

**INTERNATIONAL TENNIS FEDERATION**  
**INDEPENDENT ANTI-DOPING TRIBUNAL**  
**DECISION IN THE CASE OF VIKTOR TROICKI**

**Ian Mill QC, Chairman**  
**Dr Jose A. Pascual**  
**Dr Barry O’Driscoll**

**(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 2013 (“the Programme”) to determine the charge that Viktor Troicki (“Mr Troicki”) committed an Anti-Doping Rule Violation<sup>1</sup> under Article 2.3 of the Programme, the allegation being that Mr Troicki refused or failed without compelling justification to submit to the collection of a blood sample after notification of testing given to him following his match at the ATP World Tour Masters tournament held in Monte Carlo (“the Monte Carlo Masters”) on 15 April 2013 (“the Charge”).
  
2. The ITF was represented at the hearing of the Charge in London by Jonathan Taylor and Jamie Herbert of Bird & Bird, its solicitors. Mr Troicki was represented by Luigi Giuliano and Simone Maina of Segreteria Studio Avv. Chiusano, his lawyers. The Tribunal heard live evidence from five witnesses: two, Dr Elena Gorodilova (“Dr Gorodilova”) and Mr Cyrille Gan (“Mr Gan”), on behalf of the ITF; two, Mr John Reader (“Mr Reader”) and Mr Miro Bratoev (“Mr Bratoev”), on behalf of Mr Troicki; and Mr Troicki himself. It also received into evidence: (a) on behalf of the ITF, witness statements signed by Mr Jean-Luc Charleux (“Mr Charleux”) and Dr Philippe Kuentz (“Dr

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

Kuentz"); and (b) on behalf of Mr Troicki, witness statements signed by Mr Novak Djokovic, Mr Aleksander Troicki, Mr Milos Jelisavcic, Professor Slobodanka Djukic ("Professor Djukic") and Dr Bernard Montalvan.

3. The Tribunal listened to and considered this evidence during and following a hearing lasting some 9 hours in London on 19 July 2013, and it has read and considered detailed and extensive submissions on behalf of the parties.

4. The Tribunal would like to thank the parties' representatives for the considerable assistance which it has derived from their efforts on behalf of their respective clients.

## **(2) Summary of Issues**

5. Mr Troicki accepts that he was duly notified of the requirement to give both urine and blood samples following his match on 15 April 2013. He also accepts that, while he gave a urine sample, a blood sample was not given by him following that notification. His contention, which is disputed by the ITF, is that in the circumstances (which are set out below in the following sections of this Decision) there was no failure or refusal by him to give a blood sample, alternatively that he had a compelling justification for any such failure or refusal. Accordingly, he denies the Charge.

6. In the event that the Tribunal were to find that, contrary to his submission, the Charge is made out by the ITF, Mr Troicki invites the Tribunal to eliminate or reduce the period of Ineligibility under Articles 10.5.1 or 10.5.2 of the Programme. The ITF contends that there is no circumstance in which Article 10.5.1 can apply where an Anti-Doping Rule Violation under Article 2.3 of the Programme has been made out. It accepts that in principle Article 10.5.2 might apply in such circumstances, but denies that it has application in the present case.

**(B) The undisputed facts**

7. Mr Troicki is an experienced tennis professional. He is 27 years old and has been playing on the professional circuit since 2003. In 2011 he was ranked as high as number 12 in the world. He is currently number 53 in the world, but aspires to work his way back up the rankings. He accepts that he was at the material time fully aware of the relevant Anti-Doping Rules and of his responsibilities in that regard.
8. Prior to and since the events in question, Mr Troicki has had an unblemished drugs testing history. He has given numerous urine samples over the years (he thought around 80) and blood samples on five occasions.
9. There was clear and convincing evidence that Mr Troicki has suffered since childhood from a phobia of needles (a condition that he had inherited from his father). In consequence, the giving of blood is something that he faces with trepidation and that induces feelings of panic. He gave evidence that he fainted while giving blood seven years ago and that he feels unwell for the rest of the day after he has given a blood sample. The statement from Professor Djukic records that Mr Troicki reported dizziness with vertigo, nausea and chest pain following the taking of blood samples from him in 2007.
10. On the morning of 15 April 2013, Mr Troicki played his first round match in the Monte Carlo Masters against a Finn, Jarkko Nieminen ("Mr Nieminen"), who had a similar world ranking to Mr Troicki at the time. Mr Troicki lost 6-1, 6-2. Mr Troicki had defeated Mr Nieminen on the two previous occasions when they had played a match against each other. Mr Troicki described Mr Nieminen as a good friend, with whom he had practised a good deal in the past when they had shared the same coach. He told us that he would never in a practice match "*lose to him 1 and 2*".

