



2022/ADD/50 World Triathlon v. Yulia Yelistratova

**ARBITRAL AWARD**

delivered by the

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

sitting in the following composition:

**Sole Arbitrator: Dr.sc. Petra Pocrnic Perica LL.M, Arbitrator, Gingsins, Switzerland**

**in the arbitration between**

**World Triathlon, Switzerland**

Appearing through the International Testing Agency (ITA), represented by Ms. Dominique Leroux-Lacroix, Head of Legal Affairs, and Ms. Ayesha Talpade, Senior Legal Counsel

**Claimant**

**and**

**Yulia Yelistratova, Ukraine**

**Respondent**

## I. PARTIES

1. World Triathlon (“TRI” or the “Claimant”) is the world governing body for the sport of triathlon. TRI is a Signatory of the World Anti-Doping Code (“WADA Code”) in which capacity has enacted TRI Anti-Doping Rules (“TRI ADR”). TRI has delegated the result management and disciplinary prosecutions in relation to adjudications of the consequences of adverse analytical findings (“AAF”) to the International Testing Agency (“ITA”).
2. Ms. Yulia Yelistratova (the “Athlete” or the “Respondent”) is an elite triathlete from Ukraine born on 15 February 1988. Ms. Yelistratova is a member of the Ukrainian Triathlon federation (“UTF”) and is considered as an International-level Athlete within the meaning of the TRI ADR.

## II. FACTUAL BACKGROUND

3. Below is the summary of the relevant facts and allegations based on the Parties’ submissions on the merits of this Claim. Additional facts and allegations found in the Parties’ written submissions may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, she refers in this Award only to the submissions and evidence she considers necessary to explain her reasoning.
4. The Sole Arbitrator will consider first the general factual background and then the factual background related to the Athlete.
5. On 5 June 2021, the Athlete participated in the 2021 Europe Triathlon Cup Dnipro held in Ukraine and placed first. The Athlete was selected for an In-Competition (“IC”) doping control and sample no. A and B-4557668 was collected from her (“IC Sample”).
6. By virtue of the Athlete’s results at the Competition, she was selected to represent Ukraine to participate in the Olympic Games Tokyo 2020 (the “Tokyo Games”). This would have been her 4th Olympic Games.
7. Ms. Yelistratova declared on her Doping Control Form (“DCF”) associated with sample no. 4557668 that she had taken the following medications or supplements within the seven days prior to her doping control: “*Vit D, Omega 3, Nasonex, Stepsils*”. She also confirmed on her DCF that the sample collection was undertaken in accordance with the relevant World Anti-Doping Agency (“WADA”) International Standards.
8. The A and B-samples were transferred for analysis to the WADA-accredited laboratory in Warsaw, Poland (the “Warsaw Laboratory”).
9. On 24 July 2021, the Warsaw Laboratory reported an Adverse Analytical Finding (“AAF”) for the prohibited substance recombinant Erythropoietin (“EPO”) in sample no. A-4557668 (the “First AAF”).
10. Such substance is prohibited at all times and is classified as a non-specified substance under “S2. Peptide, Hormones, Growth Factors, Related Substances, and Mimetics” of the 2021 WADA Prohibited List.
11. Prior to reporting the First AAF and in line with the WADA International Standards for Laboratories (“ISL”), the Warsaw Laboratory sought a second opinion in the form of an expert report from Dr. Christian Reichel and Dr. Günter Gmeiner from the WADA- accredited laboratory in Seibersdorf, Austria. Both experts confirmed that the analysis of sample A-4557668 complied

with the positivity criteria as described in the applicable WADA Technical Document – Harmonization of Analysis and Reporting of Erythropoiesis Simulating Agents (ESAs) By Electrophoretic Techniques (“WADA TD2014EPO”).

12. Upon receipt of the First AAF, the ITA (on behalf of TRI) conducted the *Initial Review* of the result under Article 7.2 of the TRI ADR and Article 5.1.1 of the International Standards for Results Management (“ISRM”) and found that, no applicable Therapeutic Use Exemption (“TUE”) had been or was in the process of being granted to the Athlete either by TRI or her National Anti-Doping Agency there was no apparent departure from the International Standard for Testing and Investigations (“ISTI”) or ISL that could undermine the validity of the First AAF, and the First AAF was not caused by the ingestion of the Prohibited Substance through a permitted route insofar as EPO is banned irrespective of the route of ingestion.
13. On 25 July 2021 at 20:13 pm (Tokyo time), the ITA (on behalf of TRI) notified Ms. Yelistratova of the First AAF and imposed a mandatory Provisional Suspension pursuant to Article 7.4.1 of the TRI ADR with immediate effect (the “First Notification”).
14. Through the AAF notification, the Athlete was informed of the potential consequences of the First AAF and her procedural rights - including the right to request the B-sample counter-analysis, a Provisional Hearing or an expedited final hearing.
15. Further, considering that Ms. Yelistratova was scheduled to participate in the Women’s Individual Event at the Tokyo Olympic Games on 27 July 2021 at 6.30 am, she was requested to confirm to the ITA whether or not she was challenging the imposition of the Provisional Suspension and requested for a Provisional Hearing at the earliest convenience.
16. On 26 July 2021, Ms. Yelistratova requested for a Provisional Hearing before the CAS ADD to determine the limited question of whether the Provisional Suspension imposed on her should be lifted or maintained.
17. Ms. Yelistratova also provided her initial explanations on the source of her First AAF (the “First Explanations”). The Athlete stated first and foremost that she has always respected and abided by the Code and TRI ADR. Although at this stage she could not confidently prove how recombinant EPO had been found in her IC Sample, she put forth the following factors for consideration: (i) that 20 days prior to her sample collection, she got back from a training camp in altitude; (ii) 4 days before her sample collection, she was vaccinated against Covid-19 what she believed that her Covid-19 vaccination could have affected the metabolic processes in her body and impacted her haematological profile.
18. On 26 July 2021 at around 11.51 am, Ms. Yelistratova provided further explanations for the source of the EPO in her sample (the “Second Explanations”). She reiterated that the source of her First AAF could be the Covid-19 vaccine she received prior to the sample collection. Ms. Yelistratova further alleged that her Covid-19 vaccine may have had an impact on her haematological profile and that a better understanding of COVID-19 pathophysiology, in particular haematological disorders and its impact on athletes’ health and analyses findings (urine, blood etc.) is required.
19. Considering the proximity to the Athlete’s scheduled competition at the Tokyo Games, out of abundance of caution, the ITA obtained the raw analytical data pertaining to the First AAF from the Warsaw Laboratory and sought the expert opinion of Prof. Martial Saugy (“Prof. Saugy”) on the analytical finding. Upon review of the data, Prof. Saugy confirmed that the analysis of sample no. 4557668 evidenced the presence of recombinant erythropoietin in the Athlete’s sample.

