

INTERNATIONAL TENNIS FEDERATION

INDEPENDENT ANTI-DOPING TRIBUNAL

DECISION IN THE CASE OF ARSAN ARASHOV

Ian Mill QC, Chairman

Dr Joseph Cummiskey

Dr Anik Sax

(A) Introduction and Summary of Issues

(1) Introduction

1. This is the decision of an independent Anti-Doping Tribunal (“the Tribunal”) appointed by the International Tennis Federation (“**the ITF**”) under Article 8.1.1 of the ITF Tennis Anti-Doping Programme 2016 (“**the Programme**”) to determine the charge that Mr Arsan Arashov (“**Mr Arashov**”) committed an Anti-Doping Rule Violation¹ under Article 2.1 of the Programme, the allegation being that a Prohibited Substance, Meldonium, was found to be present in a urine sample provided by Mr Arashov during the ITF F21 Futures tournament which was held in Gandia, Spain from 9 to 17 July 2016 (“**the Event**”) on 9 July 2016 (“**the Charge**”).

2. The ITF was represented at the hearing of the Charge in London on 10 February 2017 by Mr Jonathan Taylor, Ms Marjolaine Viret and Ms Lauren Pagé of Bird & Bird, its solicitors. Mr Arashov was represented by Mr Edward Greenberg and Ms Yulia Vershinin, his lawyers. The Tribunal heard live evidence from four witnesses: three, Mr Derek Rooney (“**Mr Rooney**”), Ms Erica Hughes (“**Ms Hughes**”) and Professor Christiane Ayotte (“**Professor Ayotte**”) on behalf of the ITF; Mr Arashov gave evidence in his own defence. Mr Arashov also submitted a short statement from his father. However, Mr Arashov senior was not tendered for cross examination at the hearing.

¹ This Decision contains a number of undefined capitalised terms. The definitions are to be found in the Programme.

3. The Tribunal listened to and considered this evidence during and following a hearing in London on 10 February 2017, and it has read and considered detailed and extensive submissions on behalf of the parties (including two rounds of written submissions following the conclusion of the hearing).
4. The hearing took place in less than ideal conditions, given that: (a) everything that was said had to be translated between English and Russian (and vice versa); (b) all the witnesses gave evidence via video link, and (c) Mr Arashov's representatives themselves participated by video link. It is a tribute to the professionalism and patience of all concerned that the hearing was successfully concluded within the time available.
5. The Tribunal would in particular like to thank the parties' representatives for the considerable assistance which it has derived from their efforts on behalf of their respective clients, and also the interpreters retained by the parties to assist the Tribunal and the hearing process generally.

(2) Summary of Issues

6. It was common ground between the parties that:
 - a. Mr Arashov was asked, at the Event on 9 July 2016, to provide a urine sample, and that he did in consequence provide such a sample; and
 - b. That sample was found on analysis to contain a Prohibited Substance, namely Meldonium.
7. So far as the ITF was concerned, Article 2.1 of the Programme being a strict liability offence, these two facts established the offence asserted in the Charge.
8. Mr Arashov disagreed. He disputed the Charge on the following bases:
 - a. Mr Arashov denied having ingested any Meldonium. He also denied that anyone had advised him to ingest Meldonium. He had been on medication prior to 9 July 2016, but none of that medication (set out in a prescription which was produced to the Tribunal) contained any Meldonium. All this evidence should be accepted.

- b. The presence of the Meldonium in the sample could be attributed to contamination of the containers in which his sample was contained, such contamination being made possible by the absence of any quality guarantee (in particular, as to their sterility).
 - c. Moreover, there had also been testing of a blood sample given by Mr Arashov on the previous day (8 July 2016) which had not shown the presence of Meldonium. Had Meldonium been present in that blood sample, the testing would have identified it.
 - d. Further, there were deviations in the concentration of Meldonium found in Mr Arashov's A and B samples.
 - e. There were, in the testing of Mr Arashov, deviations from the procedures and rules laid down by WADA for urine sample testing. Accordingly, the onus lay on the ITF to establish the source of the Meldonium found in Mr Arashov's sample.
 - f. The ITF was unable to discharge that burden (in particular, because of the matters set out in sub-paragraphs (b), (c) and (d) above).
 - g. Accordingly, the Tribunal should dismiss the Charge.
9. Alternatively, Mr Arashov asserted that (if he was found guilty of the Charge) there had been No Fault or Negligence on his part for the purposes of Article 10.4 of the Programme. Specifically, he contended that the bottles of water from which he drank at the doping control station both on 8 and 9 July 2016 (which were left in an unsecured situation such that third party access was possible) could have been contaminated with Meldonium. In circumstances where the ITF was unable to establish the source from which the Meldonium was ingested by Mr Arashov (and given the departures from agreed procedures), the Tribunal should sanction Mr Arashov on the basis that he had unwittingly ingested Meldonium contained within a contaminated water bottle. On this basis, there was clearly No Fault on Mr Arashov's part.
10. The ITF did not accept any of these contentions by Mr Arashov. In particular:

