CAS 2017/A/4954 World Antidoping Agency (WADA) v. Belarus Taekwondo Federation (BTF) & Arman-Marshall Silla

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

Sitting in the following composition:

Sole Arbitrator: Mr Romano F. Subiotto QC, solicitor-advocate in Brussels, Belgium and in London, United Kingdom

in the arbitration between

World Anti-Doping Agency, Montreal, Canada

represented by Messrs Ross Wenzel and Nicolas Zbinden, attorneys-at-law, Lausanne, Switzerland

Appellant

versus

Belarus Taekwondo Federation, Minsk, Belarus

represented by Mr Vasili Valazhynetz, attorney-at-law in Minsk, Belarus

and

Arman-Marshall Silla, Minsk, Belarus

represented by Dr Nicolas Rouiller and Dr Daria Solenik, attorneys-at-law in Lausanne, Switzerland

Respondents

* * *

I. THE PARTIES

1. The World Anti-Doping Agency ("WADA" or the "Appellant") is an international independent agency whose key activities include scientific research, education, development of anti-doping capacities, and monitoring of the World Anti-Doping Code ("WADA Code").

2. The first Respondent is the Belarus Taekwondo Federation (the "BTF" or the "First Respondent"), the national taekwondo federation in Belarus. The BTF is a member of the World Taekwondo Federation ("WTF").

3. The second Respondent is Mr Arman-Marshall Silla (the "Athlete" or the "Second Respondent"), who is an athlete of the BTF.

II. APPEALED DECISION

4. The Appellant appeals the decision of the Disciplinary Committee of the BTF. On November 23, 2016, the Disciplinary Committee of the BTF decided not to impose any ineligibility period on the Athlete. In particular, the Disciplinary Committee of the BTF held the following:

   a. *"there was a hostile environment and a fierce competition between the members of the Belarussian National Taekwondo Team;*

   b. *Coaches Igor Romashkevich and Anatoly Likhadziyeuski had personal animus toward Yulia Sukhavitskaya, personal coach of Arman-Marshall Silla, which might have been the reason for their destructive actions;*

   c. *Arman-Marshall Silla and his personal coach Yulia Sukhavitskaya passed polygraph examination which proved that the Athlete had not taken meldonium intentionally and thus had not violated the Anti-Doping Rules deliberately;*

   d. *DAC assumes that Igor Romashkevich and Anatoly Likhadziyeuski might have been connected with the unintentional meldonium intake by the Athlete, taking into account their personal animus toward Yulia Sukhavitskaya and the fact that they had an easy access to the personal belongings, food products and the room where the Athlete stayed during the European Taekwondo Championships in May 2016 in Switzerland. Moreover, the above-mentioned individuals refused to pass a polygraph examination, which evokes certain suspicions concerning their involvement into this case;*

   e. *Yauheni Akimau, clinic pharmacologist of the "Republican Research and Practice Centre of Sports" State Institution provided the Expert's Conclusion stating that meldonium intake is absolutely meaningless when it comes to combat sports and cannot improve sporting results and achievements;*

   f. *The Doping-Test History of Arman-Marshall Silla proves that there have been no facts of violation of the Anti-Doping Rules by the Athlete before."*

III. PROCEDURAL BACKGROUND

A. PROCEEDINGS BEFORE THE DISCIPLINARY COMMITTEE OF THE BTF

5. On July 13, 2016, the Athlete underwent an out-of-competition doping control. The analysis of the A sample revealed the presence of meldonium. The concentration of meldonium in the sample was of 3100ng/mL (3.1µg/mL).

6. On August 11, 2016, the National Anti-Doping Agency of Belarus ("BNADA") informed the Respondents about the adverse analytical finding and a temporary suspension of the Athlete.

7. On August 12, 2016, the Athlete underwent another doping control. The concentration of meldonium in the Athlete's sample was of 0.15µg/mL.

8. On August 14, 2016, the Athlete and his coach, Mrs Yulia Sukhavitskaya, passed a polygraph examination, conducted on their own initiative.

9. On August 16, 2016, the Athlete underwent a third anti-doping control. The concentration of meldonium in the Athlete's sample was of 0.25µg/mL.

10. On November 10, 2016, a meeting of the BNADA Disciplinary Commission took place. The BNADA Disciplinary Commission issued a recommendation to the BTF to the effect that the Athlete should be disqualified for two years.

11. On November 23, 2016, the Disciplinary Committee of the BTF rendered the Appealed Decision in which it decided not to impose any ineligibility period on the Athlete.

12. On December 22, 2016, the Athlete filed a police report with the Directorate for Combating Organized Crime and Corruption of the Ministry of Internal Affairs of the Republic of Belarus.

13. On December 27, 2016, the Appellant was notified of the Appealed Decision and received certain documents from the case file.

14. On January 21, 2017, the Athlete received an answer from the Directorate for Combating Organized Crime and Corruption that the investigation had not established the circumstances how meldonium got into the Athlete's body.

B. PROCEEDINGS BEFORE THE CAS

15. On January 17, 2017, the Appellant filed the statement of appeal ("Statement of Appeal") with the Court of Arbitration for Sport ("CAS").