20. On 26 July 2021, as requested by Ms. Yelistratova, the ITA filed an Application to CAS ADD under Article 7.4.3 of the TRI ADR with a view of determining the sole issue of whether the Provisional Suspension imposed on the Athlete by the ITA should be lifted or confirmed.
21. On 26 July 2021, the Provisional Hearing was held in the matter in the presence of the Athlete. On the same date, CAS ADD issued an Operative Part of the Arbitral Award maintaining the Provisional Suspension imposed by TRI on Ms. Yelistratova. Consequently, the Athlete did not participate in the Tokyo Games.
22. On 2 August 2021, the Warsaw Laboratory provided the Laboratory Documentation Package (“LDP”) for the First AAF to the ITA, which had been requested upon receipt of the First AAF.
23. On 23 July 2021 (and prior to the Warsaw Laboratory reporting the first AAF), Ms. Yelistratova was subject to an OOC test in Tokyo, Japan, and blood sample no. 713774 and urine sample no. 3753310 were collected from her. The doping control was conducted by the ITA under the Testing Authority of the International Olympic Committee (“IOC”).
24. On 28 July 2021 (thereby, after the Provisional Hearing), the WADA-accredited Laboratory in Tokyo, Japan (“Tokyo Laboratory”) reported AAFs for recombinant Erythropoietin in both blood sample no. 713774 (“Second AAF”) and urine sample no. 3753310 (“Third AAF”).
25. Considering that Ms. Yelistratova had been provisionally suspended by TRI on 25 July 2021 for the First AAF and consequently did not participate in the Tokyo Games, the Second and the Third AAFs did not trigger consequences under the IOC Anti-Doping Rules (“IOC ADR”).
26. Consequently, on 2 August 2021, as per Article 7.1.2 of the IOC ADR and Article 10.2 of the ISTI, the IOC transferred the ownership and ensuing Results Management Authority of sample numbers 713774 and 3753310 to TRI to conduct the Results Management of the Second and Third AAF as per the applicable TRI ADR.
27. On 4 August 2021, the ITA informed Ms. Yelistratova of the Second AAF and Third AAF (“Second Notification”). Through the Second Notification, the Athlete was made aware that considering that she provided the samples where the Second and Third AAFs were detected on 23 July 2021, i.e. 2 days prior to being notified of the First AAF (i.e. 25 July 2021), in application of Article 10.9.3 of the TRI ADR, all three AAFs would be jointly considered as a single first violation. The Athlete was again explained her procedural rights, the consequences of her ADRV and the potential grounds for reducing the applicable period of Ineligibility.
28. On 6 August 2021, Ms. Yelistratova informed the ITA that the Second Notification had changed her opinion on the current situation and that she admitted the ADRV and waived her right to B-sample analysis for all three AAFs (“Third Explanations”).
29. Through this correspondence, Ms. Yelistratova changed her explanations on how the prohibited substance entered her system on two separate occasions (in three samples) and resulted in AAFs. Ms. Yelistratova no longer claimed that the presence of exogenous EPO could be due to the Covid-19 vaccine. The Athlete now alleged that she had most likely been a victim of dishonesty and fraud by a person claiming to be a “doctor”; that she had trusted medical professionals and had taken “vitamin supplements” from a doctor whom she did not know in person. Furthermore, that this doctor had prepared an “individual pharmacological program” for her and had supplied her with medication. She also stated that the doctor had claimed that he worked with many international-level athletes and only used permitted substances. Lastly, the Athlete claimed that she was willing to cooperate with the ITA to “search for the person” who caused her positive findings.

30. On 12 August 2021, the ITA informed the Athlete that as she had waived her right to B-sample analysis for all three AAFs, in line with the Article 2.1.2 of the TRI ADR it was undisputed that she had committed an ADRV for Presence of a Prohibited Substance in her samples. The ITA also noted the Athlete's willingness to cooperate and informed her that the ITA would schedule an interview to discuss this further.
31. On 16 August 2021, the ITA informed the Athlete that the ITA Intelligence and Investigation Department ("ITA I&I") would schedule a phone call with her to discuss the circumstances surrounding her ADRV.
32. On 18 August 2021, an interview was conducted between ITA I&I and Ms. Yelistratova.
33. On 30 September 2021, the ITA informed the Athlete that after review of the entire case file, the ITA considered that she had not adduced any evidence satisfying any of the mitigation grounds, including Substantial Assistance. The Athlete was informed that Aggravating Circumstances (within the meaning of Article 10.4 of the TRI ADR) applied to her present case and accordingly, the applicable consequences for her ADRV was a period of ineligibility of six years. However, considering that the Athlete had "admitted to the ADRV" after being charged by the ITA, as per Article 10.8.1, the ITA was willing to offer the Athlete a one-year reduction in the period of Ineligibility. The ITA thus gave the Athlete the opportunity to either accept the period of Ineligibility and enter into an Agreement on Consequences or, alternatively, expressly refuse the proposed Consequences and request for the matter to be referred for adjudication to CAS ADD.
34. On 13 October 2021, the Athlete responded to the ITA's correspondence providing "without prejudice information for settlement purposes" on the circumstances of her AAF.
35. On 16 November 2021, the ITA responded to the Athlete reiterating the ITA's conclusions on the proposed terms of the Agreement on Consequences. The ITA once again gave the Athlete the opportunity to either accept the proposed Consequences or refer the matter to CAS ADD.
36. On 22 November 2021, Ms. Yelistratova informed the ITA that she requested for the matter to be referred for adjudication to CAS ADD, acting as the first instance body of TRI.
37. After the war broke out in Ukraine in February 2022, it was TRI's and ITA's assumption that the Athlete may not be able to adequately participate in the CAS ADD proceedings.
38. On 10 May 2022, the ITA wrote to the Athlete and informed her that to protect her due process rights, the ITA was following up on her ADRV. The ITA requested from the Athlete to confirm whether she was still willing to proceed before CAS ADD. The ITA also reminded the Athlete that the regime of Substantial Assistance was still available to her with a view of obtaining a credit to be computed against the Ineligibility period, and it was explained the requirements of Substantial Assistance and invited her to come forward with any information that she may wish to share with the ITA.
39. On 16 May 2022, the Ukrainian Triathlon Federation (the "UTF") wrote to the ITA reiterating the contents of the Athlete's Third Explanations on the "Sabotage Theory". More particularly, UTF stated that, prior to the Tokyo Olympic Games, a Russian "sports doctor" called "Sergey" had contacted Ms. Yelistratova. This doctor proposed to improve Ms. Yelistratova's performance by prescribing "vitamins". The medication was in the form of injections, but were claimed by the doctor as permitted in sports. The doctor further told Ms. Yelistratova that many international-level athletes were using the same medication and it had helped those athletes to improve their performance. Ms. Yelistratova considered the information given to her by the doctor to be reliable and decided to use injections.

40. The UTF referred to the current political relations between Ukraine and Russia to state that “fraud is one of the elements of current war as well” and, accordingly, requested the ITA to only impose a one-year period of Ineligibility for the Athlete’s ADRV, i.e. running from 25 July 2021 until 24 July 2022.
41. On 24 May 2022, Ms. Yelistratova responded to the ITA stating that she was unwilling to accept the ITA’s proposed period of Ineligibility.
42. The Athlete further stated that she “now realized” how the Prohibited Substance had entered her system and regretted her mistake. She reiterated that she did not knowingly take the Prohibited Substance and highlighted the “doctor” who had given her the medication was Russian and considering the political situation between Russia and Ukraine, the Russian doctor could have purposely sabotaged her.
43. Consequently, since Ms. Yelistratova was unwilling to accept the ITA’s proposed period of the ITA referred the present proceedings to the CAS ADD for a determination of the applicable and appropriate Consequences for Ms. Yelistratova’s ADRV.

