture of medals, points and prizes).

6. The arbitration costs shall be borne by the Respondents jointly and severally.

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

C. The Athlete's Submissions

61. In the context of the proceedings in front of the DADC, the Athlete provided an "Explanation Note" as referred to at paragraphs [9] above and an "Explanatory Note" as referred to at paragraph [12] above.

62. In the first, the Athlete said as follows (in full):

"I, Gadisov Abdusalam, a wrestler, retired in 2016. Russian Wrestling Federation received a letter to me concerning AAF for turinabol in my sample, collected on August 6, 2015 in Kislovodsk training camp. The situation is not clear for me and I decided to submit my explanations with the reasons of my doubts about the matter. In 2015 I passed the doping sample to WADA on the European Games in Baku (13-18 of June), my result was negative. On 6th of August, in 50 days after the doping control on the European Games, I passed my sample to RUSADA in Kislovodsk training camp. Unfortunately, I do not remember if I passed this sample, but even if I did, the result was negative. But in 5 years it turned out to be positive for turinabol, which is very strange for me. The next doping test for WADA was in a month, on the World Championship in Las Vegas (7-12 of September), the result was negative. Please, explain me how could it be that turinabol, with rather long period of excretion of 90-180 days according to different sources, was not detected by two WADA tests, but was found in the 5-year old sample collected by RUSADA. This situation is absolutely unclear for me taking into account the above-mentioned facts.

I completely deny my guilt and ask you to clear the matter taking into account my reasons given in the explanation note".

63. In the second, submitted on 27 August 2020, the Athlete said as follows (also in full):

"Dear [Dr Ayotte], gives an analytical assessment of my doping samples taken only in the Moscow anti-doping laboratory 'RUSADA'. In her conclusion, she criticizes the work of the Moscow Laboratory and gives a rough assessment of the doping tests conducted. Speaking about the weak efficiency of the Moscow Laboratory, I also emphasise that the Laboratory in

Lausanne has a very good limit for detecting prohibited substances, and only it (the Laboratory in Lausanne) it is able to detect violations of anti-doping rules. In my previous explanatory note, I spoke about the doping tests that I passed for 8 years, not only to the RUSADA laboratory, but also to the International Anti-Doping Laboratories of the WADA agency - this is the year 2008-2016. There are no violations in these samples! Thus, in the words of [Dr Ayotte], there is a great desire to denigrate the work of the Moscow Anti-Doping Laboratory, taking my doping tests as a basis. I see in this a clear political interest in discrediting the work of RUSADA, as well as athletes who represent the Russian Federation. I ask you to take into account the fact that the doping samples cited by [Dr Ayotte] in [her] report were submitted by me to other International Anti-Doping laboratories of the WADA agency in a short time, at various international competitions, it can be checked. And there is no information about prohibited substances there, and there was not. I completely deny my guilt. I want to hear intelligible arguments, and not assumptions and analytical assessments made biased".

64. The Athlete also provided a further statement on 2 November 2020 when he said (as is set out in paragraph [14]): *"The matter is I do not know how I can comment these 'violations' as I haven't violated anything. Your organisation has been monitoring this and confirming for a long period of time. I do not know what has happened".*

Procedural Matters

65. In CAS 2021/A/8381 (but not in CAS 2021/A/8263), the Athlete raised *"a few procedural points that constitute in his opinion a clear and unequivocal violation of his fundamental due process rights, namely the violation of Mr Gadisov's right to be heard, the violation of the principle of equality of the parties and the violation of the principle of equality of arms".*

66. In summary, the Athlete's submissions in this respect were as follows:

a. There was a delay in the Athlete receiving the LDP in respect of the Sample, brought about by the uncollaborative attitude of WADA and RUSADA.

b. By reason of the WADA requirement, set forth in the ISL, that WADA accredited laboratories are not to provide analytical services in a doping control adjudication unless specifically requested by the responsible testing authority or results management authority, it was difficult for the Athlete to locate an expert in this matter. This *"impediment"* amounted to *"nothing more than a violation of* [the Athlete's] *right to be heard".*

c. The Athlete's urine sample collected on 11 September 2015 was not reported in ADAMS, in violation of the ISL and of the Athlete's right to be heard.

d. The *"very ambiguous reasoning"* given by the CAS in respect of the decisions to grant partial time extensions to the Athlete amounted to a violation of the Athlete's right to be heard.

Liability

67. On liability, the submissions put to the Sole Arbitrator on behalf of the Athlete may be summarised in the following way:

a. The Lausanne Laboratory did not comply with the ISL. Two main issues arise *"that may seriously question the proper conduct"* of the analysis by the Lausanne Laboratory of the Athlete's A Sample.

b. The first of these arises as a result of the discrepancies between the number of the seals affixed to the shipment box allegedly containing the Athlete's A Sample. The International Standard for Testing and Investigations effective March 2019 (the "ISTI") requires, by Article 6.3.4(a), the sample collection authority to use a unique numbering system when sealing samples.

c. On 30 April 2019, the Moscow Laboratory dispatched a shipment box containing the Athlete's A Sample to the Lausanne Laboratory. The latter received the shipment box on 3 May 2019. The numbers of the seals affixed to the shipment box before its receipt by the Lausanne Laboratory were 001034, 001039, and 001040, while the numbers of the seals affixed to the shipment box after receipt by the Lausanne Laboratory were 001248 and 001179. These discrepancies are *"not understood"*. If it turned out that the package received by the Lausanne Laboratory is not the same as that send by the Moscow Laboratory *"then it cannot be excluded … that the shipment box had been tampered with"*.

d. The second issue is that matrix effects *"could have led to a false AAF"*. Pursuant to the ISL, Article 7.2.1.1, *"the reporting of a false AAF … is not acceptable during the course of a routine Analytical testing conducted by a laboratory"*.

e. According to Dr Temerdashev, the expert relied upon by the Athlete, the retention times of the three MRM transitions for Sample US2 are identical, while for the Athlete's A Sample *"a shift in the peak maximum is observed for MRM transition m/z 381-343 along with the change in its symmetry compared to the other transitions. This can be due to matrix effects which mainly exist where the concentration of an Analyte found in a collected Sample is low"*.

f. Matrix effects can dramatically influence analysis for both identification and quantification of an analyte and can lead to false negative results due to ion suppression or false positive results when, for instance, the signal of the internal standard undergoes a suppression greater than that of the analyte.

g. It therefore cannot be excluded that matrix effects could have led to reporting a false AAF for the Athlete's A-Sample.

h. In light of these issues, *"the reporting of a false AAF by Lausanne Laboratory amounts to nothing more than a non-compliance with the [ISL]"*.