16. On February 17, 2017, the Respondents received an expert opinion from the National University of Physical Education and Sports in Ukraine on the practicability of using meldonium in combat sports.

17. On February 10, 2017, the CAS granted an extension of 20 days to the Appellant's deadline to file the appeal brief. The Appellant filed the appeal brief ("Appeal Brief") on February 27, 2017, therefore, within the extended deadline.

18. On March 7, 2017, the Respondents indicated that they would like the case to be considered by the sole arbitrator, Mr Romano Subiotto QC (the "Sole Arbitrator"). On March 7, 2017, the Appellant agreed to the nomination of Mr Romano Subiotto QC as the Sole Arbitrator.

19. On March 21, 2017, BNADA submitted a letter supporting the Appellant's requests for relief and requesting to be excluded from the list of Respondents.

20. On March 22, 2017, the Respondents received a report of the National Anti-Doping Laboratory of the Ministry of Health of the Republic of Belarus (the "Minsk Lab").

21. On March 24, 2017, the Appellant agreed to withdraw its appeal directed against BNADA, provided that the BTF and the Athlete confirm in writing that such (partial) withdrawal would not have any impact on the admissibility of WADA's appeal against the two remaining respondents.

22. On March 27, 2017, the Respondents filed their joint answer to the appeal ("Answer"). BNADA did not file an answer within the prescribed deadline.

23. On March 28, 2017, the Respondents confirmed their consent for the partial withdrawal of the Appeal directed against BNADA.

24. On May 24, 2017, the CAS fixed the hearing date for June 7, 2017.

25. On May 24, 2017, the Second Respondent informed the CAS that he had changed his legal representation.

26. On June 6, 2017, the Second Respondent filed the Amendment to Answer to the Appeal, which was communicated to the Sole Arbitrator on June 7, 2017.

27. The hearing was held on June 7, 2017 in Lausanne, Switzerland.

28. On 7 June, resp. 8 June 2017, the parties returned their Order of Procedure duly signed.

IV. CAS JURISDICTION

29. Article 13.2.1 of the WTF ADR provides that WADA has the right to appeal to the CAS in cases involving international-level athletes or international events.

30. The Appellant submits that the Athlete participated *inter alia* in the 2016 European Championships, the Olympic Qualification Event for the 2016 Rio Olympic Games and the 2015 World Championships. There is therefore no doubt that the Athlete is an international-level athlete and that the Appellant has a right of appeal to the CAS.

31. The Respondents do not dispute the Appellant's right of appeal, and do not object to the jurisdiction of the CAS.

32. It follows that the Appellant has the right to appeal to the CAS and that the CAS has jurisdiction in this case.

V. ADMISSIBILITY OF THE APPEAL

33. Article 13.7.1 of the WTF ADR provides that "*the filing deadline for an appeal or intervention filed by WADA shall be the later of:*

a. *Twenty-one (21) days after the last day on which any other party in the case could have appealed, or*

b. *Twenty-one (21) days after WADA's receipt of the complete file relating to the decision.*"

34. The Appellant claims that it received certain documents from the case file relating to the Appealed Decision on December 27, 2016. The Statement of Appeal was filed on January 17, 2017, therefore, within the 21-day deadline imposed by Article 13.7.1 of the WTF ADR.

35. Further, according to Article R51 of the Code, the Appellant must file the appeal brief within 10 days following the expiry of the deadline for filing the statement of appeal. On February 10, 2017, the CAS granted an extension of 20 days to WADA's deadline to file the appeal brief. The Appeal Brief was filed on February 27, 2017, and therefore within the extended deadline.

36. The Respondents raise no objections to the admissibility of the Appeal.

37. It follows that the Appeal is admissible.

VI. APPLICABLE LAW

38. Article R58 of the CAS Code of Sports-related Arbitration (the "Code") provides the following: "*The Panel shall decide the dispute according to the applicable regulations and 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 application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.*"

39. The Appellant considers that the Athlete is bound by the WTF Anti-Doping Rules ("WTF ADR") because he participated in many international competitions (including the 2015 World Championships and the 2016 European Championships, where he won a gold medal), and that the WTF ADR is applicable to the present arbitration.

40. The Respondents submit that the relevant rules and regulations are the WTF Statutes, the WTF ADR and the WADA Code (for the purposes of interpretation and understanding of the WTF ADR).

41. The Sole Arbitrator considers that the relevant rules and regulations in the present proceedings are indeed the WTF ADR, the WTF Statutes and the WADA Code., subsidiarily Swiss law.

VII. SCOPE OF REVIEW

42. According to Article R57 of the Code the "*Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance.*"

43. As a result, the Sole Arbitrator has the power to examine the case at hand *de novo*.

VIII. SUBMISSIONS OF THE PARTIES

A. APPELLANT'S SUBMISSIONS

1. Anti-Doping Rule Violation

44. The Appellant recalls that, pursuant to Art. 2.1 of the WTF ADR, the presence of a prohibited substance or its metabolites or markers in an athlete's sample constitutes an anti-doping rule violation ("ADRV").

45. The analysis of the Athlete's sample revealed the presence of meldonium with a concentration of 3100ng/mL (3.1µg/mL). According to the Appellant, as a consequence, the Athlete breached Art. 2.1 of the WTF ADR.

