CAS 2017/A/4944 Yulia Naumova v. International Military Sports Council (CISM) & World Anti-Doping Agency (WADA)

AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

Sitting in the following composition

President: Mr. Jens Evald, Professor of Law in Aarhus, Denmark

Arbitrators: Mr. Olivier Carrard, Attorney-at-Law in Geneva. Switzerland

Mr. Timour Sysouev, Attorney-at-Law in Minsk, Belarus

in the arbitration between

Ms. Yulia Naumova, St Petersburg, Russia

Represented by Mr. Gadzhi Gadzhiev, Attorney-at-Law, Moscow, Russia

Appellant

International Military Sports Council (CISM), Brussels, Belgium

Represented by Mr. Dominique Gavage, Attorney-at-Law, Brussels, Belgium

First Respondent

and

World Anti-Doping Agency (WADA), Montreal, Quebec, Canada

Represented by Mr. Ross Wenzel and Mr. Nicolas Zbinden, Attorneys-at-Law with Kellerhals Carrard, Lausanne, Switzerland

Second Respondent

I. PARTIES

1. Ms. Yulia Naumova (the "Athlete" or "Appellant") is a Russian international-level Athlete of Military Pentathlon.

2. The International Military Sports Council (the "CISM" or "First Respondent") is an apolitical organization, which fosters, through sport, the philanthropic goal of friendship between military athletes to promote international harmony and peace. In order to achieve these goals, CISM organizes Summer and Winter Military World Games, and other sports events around the world, continental and regional levels. Its headquarters are in Brussels, Belgium.

3. The World Anti-Doping Agency (the "WADA" or "Second Respondent") is a Swiss private law Foundation. Its seat is in Lausanne, Switzerland, and its headquarters are in Montreal, Canada. The Second Respondent is an international independent organization created in 1999 to promote, coordinate, and monitor the fight against doping in sport in all its forms.

II. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the parties' submissions on the merits of this appeal. 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 Panel considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

5. From 7 to 14 August 2016, the Appellant took part in the 63rd World Military Pentathlon Championship held in Wiener Neustadt in Austria, were she won two gold medals in the individual and the team competitions.

6. On 11 and 12 August 2016, the Appellant underwent two in-competition doping controls. On both doping control forms, the Appellant declared that she was taking Vitamin. Both tests were positive and showed the presence of Bromantan, a non-specified substance prohibited in competition.

7. On 2 September 2016 a letter was sent by the First Respondent Secretary General, Colonel Dorah Mamby Koita, to Colonel Oleg Botsman of the Physical Training department of the Russia Armed Forces informing him about the results of the two doping controls and asking him to notify them to the Athlete.

8. On 23 September 2016, Colonel Oleg Botsman sent a letter saying that the Appellant requested the analysis of the B-sample.

9. On 27 September 2016, CISM advised the representative of the Appellant of the dates of the opening of both B-samples. The Appellant's representative informed CISM, that nobody from the Appellant's side would be present at the time of the opening of the B-samples.

10. On 6 October 2016, the results of the B-samples were reported in the Anti-Doping Administration & Management System (the "ADAMS") by the laboratory confirming the presence of Bromantan.

11. On 10 October 2016, the First Respondent Secretary General, Colonel Dorah Mamby Koita informed Colonel Oleg Botsman of the results of the B-samples analysis and the opening of the disciplinary proceedings.

12. On 20 October 2016, the First Respondent Secretary General, Colonel Dorah Mamby Koita sent a request to the President of the CISM Discipline Commission, Colonel André Therry, to establish a hearing panel.

13. On 20 November 2016, the First Respondent Secretary General, Colonel Dorah Mamby Koita informed Colonel Oleg Botsman that the hearing would take place on 22 November 2016 in Brussels.

14. On 21 November 2016, Colonel Oleg Botsman sent the Athlete's explanatory memorandum informing the First Respondent that the Russian delegation would not take part in the disciplinary hearing, and he stated, *"We fully trust the decision of the CISM Discipline Commission"*.

15. In her memorandum dated 7 November 2016, the Appellant explained the following:

"I inform you that in April 2016 I had taken the medicine "Ladasten" (manufacturer ZAO "Lekko", Russia) for 2 (two) weeks, which as I found out upon the results of the doping-test contained a substance similar to Bromantan.