11. Mr Troicki's explanation for his defeat and for the manner of it was that he had felt dizzy that morning, a feeling which had got worse during the match. Mr Reader (Mr Troicki's coach) gave evidence that Mr Troicki had described himself as "not feeling well" and "flat" at the end of his pre-match warm up. Following the match, Mr Troicki complained to Mr Charleux (a drug testing chaperone at the Monte Carlo Masters) when told by him that he had been selected for doping control that he felt tired and had been affected by the sun during the match. Dr Gorodilova, the Doping Control Officer ("DCO") appointed to collect the urine and (in the case of match losers) blood samples from players selected for testing on 15 April 2103 (including Mr Troicki), gave evidence that when Mr Troicki presented himself in the Doping Control Station ("DCS") he did not look well; he looked tired and weak.
12. Prior to arriving at the DCS, Mr Troicki had been given by Mr Charleux two forms: a Doping Control Form - Urine ("DCF") and a Doping Control Form - Blood ("BCF"). As someone selected to give both samples, it was Mr Troicki's obligation, once notified of his selection, to append his signature in a box in Section 2 of each form, which was positioned immediately below the following printed statements:

*"I understand that I have been selected for a doping control and acknowledge that I have received and read this notice  
I understand that I must report to the doping control immediately after notification  
I understand that any refusal or failure to submit to doping control, and/or any attempt to interfere with the doping control process, may be treated as an anti-doping rule violation".*
13. Mr Troicki signed the DCF as required of him by Mr Charleux, but refused to sign the BCF. There is an immaterial difference between Mr Troicki and Mr Charleux as to whether Mr Troicki explained to Mr Charleux that the reason that he was refusing to sign the BCF was that he would not give a blood sample (Mr Troicki denies having said this), but it is common ground between them that Mr Troicki agreed that would explain to the DCO why it was that he was unprepared to sign Section 2 of the BCF.

14. On the way to the DCS, Mr Troicki and Mr Charleux passed by the office of the ATP Tour Manager, Mr Bratoev. Mr Troicki told Mr Bratoev that he had been selected for a blood test, but that he felt dizzy and unwell and that giving blood made him feel bad. Mr Bratoev's response was that, once selected, he had to do the test.
15. There are a number of differences in the accounts of the various witnesses present in the DCS during the period when Mr Troicki was there on 15 April 2013, but the following relevant details are non-controversial:
  - a. Upon arrival at the DCS, Mr Troicki gave a urine sample witnessed by Dr Gorodilova's assistant, Mr Gan.
  - b. Dr Gorodilova then asked Mr Troicki why he had not signed Section 2 of the BCF. He responded that he was not able to provide a blood sample because he felt unwell, and he was concerned that if he gave a sample it would make matters worse. In that context, he mentioned that his father would faint on giving blood. He asked if there was any chance that he did not have to give blood on that occasion, as he did not feel at all well. (We deal with Dr Gorodilova's answer to this question in the next section of this Decision, as there is disputed evidence in that regard).
  - c. Dr Gorodilova sought to give reassurances to Mr Troicki, so as to encourage him to agree to provide a blood sample. She showed him her medical accreditations and pointed out to him a bed in the DCS where he could lie down for the purposes of giving the sample. However, Mr Troicki did not alter his position that he could not give a sample on this occasion.

d. At Dr Gorodilova's suggestion, Mr Troicki wrote a letter to Dr Stuart Miller of the ITF ("Dr Miller") (whom Dr Gorodilova had described to Mr Troicki as *"the main man in charge ... the man that is deciding things"*) in order to explain to the ITF why he was unable to give the blood sample that he had been selected to provide. Mr Troicki also tried to make contact with Dr Miller by telephone, but unsuccessfully. In a statement written by him some four days later, in response to an ITF Notice of a possible Anti-Doping Rule Violation, Mr Troicki said that he tried to contact Dr Miller by telephone because he *"wanted to be 100% sure"*.

e. The letter to Dr Miller included the following content:

*"I was not able to do the blood test today since I was feeling very bad ...for the blood test I asked kindly to skip it this time, since I get very dizzy after giving the blood out so even before the test I didn't feel good, so I felt it would be even worse for my health condition to do it today.*

*I always did blood tests before, and I do them in the future, but today I was not provide blood sample.*

*Thank you very much in advance for your understanding"*.

f. While Mr Troicki was writing the letter to Dr Miller, Mr Reader entered the room and sat down in a chair beside his player. There was no material conversation between Mr Reader and anyone in the room (including Mr Troicki). In particular, Mr Reader did not seek to see what Mr Troicki was writing, nor did he ask why the letter was being written in the first place. He did not seek any explanation from Dr Gorodilova or from his player as to what had occurred prior to his arrival, let alone why such events had occurred.

g. Mr Troicki and Mr Reader signed the BCF, noting that the letter was attached to that form. In particular, Mr Troicki signed Section 2 of the Form, below the printed statements set out in paragraph 12 above. Mr

Gan went to obtain a copy of the letter for Mr Troicki. Upon his return, Mr Troicki and Mr Reader left the DCS.