2. Determining the Sanction

a. International Violation

46. The Appellant recalls that, according to Art. 10.2.1.1 of the WTF ADR, the period of ineligibility is four years where the ADRV does not involve a specified substance, unless the Athlete can establish that the ADRV was not intentional.

47. The Appellant further submits that the Athlete must establish how the substance entered this body in order to prove that the violation was not intentional (CAS 2016/A/4377, CAS 2016/A/4662, CAS 2016/A/4563, CAS 2016/A/4626). Namely, the Athlete must adduce concrete evidence to demonstrate that a particular supplement, medication or other product that the Athlete took contained the substance in question.

48. Further, the Appellant submits that it is wholly unjustified to infer that Igor Romashkevich and Antoly Likhadziyeuski were guilty of sabotage because they refused to take a polygraph examination, without any obligation to do so. The scenario

put forward in the Appealed Decision is nothing more than a mere supposition and not supported by any evidence.

49. As for the fact that the Athlete himself passed a polygraph examination, the Appellant recalls that CAS panels have consistently refused to attribute any significance to such evidence (CAS 2014/A/3487, CAS 2008/A/1515).

50. According to the Appellant, the Athlete has failed to establish the origin of the doping substance, which is required to a finding that the violation was not intentional. As a result, the ADRV must be deemed intentional and the Athlete sanctioned with a four-year ineligibility period.

b. Mitigating provisions

51. The Appellant points out that the Appealed Decision went as far as to apply the no fault provision pursuant to Art. 10.4 of the WTF ADR. However, a no fault finding, like other mitigating provisions of Art. 10.5 of the WTF ADR, requires that the Athlete established the origin of the substance.

52. In the Appellant's view, the Disciplinary Commission was wrong to apply the provision of Art. 10.4 of the WTF ADR. Any application of Art. 10.5 would also be excluded, given the Athlete's failure to establish the origin of the substance.

3. Requests for Relief

53. The Appellant requests the Sole Arbitrator to rule that:

a. The Appellant's Appeal is admissible.

b. The Appealed Decision rendered by the Disciplinary Committee of the BTF on November 23, 2016 is set aside.

c. The Athlete is sanctioned with a four-year period of ineligibility starting on the date on which the CAS award enters into force. Any period of provisional suspension or ineligibility effectively served by the Athlete before the entry into force of the CAS award shall be credited against the total period of ineligibility to be served.

d. All competitive results obtained by the Athlete from and including July 13, 2016 until August 11, 2016, are disqualified, with all resulting consequences (forfeiture of medals, points and prizes).

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

f. The Respondents shall be ordered to pay the Appellant a contribution to its legal and other costs in connection with these appeal proceedings.

4. Appellant's Submissions at the Hearing

54. During the hearing, among other submissions, the Appellant also drew attention to the fact that the Minsk Lab, which prepared an expert report, is not WADA-accredited and that the cover page contained unsubstantiated assertions. The Appellant argued that the Respondents should have conducted the process properly, for example by using a WADA-accredited lab, if they had wanted to prove the origin of the substance.

55. In addition, the Appellant described the timing of the expert report as odd, as there is nothing in any document showing why it should have taken eight months for the expert report to be issued. The Appellant also questioned why the state security committee (the Directorate for Combating Organized Crime and Corruption) formally closed the investigation in January 2017 before the results of the expert report were published in March 2017.

56. Further, certain new information was revealed during the Appellant's cross-examination of the Second Respondent:

a. The Second Respondent said he stopped taking Performance Glutamine on July 5, 2016 or July 6, 2016 but did not remember the exact date. However, on the doping form, he did not reveal that he was taking it, while being aware that he was required to reveal all substances taken within the last 7 days before the competition.

b. The Second Respondent disclosed he was prescribed and took Performance Glutamine again before the Olympics at the beginning of August (for about two weeks or less). However, he did not reveal the fact that he was taking Performance Glutamine in the doping form of August 12, 2016, even though, as he submitted himself, he was taking it at the beginning of August for about two weeks.

c. Further, the Second Respondent answered that there were 70 grams of powder in the jar when the Second Respondent gave it to state security. When asked by the Appellant, the Second Respondent said the jar had a 300 gram capacity and it was black. According to the Minsk Lab, the jar was white. However, according to the Appellant, the jar was black, with red lettering.

d. The Second Respondent tried to explain this by saying that he thought the large sticker was black and the jar itself was white. He continued that perhaps the sticker was torn, and they could see white underneath the sticker. He also remembered big white letters.

57. Finally, the Appellant questioned the Athlete's inconsistent description of the jar and its physical appearance. According to the Appellant, it is also disconcerting that so much evidence suddenly appeared right after the Appellant filed the Appeal, and that nothing is known of the circumstances surrounding the analyses undertaken by the Minsk Lab.

B. RESPONDENTS' SUBMISSIONS IN THE ANSWER TO APPEAL

1. Anti-Doping Rule Violation

58. The Respondents do not dispute the fact that there is an ADRV, as the analysis of the Athlete's sample revealed the presence of meldonium with a concentration of 3100ng/mL (3.1µg/mL). Therefore, the Respondents acknowledge the violation of Art. 2.1 of the WTF ADR.