I took this medicine to enhance immunity during flu epidemic HINI period in St. Petersburg, (Russia), the city of my residence.
Please, consider that I had no opportunity to obtain other immune modulators or antiviral agents since they absent at the pharmacy by the reason of high demand and deficiency.

Please, be advised that prior the above mentioned medicine (Ladasten) was prescribed to me at the stomatology (dental) clinic for implantation.

I confirm that this medicine was not taken by me during the competition period. I hope for your understanding and wait for your fair decision."

16. In its decision rendered on 30 November 2016, the CISM Discipline Commission imposed a four-year period of ineligibility on the Appellant for her violation of the CISM Anti-Doping Rules (the "CISM ADR"), starting from the date of the collection of the first sample (11 August 2016). In its decision, the CISM Discipline Commission, *inter alia*, stated the following:

"1. The athlete is considered to have committed an anti-doping rule violation during the above mentioned CISM sport event, in Wiener-Neustadt, Austria.

2. Taking into consideration the article 10.2.1.1. of the WADA Code, the athlete has to comply an ineligibility period of 4 (four) years, starting from the date collection of the first sample collected, 11 August 2016.

3. CISM Sports Commission should cancel all the results of the athlete in the mentioned Military Pentathlon Championship, as well as in any other event under its competence that she participated since the date of suspension mentioned above.

4. Russian Delegation is to arrange the return of her gold medals and Russian team gold medals to CISM General Secretariat not later than 20 February 2017. After this date, the CISM SG will reallocate the medals amongst the medal winners."

17. On 19 December 2016, a letter dated 16 December 2016 was sent by the first Respondent Secretary General, Colonel Dorah Mamby Koita to Colonel Oleg Botsman, asking to make contact to the Appellant and inform her about the decision of CISM Discipline Commission and provide all the requirements made by the mentioned Commission. An acknowledgement was sent the same day to the First Respondent.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

18. On 6 January 2017, the Appellant filed her Statement of Appeal against the CISM Discipline Commission Decision with the Court of Arbitration for Sport (the "CAS") in accordance with Article R47 et seq. of the Code of Sports-related Arbitration (the "Code"). In the Statement of Appeal, WADA and the Russian Anti-Doping Agency (RUSADA) was mentioned as "3rd party".

19. On 19 January 2017, the Appellant informed the CAS Court Office that the Statement of Appeal was to be considered as the Appeal Brief in accordance with Article R51 of the Code.

20. On 10 February 2017, the CAS Court Office acknowledged receipt of the First Respondent's Answer, dated 8 February 2017. In the letter, the Parties were invited to inform the CAS Court Office whether they preferred a hearing to be held in this matter or the Panel to issue an award based solely on the Parties' written submissions.

21. In its letter email dated 13 February 2017, the First Respondent stated that it was not necessary to hold a hearing and the Panel could issue an award based on the Parties' written submissions.

22. On 14 February 2017, the CAS Court Office, on behalf of the Secretary General of the CAS, confirmed that the Panel had been constituted as follows: Mr. Jens Evald, Professor of Law in Aarhus, Denmark (President of the Panel), Mr. Olivier Carrard, Attorney-at-Law in Geneva, Switzerland (nominated by the First Respondent) and Mr. Timour Sysouev, Attorney-at-Law in Minsk, Belarus (nominated by the Appellant).

23. On 23 February 2017, the CAS Court Office advised the Parties that the Panel had decided to i) have a second round of submissions in accordance with Articles R44.3 and R57 of the Code and upon receipt of the Parties additional submissions ii) reserve the possibility to decide to hold a hearing. The Appellant was invited to provide the CAS Court Office with a power of attorney.

24. On 27 February 2017, the Appellant confirmed that she wished to part WADA and RUSADA in the procedure *"because the decision was made on their rules"*.

25. On 2 March 2017, the CAS Court Office received the Appellant's power of attorney.

26. In its letter dated 3 March 2017, RUSADA informed the CAS Court Office that *"Given the fact that RUSADA was not the organization that initiated the test, carried out the results management and took a final decision, please do not assume RUSADA is third party in this case"*.

27. In an email dated 13 March 2017, WADA confirmed that it wished to participate in the proceedings. The primary reason for participating was *"the Appellant's explanation for the origin of the bromantan in her samples dated 11 and 12 August 2016 – notably that it resulted from an ingestion of the medicine Ladasten during a two week period in April 2016 – does not appear to be possible from a pharmacokinetic perspective"*.