16. Upon leaving the DCS, Mr Troicki again passed by the ATP office and spoke with Mr Bratoev. According to Mr Bratoev:

- a. Mr Troicki told him that the DCO had said that it was *“ok not to do the blood test”*.
- b. Mr Bratoev questioned this, as he was surprised that the DCO should have said such a thing (since it did not accord with his understanding of the Rules, namely that once selected a sample had to be given).
- c. In response, Mr Troicki said words to the effect of:

*“I told her that I am feeling dizzy and asked her 5 times if it is OK not to do the blood test and she said it will not be a problem since I am not feeling well. All I needed to do is write an explanation she dictated me. We also tried to call Stuart Miller but something was wrong with the number she gave me”*.

17. Shortly afterwards, Mr Bratoev had a short conversation with Mr Reader. Mr Bratoev described this conversation as follows:

*“What he said is that basically he was in there when Viktor was supposed to be doing the testing and Viktor was writing an explanation. He has practically confirmed that the DCO was telling Viktor what to write in the explanation”*.

18. At about the same time, Dr Gorodilova sent an email to her superior, Neal Soderstrom (“Mr Soderstrom”), telling him what had occurred with Mr Troicki. She wrote:

*“...he informed us that he was unable to provide the blood sample today due to his health conditions. We said that he must have the blood test. He said that he feels very bad today and could not provide the blood sample, we advised him to contact dr S Miller. We have only fax number, he tried several times, it was not working. We asked to write and explain why he can not provide the blood*

*sample. He signed the BCF and wrote on the separated sheet of paper why he is unable to provide the blood sample...."*

19. Later that day, Dr Gorodilova checked with one of the tournament doctors, Dr Kuentz, whether Mr Troicki had sought medical attention from him or from either of the other two tournament doctors earlier that day. He confirmed that Mr Troicki had not done so. (The evidence of Mr Troicki was that he had gone directly from the DCS back to his hotel, where he went to sleep. Mr Reader gave evidence that he had not encouraged or suggested to Mr Troicki that he seek medical attention following his meeting with Dr Gorodilova).
  
20. Overnight, Dr Gorodilova wrote up a report for Mr Soderstrom (which she sent to him early the following morning), reiterating and expanding upon the contents of her earlier email. In particular, she added the following:

*"I explained [to Mr Troicki] refusal to undergo the test may lead to sanctions. He said he was not refusing to provide the sample, but he couldn't as he was feeling exceptionally weak and unwell. He said he's undergone blood tests in the past and he's never asked to cancel it. He said that he will give blood in the future, but today it is an exception due to his health."*

21. On the following morning, Dr Gorodilova spoke with Mr Bratoev, who asked her about Mr Troicki's failure to provide a blood sample the previous day and what happened in such cases. Dr Gorodilova replied that the ITF would look at the case and determine whether the player had valid reasons for not providing a sample; if not, he would face a sanction. She added that she had been advised by Dr Kuentz that Mr Troicki had not consulted a tournament doctor the day before, which was not good for him. According to Mr Bratoev, Dr Gorodilova also said to him that she was looking for the player in order to find out whether he had a medical certificate for the previous day, as it would be better for him if he had one.



22. Mr Bratoev clearly understood from what he was told by Dr Gorodilova that there might be a problem for Mr Troicki as a result of the events of the previous day (*"it looked like something was going wrong, yes"*), and in consequence he went to find the player. Mr Troicki reiterated to Mr Bratoev that he believed that what he had done (writing to the ITF and including what the DCO had told him to include) was enough; he did not need to do anything further. However, since Mr Bratoev told Mr Troicki that his perception was that there might be a problem, that Dr Gorodilova was looking for him and that he should therefore go to the DCS and talk with Dr Gorodilova again, Mr Troicki went to find her.

23. Dr Gorodilova asked Mr Troicki whether he had a medical certificate for his condition the previous day, to which he replied that he did not. She explained in evidence that she asked this question on the basis that she thought that he might have gone to hospital after leaving her the previous day – she knew already from her discussions with Dr Kuentz referred to above that the player had not consulted any of the tournament doctors. Mr Troicki added that he was feeling much better than he had the previous day and was ready to give a blood sample. He gave the following evidence to the Tribunal in this regard:

*"I asked, "Does it make any sense to do the blood test today, since I am feeling better today?" She answered very positive, very like enthusiastic, she said like, "Yes that would be great. That could help, that they see that you are willing to do the blood test and that you are very compliant and that you are willing to do it".*

24. Following the taking of that sample, Dr Gorodilova finalised the report which she had sent earlier that day to Mr Soderstrom. In particular, she added an account of the taking of the blood sample from Mr Troicki that had occurred in the intervening period.