### **III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

44. On 14 September 2022 ITA, on behalf of the World Triathlon, ITA filed a Request for Arbitration with the Anti-Doping Division of the Court of Arbitration for Sport (the “CAS ADD”) against Ms. Yulia Yelistratova .
45. On 15 September 2022, the CAS ADD notified the Request for Arbitration to Ms. Yelistratova, ITA and the Ukrainian Triathlon Federation. It also delivered the Request for Arbitration *via* email with the link to access the whole case file, since due to the current situation in Ukraine, DHL is unable to deliver any correspondence. By the same letter, the CAS ADD informed the Athlete of the deadline to file her Answer to the Request for Arbitration.
46. On the same day, the CAS ADD informed WADA of the receipt of the Request for Arbitration in the present matter, with the note that it is not directed against WADA. However according to the Arbitration Rules of the CAS ADD (the “Rules”) and the Code of Sport-related Arbitration (the “Code”), if WADA intends to participate as a party, it shall file with the CAS an application to this effect together with the reasons therefore within the prescribed deadline.
47. On 16 September 2022, WADA informed the CAS ADD it does not want to participate in the present arbitration but reserves its right to appeal if needed.
48. On 16 September 2022, the CAS ADD informed the Parties and the Ukrainian Triathlon Federation of WADA’s letter.
49. On 22 September 2022, the CAS ADD informed the Parties and the Ukrainian Triathlon Federation that the Parties failed to jointly nominate a Sole Arbitrator, who shall be then appointed by the President of the CAS ADD in accordance with the Article A16 of the CAS ADD Rules.
50. On 4 October 2022, the Athlete submitted her Answer to the Request of Arbitration. The Answer was submitted in a form of e mail, without any attachments.
51. On 5 October 2022, the CAS ADD informed the Parties and the Ukrainian Triathlon Federation of the Athlete’s e mail, attached it to their attention, and invited the Athlete to confirm whether her email of 4 October 2022 shall be deemed as her Answer to the Request of Arbitration. By the same

letter, the Parties were invited to state where they would like to hold a hearing in the present arbitration.

52. On 6 October 2022, the Athlete confirmed that her email of 4 October 2022 shall be deemed as her Answer to the Request of Arbitration but also highlighted that she cannot attend the hearing in person or even send a representative.
53. On 7 October 2022, the CAS ADD informed the Parties of the Athlete's email from 6 October 2022, and invited the Athlete to state whether she requests the hearing to be held via videoconference.
54. On 10 October 2022, the Athlete informed the CAS ADD that she requests the hearing to be held via videoconference.
55. On 11 October 2022, the CAS ADD informed the Parties of the Athlete's email of 10 October 2022. By the same letter, they were informed that the President of the ADD Division has nominated Ms Petra Pocrnic Perica, Arbitrator, Gingins, Switzerland, to act as Sole Arbitrator in this procedure.
56. On 4 November 2022, the CAS ADD, on behalf of the Sole Arbitrator, and in accordance with the Article A19.4 of the ADD Rules, invited the Claimant to produce a transcript of the Athlete's interview with ITA I&I (which was mentioned in the Request for Arbitration and relied upon by the Claimant). The Parties were further informed that the Sole Arbitrator has decided to hold a hearing in this matter, that she would be available on 22 December 2022, and the Parties were invited to inform the CAS of any justified impossibility to attend the hearing at the aforementioned date.
57. On 11 November 2022, the Claimant informed the CAS ADD, that as mentioned in the ITA's Request (paragraph 45), on 18 August 2021 an interview was conducted between the ITA I&I and Ms. Yelistratova. The purpose of this interview was an intelligence gathering and fact-finding exercise to determine whether any further actions were needed from an I&I perspective as required by the WADA Code. The interview with Ms. Yelistratova was not recorded and hence no transcript of the interview is available. That being said, for the sake of completeness and procedural good faith, the ITA mentioned that, on 19 August 2021, the ITA I&I department prepared an internal interview report "IV Report" containing *inter alia* a summary of the discussions with the Athlete. Being an internal document, the IV report also contains confidential information not directly pertaining to the present matter. The Claimant stressed that should the Sole Arbitrator in her entire discretion find that the IV Report is useful for the assessment of this case, the ITA would be available to provide it. However, in such case, the ITA respectfully requested to redact the confidential information prior to submitting the IV Report.
58. As to the proposed hearing date on 22 December 2022, the Claimant informed the CAS ADD that the ITA's Counsel in charge of this matter was unfortunately not available due to prior commitments and the onset of the Christmas holidays which applies as well to the TRI representative.
59. On 14 November 2022, the Athlete informed the CAS ADD that she is available for a hearing on 22 December 2022, and that she is sorry that there is no transcript of her interview with the ITA, but that she would like that the hearing be held as soon as possible.
60. On 25 November 2022, the CAS ADD informed the Parties that, after examining the Parties' positions, and in accordance with Article A19.4 of the ADD Rules, the Sole Arbitrator considers that the "IV Report" might be of relevance in this matter and, therefore, invited the Claimant to produce a redacted version of such "IV Report" – after removing all confidential elements which do not pertain to the matter at stake – no later than 9 December 2022.

61. Finally, taking into consideration the Claimant's unavailability on 22 December 2022, the CAS ADD informed the Parties that the Sole Arbitrator would be available on 20 and 23 January 2023.
62. On 5 December 2022, the CAS ADD informed the Parties that in view of the Parties' availability, the hearing will be held by videoconference on 23 January 2023 by videoconference.
63. On 9 December 2022, the Claimant provided redacted version of the Interview Report of 19 August 2021, a copy of which was delivered for the Athlete's attention.
64. On 12 December 2022, the CAS ADD acknowledged receipt of the Athlete's email of 11 December 2022, whereby she confirmed that she will be attending the hearing on 23 January 2023. By the same letter, the Athlete was invited to file the communication between her, ITA and TRI by 19 December 2022, after which date the Claimant will be given a chance to comment on the Athlete's new documents.
65. On 12 December 2022, the Claimant informed the CAS ADD of the list of participants for the hearing.
66. On 18 December 2022, the Athlete sent an email to the CAS ADD proposing a settlement. On 20 December 2022, the CAS ADD invited the Claimant to comment on the Athlete's email containing such proposition.
67. On 20 December 2022, the Parties were invited to sign and return the Order of Procedure.
68. On 5 January 2023, the Claimant informed the CAS ADD of its comments to the proposed settlement. In brief, the ITA did not agree with the terms proposed by the Athlete, nor her assessment of the case and applicable regulations. In summary, the ITA limited its comments in the following way: i) the information provided by the Athlete does not equate to substantial assistance; ii) the proposed 5-year period of ineligibility was only in the context of Article 10.8.1 ITU ADR and is no longer available in the scope of disciplinary proceedings and iii) aggravating circumstances ought to apply to the case, as detailed in their request.
69. On 5 January 2023, the Parties signed and returned the Order of Procedure.
70. On 23 January 2023, a video hearing was held. The Sole Arbitrator was assisted by Mr. Fabien Cagneux, Managing Counsel of the CAS ADD, and joined by the following:

For the Claimant:

- Jeanne Courbe, TRI Legal Counsel
- Dominique Leroux, ITA Head of Legal Affairs
- Ayesha Talpade, ITA Senior Legal Counsel
- Prof. Martial Saugy, expert witness

For the Athlete:

- Ms. Yulia Yelistratova

#### **IV. SUBMISSIONS OF THE PARTIES**

71. The following is a summary of the Parties' submissions and does not purport to be comprehensive. However, the Sole Arbitrator has thoroughly considered in her deliberation all the evidence and



arguments submitted by the Parties, even if no specific or detailed reference is made to those arguments in the following outline of their positions and in the ensuing discussion on the merits.

**A. The Claimant**

72. The Claimant's submissions may be summarized as follows.
73. Regarding the establishment of the ADRV, the Claimant reiterates that under Article 3.1 of the TRI ADR, the burden of proof is first on TRI to establish, to the comfortable satisfaction of the hearing body, that an ADRV has occurred. Article 3.1 of the TRI ADR defines the comfortable satisfaction standard as "greater than a mere balance of probability but less than proof beyond a reasonable doubt".
74. As provided for in Article 2.1.2 of the TRI ADR, sufficient proof of an ADRV for Presence is established, *inter alia*: [...] presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analysed.
75. The Claimant stressed that in the present matter, the Athlete confirmed that she waived her right for the B-sample opening and analysis of all three AAFs. Therefore, strictly speaking, it is undisputed that the Athlete has committed an ADRV under Article 2.1 of the TRI ADR for the Presence of a Prohibited Substance or its Metabolites of Markers.
76. Furthermore, whilst not necessary to establish an ADRV under Article 2.1 of the TRI ADR, the review of the raw data of analysis for the First AAF by Prof. Saugy (as confirmed in his Expert Report), the fact that independent experts have validated the presence of EPO prior to the Warsaw and Tokyo laboratories reporting the AAFs and the review of the laboratory documentation packages for the three AAFs by Prof. Saugy, clearly attests the presence of exogenous EPO in all three samples provided by the Athlete.
77. The Claimant highlights that, pursuant to Article 2.1.3 of the TRI ADR, EPO is not a substance for which a quantitative threshold is required pursuant to the WADA Prohibited List. Therefore, the presence of any quantity of this Prohibited Substance or its Metabolites or Markers in an athlete's Sample constitutes an ADRV.
78. Lastly, as set forth in Article 2.1.1 of the TRI ADR, TRI does not have to show intent, fault, negligence or knowing use on the Athletes' part to establish an ADRV for Presence under Article 2.1. This principle of strict liability, according to which an ADRV occurs whenever a Prohibited Substance is detected in an athlete's bodily specimen, has been consistently upheld by the appeal division of the CAS.
79. Accordingly, the Claimant submits that TRI has discharged its burden of proof to establish the ADRV for the Presence of a Prohibited Substance (on three occasions) in accordance with Article 2.1 of the TRI ADR to the comfortable satisfaction of the Panel.
80. Also, The Claimant pointed out that the Athlete has not challenged the validity of the AAFs at any time during the results management proceeding and there has been no evidence provided that the results were not reliable.
81. As stressed by the Claimant, according to Article 3.2.2 of the TRI ADR, WADA-accredited laboratories (such as the Warsaw and Tokyo Laboratories) are presumed to have conducted sample analysis in accordance with the ISL. It is hence for an Athlete to rebut such presumption by establishing, on a balance of probabilities (i) a departure from the ISL and (ii) that such departure

could reasonably have caused the AAFs. In the present matter, the Athlete has not challenged the AAFs, and the analytical evidence grounding the ADRV for Presence is undisputed.

82. According to the Claimant, as to the Applicable Consequences for the Presence of EPO in three of Ms. Yelistratova's samples, having been established ADRV, the only remaining point of contention to evaluate are the applicable consequences.
83. The prevalent use of EPO in triathlon is evidenced by the fact that since 2018, five triathletes have tested positive and were sanctioned by TRI for the Presence of EPO in their sample. In other words, more than 60% of all anti-doping sanctions imposed on triathletes by TRI from 2018 to 2021 were for EPO.
84. It is to be concluded that TRI has met its burden of proof – in three instances - that Ms. Yelistratova has committed an ADRV for Presence of a Prohibited Substance in her samples.
85. Pursuant to Article 10.9.3.1 of the TRI ADR, multiple ADRVs shall be considered together as one single ADRV if the Athlete did not receive notice of the first violation before the subsequent violations.
86. In the present matter, three samples collected from Ms. Yelistratova returned AAF for EPO, i.e. one on 5 June 2021, and two on 23 July 2021. However, considering that Ms. Yelistratova provided the samples where the Second and Third AAFs were detected on 23 July 2021<sup>39</sup>, i.e. 2 days prior to being notified of the First AAF (i.e. 25 July 2021), in application of Article 10.9.3.1, all three AAFs are jointly considered as a single first violation and the sanction imposed shall be based on the violation that carries the more severe sanction, including the application of Aggravating Circumstances.
87. In this respect, Claimant considers that Ms. Yelistratova knowingly used the Prohibited Substance on multiple occasions. Or at the very least, the Athlete cannot establish that she “did not knowingly commit the ADRV”. Not only does the drug of choice clearly provide performance enhancing benefits to the Athlete, but she used it at least twice as supported by Prof. Saugy's expert opinion. Lastly, the fact that she injected herself with EPO with a view of competing in the Tokyo Games is further “aggravating” considering the importance of the Olympic Games.
88. Ms. Yelistratova's ADRV is of an extremely grave and serious nature and hence Aggravating Circumstances must be applied in this matter.
89. Furthermore, the ITA considers that the Ms. Yelistratova has been unable to establish that her ADRV was not intentional. To the contrary, there are no grounds to reduce the applicable period of Ineligibility. Ms. Yelistratova has not provided any details of the “vitamin” or “injection” that she was provided by the “doctor”, there is no information given by the Athlete on what was the name of the injection. All that the Athlete has put forth is that a person who claimed to be a doctor “prepared an individual pharmacological program” for her and supplied her with “medications” and she now believes that these “vitamin supplements” contained EPO.
90. According to the Claimant, this cannot amount to the Athlete discharging either her burden of proof as to source or in any event, the non-intentionality of the ADRV or her fulfilment of her duty of care. Even if we were to accept that this unsubstantiated theory, *quod non*, the Athlete displayed the highest amount of recklessness and negligence insofar as she knowingly injected herself with a substance although she claims that she did not know what the injection contained. The Athlete has blindly followed the advice of an unknown person without checking his credentials, nor the content of the injections. According to the Claimant, this careless behaviour squares perfectly with the definition of Intentional as per Article 10.2.3 of TRI ADR and is also at odds with the definition of “No Fault or No Negligence”.