Sanctions

68. On sanctions, the Athlete made the following submissions.

a. In the event that RUSADA (or WADA) succeeds in establishing to the comfortable satisfaction of the Sole Arbitrator that an ADRV has been committed as a result of the presence of DHCMT in his A Sample, the "*initial*" period of ineligibility is four years.

b. Across the two appeals, the Athlete submitted that: pursuant to Article 10.2 of the 2015 ADR, the period of ineligibility must be reduced to two years on the basis that he can establish that the ADRV was not intentional and/or pursuant to Article 10.4 of the 2015 ADR, the period of ineligibility must be eliminated on the basis that he bears No Fault or Negligence and/or pursuant to Article 10.5 of the 2015 ADR, the sanction must be reduced to a reprimand and no period of ineligibility imposed on the basis that he bears No Significant Fault or Negligence and that DHCMT in his A Sample came from a Contaminated Product.

c. It was said that the Athlete *"is firmly convinced that the potential source of the M3 of the DHCMT detected in his sample could potentially be a contaminated product"*.

d. In this respect, the Athlete relies on CAS 2018/A/5583 where (a) the panel noted that the 25-30 pg/mL of DHCMT found in the athlete's sample, which was *"also considered to be a very low concentration of M3"*, was possibly due to the ingestion of a contaminated product; and (b) it was established that the presence of the DHCMT in the athlete's sample could be due to intake of the contaminated product 10 months earlier, and that a window of 10 months between the taking of a substance and the detection of the same is unusual but not impossible.

e. The Athlete submitted that CAS 2018/A/5583 is *"definitely applicable to Mr Gadisov's case"* since it transpires from Mr Gadisov's ADAMS profile that all the samples that were collected from Mr Gadisov prior to the collection of the Sample on 6 August 2015, namely the samples collected between 2012 and 17 July 2015, were reported as negative.

f. In relation to the possibility of a contaminated product being the source of the DHCMT, the Athlete refers to Dr Temerdashev's expert opinion that *"if there are negative test results 40 days before the current testing, it is impossible to exclude the possibility of entrance of residual amounts of turinabol into the body through the consumption of contaminated products or dietary supplements"*. This is also in keeping with Dr de Boer's opinion that given the very low concentration of DHCMT detected in the Athlete's A Sample, *"it must be concluded that the way of administration could be by means of a 'true contaminated supplement'"*.

g. The Athlete also relies on Dr de Boer's opinion that *"it can be safely stated based on the negative results of frequent anti-doping control tests, that non-intentional intake of DHCMT is probable"*.

h. It is *"unrealistic"* to expect from Mr Gadisov to recall precisely what kind of product or substance he has taken seven years ago. Requiring Mr Gadisov to provide such evidence would amount to a legal requirement to achieve an impossible proof which, according to Judge Jean-Paul Costa, either leads to a reversal of the burden of proof or to the quasi-irrefutable assumption of an anti-doping rule violation.

i. The Athlete also invokes his clean record: his *"clean record of negative samples between 2012 and 2016 cannot but firmly and unequivocally demonstrate* [his] *full commitment to clean sport and fair play. It is unthinkable that an athlete with a proven clean doping record could consider using a performance-enhancing substance that, in the world of sports doping, is a dinosaur whose notoriety dates back 50 years"* in order to argue that he had no intent to commit an ADRV in the meaning of Article 10.2 of the 2015 ADR.

j. It therefore can be concluded that, on the balance of probabilities, the Athlete *"had no intent to commit an ADRV nor does he bear any Fault or Negligence or any Significant Fault or Negligence in relationship to the ADRV"*. If an ADRV should indeed be found to be established, *"the four-year Ineligibility Period normally imposed … shall be completely eliminated"*.

k. If a period of ineligibility is to be imposed, Article 10.10.1 of the 2015 ADR provides that, where there have been substantial delays in the hearing process or other aspects of doping control not attributable to the Athlete, the Sole Arbitrator may start the period of ineligibility as early as the date of sample collection. If more than one year has elapsed between the analysis of the A Sample and the notification of the adverse findings, but no explanation for this substantial delay has been proffered, it is appropriate to start the period of ineligibility at the date of the last sample collection, see CAS 2012/A/2725.

l. Therefore, if a period of ineligibility is to be imposed *"it should start as early as the date of sample collection on 6 August 2015"*. The Athlete had to wait more than a year until he was notified of the positive testing results of the re-analysis of his A Sample (the Lausanne Laboratory received the A Sample on 3 May 2019 and reported the testing results on 3 April 2020, and RUSADA reported the positive result to the Athlete on 19 May 2020). Neither the Lausanne Laboratory nor RUSADA provided any explanation as to the reasons behind such substantial delay. Moreover, the Athlete had to wait from 19 May 2020 to 10 August 2021 to obtain the decision by the DADC.

m. In accordance with Article 10.10.3.1 of the 2015 ADR, if a provisional suspension is imposed and respected by the Athlete, then the Athlete shall receive a credit for such period of provisional suspension against any period of ineligibility which may ultimately be imposed. In the present case, RUSADA imposed a provisional suspension on the Athlete on 19 May 2020. The Athlete has fully observed the provisional suspension until the handing down of the Appealed Decision on 10 August 2021. The Athlete should therefore receive a credit amounting to 14 months and 3 weeks against any period of ineligibility which may ultimately be imposed by the Sole Arbitrator in the present proceedings.

n. As to disqualification, the starting position is that all competitive results from the date of the positive sample through to the commencement of any provisional suspension or ineligibility period should disqualified, unless fairness requires otherwise. In this case, fairness requires that there be no disqualification of the Athlete's results after 6 August 2015 (the date of the Sample collection). A negative doping control reported between the date of the test leading to the ADRV and the commencement of the ineligibility period is an indication that the use of a prohibited substance has not affected results. It is, moreover, "universally accepted" that less than 100 pg/mL of DHCMT *"produce absolutely no athletic performance-enhancing benefits".*

o. In the present case, the analysis of a sample collected from the Athlete on 11 September 2015, *i.e., "a bit more than a month after the collection of Mr Gadisov's Sample on 6 August 2015"*, during the 2015 UWW World Wrestling Championships held from 7 to 12 September 2015 was reported as negative. In light of this, as well as the very low concentration of DHCMT detected in the Athlete's Sample, fairness requires that all competitive results of the Athlete obtained from the date his A Sample was collected, *i.e.,* from 6 August 2015, until the commencement of his provisional suspension, *i.e.,*

until 19 May 2020, be maintained, including the Athlete's silver medal obtained during the 2015 World Wrestling Championships held in September 2015.

69. Based on the above, in CAS 2021/A/8263 the Athlete requested the following relief:

"55. Mr Gadisov respectfully requests the Sole Arbitrator to rule as follows:

1. The appeal of RUSADA is rejected.

2. The decision rendered by the DACR on 10 August 2021 is upheld.

3. The arbitration costs shall be borne by RUSADA

4. Mr Gadisov is granted a contribution to his legal and other costs".

70. Similarly, in CAS 2021/A/8381 the Athlete requested the following relief:

"Mr Gadisov respectfully request the Panel to rule as follows:

1. The appeal of WADA is rejected.

2. The decision rendered on 27 may [sic] *2021 is upheld.*

3. The arbitration costs shall be borne by WADA

4. Mr Gadisov is granted a contribution to his legal and other costs".

VI. JURISDICTION

71. 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".