(C) **Matters in dispute**

25. While there are a number of points of detail upon which the witnesses who gave evidence before the Tribunal were not in agreement, it appears to us that there is only one matter in dispute between the parties that it is necessary for us to resolve in order to be able to reach our decision in these proceedings. That matter is what the answer was that was given by Dr Gorodilova to the question posed by Mr Troicki when he asked her whether there was any possibility that he might not have to give blood despite having been notified of an obligation to do so on 15 April 2013 (see paragraph 15(b) above).
26. Dr Gorodilova was clear in her evidence to us: her response was that this was not a matter upon which she could advise the player. Whether or not Mr Troicki's reason for not giving a sample would be regarded as valid by the ITF was not her decision; the ITF would decide this. It was in this context, she told us, that she suggested that Mr Troicki write to the ITF explaining his reasons for not giving blood. He had made a decision that he would not provide a sample; he needed to explain to the ITF why that was so.
27. Mr Troicki denies that this was Dr Gorodilova's response to his question. On the contrary, he was adamant in his evidence to us that Dr Gorodilova had assured him "100%" on four or even five occasions that if he set out his reasons in a letter to the ITF, all would be well. This was in the context of his having stated to the DCO that he did not want to suffer any sanctions as a result of not giving blood. Dr Gorodilova denies that she gave Mr Troicki any such assurance.
28. Before turning to our conclusions on this issue, we should say something about the witnesses who appeared to give evidence before us. Both parties called evidence from witnesses who were said to be able to corroborate the accounts on this key issue of Dr Gorodilova and Mr Troicki, respectively:

- a. The ITF called Mr Gan, who was present in the room in the DCS when the relevant exchanges took place between Dr Gorodilova and Mr Troicki. While we are sure that Mr Gan was doing his best to assist the Tribunal, we do not consider that his evidence should be given any weight on this key point, for two principal reasons. First, although he signed a witness statement in English, he was joined at the hearing by an interpreter whose role was to translate questions put to him in English into his native language, French, and it became increasingly clear as he was giving his evidence that his command of spoken English was not that great. Since the exchanges in the DCS on 15 April 2013 between Dr Gorodilova and Mr Troicki took place in English, we are not satisfied that he would sufficiently have understood what was being said in his presence to be able to assist us as to any points of disagreement. Secondly, on several occasions during the course of his oral evidence of what occurred, he gave answers which differed materially from his evidence as contained within his written witness statement (the contents of which he had confirmed to us as being correct).
  
- b. Mr Troicki called Mr Reader to give evidence. Mr Reader was present during the latter part of the period during which Mr Troicki was in the DCS on 15 April 2013 (see paragraph 15(f) above). In his written evidence, Mr Reader recounted how Mr Troicki asked Dr Gorodilova twice in his presence whether *“there would be any problem in proceeding as they were doing”* to which Dr Gorodilova is said to have replied that *“there should not be”*. He repeated that evidence when he appeared before us. In his oral evidence, Mr Reader also stated that he thought at the time that Mr Troicki’s request to speak to Dr Miller was because *“something was not quite sitting with [Mr Troicki]...he was not quite sure, not convinced that everything was going to be ok”*. He also made clear that he had not been present when Mr Troicki had asked Dr Gorodilova

whether he could avoid giving blood on that occasion, or when she had given her response. We make the following observations about Mr Reader and his evidence:

- i. The passages in his evidence set out above do not support the position adopted by Mr Troicki before us, namely that he had received 100% assurances from Dr Gorodilova that there would be no problem so long as he explained himself in writing to the ITF.
  
- ii. We were in any event not persuaded by Mr Reader that we should confidently accept his evidence on this central issue. We were unimpressed by him as a witness. Despite having been a professional tennis coach since at least 1985, he affected not to know the detail of the ITF's anti-doping rules. Further, he did not at any time while in the DCS question the DCO about whether it was satisfactory for his player not to give blood, despite apparently perceiving that Mr Troicki himself was not sure that all would be well unless he did so; nor did he have any conversation with Mr Troicki after leaving the DCS about how he was feeling or what advice (if any) the DCO had given him about his condition or what he ought to do in order to treat it. Finally, and tellingly, he gave evidence that he spoke with Mr Bratoev shortly after leaving the DCS and confirmed to Mr Bratoev that Dr Gorodilova had told Mr Troicki that it was ok not to do the blood test. Not only was this not Mr Bratoev's evidence (see paragraph 17 above), but it is not what Mr Reader stated in evidence had in fact been said by her. Accordingly, on matters of important detail, we feel unable to place any reliance upon Mr Reader's evidence in the absence of third party corroboration. We consider that Mr Reader, without having

given any proper thought to the matter, was prepared to say whatever he felt would be likely to assist his player in avoiding a sanction for an Anti-Doping Rule Violation.