91. It is the Claimant's opinion that even if the Sole Arbitrator would accept that the Athlete has met her burden of proof with respect to the source of EPO (that is, the injections provided by a so-called doctor), it is the ITA's submission that the Athlete has failed to establish that she bears "No Fault or Negligence" or "No Significant Fault or Negligence" within the meaning of the TRI ADR.
92. At the outset, it is recollected that as per Article 2.1.1 of the TRI ADR, it is each athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are personally responsible for any Prohibited Substance found to be present in their Samples and this is the fundamental principle of strict liability that an ADRV occurs whenever a banned substance is detected in an athlete's bodily specimen.
93. Furthermore, the Claimant stresses that the Athlete has been unable to prove Fraud or Sabotage which is very serious allegation. Ms. Yelistratova has not provided any documents or supporting evidence which goes to show that she was a "victim of dishonesty and fraud" and/or she was "sabotaged" by a Russian person claiming to be a "doctor". In any event, the conspiracy theory put forward has no bearing on the Athlete's own negligence.
94. Even if the Sole Arbitrator accepted that there was a plot against Ms. Yelistratova, the Athlete was still careless when she chose to repeatedly inject herself with unknown substances on multiple occasions. In other words, the so-called doctor's ill-intention would not exonerate the Athlete from her failure to exert her most basic duty of care of checking the content of products prior to administration.
95. Moreover, considering that there can be no doubt that EPO was used repeatedly, in at least two "distinct periods of EPO application", and that the use of EPO by the Athlete was to benefit from its performance-enhancing effects in connection with an Olympic qualifying event and thereafter just prior to the most coveted event i.e. the Olympic Games, the Claimant firmly believes that this case warrants the application of Aggravating Circumstances.
96. Therefore, the Claimant considers that the applicable period of Ineligibility for the present matter is up to six years and that other mitigation grounds provided for in the TRI ADR do not apply to this case.
97. Considering the above, the Claimant submitted the following prayer for relief:

*The ITA, on behalf of World Triathlon, hereby respectfully requests the Sole Arbitrator to issue a decision holding that:*

1. *Ms. Yulia Yelistratova is found to have committed an anti-doping rule violation under Article 2.1 of the TRI Anti-Doping Rules.*
2. *Ms. Yulia Yelistratova is sanctioned with a period of Ineligibility of up to 6 years.*
3. *The period of Ineligibility commences on the date of the CAS ADD award with credit given for the period of provisional suspension effectively served by the Athlete (i.e. from 25 July 2021).*
4. *The competitive results of Ms. Yulia Yelistratova at the 2021 Europe Triathlon Cup Dnipro are disqualified with all resulting Consequences, including forfeiture of any medals, points and prizes.*
5. *All other competitive results of Ms. Yelistratova from 5 June 2021 until the date of the decision (if any) are also Disqualified with all resulting Consequences.*
6. *The costs of the proceedings, if any, shall be borne by Ms. Yulia Yelistratova.*

7. *The ITA is granted an award for its legal and other expert costs.*
8. *Any other prayer for relief that the Panel deems fit in the facts and circumstances of the present case.*

## **B. The Athlete**

98. The Respondent's submissions, in essence, may be summarized as follows.
99. The Athlete submits that she has always supported clean sport and that taking doping would be the last thing she was thinking about, but that she trusts WADA laboratories in terms of result which she does not dispute.
100. As to the consequences, the Athlete claims that the standard period of ineligibility is four years if the Athlete knowingly administered prohibited substances. Since she refused the opportunity to open B sample and confirmed the results sent to her, the applicable sanction should be minimized for one year, therefore imposing in total 3-year period of ineligibility.
101. Since, she also did her best in cooperation with the investigation department providing all the details she had, including the scheme of pre-scripted medication and contacts of the doctor, she relied on the promise that she will get less period of ineligibility maximum up to two years. This especially considering that second and third positive test are the result of the administration of prohibited substance before she was notified the first test results which made her realized she was taking something prohibited.

## **V. JURISDICTION**

102. Even though the jurisdiction of the CAS ADD was never disputed, the Sole arbitrator shall refer briefly based on her authority to rule.
103. In the present matter, the Claimant filed the Request for Arbitration with the respect to the analysis of the Respondent's samples collected in 2021 on the occasion of the competitions under the authority of the Claimant (sample number 4557668) and IOC (second number 713774 and sample number 3753310), whereas the IOC transferred the ownership and ensuing Results Management Authority of sample numbers 713774 and 3753310 to TRI to conduct the Results Management of the Second and Third AAF as per the applicable TRI ADR.
104. Article A2 of the CAS ADD Rules provides that the CAS ADD has jurisdiction to rule as a first-instance authority on behalf of any sports entity which has formally delegated its powers to the CAS ADD to conduct anti-doping proceedings and impose applicable sanctions.
105. As per Articles 8.1.1 and 8.1.2 of the TRI ADR, the TRI has appointed the CAS ADD to act as the former's first instance hearing panel as of 1 January 2021 with the coming into force of the 2021 TRI ADR.
106. Considering the foregoing, the CAS ADD has jurisdiction to hear the present matter, to rule on whether the Athlete has committed an ADRV pursuant to Article 2.1 of the TRI ADR and to impose the appropriate consequences.

## **VI. APPLICABLE LAW**

107. The ADRV was committed in 2021.

108. It is undisputed that the TRI ADR, more precisely the version of 1 January 2021, is the law applicable to the merits.

## VII. MERITS

109. In resolving the present legal matter, the Sole Arbitrator first identified which facts are disputed and which material, then by analysing the relevant evidence established the material factual findings and then applied the applicable law with the aim to resolve the main issues of the case.

110. The main issues to be resolved by the Sole Arbitrator are:

(i) Did the Athlete commit an Anti-Doping Rule Violation (ADRV)?

(ii) In case the first question is answered in the affirmative, what is the applicable consequence?

111. The Sole Arbitrator points out that finally there was no dispute between the Parties as to the facts:

- That the Athlete wanted to improve her sporting performance especially in relation to the Tokyo Olympics;
- That she was in contact with a certain unknown individual who she never met and who delivered her (by post) the package of medical supplements for her administration;
- That the Athlete injected herself delivered supplements 35 times during seven weeks according to the delivered instructions;
- That the Athlete underwent doping controls, and the undisputed results of the testing were following:
  - the Warsaw Laboratory reported an AAF for the prohibited substance recombinant Erythropoietin (“EPO”) in sample no. A-4557668 (“First AAF”).
  - the Tokyo Laboratory reported AAFs for recombinant Erythropoietin in both blood sample no. 713774 (“Second AAF”) and urine sample no. 3753310 (“Third AAF”).
- That all three AAFs for rEPO involve a substance of abuse.