72. As outlined above, the Parties signed and returned the Order of Procedure, issued by the CAS Court Office on behalf of the Sole Arbitrator which noted, *inter alia*, that: (a) RUSADA and WADA rely on Rule 13.2.1 and 13.2.3 of the 2015 ADR (RUSADA) and Rule 15.2.1 and 15.2.3 of the 2021 ADR (WADA) as conferring jurisdiction on the CAS; and (b) the jurisdiction of the CAS was not contested by any of the Parties and was confirmed by the signature of the Order of Procedure.

73. The Sole Arbitrator, therefore, confirms that CAS has jurisdiction to decide these appeals.

VII. ADMISSIBILITY OF THE APPEAL

74. As to admissibility, it was common ground between the Parties that:

a. The CAS Code provides at Article R49 that *"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned … the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against"*.

b. The 2021 ADR provide:

i. By Article 15.2.3.3, that the deadline for an appeal other than by WADA is 21 days from the date on which the decision being appealed is received by the appealing party.

ii. By Article 15.2.3.4, that the deadline for WADA's appeal *"shall be the later of: a) Twenty-one (21) days from the expiry of the time for filing an appeal by other parties,* [and] *b) Twenty-one (21) days after WADA's receipt of a complete file relating to the decision"*.

c. The Appealed Decision was received by RUSADA on 10 August 2021. The Statement of Appeal was filed by RUSADA on 26 August 2021, and therefore within the twenty-one day time period.

d. WADA received the RUSADA case file (at least in part) on 13 September 2021. WADA's Statement of Appeal was filed on 4 October 2021, and therefore within the twenty-one day time period.

75. There was no objection by the Athlete as to the admissibility of either appeal.

76. These appeals are therefore admissible (as also confirmed by the Parties by signing the Order of Procedure).

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. Accordingly, the applicable regulations are the ADR and to the extent that such rules do not deal with an issue, then the law of the Russian Federation as domicile of the DADC is to be applied subsidiarily.

79. The ADR in place at the time of the violation in question are the 2015 ADR and these rules shall apply to the merits of the appeals. According to the legal principle tempus regit actum, procedural matters are governed by the edition of the rules applicable at the time of these appeals, namely the 2021 ADR. This was common ground between the Parties.

IX. THE MERITS

80. The Sole Arbitrator notes that, while the submissions made and evidence adduced by the Parties have been carefully considered in their entirety, the Sole Arbitrator only sets forth below those matters considered necessary to explain the reasoning and decide the dispute.

81. The merits of the appeal shall be considered in three sections: procedural matters, liability, and sanctions.

A. Procedural Matters

82. As noted above, in CAS 2021/A/8381 the Athlete raised *"a few procedural points"* that amounted, so it was submitted, to a violation of the Athlete's due process rights, including the right to be heard and the right for equality of arms.

83. These may readily be disposed because, as was submitted by the Respondents, these matters were not pressed at the hearing of the appeal and, in any event, any such irregularity has been cured by the *de novo* nature of the CAS hearing, as to which see, *e.g.*, CAS 2004/A/714 at para.11 (and the cases cited therein).

84. Further:

a. It was said that there was a delay in the Athlete receiving the LDP in respect of the Sample, brought about by the uncollaborative attitude of WADA and RUSADA. The LDP was however provided to the Athlete well in advance of the hearing and there is no suggestion that any delay caused prejudice. In any event, the Athlete had the opportunity to request the LDP before the hearing before the DADC but chose not to do so.

b. It was said that the Athlete found it difficult to retain an expert in light of the WADA requirement that WADA accredited laboratories are not to provide analytical services in a doping control adjudication unless requested by the responsible testing authority or results management authority. That may have been so but the Athlete was able to retain expert assistance for the purposes of this matter well in advance of the hearing.

c. It was said that the failure to record the Athlete's urine sample collected on 11 September 2015 in ADAMS was a violation of his right to be heard. This is not understood; if there was such a failure it is difficult to see how it is to be characterised as a violation of the right to be heard.

d. It was said that the CAS provided *"very ambiguous reasoning"* when granting the Athlete a partial extension of time. That is not a procedural irregularity and is not a violation of the Athlete's right to be heard.

B. Liability

1. The Alleged ADRV

85. At the outset, it is to be noted that nothing was said by the Athlete in answer to the various criticisms made by RUSADA and WADA of the Appealed Decision, and there was no attempt by the Athlete to sustain the Appealed Decision on its own terms. In any event, the Sole

Arbitrator agrees that the Appealed Decision is flawed for the very reasons put forward by RUSADA and WADA, see in particular what is said at paragraphs 51 et seq. above.

86. The task for the Sole Arbitrator is therefore to decide, de novo, whether an ADRV has been committed here on the basis of the material put forward by the Parties.

87. RUSADA and WADA allege that the Athlete has committed a violation of Article 2.1 of the 2015 ADR. For the sake of good order, this rule provides as follows:

"II. Definition of Doping, Rule Violations

Doping is defined as the occurrence of one or more of the anti-doping rule violations set forth in Article 2.1 through Article 2.10 of these Rules.

The purpose of Article II is to specify the circumstances and conduct which constitute anti-doping rule violations. Hearings in doping cases will proceed based on the assertion that one or more of these specific rules have been violated.

Athletes or other Persons shall be responsible for knowing what constitutes an anti-doping rule violation and the substances and methods which have been included on the Prohibited List.

The following constitute anti-doping rule violations:

2.1. Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample

2.1.1. It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.

2.1.2 Sufficient proof of 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 an 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 B Sample confirms the presence of the Prohibited Substances or its Metabolites or Markers found in the Athlete's Sample ...

2.1.3. Excepting those substances for which a quantitative threshold is specifically identified in the Prohibited List, the presence of any quantity of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample shall constitute an anti-doping rule violation.

2.1.4. As an exception to the general rule of Article 2.1, the Prohibited List or International Standards may establish special criteria for the evaluation of Prohibited Substances that can also be produced endogenously".

88. The 2015 ADR go on to provide, by Article 3, for the burden and standard of proof and for the methods by which the underlying facts for an ADRV are to be established.

"III Proof of Doping

3.1 Burdens and Standards of Proof

The ADA shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the 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 the Rules places the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.

3.2. Methods of Establishing Facts and Presumptions

Facts related to anti-doping rule violations may be established by any reliable means, including admissions. The following rules of proof shall be applicable in doping cases.