2. Period of Ineligibility

a. Determination of the basic sanction

59. The Respondents acknowledge that under Art. 10.2.1.1 of the WTF ADR, if the ADRV does not involve a specific substance, the basic sanction is four years unless the Athlete can establish that the ADRV was not intentional.

60. The Respondents argue that the Athlete's ADRV was non-intentional and that the Athlete bears no significant fault pursuant to Art. 10.5.2 of the WTF ADR.

61. The Respondents note that the Appealed Decision was based on the sabotage provision of Article 10.4 of the WTF ADR. Nonetheless, the Respondents recognize the high standards and requirements for sabotage established by CAS decisions (CAS 2012/A/2789, CAS 2015/A/4129, CAS 2014/A/3820). Therefore, the Respondents ask for the application of a basic sanction under the no significant fault provision of Art. 10.5.2 of the WTF ADR.

62. The Respondents acknowledge that in order to rely on the no significant fault provision, the Athlete has to establish: (i) how the prohibited substance entered the Athlete's system, and (ii) the Athlete's fault or negligence, when viewed against the totality of circumstances, was not significant in relationship to the ADRV (CAS 2006/A/1130; CAS 2007/A/1370 & CAS 2007/A/1376; CAS 2006/A/1067).

63. First, the Respondents submit that the way meldonium entered the Athlete's system was determined in the expert report of the Minsk Lab. According to this report, one sample of the supplement "Performance Glutamine" contained meldonium in the concentration of 3mg per 1g in one sample and 8-9mg per 1g in another. According to the report, this could mean that meldonium "*got into 'Performance Glutamine' from the outside since Meldonium is not pointed to the label as well.*"

64. Second, the Respondents claim that the Athlete took active steps to investigate how meldonium "*got into his body.*" The Respondents note that the Athlete (i) filed a police report, (ii) took a polygraph examination, (iii) filed a request for the expert opinion of the National University of Physical Education and Sports in Ukraine.

65. Third, the Respondent points out that there is animosity towards the Athlete and his coach resulting from (i) tensions between the Athlete's coach and other coaches, and (ii) racial discrimination since the Athlete is "*the only black athlete in the team.*"

66. On these grounds, the Respondents ask the Sole Arbitrator to apply Art. 10.5.2 of the WTF ADR, together with an ineligibility period from one to two years.

b. Determination of the applicable sanction within the range of the basic sanction

67. The Respondents submit that no sporting advantage was sought by the Athlete, "*as the use of mildronat[e] in taekwondo is pointless as it is not widespread within the fighting sport.*" The Respondents find that the reasonable sanction would be one year of ineligibility.

c. Determination of the basis for elimination, suspension or reduction of the applicable sanction

68. The Respondents do not seek the elimination, suspension or reduction of the applicable sanction of one year ineligibility under Art. 10.6 of the WTF ADR.

d. Determination of commencement of the ineligibility period

69. Pursuant to Art. 10.10 of the WTF ADR, the Respondents ask the Sole Arbitrator to credit the period of the Athlete's provisional suspension against the total period of ineligibility to be served. The period of the Athlete's provisional suspension equals 159 days. On August 11, 2016, the temporary suspension was imposed on the Athlete and on January 17, 2017, BNADA lifted the provisional suspension.

3. Requests for Relief

70. The Respondents request the Sole Arbitrator to issue an award holding that:

a. The Appeal filed by WADA is dismissed.

b. The Sole Arbitrator reviews the case *de novo* and sanctions the Athlete with a one-year period of ineligibility starting on the date on which the CAS award enters into force with the credit of 159 days of the provisional suspension imposed by BNADA.

C. SECOND RESPONDENT'S SUBMISSIONS ON THE AMENDMENT TO THE ANSWER TO THE APPEAL

71. In the Amendment to the Answer to the Appeal, the Second Respondent requests to be authorized to amend the requests for relief set forth in the Answer to Appeal, in view of a number of exceptional circumstances.

72. The Second Respondent submits that he had no influence on how the tenor of the Answer to the Appeal would be articulated. He is also stunned that the Answer to the Appeal requested a one-year period of ineligibility, as "*this prayer for "relief" was diametrically opposed to the 2nd Respondent position!*".

73. Since the Second Respondent's position has not been properly reflected by the common counsel in the Answer to Appeal, he now wishes to be authorized to supplement the requests and arguments in the Answer to Appeal.

74. The Second Respondent relies upon Article R56 of the Code which states that *"unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of* ***exceptional circumstances****, the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer"*.

75. As regards the exceptional circumstances in this case, the Second Respondent believes that he was prevented from stating his position in the Answer to the Appeal by his lack of independence vis-à-vis the common counsel and by his financial dependence on the First Respondent who was the principal contact with the common counsel. In addition, the Second Respondent states that his position will be ignored and the award will be rendered with no regard to his position if the Sole Arbitrator disallows the Second Respondent from making an additional submission.