112. Therefore, there is no dispute between the Parties whether the ADRV was committed.

113. There is a dispute between the Parties, however, what are the applicable consequences of ADRVs.

114. More specifically, the core of the present dispute is whether there are conditions met for the application of Aggravating Circumstances, or on the contrary, as claimed by the Athlete, for the application of mitigating circumstances, which would than result by the increase or the decrease of the starting 4-year ineligibility period.

115. The main task for the Sole Arbitrator is hence to decide whether to the standard 4-year starting eligibility period

(iii) Aggravating Circumstances within the meaning of the Article 10.4. TRI ADR apply, and if the answer is affirmative, which additional eligibility period from 0 to 24 months should be applicable (Claimant’s standing point)?

- (iv) Or, if the answer is negative, do the Athlete's admission, remorse and cooperation qualify for a reduction/mitigation of the ineligibility period for max 1/4, therefore mitigation for 1 year and applying the 3-year ineligibility sanction (Respondent's standing point)?
116. To repeat, regarding the facts, there is no dispute between the Parties that the Athlete did use the substance which was delivered to her *via* post, that she injected it through the course of seven weeks in total 35 times.
117. That this could be the source of the prohibited substances in the Athlete's body, the timing of intake and way of administrations in connection to the results of the tests, was also confirmed by Professor Prof. Saugy's expert testimony.
118. There was no dispute that the person who delivered the "medication" was completely unknown to the Athlete to the extent that she did not even know his name; that she did not check whether the delivered supplements contained anything prohibited or that she did any basic due diligence. But also, it was undisputed that the Athlete was very familiar with the anti-doping rules and underwent doping controls on multiple occasions.
119. There is a dispute however, whether 35 injections constitute multiple use, or as the Athlete claimed, one continuous use of the "Program" divided into 35 administrations. Also, there is a dispute in what way this issue affects the applicable sanction.
120. Since there is no dispute about the material facts, the Sole Arbitrator shall turn to the applicable regulations to determine whether the conditions are met for the application of "Aggravating Circumstances". In case of a positive answer, the Sole Arbitrator shall only examine which additional period of ineligibly shall be applied. In case of a negative answer, the Sole Arbitrator shall examine if there are conditions met for the application of the mitigation factors.
121. Article 2.1. TRI ADR reads as follows:
- 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 an anti-doping rule violation under Article 2.1 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analyzed; or, where the Athlete's B Sample is analyzed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample; or, where the Athlete's A or B Sample is split into two (2) parts and the analysis of the confirmation part of the split Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first part of the split Sample or the Athlete waives analysis of the confirmation part of the split Sample.*
- 2.1.3 Excepting those substances for which a Decision Limit is specifically identified in the Prohibited List or a Technical Document, the presence of any reported quantity of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample shall constitute an anti-doping rule violation.*
122. Article 10.2 TRI ADR reads 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 Articles 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension pursuant to Articles 10.5, 10.6 or 10.7: 10.2.1 The period of Ineligibility, subject to Article 10.2.4*

*shall be four (4) years where: 10.2.1.1 The anti-doping rule violation does not involve a Specified Substance or a Specified Method, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.*

123. Article 10.2.3 TRI ADR reads as follows:

*As used in Article 10.2, the term “intentional” is meant to identify those Athletes or other Persons who engage in conduct which they knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. 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.*

124. Article 10.4. TRI ADR reads as follows:

*If World Triathlon establishes in an individual case involving an anti-doping rule violation other than violations under Article 2.7 (Trafficking or Attempted Trafficking), 2.8 (Administration or Attempted Administration), 2.9 (Complicity) or 2.11 (Acts by an Athlete or Other Person to Discourage or Retaliate Against Reporting to Authorities) that Aggravating Circumstances are present which justify the imposition of a period of Ineligibility greater than the standard sanction, then the period of Ineligibility otherwise applicable shall be increased by an additional period of Ineligibility of up to two (2) years depending on the seriousness of the violation and the nature of the Aggravating Circumstances, unless the Athlete or other Person can establish that he or she did not knowingly commit the anti-doping rule violation.*

125. When it comes to what constitutes “Aggravating Circumstances” it is defined by the Appendix I (Definitions) to the TRI ADR as follows:

*Aggravating Circumstances: Circumstances involving, or actions by, an Athlete or other Person which may justify the imposition of a period of Ineligibility greater than the standard sanction. Such circumstances and actions shall include, but are not limited to: the Athlete or other Person Used or Possessed multiple Prohibited Substances or Prohibited Methods, Used or Possessed a Prohibited Substance or Prohibited Method on multiple occasions or committed multiple other anti-doping rule violations; a normal individual would be likely to enjoy the performance-enhancing effects of the anti-doping rule violation(s) beyond the otherwise applicable period of Ineligibility; the Athlete or Person engaged in deceptive or obstructive conduct to avoid the detection or adjudication of an anti-doping rule violation; or the Athlete or other Person engaged in Tampering during Results Management or the hearing process. For the avoidance of doubt, the examples of circumstances and conduct described herein are not exclusive and other similar circumstances or conduct may also justify the imposition of a longer period of Ineligibility.*

126. Article 10.9.3 TRI ADR reads as follows:

#### *10.9.3 Additional Rules for Certain Potential Multiple Violations*

*10.9.3.1 For purposes of imposing sanctions under Article 10.9, except as provided in Articles 10.9.3.2 and 10.9.3.3, an anti-doping rule violation will only be considered a second violation if World Triathlon can establish that the Athlete or other Person committed the additional anti-doping rule violation after the Athlete or other Person received notice pursuant to Article 7, or after World Triathlon made reasonable efforts to give notice of the first anti-doping rule violation. If World Triathlon cannot establish this, the violations shall be considered together as one single first violation, and the sanction imposed shall be based on the violation that carries the more severe sanction, including the application of Aggravating Circumstances. Results in all Competitions dating back to the earlier anti-doping rule violation will be Disqualified as provided in Article 10.10.*

*10.9.3.2 If World Triathlon establishes that an Athlete or other Person committed an additional anti-doping rule violation prior to notification, and that the additional violation occurred twelve (12) months or more before or after the first- noticed violation, then the period of Ineligibility for the additional violation shall be calculated as if the additional violation were a stand-alone first violation and this period of Ineligibility is served consecutively, rather than concurrently, with the period of Ineligibility imposed for the earlier-noticed violation. Where this Article 10.9.3.2 applies, the violations taken together shall constitute a single violation for purposes of Article 10.9.1*

**Do the facts of the case fall within the definition of Aggravating Circumstances as defined by the Appendix I (Definitions) to the TRI ADR? If so, what are the consequences?**