- c. Mr Troicki also called Mr Bratoev to give evidence. In contrast to Mr Reader, Mr Bratoev came across as an assured witness, who had a good recollection of the relevant events on 15 and 16 April 2013. Moreover, as a tour manager of the ATP, he was independent of the parties to these proceedings. We are able to accept the thrust of his evidence, including his important evidence (heavily relied upon by Mr Troicki) which is summarised in paragraph 16 above. Indeed, the ITF was not disposed to challenge that evidence (thus its inclusion within Section (B) of this Decision).

29. We now turn to consider the two principal witnesses who gave evidence before us.

- a. Dr Gorodilova is a highly experienced DCO (having been involved in anti-doping work in sport for 15 years). As such she is well aware of her responsibilities and the limits of her powers. In particular, she was well aware on 15 April 2013 that it was indeed not her decision (but rather that of the ITF) whether it was open to Mr Troicki to avoid giving blood on that day or whether that avoidance would result in sanctions for an Anti-Doping Rule Violation. She appended to her witness statement training materials published by her employer, International Doping Tests and Management Limited (“IDTM”) which included advice to DCOs as to how to act when faced with a possible failure or refusal to give a sample. Although this was the first time that Dr Gorodilova had found herself in the precise situation which she faced with Mr Troicki, we have no doubt that she would have had in mind the guidance in those materials on that occasion and would have

sought to follow such guidance scrupulously. We say this because we found her a cautious, thoughtful and truthful witness, who used her words carefully (despite English not being her mother tongue). The IDTM materials included the following:

*“In fact, there is no valid excuse for a DCO not to proceed and collect a sample from the athlete once the athlete has been notified. If an athlete refuses to provide a sample according to the procedures, it is up to the athlete’s international Federation to investigate this as a possible failure to comply...”*

*If you find yourself in a situation that could be interpreted as a failure to comply, you should follow the six steps listed on next two pages:*

- 1 Always maintain a polite behaviour. Be very clear about the athlete’s responsibilities...*
- 2 Inform the athlete...of the possible consequences of a failure to comply with the doping control procedure...*
- 3 Always ensure that there is no misunderstandings involved...(e.g....language problems etc)*
- 4 Always encourage the athlete to proceed with the doping control...*
- 5 The relevant information about the failure to comply should be filled out on the doping control form...The DCO should always encourage the athlete to sign the form.*
- 6 Try to obtain witnesses signatures to confirm the events taking place...*

*If you are ever faced with a failure to comply, it’s very important that you report it to the IDTM HQ as soon as possible. Make notes of everything that took place and write a comprehensive and detailed report...”*

Having regard to our perception of her as a witness, and having regard to the undisputed evidence which we have summarised in Section (B) above about what occurred in the DCS on 15 April 2013 (including in particular the various steps taken by Dr Gorodilova in response to Mr Troicki’s stated position), we have decided that we should proceed on the basis that Dr Gorodilova did in fact follow that guidance with Mr Troicki, in the absence of compelling evidence to the contrary.

- b. Mr Troicki is a confident and determined man, who was very keen to impress upon the Tribunal his conviction that he had not done anything wrong. We are content to accept that by and large he had genuine belief in the accuracy of his account to us of the relevant events. However, that does not mean that this account was in fact accurate. It is very frequently the case that witnesses have persuaded themselves of the truth of what they purport to recall, despite the fact that the truth in reality lies elsewhere.
  
- 30. Therefore where, as here, there are conflicting accounts it is necessary to test each account against all other available material and against any inherent probabilities and inherent improbabilities in order to be able to reach a confident conclusion as to what in fact occurred. Having done this, and as explained below, we have concluded that we should accept Dr Gorodilova's account of what occurred in preference to that of Mr Troicki. In particular, it is our conclusion that:
  - a. She informed Mr Troicki that she could not advise him as to whether his reason for not giving blood was a valid reason, as it was not her decision, but would be a matter for the ITF to decide.
  - b. She did not assure Mr Troicki that, if he wrote his reasons in a letter to the ITF, all would be well.
  
- 31. Our principal reasons for these conclusions are as follows:
  - a. They accord both with what the IDTM training materials would require a DCO to say and not to say in these circumstances and with what we would expect an experienced DCO such as Dr Gorodilova to say and not to say in such circumstances, given the scope of her responsibilities and the limits of her authority.