- a. As to paragraph 8(a), the evidence of Mr Arashov should not be accepted as truthful – even if not deliberately untruthful. There was no plausible explanation for the presence of Meldonium in his urine sample other than that he had ingested it.
- b. As to paragraph 8(b), the suggestion that the sample containers might have been contaminated was nothing more than baseless speculation.
- c. As to paragraph 8(c), Mr Arashov’s blood sample had not been tested for Meldonium. The fact that the testing of that sample did not detect the presence of Meldonium was therefore of no consequence.
- d. As to paragraph 8(d), as Meldonium was not a threshold substance, the analytical methods employed in testing for its presence only looked for that presence, not for the exact concentration. The figures identified in both samples were approximate estimations. The disparity between those estimations in the A and B samples was immaterial.
- e. As to paragraphs 8(e) and (f):
 - i. There had been no departure from relevant procedures.
 - ii. Even had there been the departures alleged, they were immaterial, since there could be no causal link between such departures and the presence of Meldonium in Mr Arashov’s sample.
 - iii. Accordingly, the onus remained on Mr Arashov to explain that presence in a way that negated ingestion by him.
 - iv. Mr Arashov was unable to provide any such explanation.
- f. As to paragraph 9:
 - i. The suggestion that water bottles drunk by Mr Arashov at the doping control station on 8 or 9 July 2016 might have been contaminated with Meldonium was, again, baseless speculation. Had Mr Arashov drunk contaminated water on 9 July 2016, he could not have excreted the

quantities of that substance that were found in his sample. Mr Arashov had not given evidence that he had drunk any water on 8 July 2016.

- ii. Mr Arashov having admitted at the hearing that he knew Meldonium was a banned substance, the Tribunal should find that Mr Arashov took Meldonium knowing that to do so was an Anti-Doping Rule Violation. That amounted to intent for the purposes of Article 10.2.1 of the Programme. There was no room for a finding of No Fault.

(B) The source of the Meldonium found in Mr Arashov's urine sample

11. The issues identified above require the Tribunal to consider:

- a. Whether Mr Arashov did or did not ingest Meldonium (and in that context the case advanced by Mr Arashov as to contamination of the containers into which Mr Arashov's A and B samples were placed).
- b. Whether, if he did ingest Meldonium, he did so knowingly or unwittingly (and in that context the case advanced by Mr Arashov as to contamination of bottles containing water drunk by Mr Arashov on 8 and 9 July 2016).

12. We consider these issues in turn. In this section of the Decision, we consider all aspects of these issues save whether Mr Arashov, if he ingested Meldonium, did so knowingly. We consider that aspect at a later stage.

13. As stated above, Mr Arashov gave oral evidence at the hearing, during the course of which he maintained steadfastly that he had not ingested Meldonium at any time and that he was well aware at the time that Meldonium was a banned substance. These assertions have, of course, to be tested: (1) in the context of his evidence as a whole, and (2) against the inherent probabilities having regard to the relevant and available background facts.

14. As to (1) above, the Tribunal found Mr Arashov to be a most composed individual, mature beyond his years. He gave his evidence confidently and clearly. For the most part, he seemed to the Tribunal to be seeking to assist us with his genuine recollections. However, that is not to say that we have been able to accept all of his evidence as accurate. Thus:

- a. He asserted that his father had not watched his match on 9 July 2016, despite having travelled with him from Kazakhstan for the Event, because “it was what I wanted”. Yet, his evidence was that, at the doping control station when asked whether he had a representative with him, his evidence was that his father could attend, although he was in Valencia, 100 kilometres away from where the Event was taking place. According to Mr Arashov, the Doping Control Officer (Mr Rooney) told him that this would take too long. Mr Rooney denied in evidence that this had occurred (his evidence, based on the contents of Mr Arashov’s Doping Control Form, being that Mr Arashov declined to have a representative present). We prefer the evidence of Mr Rooney on this point. This is for three reasons. First, it seems consistent with Mr Arashov’s decision that he did not want his father present for his match, despite all the distance that he had travelled to be with his son for the Event. Secondly, Mr Arashov’s oral evidence on this point differed materially from his evidence set out in his witness statement (paragraph 13), which was to the effect that he was not informed of his rights to be together with his representative. Thirdly, whereas Mr Arashov’s father gave a witness statement, it contained no support for the contention that he had accompanied his son to Spain, let alone that he remained in Valencia while his son competed.