127. The Athlete claims that she was following the “vitamin program” recommended by the Russian doctor whom she never met, and who obviously had malicious intentions. But in this respect, she submits no evidence. Moreover, there is no evidence on file whatsoever relating to any disputed issue from the Athlete supporting her statements - the only evidence she ever relied on. It is however supported by Prof. Saugy that the Athlete’s AAFs could be the result of the Athlete’s action by injecting herself 35 times what resulted in three AAFs for prohibited substance.
128. The rules in this regard are straightforward in its wording: ...*Used or Possessed a Prohibited Substance or Prohibited Method on multiple occasions...* There is no doubt that injecting herself 35 times with prohibited substance qualifies for use on multiple occasion. Following a “Program” of dosage via injections with the aim of enhancing performance for particular competition makes no difference in this regard and only supports the application of the rule.
129. Therefore, the Sole Arbitrator concludes that the conditions are met for the application of the Aggravating Circumstances to the present case *unless the Athlete or other Person can establish that he or she did not knowingly commit the anti-doping rule violation* as prescribed by the Article 10.4. TRI ADR.
130. Burdens and Standards of Proof are prescribed by the Article 3.1. TRI ADR in the following way:
- World Triathlon shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether World Triathlon has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules place the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, except as provided in Articles 3.2.2 and 3.2.3, the standard of proof shall be by a balance of probability.*
131. It follows from the applicable rules that the Athlete should prove, on the balance of probability standard, that she did not knowingly commit an ADRV if she wants to avoid the applicability of Aggravating Circumstances to the present case.
132. There is however no evidence in the file supporting the Athlete’s explanations and claims beside her statements. Therefore, the required standard of proof has not been met and the Athlete did not prove she did not knowingly commit an ADRV. In follows that the conditions are met for the application of the Aggravating Circumstances to the present case.
133. The Sole Arbitrator shall determine next what are the consequences of applicability of Article 10.4 of the TRI ADR to the present case with regard to the period of ineligibility.
134. In determining which additional period of ineligibility shall be imposed on the Athlete if the Aggravating Circumstances conditions are met, applicable regulations prescribe that... *then the period*



*of Ineligibility otherwise applicable shall be increased by an additional period of Ineligibility of up to two (2) years depending on the seriousness of the violation and the nature of the Aggravating Circumstances.*

135. It follows from the applicable rules that (i) seriousness of the violation and the (ii) nature of the Aggravating Circumstances are the two factors to consider when calculating the increased period of ineligibility between 0-24 months to the undisputed starting point of 4-years ineligibility.
136. To determine in which range of additional sanction the present case will fall, the Sole arbitrator needs to start from the undisputed facts. The Athlete injected herself 35 times. She injected herself with the substance she did not verify, not even at the basic minimum level, in any possible way. She took the substance prescribed and delivered to her by a person she never met, with the unknown occupation or credentials, whose full and real name she does not know. Moreover, it was not delivered to her personally but *via* post. Later when faced with AAFs she changed the explanations multiple times, from COVID vaccination, training in high altitude, vitamins use to being victim of fraud. But without submitting any evidence in this respect to the file.
137. The Sole Arbitrator points out that the seriousness of violation is to be measured against the Athlete's duty to respect the Anti-Doping Rules. It stands very clearly in the rules and is supported by the extensive CAS jurisprudence that it is each athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are personally responsible for any Prohibited Substance found to be present in their Samples and this is the fundamental principle of strict liability – the ADRV occurs whenever a banned substance is detected in an athlete's body no matter the fault, intent or negligence. These factors are only to be considered when determining the applicable sanction.
138. The Claimant correctly refers to CAS practice in this regard which highlights the Athlete's duty to prevent ADRVs (in CAS 2011/A/2518: *The Athlete's fault is measured against the fundamental duty which he or she owes under the Programme and the WADC to do everything in his or her power to avoid ingesting any Prohibited Substance*).
139. Also, well-known jurisprudence of CAS supports and explains the "utmost caution" that needs to be engaged by the Athlete. It follows from CAS 2005/C/976 & 986 that ...*The WADC imposes on the athlete a duty of utmost caution to avoid that a prohibited substance enters his or her body (...). The Panel underlines that this standard is rigorous, and must be rigorous, especially in the interest of all other competitors in a fair competition (...). It is this standard of utmost care against which the behaviour of an athlete is measured if an anti-doping violation has been identified.*
140. What can be concluded is that by engaging no caution whatsoever and injecting herself with the substance of completely unknown content from completely unknown source qualifies for very serious violations.
141. This goes also for the nature of Aggravating Circumstances – the Athlete did not only inject herself few times what would qualify for multiple use. She injected herself 35 times with the prohibited substances. And as highlighted, whether there was only one focus – improving the performance on the Tokyo Olympics, makes no difference to the case at hand.
142. On the other hand, the Sole Arbitrator has taken into account that the Athlete finally admitted the ADRV and described all the circumstances surrounding it as being part of one doping cycle. The later was also supported by the expert witness as the most plausible scenario.
143. In summary, Article 2.1 TRI ADR defines what constitutes an ADRV for Presence of a Prohibited Substance. Pursuant to Article 10.9.3 of the TRI ADR, multiple ADRVs shall be considered together as one single ADRV if the Athlete did not receive notice of the first violation before committing the subsequent violations. According to Article 10.2 of the TRI ADR, the period of Ineligibility imposed

for the violation of Article 2.1 and/or Article 2.2 for a Non-Specified Substance, like EPO shall be four years unless the Athlete can establish that the ADRV was not intentional. The notion of “intent” is defined in Article 10.2.3 of the TRI ADR. The Athlete did not meet her burden of proof regarding absence of intent. Furthermore, the four-year period of Ineligibility can be increased to maximum of up to 6 years if Aggravating Circumstances of the case fall within the meaning of Article 10.4. Lastly, seriousness of the violation and the nature of the Aggravating Circumstances are two factors to consider determining the increased period of ineligibility between 0-24 months to the undisputed starting point of 4 years.

144. Taking into account the seriousness of the violation and the nature of the Aggravating Circumstances in this specific case, the Sole Arbitrator finds it reasonable and fair to increase the starting point of the 4 years period of ineligibility for additional 12 months, before assessing whether the facts of the case qualify for the Substantial Assistance provided by the Athlete and thus fulfil the conditions for mitigating regime within the meaning of Article 10.7. TRI ADR.

**Do the facts of the case qualify for the Substantial Assistance provided by the Athlete and thus fulfil the conditions for mitigating regime within the meaning of Article 10.7. TRI ADR? If so, what are the consequences?**

145. The Athlete claims she is entitled for the reduction of sanction because she admitted the ADVR, was always cooperative and regret it ever happened. She claimed that other Athletes who were disqualified because of cooperation with the same doctor got only three-year ineligibility sanction period and they did not even have to admit the ADVR nor were they cooperative as she was.
146. Substantial Assistance as a reason for reduction of sanction is prescribed by the Article 10.7. of the TRI ADR.
147. Article 10.7. of the TRI ADR reads as follows:

*Article 10.7 - Elimination, Reduction, or Suspension of Period of Ineligibility or other Consequences for Reasons Other than Fault.*

*10.7.1 Substantial Assistance in Discovering or Establishing Anti-Doping Rule Violations*

*World Triathlon may, prior to an appellate decision under Article 13 or the expiration of the time to appeal, suspend a part of the Consequences (other than Disqualification and mandatory Public Disclosure) imposed in an individual case where the Athlete or other Person has provided Substantial Assistance to an Anti-Doping Organization, criminal authority or professional disciplinary body which results in:*

*(i) the Anti-Doping Organization discovering or bringing forward an anti-doping rule violation by another Person; or*