28. On 13 March 2017, the CAS Court Office invited the Appellant, within ten days, to file its observations.

29. In its email dated 14 March 2017, the First Respondent stated that it had no observations about WADA's participation in the proceedings.

30. On 27 March 2017, the CAS Court Office informed the Parties that the Panel would issue its decision on WADA's participation in due course.

31. On 30 March 2017, the Panel confirmed the participation of WADA in the present procedure as Respondent in accordance with Article R41.4 of the Code. Accordingly, WADA was granted a ten-day deadline to submit its written submission in the case at stake.

32. On 10 April 2017, WADA submitted its observations in which it, *inter alia*, concluded as follows:

"6. On the face of the CISM ADR, it [...] appears that the CISM Disciplinary Commission's sanctioning power is limited to Consequences relating to the CISM Event and that, by sanctioning the Athlete with a four year ineligibility period, the CISM Disciplinary Commission acted ultra vires. It is therefore incumbent on CISM to explain the basis for its authority to impose a period of ineligibility on the Athlete."

33. On 12 April 2017, the CAS Court Office gave the Appellant and the First Respondent the opportunity to submit within ten days their observations on WADA's submission dated 10 April 2017.

34. In its letter dated 21 April 2017, the First Respondent explained the basis for its authority to impose a period of ineligibility on the Athlete.

35. On 8 May 2017, the CAS Court Office invited, with reference to the latest development in the case, the Parties to inform whether they preferred a hearing to be held or for the Panel to issue an Award solely on the basis of the Parties' written submissions.

36. In its email dated 9 May 2017 to the CAS Court Office, the Respondent stated that a hearing was not necessary.

37. In an email dated 12 May 2017 to the CAS Court Office, the Appellant stated, *"Our party believes that you can make a decision without a hearing"*.

38. In its email dated 15 May 2017 to the CAS Court Office, the Second Respondent noted that a hearing was not necessary.

39. The CAS Court Office invited on behalf of the Panel the First Respondent to clarify whether or not the Appellant was suspended after the collection of the test samples of 11 August and 12 August 2016 and if she had participated in any other CISM events following the 63rd World Military Pentathlon Championship in 2016.

40. In its letter dated 1 June 2017 to the CAS Court Office, the First Respondent stated the following:

"1) Was Appellant suspended after collections of the test samples?

There wasn't provisional suspension before the CISM's decision on 30 November 2016. CISM Discipline Commission imposed four-year period of ineligibility to Appellant for her violation of the anti-doping rules, starting from the date of the collection of the first sample (11 August 2016).

2) Did Appellant participated to other CISM events?

No, the Appellant didn't participate to other CISM events.
The next CISM Military Pentathlon Championship will be held from 29 July 2017 to August 2017 in Ecuador."

41. Each Party returned its Order of Procedure duly signed. WADA however, made the following comment under section 2, 4 and 8 of such document "*as intervening third party*" instead of Second Respondent.

IV. PARTIES' SUBMISSIONS

A. The Appellant's Submissions

42. The Appellant's submissions, in essence, may be summarized as follows:

- "WADA Code doesn't forbid to take Bromantan in all time. It is forbidden during competition only"

- "The CISM Discipline Commission did not realize that the medicine is eliminated from the body very long".

- "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".

- "The appellant wasn't taking any medicine during competition. It has been 3 months since "Ladasten" consumption. It was a single event of violation from beginning of career. Considering the age of appellant the decision make impossible continuing of the career."

The Appellant makes the following request, asking the CAS *"to cancel the decision or make it less severe"*.

B. The First Respondent's Submissions

43. The First Respondent's submissions, in essence, may be summarized as follows:

- An anti-doping violation occurred on basis of Article 2.1.2 of the CISM ADR alternatively Article 2.2 of the CISM ADR.

- The standard sanction for the Appellant's anti-doping rule violation is four years pursuant to Article 10.2 of the CISM ADR.

- The product that the Athlete acquired contains Bromantan itself, not a related product. Ladasten contains Bromantan, a prohibited substance, and its advertised properties should alert competing athlete.

- Bromantan is a non-specified substance prohibited in competition. In order to reduce the sanction to two years, the Appellants must establish that the anti-doping rule violation was not intentional.