- b. We do not accept as accurate the evidence Mr Arashov gave about the moment when he was notified by Ms Hughes that he was required to give a urine sample. As is discussed further below, a minor should have an adult present at that moment. Ms Hughes was adamant that, although (unsurprisingly) she had no recollection of her notification to Mr Arashov itself, her training had taught her of the requirement of the presence of an adult, and she would have ensured that this was satisfied in Mr Arashov’s case. We found Ms Hughes to be a conscientious person, who would have taken her duties in this regard very seriously, and we accept her evidence in this regard. Mr Arashov, on the other hand, purported to recall that, at the moment of notification on 9 July he was talking to another player (whose name he did not recall) and that the other player’s coach was “nearby”, which he then clarified as meaning “maybe three or four metres away, maybe even further because he was talking on the phone”. We find it inherently improbable that Mr Arashov would have remembered accurately this degree of detail (especially when he could not recall the name of the other player). Moreover, his evidence again differs from his written

evidence (paragraph 8) which was that, at the moment of notification “there were neither my representative nor any other witness”. Regrettably, the view that we formed at this point was that Mr Arashov was embellishing his evidence in order to assist his own case.

15. Accordingly, we are unable to accept at face value Mr Arashov’s assertions: (a) that the only medications that he was prescribed were Asparcam, Stamlo and Valerian, as set out in the written prescription which Mr Arashov adduced in evidence, and (b) that he was absolutely sure that he was not taking any other medications in the run up to the Event. It is necessary to test the probability of these assertions being true against the relevant background facts. We therefore turn to point (2) in paragraph 13 above.

16. It seems to us that the four most relevant background facts are as follows:

- a. The circumstances in which Mr Arashov came to require medication in the first place. The “Therapist’s Consultation” document which Mr Arashov has produced dated 27 May 2016 (some six weeks before the start of the Event) refers to Mr Arashov as having raised blood pressure with stabbing pain in the heart area and periodical dizziness. While the prescribed medications would appear to be appropriate for someone in Mr Arashov’s condition, so it appears would Meldonium as well. The ITF’s Opening Brief (at paragraphs 2.3, 2.4 and 2.6) describes properties of Meldonium which include cardio-protective benefits – by improving blood flow and increasing the amount of oxygen and glucose available at the cell level for energy metabolism. It is also considered to have performance-enhancing effects for athletes (which had led to its widespread use among elite athletes). It is therefore a medication which (leaving aside the fact that it was at the relevant time on the WADA Prohibited List) would have been considered, in the region where Mr Arashov resides, as potentially appropriate and helpful to assist an athlete with Mr Arashov’s stated complaints.
- b. The response given by Mr Arashov when first informed about the test findings. In stark contrast to the evidence given by him orally, he wrote to the ITF as follows on 29 September 2016:

“Some time ago I had problems with health. I felt weakness and had to go to the doctor. The doctor gave the receipt with the names of medicine. I think meldonium was in it but I didn’t know ... If there is chance to do without a disqualification I will be very grateful, and from now on I will be very careful when choosing a medication for treatment”.

- c. The fact that, while Meldonium is only available in Kazakhstan by prescription, it is available elsewhere (including in Russia) over the counter, and is readily available online without a prescription (see the ITF Opening Brief, paragraph 2.5).
- d. The absence of any plausible explanation for the presence of Meldonium in Mr Arashov’s sample which does not involve ingestion by him of that Prohibited Substance. In this context, it is relevant to consider three aspects of Mr Arashov’s case, namely: (1) the argument that the containers in which Mr Arashov’s A and B samples were stored might have been contaminated with Meldonium; (2) the argument that the absence of any reading for Meldonium in Mr Arashov’s blood sample given the previous day (8 July 2016) is significant because it suggests that he had not ingested any Meldonium up to that point; (3) the fact that there were different concentrations of Meldonium found as between the A and B samples.
- e. As to the first of these points:
 - i. Mr Arashov accepted in evidence that the requirements upon Mr Rooney immediately following the giving by Mr Arashov of a urine sample had been satisfied. In particular, Mr Arashov accepted that: (1) he was offered a number of cardboard boxes containing Berlinger sample kits, from which he was permitted to choose one; (2) the two glass bottles contained within the cardboard box chosen by him had plastic seals on them; (3) he could see nothing wrong with the appearance of the glass bottles and made sure he was happy with them before removing the seals; (4) after he had poured his sample into the two glass bottles, Mr Arashov put caps back on the bottles and turned them until they were tight; (5) Mr Rooney then checked that they were tight and there was no leakage; (6) he had no concerns about any aspect of the sample collection, and signed the Doping Control Form to that effect.