- b. They accord with Dr Gorodilova's email and report to Mr Soderstrom shortly after the events in question had occurred (see paragraphs 18 and 20 above). Had Dr Gorodilova given any assurance to Mr Troicki as suggested, that is something that she would have included in those documents, in which she described all the material events that had occurred (as required on her in the IDTM training materials).
- c. They are consistent with Dr Gorodilova's behaviour on 16 April 2013 (her negative reaction to the absence of a medical certificate and enthusiasm at the offer by Mr Troicki to give blood voluntarily: see paragraphs 20 and 22 above) – if she had given an unequivocal assurance as suggested the previous day, why would she have reacted in these ways and why would Mr Troicki (who had just been told by Mr Bratoev that there might be a problem: see paragraph 22) not have asked her when he saw her on 16 April 2013 (which he accepted he did not) why she was expressing concerns when she had not communicated any on the previous day?
- d. They accord with our perception of Dr Gorodilova as a conscientious and cautious individual. There is no evidence which compels us to the conclusion that, despite this, she failed to follow the relevant guidance given to her by IDTM as to how to proceed in the circumstances she faced with Mr Troicki.
- e. Mr Troicki's own recollection, as recorded in his written statement given four days after the event, was not consistent with an unequivocal assurance having been given to him on 15 April 2013 by Dr Gorodilova. According to that statement, she had merely stated that "*it should be all right*" if he wrote as suggested to the ITF. That statement also included the words "*I wanted to be 100% sure*" (see the last sentence of paragraph 15(d) above). Moreover, as Mr Troicki accepted in



evidence before us (see also paragraph 15(d) above), he had appreciated at the time that Dr Miller was the one who had to make the decision – i.e. to decide whether Mr Troicki’s conduct and his explanation for that conduct would or would not be regarded as acceptable.

- f. For what it is worth, Mr Troicki’s own stated lack of certainty on 15 April 2013 that all would be well is reflected in the evidence of Mr Reader referred to in paragraph 28(b) above.

32. What then of the evidence from Mr Bratoev as to what Mr Troicki said to him shortly after leaving the DCS? Why would Mr Troicki have been so categorical in his assertion to Mr Bratoev that the DCO had told him that it was “OK not to do the blood test” unless that is what had in fact occurred? We have concluded that the answer to these questions is to be found in an appreciation of the context in which the exchanges between Dr Gorodilova and Mr Troicki took place. That context was that the player was feeling ill and dizzy, he was panicked by the thought of giving blood because of his fear of needles and because of the likely adverse physical consequences for him, were the test to go ahead (in particular because he was already feeling unwell). At the same time, he was also well aware of the relevant Anti-Doping Rules and needing to ensure that he did not incur any sanction as a result of not giving the required sample. In that highly stressful situation for him, and with his mental faculties impaired by his physical condition, Mr Troicki heard what he felt he needed to hear from Dr Gorodoliva and blanked out anything else. Thus:

- a. Mr Troicki did not properly take on board at the time her statement that she could not advise him as to whether his reason for not giving blood was a valid one, and he elevated her statement that he should put his explanation in writing to the ITF into something that it was not – he saw it as being offered as a potential solution to the problem,

whereas it was in fact being proposed by her merely as part of the due process to be followed in such circumstances (see item 5 in the IDTM guidance set out in paragraph 29(a) above).

- b. Mr Troicki heard in the words of Dr Gorodilova, while he was writing out the letter to the ITF and signing the BCF, assurances suggesting a positive outcome as a result of his actions, whereas in fact what she was doing was to encourage him politely to complete those matters, again in accordance with the IDTM guidance.

- 33. We should make it clear that we are not here suggesting that Dr Gorodilova was at all unclear in what she stated to Mr Troicki, rather that Mr Troicki (in the circumstances and for the reasons stated above) was misinterpreting her various statements. That said, we do not accept that Mr Troicki misinterpreted Dr Gorodilova to an extent that warranted the assertion made by him shortly afterwards to Mr Bratoev. His attempt to speak to Dr Miller, the content of his letter to Dr Miller (*"thank you very much in advance for your understanding"*; and the absence of any mention in that letter of assurances given to him by Dr Gorodilova or of any understanding on the part of Mr Troicki that he was justified in not giving blood), his failure to complain to Dr Gorodilova on 16 April 2013 when it became clear to him that his failure to give a sample might prove problematic (or even to mention to her in that context any assurances given by her the previous day) and the qualifications contained within his statement written four days later, all clearly indicate that Mr Troicki was not as confident as to the outcome as he wanted Mr Bratoev to believe was the case. One can speculate as to why Mr Troicki exaggerated the position to Mr Bratoev as he did; Mr Troicki came across to us as someone prone to exaggeration in order to make his point, but it may have been that he expressed himself in a way designed to avoid the possibility of Mr Bratoev telling him to go back to take the test.