3.2.1. Analytical methods or decision limits approved by WADA after consultation within the relevant scientific community and which have been the subject of peer review are presumed to be scientifically valid. Any Athlete or other Person seeking to rebut this presumption of scientific validity shall, as a condition precedent to any such challenge, first notify WADA of the challenge and the basis of the challenge. CAS, on its own initiative, may also inform WADA of any such challenge. At WADA's request, the CAS panel shall appoint an appropriate scientific expert to assist the panel in its evaluation of the challenge. Within 10 days of WADA's receipt of such notice, and WADA 's receipt of the CAS file, WADA shall also have the right to intervene as a party, appear amicus curiae or otherwise provide evidence in such proceeding.

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 ADA 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, these Rules 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 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 ADA 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".

89. The ADRV alleged in these appeals is the violation of Article 2.1 of the 2015 ADR by reason of the presence of a prohibited substance or its metabolites or markers in the Athlete's A

Sample. The Athlete waived his right to have the B Sample analysed. That being so, according to Article 2.1.2 of the 2015 ADR (see above) sufficient proof of an ADRV is established by the presence of a prohibited substance or its metabolites or markers in an Athlete's A Sample.

90. In the Sole Arbitrator's view, it is clear from the evidence from the Lausanne Laboratory that the Athlete's A Sample did contain a metabolite of DHCMT in an estimated concentration of 7 pg/mL. There is no dispute that DHCMT is a non-threshold substance prohibited at all times and that, accordingly, the presence of any concentration of DHCMT constitutes an ADRV.

91. The two 'defences' to liability proffered on the part of the Athlete were (a) the uncertainty in relation to the chain of custody and (b) the uncertainty of the effect of the "matrix effect" on the analytical results reported by the Lausanne Laboratory, or, put differently, the possibility that the positive analytical finding could have been created by something else than the prohibited substance itself.

92. Before dealing with these 'defences', it is to be noted that the Athlete challenged the independence of Drs Kuuranne and Ayotte by reason of their relationship with WADA, and therefore the reliability of their evidence. During cross-examination, Drs Kuuranne and Ayotte were asked whether they were scientific members of certain WADA working groups which provide expert advice, recommendations and guidance to WADA's leadership team. This they confirmed and explained that (a) the work on these working groups was done on an unremunerated basis and (b) their evidence in these appeals (and any other cases where called by WADA) was in respect of the work they had undertaken in the Lausanne Laboratory and was not to be regarded as evidence "for" or "on behalf of" WADA in any way. It was nevertheless submitted in closing by counsel for the Athlete that these experts were not independent. The Sole Arbitrator notes that this is not something that was put to either witness during cross-examination. In any event, the Sole Arbitrator is satisfied that Drs Kuuranne and Ayotte are independent and expert and that there was no basis for the challenge.

93. As to the first 'defence', it was said that the Moscow Laboratory delivered a shipment box containing the Athlete's A Sample bearing seal numbers 001034, 001039, and 001040 and yet, according to the Lausanne Laboratory's LDP, the seal numbers affixed to the shipment box after its reception by the Lausanne Laboratory were 001248 and 001179. This matter was explained by Dr Kuuranne in her evidence before the Sole Arbitrator. In this case, multiple samples were sent from the Moscow Laboratory to the Lausanne Laboratory (for long term storage) in multiple storage boxes delivered by multiple vehicles. The seal numbers 001248 and 001179 mentioned in the LDP refer to the particular vehicles which transported the Athlete's Sample to the Lausanne Laboratory; that is, the Athlete's Sample was contained in a shipment box bearing three seal numbers, *i.e.*, 001034, 001039, and 001040, and that shipment box was transported by a vehicle bearing the seal numbers 001248 and 001179. There was therefore, according Dr Kuuranne, no break in the chain of custody. This explanation was not challenged by the Athlete and provides a complete answer to the Athlete's concerns in this regard.

94. As to the second 'defence', the matrix effect, this was explained as the effect on an analytical assay caused by components of the sample other than the specific compound which is to be analysed (the analyte). Matrix effects are observed either as a loss in response, resulting in an underestimation of the amount of analyte, or as an increase in response, producing an overestimated result, and in that sense can give rise to a false positive.

95. It was said by Dr Temerdashev that the retention times for the MRM (*i.e.*, multiple reaction monitoring) transitions were identical for the positive control while the analysis of the A Sample showed *"a shift in the peak maximum is observed for MRM transition m/z 381-343 with the change in its symmetry compared to the other transitions"*. According to Dr Temerdashev, *"this can be related to matrix effects, which can be minor and influence only at low concentrations"*.

96. When asked about this at the hearing, Dr Kuuranne said that the matrix effect is recognised as a phenomenon that may suppress or enhance the signal, but that it was accounted for (by which she meant excluded) in the process of identification employed by the Lausanne Laboratory, which process accorded with the WADA technical document on identification, WADA TD2015IDCR. She said that she *"disagreed"* that there was any material difference in retention times (*"a matter of milliseconds"*) and *"strongly disagreed"* with the suggestion that there may have been a false positive. Dr Kuuranne said that the conclusion of the Lausanne Laboratory that *"Identification criteria (WADA TD2015IDCR) are met for dehydrochloromethyltestosterone metabolite 'M3' in the sample A3868936"* took account of the potential effects of the matrix effect.

97. In this respect, it is important to recognise the import of Articles 3.1 and 3.2.2 of the 2015 ADR (set out above). By Article 3.2.2, there is a presumption that the Lausanne Laboratory conducted its analysis and custodial procedures in accordance with the ISL (and thus also WADA TD2015IDCR). It is open to the Athlete to rebut this presumption by establishing that there was a departure from the ISL and that such departure *"could reasonably have caused"* the AAF. The Athlete must do so, however, by proving on the balance of probabilities that there has been a departure, *i.e.*, it was more probable than not that there was a departure by the Lausanne Laboratory, and that such departure could reasonably have caused the AAF reported by it in relation to the Athlete.

98. In the Sole Arbitrator's view the evidence of Dr Temerdashev on behalf of the Athlete does not go far enough to rebut the presumption. Indeed, that is not how Dr Temerdashev expressed his view. He did not go so far as to say that there was a false positive brought about by the matrix effect; he said only that the shape of the transitions suggested that there might be. Nor, when asked, was Dr Temerdashev able to identify any specific departure from the ISL or WADA TD2015IDCR by the Lausanne Laboratory.

99. In any event, Dr Kuuranne was very clear in her explanation, which was not objected to by Dr Temerdashev (or by the Athlete), that the matrix effect had been accounted for in the process of identification adopted by the Lausanne Laboratory such that the stated conclusion of the Lausanne Laboratory took account of the potential effects of the matrix effect. It is also important to note as well that Dr de Boer was of the view that there was no *"official departure from the relevant regulations regarding the identification of HHCMT [sic] 'M3'"* and that *"no indications were found that DHCMT 'M3' was identified inadequately"*.

100. All that being so, the presumption under Article 3.2.2 2015 ADR stands, as does the reported finding of the Lausanne Laboratory.