- ii. Professor Ayotte, who is and was the director of the laboratory which conducted the testing of Mr Arashov's A and B samples, gave evidence as follows: (1) that Mr Arashov's samples were part of a batch of 29 pairs of A and B samples in respect of which nothing abnormal was recorded and nothing was missing; (2) there was no sign of manipulation; (3) none of the other samples in that batch contained any traces of Meldonium; (4) her laboratory analyses between 25 and 28 thousand samples per annum, of which half have for many years involved use of the Berlinger kits; (5) if the glass containers had contained Meldonium prior to the introduction of the sample liquid, that Meldonium would have been visible in the amount needed to give rise to the levels found in the A and B samples.

- iii. Mr Rooney gave evidence in relation to Mr Arashov's A and B samples as follows. He confirmed that: (1) Mr Arashov was given a choice of 20-30 Berlinger kits from which to choose; (2) he asked Mr Arashov to check that the seals on the bottles were intact, which they were; (3) he asked Mr Arashov to seal and lock both bottles once they contained his samples, which he did; (4) Mr Arashov confirmed that he had no comments to make on the sample process. He added that: (1) he directed Mr Arashov to put each bottle in a plastic bag, which was then sealed and put in the cardboard box; (2) he put Mr Arashov's samples and other samples collected that day in a larger cardboard box in a fridge at the doping control station – a different fridge from the one that contained players' drinks; (3) he took the box containing all the samples back to his home at the end of his working day, and put the samples in a fridge in his office – a fridge that was not used by his family; (4) finally, he handed the box to a courier for shipment to Professor Ayotte's laboratory. Mr Rooney's written evidence concluded as follows: "At all times, the samples, including Mr Arashov's, were kept in the tamper-evident Berlinger bottles in a secure location, and could not have been accessed by any unauthorised person".

- iv. It was suggested to Mr Rooney on behalf of Mr Arashov that, in the absence of any system for checking the cleanliness or sterility of the glass bottles or of certificates attesting to such cleanliness or sterility, there was no way of knowing whether in fact the bottles might have been contaminated prior to their arrival in the doping control station. Mr Rooney's response was that he and the player concerned always check the equipment in order to see whether it is clean and whether there is evidence of damage or whether it might have been opened. He works on the assumption that the manufacturer would have sent the equipment out in a sterile condition.

- v. Our conclusions, in light of the evidence summarised above, are that Mr Arashov's case involving possible contamination of his sample is wholly speculative and has no solid factual foundation whatsoever. He points to no particular time when, or means by which, such tampering might have occurred. His attack on the lack of sterility certificates gets nowhere in circumstances where the evidence is to the effect that the products concerned are reputable and there is no asserted history of tampering or contamination. None of the other samples in the same batch showed any traces of Meldonium. Professor Ayotte was adamant that any inclusion of Meldonium before the addition of the sample liquid would have been readily apparent.

- f. As to the second of these points:
 - i. Mr Arashov contends that, had Meldonium been present in his blood on 8 July 2015, this would have been detected in the analysis of his blood sample given on that day. Since it was not detected, it was not present, which supports the proposition that Mr Arashov did not ingest Meldonium prior to 9 July 2016.

 - ii. Professor Ayotte, who is also the current President of the World Association of Anti-Doping Scientists, deals with this suggestion comprehensively in her written evidence. Contrary to Mr Arashov's suggestion, the tests carried out on his blood sample given on 8 July 2016 (aimed at detecting Growth

Hormone isoforms, HBOCs and ESAs (erythropoiesis-stimulating agents) would not detect the presence or otherwise of Meldonium, as it is a totally different compound. Professor Ayotte was not challenged about this aspect of her evidence in cross-examination. Finally, Mr Arashov did not adduce the evidence of anyone with relevant expertise to challenge that evidence.

iii. In summary, we accept Professor Ayotte's evidence about this, and therefore reject Mr Arashov's assertion set out in (i) above).

g. As to the third of these points:

i. Mr Arashov points to the fact that, while the estimated concentration of Meldonium in his A sample was 63µg/ml, the estimated concentration in his B sample was only 55µg/ml. This difference is said by Mr Arashov both to raise doubts as to the reliability of the test results and also to support the suggestion (dealt with above) that there might be a lack of cleanliness in the sample containers.

ii. Again, Professor Ayotte gives this contention short shrift in her written evidence. She wrote as follows:

"Meldonium is not a threshold substance, consequently the analytical methods employed are aimed at identifying Meldonium and not to provide an exact concentration. Meldonium was conclusively identified in the A and in the B sample. We made an approximate estimation of the levels of Meldonium in those samples by comparing the signal in the athlete's sample to that of the Meldonium standard prepared at 250 µg/ml, i.e. by a single point comparison. Nonetheless, the levels in the A sample and the B sample were relatively consistent. E.g. 63µg (63,000 ng)/ml and 55µg (55,000 ng/ml)/ml respectively, for a mean value of 59µg/ml (cv 9.5%). There is no material discrepancy".

iii. Again, this evidence was not challenged on behalf of Mr Arashov during Professor Ayott's cross-examination, nor did Mr Arashov adduce any

evidence from a suitably qualified expert to gainsay or challenge the Professor's evidence.