- The Appellant has failed to establish on the balance of probability that the anti-doping rule violation was not intentional based on the following reasons:

  - The Appellant does not prove that Ladasten was prescribed by her doctor, prior April 2016 by her dentist.

  - Bromantan does not increase immunity.

  - The flu epidemic in St Petersburg was over in March 2016.

  - The Appellant did not file any document proving *"that the medicine is eliminated from the body very long"*

  - According to several scientific articles and the statement from Dr Robert Zavuga of CISM TUEC and Professor Christiane Ayotte from INRS-Institut Armand Frappier in Québec it is unlikely that the substance lasted four months in the Appellant's body.

  - The Appellant did not explain why she did not apply for a Therapeutic Use Exemption (TUE) if she knew that the substance could be found in her body months after the ingestion.

  - The Appellant does not prove that she could not take another medication.

  - The Appellant did not mention on her doping control form the name of the substance.

- The use of Bromantan was a conscious and deliberate act.

- The use of Bromantan improves sporting performance.

44. The First Respondent makes the following requests for relief, asking the CAS:

"1. The Appeal of Appellant is admissible.
2. The Appeal of Appellant be dismissed.

3. The decision rendered by the CISM's Discipline Commission on 30 November 2017 [6], be confirmed.

1. *The athlete is considered to have committed an anti-doping rule violation during the above mentioned CISM sport event, in Wiener-Neustadt, Austria.*

2. *Taking into consideration the article 10.2.1.1. of the WADA Code, the athlete has to comply an ineligibility period of 4 (four) years, starting from the date of the collection of the first sample collected, 11 August 2016.*

3. *CISM Sports Commission should cancel all the results of the athlete in the mentioned Military Pentathlon Championship, as well as any other event under its competence that she participated since the date of suspension mentioned above.*

4. *Russian Delegation is to arrange the return of her gold medals and Russian team gold medals to the CISM General Secretariat no later than 20 February 2017. After this date, the CISM SG will reallocate the medals among the medal winners.*

4. That Appellant shall bear all costs of the proceedings including a contribution in CISM's legal costs and other expenses incurred in connection with the proceedings."

C. The Second Respondent's Submissions

45. The Second Respondent's submissions are as follows:

- *"7. [...] WADA notes that the Athlete's explanation of origin lacks any evidentiary basis and relies solely on the Athlete's own word. The Athlete does not establish, with underlying evidence, that she was prescribed "Ladasten" in April 2016, or that she actually took such product. Moreover, the Athlete does not demonstrate that her explanation is pharmacokinetically possible, i.e. that her alleged intake of "Ladasten" could have given rise to the positive finding in August 2016 and more particularly the concentration of bromantan found in her body [...].*

  8. As per CAS' abundant case law [...], the Athlete's efforts are therefore not sufficient to satisfy her burden of establishing the origin of the prohibited substance, which is a prerequisite to any plea of lack of intention [...] or of No Significant Fault or Negligence."

V. JURISDICTION

46. Article R47 of the Code provides as follows:

> *"An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body."*

47. The jurisdiction of the CAS, which is not disputed, derives from Article 9.3 A of the CISM Regulations and Article 12.2.1 of the CISM ADR which state:

> *"Article 9.3.*
> *APPEALS*
> *A. A right to appeal the decision of the CISM Discipline Commission may be exercised by the athlete (or any other person sanctioned by the mentioned Commission) directly to the International Court of Arbitration for Sport (CAS) in Lausanne, Switzerland."*

> *"12.2.1 In all cases arising from the Event, the decision may be appealed exclusively to CAS in accordance with the provisions applicable before such court."*

48. The First and Second Respondent also confirmed the jurisdiction of CAS based on such articles by having signed the Order of procedure.

49. Hence, it follows that CAS has jurisdiction to adjudicate and decide on the present dispute, and that the present case shall be dealt with according to the Appeals Arbitration Rules in the CAS Code.