76. In his Amended Prayers for Relief, the Second Respondent requests the Sole Arbitrator to find that:

a. The Appeal filed by WADA is dismissed and the decision by the Disciplinary Committee of BTF on November 23, 2016 is confirmed.

b. The Second Respondent bears no fault or negligence for the ADRV, per Art. 10.4 WTF ADR, and shall not be subject to the otherwise applicable period of ineligibility.

c. Alternatively, the Second Respondent bears no significant fault or negligence for the ADRV, per Art. 10.5.1.2 WTF ADR, and shall be sanctioned with an 8-month period of ineligibility starting from July 13, 2016 or November 10, 2016, and there be the option of provisional ineligibility already served by the Second Respondent to be credited against the total ineligibility period.

d. Alternatively to c. the Second Respondent shall be sanctioned with an 8-month period of ineligibility starting from the date of the CAS Award. Any period of provisional ineligibility already served by the Second Respondent shall be credited against the total ineligibility period.

e. The Appellant pay arbitration costs and be ordered to pay to the Respondents a contribution to their legal and other costs in connection with these appeal proceedings.

1. No Fault or Negligence

77. The Second Respondent claims that there was more evidence than just the theory of sabotage that should allow for the finding of no fault or negligence. The Disciplinary Committee of the BTF inferred the conclusion on the probability of sabotage and the absence of fault and negligence from the entire set of collected evidence, not only from polygraph evidence:

a. The report of the internal investigation led by BNADA in September-October 2016 established that meldonium could have been added into the Athlete's meals in the canteen by an unidentified third person when the team trained in RCOP "Staiki" (June/July 2016) or during the European Championships in Montreux in May 2016.

b. According to Yauhehi Akimau's pharmacology report, "Republican Research and Practice Center for Sports," meldonium has no positive effect on an athlete's performance in combat sports.

c. The Athlete's medication intake was monitored by a doctor.

78. Further, since meldonium has little effect on an athlete's performance in wrestling sports and the Athlete suffered no health condition that could urge the need to use mildronate, the most plausible scenario seems to be that of non-intentional ingestion.

79. The Second Respondent submits that the decision of the Disciplinary Committee of the BTF is thus in line with the CAS jurisprudence on this matter, whereby the absence of any intent to enhance sport performance excludes the intentional use of a prohibited substance within the meaning of Art. 10.2.1.1 WTF ADR (CAS 2007/A/1362; CAS 2013/A/3115).

80. Finally, in a case with similar circumstances of nutrition supplements contaminated by cocaine, the CAS panel found that there was neither fault nor negligence on the part of the athlete having ingested a food supplement contaminated by a non-identified person. The panel in that case stated that in such circumstances the athlete could not reasonably anticipate the possibility that an ill-intentioned person would open her luggage and insert the prohibited substance into the food supplement (CAS 2014/A/3475). The same reasoning must be applied here.

2. No Significant Fault or Negligence

81. The Second Respondent submits that no significant fault means that the athlete has not fully complied with his or her duties of care. The sanctioning body has to determine the reasons which prevented the athlete in a particular situation from complying with his or her duty of care. For this purpose, the sanctioning body has to evaluate the specific and individual circumstances. However, the sanctioning body may depart from the standard sanction only if the circumstances indicate that the departure of the athlete from the required conduct according to the duty of utmost care was not significant.

(CAS 2009/A/2012, at § 27 (quoting CAS 2005/C/976 & 986, at § 75; CAS 2007/A/1370 & 1376, at § 72))

82. The Second Respondent believes that he could not have reasonably anticipated the presence of a foreign substance in the nutrition supplement even by exercising the utmost duty of caution.

83. The Second Respondent relies on the Report established by the Committee for State Security of Belarus. According to the report, "Performance Glutamine" contaminated with meldonium *"was bought by [the Second Respondent] in April 2016 in a specialized sport food shop in the shopping mall Zamok. The product was kept in a storage room together with other sport products during trips to training camps and other competitions."* The Athlete submits that it is therefore apparent that he took precautions that could have been reasonably expected from him to limit the risk of exogenous contamination.

84. Further, the Second Respondent submits that the usage of biologically active supplements *"was monitored and corrected by the officers of the Republican Research and Practice Centre of Sports State Institution."* Therefore, the fact that the Second Respondent acquired and used "Performance Glutamine" was known to the monitoring authority and subject to its control. According to the Second Respondent, it follows that the Athlete did not fail to take the clear and obvious precautions which were expected from him in consuming a nutritional supplement.

85. The Second Respondent claims that he exercised the normal duty of care which was objectively expected from him in the given circumstances because he bought his food supplements in a specialized sport nutrition store, had his supplements monitored by the "Republican Research and Practice Centre of Sports" State Institution, and placed the supplements in storage during his trips. He claims that "*he could not otherwise limit the exposure to the risk of intrusion of a third party as the place of stay and the room-mates were attributed by the Federation / coaches, and the athletes had no influence over such decisions.*" He continues to declare that, subjectively, he did not have a particular reason to fear malevolent contamination or sabotage and could not reasonably anticipate that his food be contaminated.

86. Citing the reasons mentioned above, the Second Respondent considers that the degree of fault which could be imputed to him under the above-described circumstances amounts to a "light degree", thus opening a possibility of reduction of the applicable ineligibility period to a maximum of 8 months (cf. CAS 2014/ A/3549) and requests the Sole Arbitrator to reduce the otherwise applicable penalty to a maximum of 8 months.