- iv. Accordingly, in this respect too we accept her evidence and reject Mr Arashov's contention.

17. For all the reasons set out in paragraph 16 above, we conclude that the relevant background points firmly in favour of the conclusion that, notwithstanding his firm denials, Mr Arashov did in fact ingest Meldonium prior to his urine sample being given on 9 July 2016. We therefore conclude that, in this respect too, Mr Arashov did not assist the Tribunal with helpful and accurate evidence. That is not to say, however, that he should necessarily conclude that he sought to mislead us deliberately in this respect or that he had ingested Meldonium knowingly and deliberately. We will consider these quite different questions later in this Decision.

18. The next issue to consider is the further, alternative, argument of Mr Arashov that the source of the Meldonium in his sample might have been contaminated drinking water contained within one (or more) of the bottles of water taken by him from the fridge in the Doping Control Station on 8 July 2016 (prior to giving his blood sample) or on 9 July 2016 (prior to giving his urine sample). As to this:

- a. In the light of the evidence given orally by Professor Ayotte, it would appear theoretically to be possible that relevant quantities of Meldonium could be present in bottles of drinking water without such contamination being visually apparent and without affecting the taste of the water.
- b. On the other hand, Professor Ayotte also confirmed that such contamination could not have resulted in the concentrations found in Mr Arashov's urine sample, if the bottle(s) of water concerned had been consumed by the player on 9 July 2016 while waiting to give that urine sample. Very little Meldonium would have been excreted given the short period following ingestion. Professor Ayotte's evidence in this regard was confirmed by a study in the 2016 International Journal of Sports Medicine, which showed that the best part of 24 hours following ingestion would have been required in order to achieve the sorts of concentration found in Mr Arashov's sample.

- c. Accordingly, the only feasible circumstance (contended for by Mr Arashov) in which such contamination might have caused the concentrations of Meldonium found in his urine sample would be if Mr Arashov had consumed sufficient quantities of Meldonium in water drunk by him on 8 July 2016, prior to giving his blood sample. In his written Closing Submissions, Mr Arashov claims that on 8 July 2016 “he was in the waiting area of the doping control office, and had drinks”. This was the first time that Mr Arashov had made this claim. He gave evidence orally about drinking two bottles of water on 9 July 2016, while waiting for one and a half hours to give his urine sample. He explained the context for this in his witness statement (paragraphs 9 and 10): “... they ... asked whether I was ready to pass urine test or not. I answered I was not ready. The doping control Inspector asked me to wait in the waiting area at the doping control station and I was offered some beverages in order to be ready to pass urine test more quickly ... I took a bottle from the fridge and drunk”. (Orally, he varied that evidence to the effect that he had consumed two bottles of water, not one). In his witness statement, he made no mention about having consumed water (or any other drink) on the previous day while waiting (for a shorter period of about 50 minutes) to give his blood sample. Nor did he say that he consumed water on 8 July 2016 when giving oral evidence. Further, there is no reason to infer that he would have drunk anything on that occasion, given that it would not have been relevant to his ability to give a blood sample. In our view, it would not be correct to allow this important new assertion to be allowed in as evidence, given that the ITF had no opportunity to question Mr Arashov on his recollection in this regard.
- d. For the reasons given above, therefore, this further contention of Mr Arashov must be rejected. Additionally, however, it is right to observe that we also agree with the ITF that this contention by Mr Arashov amounts in any event to no more than baseless speculation. In particular:
- i. Mr Rooney’s evidence (witness statement, paragraph 19, and orally) was that he had checked that all the bottles of water (there were no other drinks) were new and sealed before accepting them from the tournament supervisor. He also confirmed orally that only the athletes had access to the bottles in the fridge, and once they had chosen a bottle they kept it with them at all times.

- ii. It is wholly unclear why, if a liquid consumed by Mr Arashov was to have been “spiked” with Meldonium, it should have been a water bottle, chosen by him at random from those in the doping control station waiting room fridge. Why not any other consumable liquid bought by or given to him on 8 July 2016? Yet, this is not suggested. Nor is any plausible reason suggested by Mr Arashov to as to why someone should have committed the act of sabotage which he necessarily needs to claim has occurred. Clearly, such an act could not have been targeted at Mr Arashov individually, since it could have been any player who chose the contaminated bottle (it being the case that no other player who gave a sample at the Event tested positive for Meldonium). Mr Arashov’s Written Response to the ITF’s Opening Brief does contain the following assertion: “the tournament organizers are interested in the victory of their Players, so it is reasonable to presume that the beverages provided by the organizer of the tournament may contain prohibited substances in order to eliminate opponents unscrupulously”. We regard this assertion (wholly unsupported by evidence) as one that should not have been made. It makes a very serious allegation, without any foundation for it. In any event, it makes no sense. “Their Players” would be as much at risk of selecting a contaminated bottle as any other player.