VI. ADMISSIBILITY

50. The basis for CISM's authority to impose a period of ineligibility on the Appellant derives from CISM's Statutes Article 8 ("The rights and duties of the CISM Member nations are described in the CISM Regulations"), CISM Regulations Article 8.14-C ("The CISM Regulations Chapter IX addresses all details concerning the conduct of anti-doping controls at a CISM World Championship") and Chapter IX Anti-Doping Regulations Article 9.1-D ("CISM anti-doping policy"), Article 9.2-C ("The CISM Secretary General"), Article 9.2-D ("The CISM Discipline Commission"), Article 9.4 ("Procedures") and 9.5 ("CISM Anti-Doping Rules"), which Articles all refer to CISM ADR.

51. The Appeal was filed within the 21 days set by Article 12.6 of the CISM ADR. The Appeal complied with all other requirements of Article R47 of the Code including the payment of the CAS Court Office fee.

52. It follows that the Appeal is admissible.

VII. APPLICABLE LAW

53. Article R58 of the Code provides the following:

> *"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision."*

54. In accordance with R58 of the Code, the applicable regulations to this case are CISM ADR, WADA Code and, subsidiarily, Belgian Law as the First Respondent has submitted and which is undisputed by the Appellant.

VIII. MERITS

55. The Panel will address the issues as follows:

A. The Occurrence of an ADRV and the Standard Sanction

B. Burden and Standard of Proof

C. Was the Appellant's ADRV Intentional?

D. Sanctions

A. The Occurrence of an ADRV and the Standard Sanction

56. Pursuant to Article 2.1.2 of the CISM ADR, the *"[p]resence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample"* is an ADRV.

57. With regard to the Appellant's ADRV, the Panel notes, that it is undisputed that the Appellant consumed Bromantan, a non-specified substance prohibited in-competition only, cf. WADA's Prohibited List, "S.6.a, Non-Specified Stimulants", known to be sport performance enhancing. The Panel further notes that the Appellant does not contest the adverse analytical finding.

58. Accordingly, the Panel holds that the Appellant has committed an ADRV. With respect to the appropriate period of ineligibility, Article 10.2 of the CISM ADR provides that:

"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 10.4, 10.5 or 10.6:
10.2.1 The Period of Ineligibility shall be four years where:

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

...

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

59. The Panel notes, that the standard sanction for an ADRV involving a non-specified substance is 4 (four) years, unless the Athlete (or other Person) can establish that the ADRV was not intentional.

B. Burden and Standard of Proof

60. In the present case, the burden of proof that the ADRV was not intentional bears on the Appellant, cf. Article 10.2.1.1 of the CISM ADR and it naturally follows that the Appellant must also establish how the substance entered her body.

61. Pursuant to Article 3.1 of the CISM ADR, the standard of proof is the balance of probabilities:

"[...] Where the 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, the standard of proof shall be by a balance of probabilities".

62. The Panel notes, that this standard requires the Appellant to convince the Panel that the occurrence of the circumstances on which the Appellant relies is more probable than their non-occurrence, cf. CAS 2016/A/4377, at para. 51.

C. Was the Appellant's ADRV intentional?

63. The main relevant rule in question in the present case is Article 10.2.2 of the CISM ADR that, *inter alia*, refers to WADA Code Article 10.2.3, that reads as follows:

"As used in Articles 10.2 and 10.3, the term "intentional" is meant to identify those Athletes who cheat. The term, therefore, requires that the Athlete or other Person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only

prohibited In-Competition shall be rebuttably presumed to be not "intentional" if the substance is a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered "intentional" if the substance is not a Specified Substance and the Athlete can establish that the Prohibited Substance was unrelated to sport performance."

64. The WADA 2015 World Anti-Doping Code, Anti-Doping Organizations Reference Guide (section 10.1 "What does 'intentional' mean?", p. 24) provides the following guidance:

"'Intentional' means the athlete, or other person, engaged in conduct he/she knew constituted an ADRV, or knew there was significant risk the conduct might constitute an ADRV, and manifestly disregard that risk.

Article 10.2 is clear that it is four years of ineligibility for presence, use or possession of a non-specified substance, unless an athlete can establish that the violation was not intentional. For specified substances, it is also four years if an ADO can prove the violation was not intentional.