3. Commencement of Ineligibility Period, if Any

87. The Second Respondent draws upon Art. 10.10.WTF ADR, *"Where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Athlete or other Person, WTF or ADO imposing the sanction may*

start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection or the date on which another Anti-Doping Rule violation last occurred. All competitive results achieved during the period of Ineligibility, including retroactive Ineligibility, shall be Disqualified."

88. The Second Respondent continues to make his case for the unreasonable delays, asserting that it was not caused by the Athlete. He states that there were delays in separate phases of the proceedings, which constitute the substantiality of the delay.

89. In particular, it took BNADA two months to conduct the internal investigations and render a recommendation. There was no explanation given as to why the investigation measures started nearly two months after the ADRV, whereas BNADA could have begun the preliminary investigations immediately. Also, the hearing of the BNADA Disciplinary Commission took place on November 10, 2016, whereas the decision was rendered solely on November 23, 2016 by the Disciplinary Committee of the BTF and notified to the Appellant on December 27, 2016.

90. Therefore, the Second Respondent believes he is entitled to request that the ineligibility period starts running from July 13, 2016 (the date when the sample was taken), or failing that, on November 10, 2016 (the date of the hearing of the BNADA Disciplinary Commission).

D. RESPONDENTS' SUBMISSIONS AT THE HEARING

1. First Respondent

91. The First Respondent states that the conclusion of the Disciplinary Committee of the BTF was based on comprehensive work and it took a lot of time, and included declarations of the Athlete himself, declarations of all people around the Athlete, as well as consultations with specialists in medicine, pharmacology, and theory and methods of sport training. The analysis of all facts convinced the Disciplinary Committee of the BTF that it was highly possible that sabotage took place.

2. Second Respondent

92. The Second Respondent stated that he always buys his supplements of the same brand in the same specialized shop. He had no reason to have any doubts about these substances. The Second Respondent also submitted that he had always had strict indications about which supplements he should take in which dosage and for how long.

93. The Second Respondent submitted that all of the Athlete's food supplements were taken for testing as soon as a positive finding was made. The Second Respondent admitted that he did not know why it took so long for the Minsk Lab to establish the final results and to provide an expert report which was issued only in March 2017. He claimed that the samples were handed over to the lab on August 21, 2016. Ever since then, the Athlete was expecting the report to be established. Once public, the report allowed the Athlete to provide only physical evidence that he had to show the origin of the product.

94. Further, the Appealed Decision established that on several occasions personal belongings of the Athlete were more exposed to third party intrusion than they could reasonably be. The Second Respondent believes this is one of those circumstances when the Athlete was travelling and could not anticipate all the risks of third party intervening with his food supplements or medication.

95. Finally, the Second Respondent claimed that the samples were collected by the state security commission (what he portrays as "*the former KGB*"). He claimed that the date was secret and it is simply the "*reality of Belarus*." However, he stated that he has converging testimonies that samples were collected on August 21, 2016 and there should be no reason to disregard them.

IX. MERITS

A. ANTI-DOPING RULE VIOLATION (ADRV)

B. NO SIGNIFICANT FAULT OR NEGLIGENCE

1. Relevant provisions

96. The WTF ADR and the WADA Code define a contaminated product as "*a product that contains a Prohibited Substance that is not disclosed on the product label or in information available in a reasonable Internet search.*"

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

98. According to Article 10.5.1.2 of the WTF ADR and the WADA Code on contaminated products: "*In cases where the Athlete or other Person can establish No Significant Fault or Negligence and that the detected Prohibited Substance came from a Contaminated Product, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years Ineligibility, depending on the Athlete's or other Person's degree of Fault.*"

2. How the prohibited substance entered the Athlete's body

a. CAS jurisprudence

99. The Athlete must demonstrate how the prohibited substance entered his system to sustain a plea of no significant fault. The Sole Arbitrator reiterates the relevant CAS jurisprudence:

a. CAS 2010/A/230: "*To 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."[1]

b. CAS 99/A/234 and CAS 99/A/235: *"The raising of an unverified hypothesis is not the same as clearly establishing the facts."*

c. CAS 2014/A/3615: *"The person charged cannot discharge that burden [of proof] merely by showing that he made reasonable efforts to establish the source, but that they were without success. The resolution of the issue which arises at this first stage does not relate to the presence or absence of fault or negligence, or, if it is present, its degree. Such matters are relevant only to the second stage. The resolution of the issue which arises at the first stage depends upon the answer to a simple question: has the person charged established what the source is? Mere assertion as to what the source is, without supporting evidence, will be insufficient."*[2]

d. CAS 2006/A/1067: *"The Respondent has a stringent requirement to offer persuasive evidence of how such contamination occurred. Unfortunately, apart from his own words, the Respondent did not supply any actual evidence of the specific circumstances in which the unintentional ingestion of cocaine occurred."*[3]

e. CAS 2006/A/1032: *"to prove that the concentrations of 19-NA in her sample supplied during the Paris test were caused in part by the ingestion of nutritional supplements, and in what proportion,* ***the player would need to adduce very specific evidence regarding what type of supplement was taken, in what doses and intervals and during what periods*** (emphasis added)."[4]