19. Finally, it is right at this stage to observe that, even if we had thought that Mr Arashov was justified in his assertion of sabotage, this would not have affected the outcome of the issue as to whether he had committed an Anti-Doping Rule Violation pursuant to Article 2.1 of the Programme, unless the circumstances asserted involved a breach of the relevant rules which had caused the positive test result. Mr Arashov asserts a series of such alleged rule breaches, and it is to these allegations that we now turn.

(C) The alleged departures from procedure

20. There appear to be the following alleged rule departures relied upon by Mr Arashov:
 - a. That Mr Rooney did not give Mr Arashov time to locate his representative and so he was not accompanied by his representative during the doping control process. Also,

Mr Arashov was not notified of the need to give a sample in the presence of an adult.

- b. That there was no witness present to observe Mr Rooney during the passing of the sample.
- c. That there was no guarantee provided that the drinks provided in the doping control station were free from prohibited substances.
- d. That the manufacturer of the sample collection equipment did not provide a guarantee that the equipment was clean and there was no proper procedure under the rules for athletes to inspect the cleanliness of that equipment.
- e. That there was no documentation to prove that Mr Rooney stored the sample correctly at his house.

21. Before turning to consider these allegations individually, it is necessary to put these allegations in their proper context, which is as follows:

- a. Article 8.7.4 of the Programme provides that: “If the Player ... establishes the occurrence of a departure from an International Standard or other anti-doping rule or policy set out in the Code or this Programme that could reasonably have caused the Adverse Analytical Finding or other facts alleged to constitute an Anti-Doping Rule Violation, then the ITF shall have the burden to establish that such departure did not cause such Adverse Analytical Finding or other facts”.
- b. It is clear on authority that any such departure must be from a mandatory requirement, not merely best practice or a provision that something might or should be done: *USADA v Landis* (AAA Panel decision 20/9/07), upheld on appeal (CAS 2007/A/1394); *WADA v FMF & Carmona* (CAS 2006/A/1149, para 42).
- c. A departure can only reasonably have caused the adverse analytical finding if there is a material (as opposed to a theoretical) possibility of that being the case. Thus, there have to be facts established by the athlete from which “a reviewing panel could rationally infer a possible causative link between the IST departure and the presence of a prohibited substance in the athlete’s sample. For these purposes, the

suggested causative link must be more than merely hypothetical, but need not be likely, as long as it is plausible”².

22. Applying these principles to the allegations made by Mr Arashov, our findings are as follows:

- a. We have found (see paragraph 14(a) above) that Mr Arashov declined to have a representative present and (see paragraph 14(b) above) that he was notified by Ms Hughes in the presence of an adult. Therefore, Mr Arashov’s allegations in paragraph 20(a) above fail on the facts. In addition, the relevant Article of the International Standard for Testing and Investigation (“**ISTI**”) (Annex C Article 4.4) provides that an Athlete who is a Minor merely “should” be notified in the presence of an adult (i.e. not a mandatory provision) and that, if (as here) the Minor declines a representative, the DCO shall consider whether another third party ought to be present. In the present case, such a third party was present during the collection process – Pedro Candecas Panos (an assistant/chaperone and blood collection officer) (“**Mr Panos**”). Moreover, there is no room for the necessary contention that any breach as alleged in any of these respects could have caused the adverse analytical finding.
- b. As to the second allegation (paragraph 20(b) above), Annex C Articles 4.5 and 4.6 make clear that, in the absence of a representative of the Minor, the DCO/Chaperone’s representative should observe the DCO/Chaperone while the Minor is passing a sample. That occurred in this case; Mr Panos was that representative. Again, there is in any event no room for the necessary contention that any breach as alleged in any of these respects could have caused the adverse analytical finding. The purpose of these provisions is to protect the DCO/Chaperone from an allegation of impropriety with the Minor.
- c. As to the absence of guarantee in relation to the water in the doping control station fridge (see paragraph 20 (c) above), there is no ISTI requirement that such a guarantee should be provided. On the contrary, ISTI Article 5.4.1(g) refers to Athletes consuming fluids prior to providing a sample at their own risk. In any event, we have rejected the contention that spiking of the water bottles could have caused the adverse analytical finding (see paragraph 18 above).