***Note:** Specified substances are more susceptible to a credible, non-doping explanation; non-specified substances do not have any non-doping explanation for being in an athlete's system."*

65. The Panel in the present case aligns with the Panel in CAS 2016/A/4377, at para. 52, that to establish the origin of the prohibited substance it is not sufficient for an Athlete *"merely to protest their innocence and suggest that the substance must have entered his or her body inadvertently from some supplement, medicine or other product which the athlete was taking at the relevant time. Rather, an athlete must adduce concrete evidence to demonstrate that a particular supplement, medication or other product that the athlete took contained the substance in question".*

66. In CAS 2010/A/2277, the Panel held as follows:

"Mr La Barbera did not supply any actual evidence of the specific circumstances in which the unintentional ingestion of the Prohibited Substance would have occurred. Mr La Barbera does in particular neither bring any scientific evidence that would explain how the Prohibited Substance could be found in his system one week after the end of the dog's treatment, nor whether such potential ingestion through his biting his nails could result in the level of substance found in his body. As a result, the Panel finds that Mr La Barbera's explanations lack corroborating evidence and prove unsatisfactory, thereby failing the balance of probability test."

67. In CAS 2014/A/3820, at para. 80, the Panel made the following comments:

> *"In order to establish the origin of a Prohibited Substance by the required balance of probability, an athlete must provide **actual evidence** as opposed to mere speculation. In CAS 2010/A/2230, the Panel held that: [t]o permit an athlete to establish how a substance came to be present in his body by little more than a denial that he took it would undermine the objectives of the Code and Rules. Spiking and contamination – two prevalent explanations volunteered by athletes for such presence – do and can occur; but it is too easy to assert either; more must sensibly be required by way of proof, given the nature of the athlete's basic personal duty to ensure that no prohibited substances enter his body."*

68. In the present case, the Panel finds that the Appellant's explanations have virtually no evidentiary basis supporting them. As to the Appellant's explanations, the Panel holds as follows:

i. In her explanatory memorandum dated 7 November 2016 to the CISM Discipline Commission, the Appellant explains, that "Ladasten" was prescribed to her *"at the stomatology (dental) clinics for implantation"*. The Panel observes that the Appellant did not provide any documentation or copy of the alleged prescription. Furthermore, the Panel notes that the dentist was not called as a witness by the Appellant in the CISM proceeding or this CAS proceeding. The Panel finds, that the Appellant did not prove on the balance of probability that "Ladasten" was in fact prescribed by her dentist.

ii. The Appellant asserts that *"the medicine is eliminated from the body very long"*. The Panel observes that the Appellant did not provide any documentation, that it is pharmacokinetically possible that the alleged intake of "Ladasten" in April 2016 could give rise to a positive finding four months later, in August 2016, in particular the concentration of Bromantan found in her body. The Panel takes into consideration the statements of Dr Robert Zavuga of CISM TUEC and Professor Christine Ayotte from INRS-Institut Armand Frappier in Québec including published scientific research which deem it unlikely that the substance lasted four months in the Appellant's body. The Panel further takes into consideration, the statement of Professor Christine Ayotte that the level detected in the Appellant's sample were much more than traces, *"Therefore in my view, the delay between the last dose and the August tests is shorter than described"*. It follows that the Panel finds the Appellant's assertion to be unsubstantiated.

iii. The Panel finds the Appellant's explanation, that she used "Ladasten" to increase her immunity, to lack credibility in the light of the statement by Professor Christine Ayotte that *"Bromantan is not an anti-viral medication, there is no reason to administer these drugs in absence of a viral infection"*.

iv. The Panel observes that the Appellant did not mention on her doping control form that she used "Ladasten". The Panel notes, that the Appellant in August 2015 was 35 years of age and had been a military athlete since 2007 and therefore had a long experience in sport and has received education in anti-doping. The Panel finds that the failing disclosure on the doping control form to be a factor that further undermines the veracity of the Appellant's explanation that the ADRV was not intentional.

v. Finally, there is no evidence in the file of the existence of a flu epidemic in April 2016 in St-Petersburg.

69. Accordingly, the Panel finds that the Appellant has not met her burden of proof, and the ADRV must be deemed to be intentional. The Appellant must therefore be sanctioned with a four-year period of ineligibility under the CISM ADR.

70. As the Panel has established that the Appellant's ADRV was intentional, the Panel cannot consider the application of Article 10.2.2 of the CISM ADR and Article 10.5.2 of the WADA Code to reduce her sanction.

D. Sanctions

1. Disqualification

71. The First Respondent asks the Panel to confirm the CISM Disciplinary Commission's decision to disqualify all the results of the Appellant in the 63rd World Military Pentathlon Championship 2016, as well as any other event under its competence that she participated since the date of suspension.