101. Accordingly, taking all matters into account, the Sole Arbitrator is comfortably satisfied that the Athlete has committed a violation of Article 2.1 of the 2015 ADR.

C. Sanctions

102. In light of the determination on liability, it is necessary to consider sanctions. The Sole Arbitrator must consider (a) the period of ineligibility and (b) the disqualification of the Athlete's results after the commission of the ADRV.

103. As has been noted above, across the two appeals, the Athlete invoked, expressly or implicitly, Articles 10.2, 10.4 and 10.5 of the 2015 ADR. It was argued that the period of ineligibility must be reduced to two years on the basis that he can establish, under Article 10.2, that the ADRV was not intentional. It was also argued that pursuant to Article 10.4 of the 2015 ADR, the period of ineligibility must be eliminated on the basis that he bears No Fault or Negligence and/or pursuant to Article 10.5 of the 2015 ADR, the sanction must be reduced to a reprimand and no period of ineligibility imposed on the basis that he bears No Significant Fault or Negligence and that DHCMT in his A Sample came from a Contaminated Product.

1. Period of Ineligibility

104. Article 10.2 of the 2015 ADR provides as follows:

"10.2 Ineligibility for Presence, Use or Attempted Use or Possession of a Prohibited Substance or Prohibited Method

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

10.2.1 The period of Ineligibility shall be four years where:

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

10.2.1.2. The anti-doping rule violation involves a Specified Substance and the ADA can establish that the anti-doping rule violation was intentional.

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

10.2.3. As used in Articles 10.2 and 10.3, the term "intentional" is meant to identify those Athletes who cheat. The term, therefore, requires that the Athlete or other Person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not "intentional" if the substance is a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered "intentional" if the substance is not a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance".

105. Articles 10.4 and 10.5 of the 2015 ADR, in relation to the reduction or elimination of the period of ineligibility, provide in relevant part as follows:

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

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

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

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

10.5.1.1. Specified Substances

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

10.5.1.2. Contaminated Products

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

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

If an Athlete or other Person establishes in an individual case where Article 10.5.1 is not applicable, that he or she bears No Significant Fault or Negligence, then, subject to further reduction or elimination as provided in Article 10.6, the otherwise applicable period of Ineligibility may be reduced based on the Athlete or other Person's degree of Fault …".

106. In the 2015 ADR:

a. Fault means: *"Any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete or other Person's degree of Fault include, for example, the Athlete's or other Person's experience, whether the Athlete or other Person is a Minor, special considerations such as impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In assessing the Athlete's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behavior. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Athlete only has a short time left in his or her career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.5.1 or 10.5.2".*

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

c. No Significant Fault or Negligence means: *"The Athlete or other Person's establishing that his or her Fault or Negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the anti-doping rule violation. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system".*

d. Contaminated Product means: *"A product that contains a Prohibited Substance that is not disclosed on the product label or in information available in a reasonable Internet search".*

107. In light of the provisions just rehearsed, the position for these appeals is as follows:

a. If the Athlete is adjudged to have violated Article 2.1 of the 2015 ADR by reason of the presence of DHCMT, a non-specified substance, the period of ineligibility is four years, unless the Athlete can establish that the ADRV was not intentional.

b. In this context, as articulated in Article 10.2.3 of the 2015 ADR, "intentional" is meant to identify those athletes who cheat and requires that the athlete engaged in conduct which he or she knew constituted an ADRV or knew that there was a significant risk that the conduct might constitute or result in an ADRV and manifestly disregarded that risk.

c. It follows that "not intentional" requires a showing by the Athlete (the burden being on him to the balance of probabilities per Article 3.1 of the 2015 ADR) that he did <u>not</u> 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 manifestly disregarded that risk.

d. In this context, it is important to note that it is not expressly required in the 2015 ADR that the Athlete, in order to establish that the ADRV was not intentional, must establish how the prohibited substance entered his system. This is consistent with the position in CAS 2016/A/4534 (concerning the 2015 FINA DCR concerning the same provisions) and the Sole Arbitrator adopts what was said there (including in particular the passages at paras 35-37) and in CAS 2017/A/5016 & 5036 at paras 122-123; and see also CAS 2020/A/7579 & 2020/A/7580 at paras 109-113. (There are cases to the contrary, such as CAS 2017/A/5248 and CAS 2017/A/5295, but, with respect, in the view of the Sole Arbitrator none grapples adequately with the absence in the text of the requirement to prove the source.) Nevertheless, as was made clear in those cases, while it is right to say that it is open to the athlete to prove lack of intention without proving source, it would be extremely rare for an athlete to be able to do so such that, where an athlete cannot prove source, it leaves the "narrowest of corridors" through which the athlete must pass in order to discharge the burden which lies upon them. The Sole Arbitrator adopts and endorses what was said by the panel in CAS 2017/A/5016 & 5036 at paras 123-124 (emphasis added):

"123. The Panel, indeed, observes that it could be de facto difficult for an athlete to establish lack of intent to commit an anti-doping rule violation demonstrated by presence of a prohibited substance in his sample if he cannot even establish the source of such substance: proof of source would be an important, even critical, first step in any exculpation of intent, because intent, or its lack, are more easily demonstrated and/or verified with respect to an identified "route of ingestion". However, the Panel can envisage the possibility that it could be persuaded by an athlete's assertion of lack of intent, where it is sufficiently supported by all the circumstances and context of his or her case, even if, in the opinion of the majority of the Panel, such a situation may inevitably be extremely rare: where an athlete cannot prove source, it leaves the narrowest of corridors through which such athlete must pass to discharge the burden which lies upon him.

124. The foregoing, in fact, does not mean that the Athlete can simply plead his lack of intent without giving any convincing explanations, to prove, by a balance of probability, that he did not engage in a conduct which he knew constituted an anti-doping rule violation or knew that there was a significant risk that said conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. The Panel repeats that the Athlete, even though he is not bound to prove the source of the prohibited substance, has to show, on the basis of the objective circumstances of the anti-doping rule violation and his behaviour, that specific circumstances exist disproving his intent to dope.