² *Campbell-Brown v JAAA & IAAF* (CAS 2014/A/3487 at para 155)

- d. Similarly, we have rejected the contention that contamination of the sample collection equipment could have caused the adverse analytical finding (see paragraph 16(e) above). Therefore, Mr Arashov's fourth argument (see paragraph 20(d) above) also fails. In any event, the relevant ISTI requirement (Article 6.3.4(d)) is that: "The Sample Collection Authority shall only use Sample Collection Equipment systems which at a minimum ... ensure that all equipment is clean and sealed prior to use by the Athlete". This requirement was satisfied in the present case (see the evidence set out in paragraph 16(e) above).
- e. Mr Arashov's final argument (paragraph 20(e) above) also fails. Professor Ayotte gave unchallenged evidence in her written evidence that storage conditions could not have caused the presence of Meldonium in Mr Arashov's sample. In any event, there was no evidence of breach of the relevant ISTI requirement. Article 8.3.1 provides: "The Sample Collection Authority shall define criteria ensuring that each Sample collected is stored in a manner that protects its integrity, identity and security prior to transport from the Doping Control Station..." Mr Rooney's evidence in this regard is summarised in paragraph 16(e)(iii) above. We do not consider that this discloses any failure to comply with the ISTI requirements.

(D) Conclusions on liability

- 23. For all the reasons set out above, we have been satisfied by the ITF and on the evidence that Mr Arashov did indeed commit the Anti-Doping Rule Violation pursuant to Article 2.1 of the Programme with which he has been charged.

(E) Sanction

(1) In what circumstances did Mr Arashov ingest Meldonium?

- 24. In order to decide upon the Period of Ineligibility to be imposed on Mr Arashov, it is necessary to determine whether the Anti-Doping Rule Violation in the present case was intentional (Articles 10.2.1(a) and 10.2.3 of the Programme), and whether the provisions of Article 10.4 of the Programme (No Fault or Negligence) or Article 10.5 (No Significant Fault or Negligence) are engaged and satisfied. In relation to the latter two provisions, the relevant definitions in the Programme provide that: "*Except in the case of a Minor, for any*

violation of Article 2.1 the Player must also establish how the Prohibited Substance entered his/her own system” (emphasis added).

25. The question therefore arises: how does this Tribunal interpret and apply these provisions in circumstances where the Player (a Minor) has not established how the Prohibited Substance entered his/her own system? Here, the Tribunal has rejected Mr Arashov’s speculative suggestions of contamination of the sample collection equipment and/or of the drinking water in the doping control station. We have also rejected as unreliable his adamant denial of knowing ingestion. It seems to us that, in those circumstances, it is incumbent on us to assess the most likely circumstances of ingestion by Mr Arashov, having regard to the objectively ascertainable background facts, and apply the provisions on that basis.
26. The most significant background facts are those which we have set out in sub-paragraphs (a) to (c) of paragraph 16 above. We also note that Mr Arashov did not adduce the evidence either of his tennis coach or of his fitness coach in support of his denial of having ingested Meldonium. In the above circumstances, we have concluded that the most probable explanation is that, on advice, he was given and took Meldonium in the period prior to 9 July 2016 (probably in consequence of his medical condition). That leaves open the question as to whether he did so, knowing that to do so constituted an Anti-Doping Rule Violation or that there was a significant risk that the conduct might constitute or result in an Anti-Doping Rule Violation and manifestly disregarded that risk (Article 10.2.3 of the Programme). Since Mr Arashov volunteered that he was aware at the time that Meldonium was a banned substance, this question boils down to whether he knew that he was ingesting Meldonium.
27. We have not found it easy to resolve this question. We have however been struck by the seeming disparity between the impression created by Mr Arashov’s email of 29 September 2016 (set out in paragraph 16(b) above) and by the impression created by him when he appeared before us. The email came across as genuine and as having been written (without the benefit of independent advice) by an inexperienced and naïve/innocent youngster, who might have allowed himself to be guided badly by others. In contrast, the person who appeared before us seemed (as previously stated) confident and mature beyond his years. It may be that this experience so early in his career has had a sobering and maturing effect on Mr Arashov. However, be that as it may, it is important to bear in mind that we must assess Mr Arashov and his likely behaviour as at the date when the relevant events occurred, in July 2016 (some 7 months before he gave evidence). Doing so, we have concluded that, while we

cannot and do not accept Mr Arashov's steadfast denials of having taken any substance during the relevant period other than the medications in the prescription that we have seen, we can nonetheless accept that he might not have known that what he was advised to take in addition (perhaps by one of his coaches or by a medical practitioner) contained a Prohibited Substance such as Meldonium.