72. The relevant rule is Article 10.1 of the CISM ADR that reads as follows:

"An anti-doping rule violation occurring during or in connection with an Event may, upon the decision of the CISM Discipline Commission, lead to Disqualification of all of the Athlete's individual results obtained in that Event with all Consequences, including forfeiture of all medals, points and prizes, except as provided in Article 10.1.1.

Factors to be included in considering whether to Disqualify other results in an Event might include, for example, the seriousness of the Athlete's anti-doping rule violation and whether the Athlete tested negative in other Competitions."

73. According to the First Respondent's letter dated 1 June 2017, the Appellant did not participate in other CISM events following the 63rd World Military Pentathlon Championship 2016. Accordingly, the Panel concludes that the results obtained by the Appellant in the 63rd World Military Pentathlon Championship 2016 are disqualified. In any event, any results that the Appellant would have achieved after the World

Championship 2016 would be automatically cancelled considering that her suspension started on 11 August 2016.

2. Period of Ineligibility Start and End Date

74. With respect to the sanction start date, the Panel is guided by Article 10.2.2 of CISM ADR and Article 10.11 of the WADA Code.

75. Article 10.11 of the WADA Code is titled "Commencement of Ineligibility Period", provides that:

"Except as provided below, the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date Ineligibility is accepted or otherwise imposed."

76. Article 10.11.1 of the WADA Code provides for an earlier start date, as early as the date of the sample collection, if "there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Athlete [...]". There was no evidence presented in this case of any such delays and no argument was made with respect thereto.

77. Article 10.11.3 of the WADA Code is titled "Credit for Provisional Suspension or Period of Ineligibility Served" and states as follows:

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

78. In this case, the Appellant was not provisionally suspended and therefore the Appellant is not entitled to receive any credit for a period of provisional suspension against the period of ineligibility which is ultimately imposed.

79. The Panel finds that the Appellant's four-year period of ineligibility shall start on 11 August 2016 (the date of the first sample collection). In its decision, the Panel has taking into consideration that (i) the Appellant was not suspended as the next CISM Military Pentathlon Championship was not held until July/August 2017 (ii) the CISM Discipline Commission imposed a four year period of ineligibility on the Appellant, starting from the date of collection of the first sample (iii) the Second Respondent in its request for relief explicitly asked the Panel to imposed a four-year period of ineligibility starting from the date of the collection of the first sample, and (iv) due to the present proceedings a starting date commencing on the date of this Award would consequently lead to a five-

year suspension of the Athlete if, in addition, all results since 11 August 2016 would be disqualified, which the Panel deems to be unfair.

IX. COSTS

80. Given that this is a disciplinary case of an international, pursuant to Article R65.1 and R65.2 of the Code, the proceedings are free of charge, except for the Court Office fee, which the Appellant has already paid and which is retained by CAS.

81. Article R65.3 of the Code provides, however, that the Panel has the discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings. When granting such contribution, the Panel shall take into consideration the complexity and the outcome of the proceedings, as well as the conduct and the financial resources of the parties.

82. In the view of the outcome of the case, i.e. that the Appellant's appeal is dismissed, all the circumstances of the present proceedings, the Panel considers it appropriate that the Appellant shall pay an amount of CHF 3,000 (three thousand Swiss francs) to the First Respondent as contribution for the legal costs and other expenses incurred by the First Respondent in these arbitration proceedings.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed on 6 January 2017 by Ms Yulia Naumova against the decision rendered by the CISM Disciplinary Commission on 30 November 2016 is dismissed.

2. The decision rendered by the CISM Disciplinary Commission on 30 November 2016 is confirmed.

3. The Award is pronounced without costs, except for the CAS Court Office fee of CHF 1,000 (one thousand Swiss Francs) paid by Ms Yulia Naumova, which is retained by the CAS.

4. The Appellant shall pay an amount of CHF 3,000 (three thousand Swiss francs) to the International Military Sports Council as contribution to its legal costs and other expenses that it has incurred in these arbitration proceedings.

5. All further and other requests for relief are dismissed.

Lausanne, 25 August 2017

THE COURT OF ARBITRATION FOR SPORT

Jens Evald
President of the Panel

Olivier Carrard
Arbitrator

Timour Sysouev
Arbitrator