125. In this context, therefore, it is this Panel's opinion that, in order to disprove intent, an athlete may not merely speculate as to the possible existence of a number of conceivable explanations for the AAF (such as sabotage, manipulation, contamination, pollution, accidental use, etc.) and then further speculate as to which appears the most likely of those possibilities to conclude that such possibility excludes intent. There is in fact a wealth of CAS jurisprudence stating that a protestation of innocence, the lack of sporting incentive to dope, or mere speculation by an athlete as to what may have happened does not satisfy the required standard of proof (balance of probability) and that the mere allegation of a possible occurrence of a fact cannot amount to a demonstration that that fact did actually occur (CAS 2010/A/2268; CAS 2014/A/3820): unverified hypotheses are not sufficient (CAS 99/A/234-235). Instead, the CAS has been clear that an athlete has a stringent requirement to offer persuasive evidence that the explanation he offers for an AAF is more likely than not to be correct, by providing specific, objective and persuasive evidence of his submissions. In short, the Panel cannot base its decision on some speculative guess uncorroborated in any manner".

e. If the Athlete can establish that the ADRV was not intentional, then the period of ineligibility shall, subject to what follows, be two years.

f. The period of ineligibility may be eliminated if the Athlete can establish (the burden being on him under Article 10.4 of the 2015 ADR and the required standard being the balance of probabilities per Article 3.1 of the 2015 ADR) that he bears no Fault or Negligence, *i.e.*, a showing by the Athlete that he did not know or suspect, even with the exercise of utmost caution, that he had used the DHCMT. In this context, in contrast to the position set forth above, it is an express requirement that the Athlete must establish how the DHCMT entered his system.

g. The period of ineligibility may be reduced if the Athlete can establish (the burden being on him under Article 10.5.1.2 of the 2015 ADR and the required standard being the balance of probabilities per Article 3.1 of the 2015 ADR) both of the following things:

   i. that he bears no Significant Fault or Negligence, *i.e.*, that his Fault or Negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the ADRV. In this context, the Athlete must (once again) establish how the DHCMT entered his system; and

   ii. that the DHCMT came from a Contaminated Product, namely a product that contained DHCMT that was not disclosed on the product label or in information available in a reasonable internet search.

h. If the Athlete can establish these two things, the period of ineligibility is to be in the range between, at one end, a reprimand and, at the other end, two years ineligibility, depending on the Athlete's degree of Fault, as assessed by (here) the Sole Arbitrator.

i. Finally, if the facts do not concern a Specified Substance or a Contaminated Product, it is open to the Athlete to establish that, pursuant to the general provision of Article 10.5.2, he bears no Significant Fault or Negligence in which case the period of ineligibility may be reduced upon an assessment of the Athlete's degree of fault, but the reduced period of ineligibility may not be less than one-half of the period of ineligibility otherwise applicable.

108. It is not at all clear how and if so to what extent the element of intentionality in Article 10.2 of the 2015 WADC overlaps with the elements of fault in Articles 10.4 and 10.5 of the 2015 WADC. In this regard, however, the Sole Arbitrator gratefully adopts the approach suggested in Rigozzi, A., Haas, U., Wisnosky, E and Viret, M. (2015). Breaking down the process for determining a basic sanction under the 2015 World Anti-Doping Code. *Int Sports Law J* 15:3-48 (hereafter "Rigozzi *et al* 2015"), namely to determine the basic sanction that is to be applied according to the facts of the matter by first considering whether a fault-related reduction under Article 10.4 (No Fault or Negligence) or Article 10.5 (No Significant Fault or Negligence) is to apply and, if not, then consider whether the Athlete is able to establish that the violation is not intentional. The Sole Arbitrator agrees with Rigozzi *et al* 2015 that this represents a simple and straightforward interpretation of the sanctioning regime of the 2015 WADC, the intended operation of which is difficult to fathom. As is said in the article, if an athlete is able to establish that one of the fault-related provisions applies, that should be sufficient to establish that the violation was not intentional and there is no need to establish, separately and differently, that the violation was not intentional.

109. As to the first, it is important to note that, whether one is concerned with elimination of the period of ineligibility under Article 10.4 of the 2015 ADR on the basis of No Fault or Negligence or the reduction of the period of ineligibility under Article 10.5 of the 2015 ADR on the basis of No Significant Fault or Negligence, it is an express requirement that the Athlete must establish how the DHCMT entered his system.

110. The immediate (and insurmountable) difficulty for the Athlete is that he adduced no evidence at all in support of his contention as to the source of the DHCMT. Indeed, even in his Answer the highest it was put was that the Athlete was firmly convinced *"that the potential source [of the DHCMT] … could potentially be a contaminated product"*.

111. Further, when called upon by RUSADA to provide an explanation for the presence of the DHCMT in his sample all that the Athlete was able to offer was: *"The matter is I do not know how I can comment these 'violations' as I haven't violated anything. Your organisation has been monitoring this and confirming for a long period of time. I do not know what has happened"*. Added to that is the fact that when asked at the time of the doping control test on 6 August 2015 the Athlete said nothing at all about a supplement (or other product) that may have been the source of contamination. According to Dr de Boer, he was told that, despite this 'nil return' by the Athlete on the contemporaneous doping control form, the Athlete *"did use unspecified supplements"*. But there was no evidence as to this at all.

112. Moreover, in the present proceedings the Athlete has not submitted any evidence in support of his allegation that the positive test result has been caused by the unintentional ingestion of a Contaminated Product.

113. It does not avail the Athlete to invoke Dr Temerdashev's comments that *"if there are negative test results 40 days before the current testing, it is impossible to exclude the possibility of entrance of residual amounts of turinabol into the body through the consumption of contaminated products or dietary supplements"*, or Dr de Boer's opinion that, given the very low concentration of DHCMT detected in the Athlete's A Sample *"it must be concluded that the way of administration could be by means of a 'true contaminated supplement'"*. Indeed, during the hearing Dr de Boer fairly conceded that the level of DHCMT of 7 pg/ml does not, of itself, indicate whether or not the intake was intentional and that, instead, one must have regard to all the circumstances.

114. Even on their face, these comments are matters of speculation, not evidence, and what is required, as a matter of well-settled CAS jurisprudence, is for the Athlete to discharge his onus in this respect on the balance of probabilities by reference to evidence. It follows that the Athlete has not established the source of the prohibited substance or that the cause of the positive finding was a Contaminated Product.

115. Recall as well that "Contaminated Product" is a defined term, which means a product that contained the prohibited substance that was not disclosed on the product label or in information available in a reasonable internet search. There was no evidence at all in this respect from the Athlete. It follows therefore that, when one considers whether a fault-related reduction applies in these circumstances, the answer is no.

116. In accordance with the approach in Rigozzi *et al* 2015, the next question to ask is whether the Athlete is in a position to establish "otherwise" that the violation was not intentional (in accordance with Article 10.2.3 of the 2015 ADR).

117. As to this, the Athlete submits that his clean record of negative samples between 2012 and 2016 demonstrates his commitment to clean sport and fair play and that Dr de Boer's opinion was that, in light of these frequent negative results, it was *"probable"* that any intake of DHCMT was unintentional.

118. In the Sole Arbitrator's view, the mere fact that the Athlete enjoyed a clean record during the period 2012 to 2016 does not, without more, discharge the Athlete's burden of showing that he did not act intentionally in the context of the present ADRV. It does not show, on the balance of probabilities, that (as described above) the Athlete 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 manifestly disregarded that risk. It is something to be weighed in the balance, to be sure, but it is insufficient in and of itself to meet that burden. As was observed in 2017/A/5016 & 5036, even though the Athlete in the context of Article 10.2.3 of the 2015 ADR is not obliged to prove the source of the prohibited substance, he nevertheless has to show, on the basis of the objective circumstances of the ADRV and his behaviour, that specific circumstances exist disproving his intent to commit an ADRV. This he has not done.