100. Further, the CAS has previously treated cases where contamination from food supplements was discussed:

a. CAS 2000/A/310: *"Turning to the issue of contaminated food supplements and medication, the Panel must first emphasise that the Appellant has adduced no evidence that he consumed such products. The Appellant's case can be contrasted in this regard with another recent nandrolone case in which the athlete went to some lengths to demonstrate that he had consumed a specific nutritional supplement and that this supplement was contaminated with nandrolone precursors: CAS 2001/A/317. The Appellant's failure to establish the factual basis*

---

1 CAS 2010/A/230, ¶11.12.

2 CAS 2014/A/3615, ¶56.

3 CAS 2006/A/1067, ¶14.

4 CAS 2006/A/1032, ¶98.

for his submissions in regard to the impact of contaminated food supplements or medication is fatal to this argument."[5]

b. The case at hand

101. The Respondents submit that the Minsk lab expert report established the way in which meldonium entered the Athlete's body.

102. The Minsk Lab reports states that, *"meldonium was found in the container with Performance Glutamine. The assay was 3mg per 1g and 8-9 mg per 1g after the second analysis. The drug was not supposed to be contained in the sport food, which unambiguously suggests that the drug was added to the mixture."* However, the report also states that *"it has not yet been possible to ascertain who was the person responsible for the addition of the prohibited drug."*

103. The report also states that *"In the course of the tests 19 samples of BFS*[6] *were analysed. Sample 5 (Performance glutamine, manufacturer: San Corporation, USA) contained meldonium in concentration of 8.7 mg/g."*

104. The Respondents further submit that the results of the report were received by the Respondents on March 22, 2017 and that *"the late receiving is attributable to the case complexity and participation of the Committee for State Security of the Republic of Belarus in the investigation of the case."* However, the Sole Arbitrator notes that it is not entirely clear from the report (i) when the Minsk Lab was charged with preparation of the report and (ii) when the samples were collected and (iii) when their analysis commenced. The only visible dates in the report are *"21.03.2017 No.4/1/4-475 to No.81 dated 10.03.2017."*

105. It might well be the case that the Minsk Lab was charged with preparing the report once the Respondents could review the Statement of Appeal (filed on January 17, 2017) and the Appeal Brief (February 27, 2017) in this case. The Sole Arbitrator doubts its reliability taking into consideration how late in the process this report was received.

106. During the hearing, the Second Respondent admitted that he does not know why it took so long for the Minsk Lab to establish the final result and to provide a report, which was issued only in March 2017. He claimed that the samples were handed over to the lab on August 21, 2016. However, this evidence has not been corroborated and was not previously included in the file.

107. In addition, if the Respondents wanted to prove the origin of the substance, they should have conducted the process properly, for example by using a WADA-accredited lab. Finally, it also seems peculiar that the Directorate for Combating Organized Crime and

---

5 CAS 2000/A/310, ¶99.

6 Biological food supplements and special foods for athletes.

Corruption closed the investigation on January 21, 2017, before the results of the report were published in March 2017.

108. In any event, the report does not discharge the Athlete's obligation to establish how the prohibited substance entered his body. The report only indicates that meldonium "*got into "Performance Glutamine" from the outside since Meldonium is not pointed to the label.*" It might have well been the Second Respondent himself who contaminated the supplement.

109. In line with CAS 2006/A/1032 cited above, the Athlete would have had to adduce evidence as to how many of the Performance Glutamine supplements he took and in what proportion. In particular, the Athlete, "*would need to adduce very specific evidence regarding what type of supplement was taken, in what doses and intervals and during what periods.*"[7]

110. In the Answer to the Appeal, the Athlete has not adduced evidence explaining when, for how long and in what doses the Athlete took Performance Glutamine. Neither has the Athlete adduced any evidence proving that he consulted with his doctor or contacted the manufacturer before taking the supplement. Neither has the origin of this substance been established.

111. However, in the Amendment to the Answer to the Appeal filed only on June 6, 2017, the Second Respondent explains that he bought his food supplements in a specialized sport nutrition store, had his supplements monitored by the "Republican Research and Practice Centre of Sports" State Institution, and placed the supplements in storage during his trips. The Athlete submits that it is therefore apparent that he took precautions that could have been reasonably expected from him to limit the risk of exogenous contamination. However, it is unclear why the Second Respondent presented this evidence so late in the proceedings. Therefore, the Sole Arbitrator has serious doubts as to its credibility.

112. The degree of the Athlete's fault is analyzed below for the sake of completeness, even though the Sole Arbitrator considers that the way in which the prohibited substance entered the Athlete's body has not been established and the Athlete cannot therefore rely on the no significant fault provision.

3. Degree of fault

a. Recommendation of the BNADA Disciplinary Commission

113. On November 10, 2016, a meeting of the BNADA Disciplinary Commission took place. The BNADA Disciplinary Commission issued a recommendation to the BTF to the effect that the Athlete should be disqualified for two years.

---

[7] CAS 2006/A/1032, ¶98.