(D) **The relevant Rules of the Programme**

(1) **Article 2.3**

34. Mr Troicki is charged with a breach of Article 2.3 of the Programme, which provides that it is an Anti-Doping Rule Violation to refuse or fail “*without compelling justification*” to submit to Sample collection after notification of Testing as authorised in applicable anti-doping rules, or otherwise evading Sample collection.
35. Mr Troicki denies the Charge on the bases: (a) that his conduct amounted neither to a failure nor to a refusal to give a Sample as notified; alternatively, (b) that any such failure or refusal was with compelling justification.
36. The parties have drawn our attention to a number of cases in which tribunals have considered whether “*compelling justification*” existed in the particular circumstances of those cases. The ITF submits that these cases demonstrate that these words should be construed extremely narrowly, in order to avoid the consequence that testing efforts would be completely undermined. Further, it submits that the player would have to be able to show that it was not physically possible for him to provide a sample or that his failure to do so was unavoidable.
37. The Tribunal accepts the thrust of these submissions. As observed in the case of WADA v CONI & Ors (CAS 2008/A/1557) at para 80, the use of the word “*compelling*” in Article 2.3 “*underscores the strictness with which the justification needs to be examined*”. Moreover, in the case of CCES v Boyle (SDRCC, 31 May 2007) at para 53, the tribunal rejected the submission that, if a player was taken violently and horribly ill, this would afford compelling justification for refusing or failing to submit to a test: “*to be compelling her departure would have had to have been unavoidable*”.
38. Unsurprisingly, therefore, Mr Troicki does not seek to argue that the facts of his illness at the time, his phobia of needles and his panic at the likely physical consequences for him of giving blood would of themselves amount

to “*compelling justification*” for the purposes of Article 2.3 of the Programme. Mr Troicki seeks to rely upon these factors in conjunction with his asserted case that he was assured by Dr Gorodilova that it would be ok for him to miss the test, given his written explanation to the ITF.

39. The ITF concedes, correctly in our view, that if we were to find that Dr Gorodilova had given Mr Troicki an unequivocal assurance, without any qualification, that would have led any reasonable person to understand that he/she did not have to give a test and that he/she would not face any sanctions for doing so, this would amount to compelling justification for the purposes of the Rule.

**(2) Articles 10.5.1 and 10.5.2**

40. In the event that the Tribunal were to find the commission by him of an Anti-Doping Rule Violation as charged, Mr Troicki seeks to bring himself within the provisions of Article 10.5.1, alternatively Article 10.5.2, of the Programme. Under Article 10.5.1, the otherwise applicable period of Ineligibility is eliminated in circumstances where the Participant establishes that he/she bears No Fault or Negligence in respect of that Violation. Under Article 10.5.2, the period of Ineligibility may be reduced (by a maximum of 50%) if the Participant establishes that he/she bears no Significant Fault or Negligence in respect of that Violation<sup>2</sup>.
41. In its opening written submissions, the ITF suggested that there was a conceptual difficulty in applying Article 10.5.1 or 10.5.2 in circumstances where a player’s actions were intentional and the attempted justification for them had been rejected. However, in closing, it accepted that such a possibility must exist (given the terms of Article 10.3.1 of the Programme – see footnote 2 above), and suggested (correctly in our view) that this might occur

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<sup>2</sup> Under Article 10.3.1 of the Programme, a first anti-doping offence under Article 2.3 of the Programme carries with it a two year period of Ineligibility “*unless the conditions specified in Article 10.5...are met*”.

where a genuine and honest mistake as to one's responsibilities under the Rules explained (but did not justify) a player's failure. Thus, for example, the fact that a player had failed to comply as a result of severe stress at the time might operate to justify some mitigation of sanction under Article 10.5.2: see Kendrick v ITF (CAS 2012/A/2804) and WADA v CONI & Ors (supra).

42. It was Mr Troicki's submission that, since his actions were the consequence of his misunderstanding of Dr Gorodilova's statements to him, Article 10.5.1 or at any rate Article 10.5.2 had to be engaged. The ITF did not accept this. In its submission, Article 10.5.1 could not be engaged as a matter of logic and principle, and to apply Article 10.5.2 on the facts of the present case would be "*a stretch*". Alternatively, the ITF submitted that those facts would only justify "*limited mitigation at best*" under Article 10.5.2.

**(E) Our Overall Conclusions**

**(1) Failure or Refusal**

43. We find that Mr Troicki both failed and refused to submit to giving blood on 15 April 2013, having been duly notified of his obligation to do so. His failure to give blood is obvious, given that it did not occur. However, we consider that Mr Troicki also by his conduct and his actions evidenced a refusal to give blood as well. Dr Gorodilova was adamant in her evidence that she took the steps that she did (starting with the request for a letter of explanation) because Mr Troicki had made it clear that his mind was made up - he was not prepared to give blood despite her efforts to encourage him to do so.