119. In these circumstances, the Sole Arbitrator is of the clear view that the Athlete has failed to discharge the burden upon him to establish what is required for the elimination or the reduction of the period of ineligibility and/or that his conduct was not intentional with the result that, therefore, the applicable period of ineligibility remains four years.

120. As to when that period should commence, the applicable rule is Article 10.10 of the 2015 ADR, which provides (in relevant part) as follows:

"10.10 Commencement of Ineligibility Period

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 the Ineligibility is accepted or otherwise imposed.

10.10.1 Delays Not Attributable to the Athlete or Other Person

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

10.10.3 Credit for Provisional Suspension or Period of Ineligibility Served

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

121. In these appeals, the Athlete argued that the start date for any period of ineligibility should be backdated to the date of the doping control itself by reason of the substantial delays in the hearing process or other aspects of doping control not attributable to the Athlete. It was said that the Lausanne Laboratory received the A Sample on 3 May 2019 and yet did not report the testing results until 3 April 2020, with RUSADA reporting the positive result to the Athlete

on 19 May 2020. The Athlete complained that no explanation has been provided for such delay.

122. The questions for the Sole Arbitrator are two-fold. Is this period of delay to be characterised as a substantial delay not attributable to the Athlete? If so, is it appropriate to exercise the discretion provided for by Article 10.10.1 of the 2015 ADR?

123. As to the first, it is important to note that the delay complained of by the Athlete is that period of time between the receipt of the Sample by the Lausanne Laboratory on 3 May 2019 and the notification of the testing results to the Athlete on 19 May 2020, some 12 months later. Does that delay amount to a substantial delay not attributable to the Athlete?

124. An explanation was provided by WADA at the hearing. It was said that, as part of the process by which RUSADA was to be reinstated as compliant with the WADC, the Moscow Laboratory (a) in January 2019 provided to WADA its LIMS data and (b) in June 2019 sent to the Lausanne Laboratory a vast number (circa 3,000) of samples held by the Moscow Laboratory for long term storage and possible re-analysis. It was necessary therefore for WADA to scrutinise the LIMS data in order to form a view as to which of the samples should be re-analysed and then perform the re-analysis, which accounts for the delay of which the Athlete complains.

125. There is no reason not to accept that explanation; indeed it was not challenged by the Athlete. It is understandable that any delay may be frustrating for the Athlete but this period of time does not, in the Sole Arbitrator's view, amount to a substantial delay.

126. In any event, even if it were to be so regarded, the Sole Arbitrator would not, in these circumstances, exercise the discretion provided for in Article 10.10.1 of the 2015 ADR. As was submitted by WADA, any program of re-analysis – such as the one here of the vast number of Moscow Laboratory samples – will inevitably mean an elongated period of time from the date of the sample to the finalisation of the matter. If the period of time to effect each re-analysis was to amount to a substantial delay for the purposes of Article 10.10.1 of the 2015 ADR, then this would amount to a systematic back-dating of the commencement of the period of ineligibility for any re-analysis which would undermine the purpose, efficacy and importance of any re-analysis program.

127. In accordance therefore with Article 10.10 of the 2015 ADR, the period of ineligibility should commence "on the date of the hearing decision providing for ineligibility", *i.e.,* the date of this Award. In this case, the Athlete was provisionally suspended from 19 May 2020 to 27 May 2021, a period of one year and eight (8) days. Such period shall be credited against the period of ineligibility.

2. Disqualification

128. RUSADA and WADA seek the disqualification of all competitive results obtained by the Athlete from and including 6 August 2015 (that being the date of the doping control) to the date of this Award, with all resulting consequences (including forfeiture of medals, points and prizes).

129. The doping control test in these appeals was conducted out of competition. It follows therefore that those provisions relating to automatic disqualification for in-competition testing do not

apply and that the following provisions as to disqualification in relation to out-of-competition testing are relevant:

"X. Sanctions on Individuals

…

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

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

130. The Sample was collected on 6 August 2015. According therefore to this provision, all competitive results obtained by the Athlete from that date should be disqualified – "unless fairness requires otherwise".

131. The Athlete submitted that fairness did require otherwise here. The principal argument put forward by the Athlete is that it is unlikely that the presence here of the prohibited substance affected results. It was said that (a) the fact that there was a negative doping test between the date of the ADRV and the commencement of the ineligibility period is an indication that the presence of the DHCMT has not affected the results and (b) the concentration of DHCMT found here (*i.e.* 7 pg/mL) *"produce*[d] *absolutely no athletic performance-enhancing benefits"*.

132. WADA and RUSADA submitted that the burden was on the Athlete to show that fairness required a different, shorter period of time, but that the Athlete had not discharged his burden in this regard.

133. In this respect, the Sole Arbitrator observes as follows:

a. The starting position is that all competitive results from the date on which the positive sample is collected are to be disqualified. This flows from the use of the word 'shall' in Article 10.8 of the 2015 ADR.

b. The period of disqualification is ordinarily from the date of the collection of the positive sample through the commencement of any provisional suspension or period of ineligibility. Importantly, it does not mean that the period of disqualification should catch all competitive results up to the date of the award.

c. There is nothing in the rule either way as to who bears the burden of showing that the exception is to be applied in any given circumstances.

d. There is no burden on the ADO to show that disqualification from the date of the positive sample through to provisional suspension is fair.

e. However, it is obvious that the exception will ordinarily be invoked by an athlete in an endeavour to minimise the length and breadth of the period of disqualification. If an athlete argues for a shorter period of time then the athlete will, of course, bear the burden of persuading the panel that fairness so requires.

f. Any consideration of fairness must include not only fairness to the athlete in question but also fairness to the other athletes who competed with that athlete and fairness to the integrity of the sport in general.

g. None of this is to say, however, that a CAS panel (or other tribunal) is somehow precluded from bringing into account notions of fairness when assessing the period of disqualification. The rule says that all competitive results obtained from the date a positive sample was collected through the commencement of any provisional suspension or ineligibility, shall be disqualified *"unless fairness requires otherwise"*. If a panel forms the view that fairness does require otherwise then it is open to the panel to say so and there is nothing in the rule or in the CAS jurisprudence or as a matter of principle to suggest otherwise.