28. Against that background, has Mr Arashov established that his Anti-Doping Rule Violation was not intentional (for the purposes of Article 10.2.1 of the Programme)? We note that the exception to be found in the definitions relevant to Articles 10.4 and 10.5 of the Programme is not to be found in relation to Article 10.2.1. In those circumstances, and since Mr Arashov did not give evidence to us which we are able to accept and which would negative intention as defined in Article 10.2.3 of the Programme, we have concluded that it would be wrong for us to find the test in Article 10.2.1 to have been satisfied by him.
29. Accordingly, there is no room for the application of either Article 10.4 or 10.5.

(2) Period of Ineligibility

30. Nonetheless, this does not mean that Mr Arashov must serve the four year Period of Ineligibility which is provided for in the Programme. The findings that we have made as set out in paragraph 27 above still, it seems to us, have relevance to the outcome on this aspect of the case:
- a. The definition of "Fault" in the Programme contains the following provision: "Factors to be taken into consideration in assessing a Player's ... degree of Fault include the Player's... experience, whether the Player ... is a Minor ..." This provision (and the CAS cases to which it has referred us) has led the ITF very fairly to submit as follows: "The question is whether the age of the athlete and/or his level of experience and maturity impacted on his ability to perceive the anti-doping risks and to identify and implement strategies to avoid those risks. If so, some mitigation would be appropriate; if not, it would not".
 - b. More importantly, in the case of *I v FIA* (CAS 2010/A/2268), attention was drawn to CAS decisions which have specifically stated that the principle of proportionality may mandate a judging body, in particular circumstances, to reduce the sanction below

what is provided by the applicable rules derived from the WADA Code. In that case, which concerned a 12 year old go-karter, the principle of proportionality caused the CAS panel to reduce the otherwise applicable two year ban to one of 18 months. In particular, they did this because the child was someone whose capability to grasp fully the meaning and purpose – in terms of both retribution and education – of his sanction could be doubted. In its written closing submissions, the ITF recognised that “the only possible way to reduce the ban to less than four years would be to rule that in circumstances where the athlete is only 16 years old, and clearly not as mature as he thinks he is, he is not a drugs cheat in the classical sense. Rather, he is only guilty of the sort of stupidity/failure to consider the consequences of his actions of which teenagers everywhere are guilty, and for that offence a four year sanction is so disproportionate that it cannot be imposed even though that is what the rules require”.

- c. The ITF went on to state its position that we should not follow such a course in the instant case. However, in so stating, we consider that the ITF was influenced by the behaviour of Mr Arashov at the hearing. Had it been more focussed on how Mr Arashov might have been in July 2016, as reflected in his 29 September 2016 email to which we have referred above, it might have adopted a different approach. A six month period can see profound changes in an adolescent of Mr Arashov’s age at the time. In our view, it would be disproportionate to impose a four year ban on Mr Arashov, who is right at the start of his career and someone who was clearly naïve and immature at the moment when he was advised and persuaded to take inappropriate medication last June/July. To impose a four year ban might seem proportionate in the light of the way in which he conducted himself at the hearing, but in our view that would be to allow an irrelevant consideration to influence the result.
- d. For these reasons, we have decided that a proportionate Period of Ineligibility would be one of two years.

31. Mr Arashov was provisionally suspended on 30 September 2016. Accordingly, that ban will be deemed to have commenced with effect from that date.

(3) Disqualification of Results


32. Mr Arashov's results at the Event are automatically disqualified (Article 9.1 of the Programme). There are four subsequent tournaments prior to his suspension at which he won only 15 singles ranking points and 45 doubles ranking points. He won no prize money. In those circumstances, and given the ban of two years which we have imposed, we consider, in the round, that these results should not be disqualified.

(F) The Tribunal's Ruling

33. Accordingly, for the reasons given above, the Tribunal rules as follows:

- a. It confirms the commission of the Anti-Doping Rule Violation under Article 2.1 of the Programme specified in the Charge;
- b. It orders that Mr Arashov's results must be disqualified in respect of the ITF F21 Futures tournament which was held in Gandia, Spain from 9 to 17 July 2016;
- c. It orders further that Mr Arashov be permitted to retain the ranking points obtained by him from his participation in all subsequent competitions in which he took part;
- d. Declares Mr Arashov ineligible for a period of two years, commencing on 30 September 2016, from participating in any capacity in (i) any Covered Event; (ii) any other Event or Competition or activity (other than authorised anti-doping education or rehabilitation programmes) authorised, organised or sanctioned by the ITF, the ATP, any National Association or member of a National Association, or any Signatory, Signatory's member organisation, or club or member organisation of that Signatory's member organisation; or (iii) any Event or Competition authorised or organised by any professional league or any international or national-level Event or Competition organisation.

Ian Mill QC (Chairman)


Dr Joseph Cummiskey
10.4.2017


Dr Anik Sax

Dated this 10th day of April 2017