**(2) Compelling Justification**

44. We have concluded that Mr Troicki's attempt to defend the Charge on the basis that he had compelling justification for not giving blood must fail. We refer to paragraphs 38 and 39 above. The only circumstances in which we would have been prepared to accept such a defence would have been if we had accepted that Dr Gorodilova's statements and conduct would have led a reasonable person in the position of Mr Troicki on 15 April 2013 to conclude

that he definitely would not be sanctioned if he did not give blood on that occasion. It is a question that we do not have to address whether that reasonable person was one having the characteristics and condition of Mr Troicki at the time. We do not need to address this because, as set out in paragraph 33 above, we do not accept that Mr Troicki in fact understood at the time that Dr Gorodilova was giving him any unqualified or categorical assurance. Short of such an understanding, there can have been no compelling justification for Mr Troicki's actions.

**(3) Mitigation under Article 10.5.1**

45. We do not see how it is open to Mr Troicki to argue that he was guilty of No Fault or Negligence, given our findings set out above and our conclusion that he is unable sufficiently to justify his actions to escape liability under the Charge.

**(4) Mitigation under Article 10.5.2**

46. On the other hand, we are prepared to treat Article 10.5.2 as engaged on the facts of this case. Like the footballers in the CONI case and the tennis player in the case of Kendrick, Mr Troicki acted in the way that he did in consequence of the stress that he was under - in this case, as a result of a combination of his physical condition and his panic at the prospect of giving blood. On all other occasions when he was in good health (including on 16 April 2013 - see paragraph 23 above), he gave blood, despite his phobia. On the other hand, we agree with the ITF that his circumstances only warrant affording Mr Troicki limited mitigation, given our finding that he was nonetheless aware at the time that there was a risk (however small) that his actions might result in a sanction. We have concluded in all the circumstances that the right course for us is to accept that Mr Troicki has established that he was not guilty of Significant Fault or Negligence and reduce the otherwise applicable period of Ineligibility by six months.

**(5) Sanction**

47. Article 10.9 of the Programme provides that any Consequences imposed thereunder (including any period of Ineligibility) shall (subject to certain exceptions that have no application in the present circumstances) come into force and effect on the date that the decision imposing the Consequences is issued.
48. Article 9.1 of the Programme provides that an Anti-Doping Rule Violation automatically leads to Disqualification of the results obtained by the Player in the Competition in question, with all resulting consequences, including forfeiture of any ranking points and Prize Money.
49. Article 10.8 of the Programme provides that *“all other competitive results obtained from the date the Sample in question was collected...or other Anti-Doping Rule Violation occurred through to the start of the Ineligibility period shall be Disqualified (with all of the resulting consequences, including forfeiture of any medals, titles, ranking points and Prize Money), unless the Independent tribunal determines that fairness requires otherwise”*. The ITF submits that the burden is on Mr Troicki to establish why fairness requires otherwise in the circumstances of his case. Accepting that burden, Mr Troicki argues that it would be unfair to Disqualify him in respect of subsequent events because he was truly convinced that he had not broken the Rules.
50. While we have not accepted that as a fair summary of the player’s state of mind at the time, we are nonetheless of the view that fairness dictates that Mr Troicki should not suffer any Disqualification beyond the event in question. In reaching that conclusion, we have borne in mind the helpful analysis of the relevant authorities on this point in the case of Bogomolov (an ITF Anti-Doping Tribunal Decision of 18 January 2005). It seems to us that, in circumstances where the Anti-Doping Rule Violation is constituted by a failure or refusal to submit to giving a sample, where there is no suggestion that this failure or refusal was in fact prompted by the player’s desire to evade

the detection of a banned substance in his system, where there have been subsequent negative tests (including on the following day) and where the facts of the case warrant some mitigation of sanction under Article 10.5.2 of the Programme, it would be disproportionate to penalise Mr Troicki in respect of his subsequent playing activities. We accept that there is something to be said for the view (advanced by the ITF in argument in Bogomolov) that the Programme is designed to encourage players voluntarily to abstain from competing pending the decision on their case and that Article 10.8 should be read against that background. However, we do not consider that, on the facts of this case, Mr Troicki should be penalised in effect because he chose not to take that voluntary course.

**(6) The Tribunal's Ruling**

51. Accordingly, for the reasons given above, the Tribunal:
- a. Confirms the commission of the Anti-Doping Rule Violation under Article 2.3 of the Programme specified in the Charge;
  - b. Orders that Mr Troicki's individual result must be disqualified in respect of the Monte Carlo Masters 2013, and in consequence rules that the 45 ATP ranking points and €9,305 in prize money obtained by him from his participation in that event must be forfeited;
  - c. Orders further that Mr Troicki be permitted to retain the prize money and ranking points obtained by him from his participation in all subsequent competitions in which he has participated;
  - d. Finds that Mr Troicki has established that the circumstances of his Anti-Doping Rule Violation bring him within the provisions of Article 10.5.2 of the Programme;



- e. Declares Mr Troicki ineligible for a period of 18 months, commencing on 15 July 2013, 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 Jose A Pascual**

**Dr Barry O'Driscoll**

**25 July 2013**