134. In the Sole Arbitrator's view this is of a piece with established CAS jurisprudence to the effect that the rule is subject to a 'general principle of fairness' and that a CAS panel has a discretion to modify this period of time should fairness so dictate: see, *e.g.*, CAS 2017/O/5039; CAS 2019/O/6153. The latter case provides helpful guidance in this respect:

> *"120. In the absence of evidence by the Athlete, who carries the burden of proof in regard to the "fairness exception", the Sole Arbitrator cannot assess or assume factors such as unaffected results or financial hardship stemming from the disqualification. The Sole Arbitrator is able, however, to review the Athlete's degree of fault and issues such as delays in results management and the overall length of the disqualification relevant in particular to a re-testing situation.*
>
> *…*
>
> *127. The re-testing of the Athlete's 2011 Sample took place over five (5) years and three (3) months following the 2011 Sample collection and the re-testing of the Athlete's 2012 Sample took place over four (4) years and eight (8) months following the 2012 Sample collection. The Sole Arbitrator recognises that anti-doping organisations are entitled to re-test samples at any time within the applicable statutes of limitations, and that they tend to await a later period as retesting is typically done once and they want to benefit from the most advanced science and testing process available. Nevertheless, the Athlete should not be penalized by and disqualified for an excessive period merely as a result of a decision of the anti-doping organisations not to proceed with the re-testing at an earlier date. The Sole Arbitrator notes that once the Samples were re-tested the anti-doping organisation has acted diligently and without delay. …*
>
> *130. CAS case law confirms the broad discretion of panels in adjusting the disqualification period to the circumstances of a specific case. Taking into account, on the one hand, the seriousness of the ADRVs in the present case, the fact that multiple ADRVs occurred and the argued degree of fault by the Athlete and, on the other hand, the period of over five years of requested disqualification without evidence of use of prohibited substances (but for the two confirmed ones) when the governing body could*

have theoretically brought this case earlier, as well as the sanction already imposed, the Sole Arbitrator finds that the principles of proportionality and fairness in line with vast CAS jurisprudence do not support disqualification of results for such an extended period of time".

135. On this issue the Sole Arbitrator adopts the view taken in CAS 2020/O/6759 [89]-[90]:

"89. Therefore, the general rule is that, in addition to the automatic disqualification of the results in the competition where the Adverse Analytical Finding has been produced, all the Athlete's competitive results obtained from the date of the commission of the ADRV through the start of any provisional suspension or ineligibility period shall be disqualified. In this regard, the Sole Arbitrator notes that the retroactive disqualification of the competitive results of an athlete that has committed an ADRV is fair and necessary to restore the integrity of all the sporting competitions in which he or she competed, rectifying the record books in the interest of sport. Deciding otherwise would be tantamount to reward the deceiver and would not be fair at all vis-à-vis the rest of the athletes that did not use Prohibited Substances.

90. Notwithstanding this, it is also important not to forget that the primary reason behind this measure (i.e. the disqualification of the sporting results of an athlete that cheated) is not to sanction him or her, but to ensure fair play and equal opportunities for all athletes, annulling those results achieved by those who acted or is reasonable to believe that have acted dishonestly vis-à-vis their competitors, being involved in any kind of ADRV, which is one of the most despicable breaches of the fundamental principles of sport. But, at the same time, it should be taken into account that, in certain exceptional circumstances, the strict application of the disqualification rule can produce an unjust result. In particular, this may be the case when the potential disqualification period covers a very long term, which is normally the case when the facts leading to the ADRV took place long before the adjudicating proceedings started which usually occurs when they are opened as a result of the re-testing of a sample or of the uncover of a sophisticated doping scheme. In addition, in this type of cases it may be difficult to prove that the athlete at stake used prohibited substances or methods during such a long period of time".

136. In these appeals, the potential period of disqualification does cover a long term (in the order of seven years) and there is no evidence to prove that the Athlete used prohibited substances during such a long period of time, or otherwise violated the ADR.

137. The Sole Arbitrator therefore takes the view that, in this case, there are exceptional circumstances which militate against a strict application of the rule, *i.e.*, fairness does require otherwise: (a) the events in question took place in 2015, long before these arbitral proceedings, (b) the ADRV relates solely to those events, and (c) there is no suggestion or evidence that there has been any use of prohibited substances on the part of the Athlete over that period of time. Having taken this view it is unnecessary to consider whether or not the results achieved by the Athlete were, as a matter of fact, affected by the prohibited substance.

138. These circumstances do, in the Sole Arbitrator's view, set this matter apart from the ordinary and require, in the interest of fairness, a reduction of the period of disqualification so that the period comports with the applicable period of ineligibility. The Sole Arbitrator thus takes the view that fairness requires that all competitive results for a period of four years from 6 August 2015 through to and including 5 August 2019 should be disqualified (with all attendant consequences).

X. CONCLUSION

139. In view of all the above considerations, the Sole Arbitrator holds and determines that the appeals brought by RUSADA and WADA should succeed. In particular:

a. The Sole Arbitrator is comfortably satisfied that the Athlete's sample contained a prohibited substance in violation of Article 2.1 of the 2015 ADR.

b. The Athlete is sanctioned with a period of ineligibility of four (4) years starting from the date of this Award, but with credit to be given for the period already served in provisional suspension, being from 19 May 2020 to 27 May 2021.

c. All of the Athlete's competitive results for a period of four (4) years from 6 August 2015 through to and including 5 August 2019 shall be disqualified, with all of the resulting consequences including the forfeiture of any titles, awards, medals, points and prize and appearance money.

XI. COSTS

(…).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Appeal filed on 26 August 2021 by the Russian Anti-Doping Agency against the decision of the Disciplinary Anti-Doping Committee of the Russian Anti-Doping Agency No. 124/2021 rendered on 27 May 2021 (*CAS 2021/A/8263 Russian Anti-Doping Agency v. Abdusalam Gadisov*) is upheld.

2. The Appeal filed on 4 October 2021 by the World Anti-Doping Agency against the decision of the Disciplinary Anti-Doping Committee of the Russian Anti-Doping Agency No. 124/2021 rendered on 27 May 2021 (*CAS 2021/A/8381 World Anti-Doping Agency v. Russian Anti-Doping Agency & Abdusalam Gadisov*) is upheld.

3. The decision of the Disciplinary Anti-Doping Committee of the Russian Anti-Doping Agency No. 124/2021 rendered on 27 May 2021 is set aside.

4. Abdusalam Gadisov is found to have committed an anti-doping rule violation under Article 2.1 of the All-Russian Anti-Doping Rules of June 18, 2015.

5. A period of four (4) years ineligibility is imposed on Abdusalam Gadisov, starting on the date of the present Award. The period of provisional suspension served by Abdusalam Gadisov between 19 May 2020 and 27 May 2021 shall be credited against the period of ineligibility imposed.

6. All competitive results of Abdusalam Gadisov from 6 August 2015 until 5 August 2019 are disqualified, with all the resulting consequences (including forfeiture of any titles, awards, medals, profits, prizes, and appearance money).

7. (…).

8. (…).

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

Seat of arbitration: Lausanne, Switzerland
Date: 13 July 2023

THE COURT OF ARBITRATION FOR SPORT

James Drake KC
Sole Arbitrator