*(ii) which results in a criminal or disciplinary body discovering or bringing forward a criminal offense or the breach of professional rules committed by another Person and the information provided by the Person providing Substantial Assistance is made available to World Triathlon or other Anti-Doping Organization with Results Management responsibility; or*

*(iii) which results in WADA initiating a proceeding against a Signatory, WADA-accredited laboratory, or Athlete passport management unit (as defined in the International Standard for Laboratories) for non-compliance with the Code, International Standard or Technical Document; or*

*(iv) with the approval by WADA, which results in a criminal or disciplinary body bringing forward a criminal offense or the breach of professional or sport rules arising out of a sport integrity violation other than doping. After an appellate*

*decision under Article 13 or the expiration of time to appeal, World Triathlon may only suspend a part of the otherwise applicable Consequences with the approval of WADA.*

*The extent to which the otherwise applicable period of Ineligibility may be suspended shall be based on the seriousness of the anti-doping rule violation committed by the Athlete or other Person and the significance of the Substantial Assistance provided by the Athlete or other Person to the effort to eliminate doping in sport, non-compliance with the Code and/or sport integrity violations. No more than three-quarters of the otherwise applicable period of Ineligibility may be suspended. If the otherwise applicable period of Ineligibility is a lifetime, the non-suspended period under this Article must be no less than eight (8) years. For purposes of this paragraph, the otherwise applicable period of Ineligibility shall not include any period of Ineligibility that could be added under Article 10.9.3.2 of these Anti-Doping Rules.*

*If so requested by an Athlete or other Person who seeks to provide Substantial Assistance, World Triathlon shall allow the Athlete or other Person to provide the information to it subject to a Without Prejudice Agreement.*

*If the Athlete or other Person fails to continue to cooperate and to provide the complete and credible Substantial Assistance upon which a suspension of Consequences was based, TRI shall reinstate the original Consequences. If World Triathlon decides to reinstate suspended Consequences or decides not to reinstate suspended Consequences, that decision may be appealed by any Person entitled to appeal under Article 13.*

148. Should the Athlete satisfy more than one requirement to mitigate the applicable sanction, Article 10.7.3 of the TRI ADR sets forth how to calculate the ineligibility period. Article 10.7.3 of the TRI ADR reads as follows:

*10.7.3. Application of Multiple Grounds for Reduction of a Sanction*

*Where an Athlete or other Person establishes entitlement to reduction in sanction under more than one provision of Article 10.5, 10.6 or 10.7, before applying any reduction or suspension under Article 10.7, the otherwise applicable period of Ineligibility shall be determined in accordance with Articles 10.2, 10.3, 10.5, and 10.6. If the Athlete or other Person establishes entitlement to a reduction or suspension of the period of Ineligibility under Article 10.7, then the period of Ineligibility may be reduced or suspended, but not below one-fourth of the otherwise applicable period of Ineligibility.*

149. It is the Sole Arbitrator's view that the wording of the above-mentioned Articles is very clear. The Assistance of an Athlete must lead to one or more of the four results described and enumerated as (i)-(iv) in Article 10.7. of the TRI ADR. The burden of proof to establish that the results prescribed by the Article 10.7. of the TRI ADR, if any, are connected to her assistance lays on the Athlete. Since there was no proved or even mentioned result connected, as prescribed by the applicable rules, the conditions set forth by the Article 10.7. of the TRI ADR are not met. Therefore, there was no reason to mitigate the applicable consequences.

**Conclusion with regard to the applicable Ineligibility period**

150. In conclusion, the Sole Arbitrator finds that the present case of ADRV could be qualified as very serious violation of Athlete's duty to prevent ADRV. Having in mind that the violation happened 35 times in terms of multiple use and the circumstances of the case (no due diligence, completely unknown content delivered by completely unknown person), but also taking into account that at the end the Athlete admitted both the ADRV and the circumstances of it (which was supported by the expert witness) and that there was no ground to apply the reduction regime set forth by the Article 10.7. of the TRI ADR, the Sole arbitrator is of the view that the application of additional 12 months, to the four-year of ineligibility are inevitable and justified in the present case.

### VIII. DISQUALIFICATION OF RESULTS

151. On 5 June 2021, the Athlete participated in the 2021 Europe Triathlon Cup Dnipro held in Ukraine where she placed first. At that occasion, she was selected for an In-Competition doping control, which resulted that Adverse Analytical Finding (“AAF”) for the prohibited substance recombinant Erythropoietin (“EPO”) in sample no. A-4557668 (“First AAF”) as reported by the Warsaw Laboratory.
152. Athlete did not have any competitive results between the date of her IC test (5 June 2021) and the date of her OOC Tests (23 July 2021) or thereafter.
153. Article 9 of the TRI ADR reads as follows:

*An anti-doping rule violation in Individual Sports in connection with an In-Competition test automatically leads to Disqualification of the result obtained in that Competition with all resulting Consequences, including forfeiture of any medals, points and prizes.*

154. In line with Article 9 of the TRI ADR, Athlete’s competitive results at the 2021 Europe Triathlon Cup, Dnipro are automatically disqualified including the forfeiture of any medals, prizes and points.
155. Since the Athlete does not have any competitive results between the date of her IC test (5 June 2021) and the date of her OOC Tests (23 July 2021) or thereafter, there are no further results to be disqualified.

### IX. COSTS

(...).

### X. APPEAL

164. Article 13.2 TRI ADR prescribes Appeals from Decisions Regarding Anti-Doping Rule Violations, Consequences, Provisional Suspensions, Implementation of Decisions and Authority. More specifically, in line with the Article 13.2.1 (Appeals Involving International-Level Athletes or International Events), in cases arising from participation in an International Event or in cases involving International-Level Athletes, the decision may be appealed exclusively to CAS.
165. Pursuant to Article A21 of the ADD Rules, this award may be appealed to the CAS Appeals Arbitration Division within 21 days from receipt of the notification of the final award with reasons in accordance with Articles R47 et seq. of the CAS Code of Sports-Related Arbitration, applicable to appeals procedures.

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## ON THESE GROUNDS

### The Court of Arbitration for Sport rules that:

1. The Request for arbitration filed by the International Testing Authority (ITA) on behalf of the World Triathlon on 14 September 2022 against Ms. Yulia Yelistratova is partially upheld.
2. Ms. Yulia Yelistratova committed an Anti-Doping Rule Violation in accordance with the Article 2.1 of the TRI Anti-Doping Rules.
3. In accordance with the Articles 10.9.3., 10.2. and 10.4. of the TRI Anti-Doping Rules, Ms. Yulia Yelistratova is sanctioned with a period of ineligibility of five (5) years starting from the date of this Award.
4. Ms. Yulia Yelistratova shall receive credit for period of Provisional Suspension served from 25 July 2021 against the period of ineligibility imposed by this Award.
5. Ms. Yulia Yelistratova's results from the 2021 Europe Triathlon Cup Dnipro are disqualified, along with all other consequences, including forfeiture of any medals, points and prizes.
6. (...).
7. (...).
8. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 4 July 2023

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

Dr.sc. Petra Pocrnic Perica LL.M  
Sole Arbitrator