114. The BNADA Disciplinary Commission concluded that "*there are grounds for admitting inconspicuous degree of guilt in his actions, which allows reducing term of disqualification by fifty percent in accordance with article 10.5.2 WADA.*" In its evaluation of the degree of the Athlete's fault, the BNADA Disciplinary Commission took the following factors into account:

a. "*In the course of NADC examination and interrogation with sportsmen, coaches and medical workers there was detected unfavorable environment and unsound competition in the relationships of the national taekwondo team, as well as the fact of personal animosity between the coaches Romashkevich I.N, Likhadziyeuski A.A. and the personal coach of the Sportsman Sukhavitskaya Y.E., which could result in destructive actions;*

b. *The Sportsman and the personal coach of the Sportsman Sukhavitskaya Y.E. passed examination through polygraph, which showed absence of the fact of intentional usage of meldonium by the Sportsman. This points at the absence of any intention of the Sportsman to violate anti-doping rules;*

c. *Taking into consideration personal animosity between the coaches Romashkevich I.N., Likhadziyeuski A.A. and the personal coach of the Sportsman Sukhavitskaya Y.E. and possibility to enter the room of the Sportsman, access to his products and personal things during European Championship at the end of May 2016 in Switzerland, the Committee assumes involvement of the above mentioned people to the fact that meldonium entered Sportsman's organism without his knowledge. The fact of their refusal to pass polygraph examination may testify about this, which raises suspicions in relation to their guiltlessness to this situation;*

d. *Statement of the expert Akimov E.S. (a physician, clinical pharmacologist of the state institution "Republican scientific and practical center") on impracticality of usage of meldonium for improvement of results in combat sports;*

e. *Preceding history of testing the Sportsman for drugs (16.10.2015, 17.01.2016) and absence of any cases of his violation of any anti-doping rules;*

f. *In connection with detection of a prohibited substance in the organism of the Sportsman, BTF did not grant a request on promotion of the personal coach of the Sportsman Sukhavitskaya Y.E. Also a decision to break employment relations with the physicial Zherko O.A."*

b. <u>The Appealed Decision</u>

115. On November 23, 2016, the Disciplinary Committee of the BTF decided not to impose any ineligibility period on the Athlete. In particular, the Disciplinary Committee of the BTF held the following:

a. "*there was a hostile environment and a fierce competition between the members of the Belarussian National Taekwondo Team;*

b. *Coaches Igor Romashkevich and Anatoly Likhadziyeuski had personal animus toward Yulia Sukhavitskaya, personal coach of Arman-Marshall Silla, which might have been the reason for their destructive actions;*

c. *Arman-Marshall Silla and his personal coach Yulia Sukhavitskaya passed polygraph examination which proved that the Athlete had not taken meldonium intentionally and thus had not violated the Anti-Doping Rules deliberately;*

d. *DAC assumes that Igor Romashkevich and Anatoly Likhadziyeuski might have been connected with the unintentional meldonium intake by the Athlete, taking into account their personal animus toward Yulia Sukhavitskaya and the fact that they had an easy access to the personal belongings, food products and the room where the Athlete stayed during the European Taekwondo Championships in May 2016 in Switzerland. Moreover, the above-mentioned individuals refused to pass a polygraph examination, which evokes certain suspicions concerning their involvement into this case;*

e. *Yauheni Akimau, clinic pharmacologist of the "Republican Research and Practice Centre of Sports" State Institution provided the Expert's Conclusion stating that meldonium intake is absolutely meaningless when it comes to combat sports and cannot improve sporting results and achievements;*

f. *The Doping-Test History of Arman-Marshall Silla proves that there have been no facts of violation of the Anti-Doping Rules by the Athlete before."*

c. ***Doctrine and CAS jurisprudence on no significant fault***

116. The issue whether an athlete's fault or negligence is "significant" has been much discussed in the CAS jurisprudence (CAS OG 06/001; CAS 2013/A/3327,; CAS 2005/A/921; CAS 2004/A/690; CAS 2005/A/830; CAS 2005/A/847; CAS OG 04/003; CAS 2006/A/1025; 2008/A/1489&1510; CAS 2009/A/1870; CAS 2012/A/2701; CAS 2012/A/2747; CAS 2012/A/2804; CAS 2012/A/3029).

117. However, all these cases are very "fact specific" and no doctrine of binding precedent applies to CAS jurisprudence. Indeed, the WTF ADR and the WADA Code, while defining the conditions for the finding of no significant fault, stresses the importance of establishing it "*in view of the totality of the circumstances*", and therefore of taking account of their specificities.

118. A period of ineligibility can be reduced based on no significant fault only in cases where the circumstances justifying a deviation from the duty of exercising the "utmost caution." As concluded by the CAS panel in CAS 2016/A/4643, a claim of no significant fault is (by definition) consistent with the existence of some degree of fault and cannot be excluded simply because the athlete left some "stones unturned". As a result, a deviation from the duty of exercising the "utmost caution" does not imply per se that the athlete's negligence was "significant"; the requirements for the reduction of

the sanction under Article 10.5.2 of WTF ADR and the WADA Code can be met also in such circumstances.

d. CAS jurisprudence on contamination from food supplements

119. Further, as can be seen below, the CAS has dealt with the issue of contamination resulting from food supplements on numerous occasions:

a. CAS 2002/A/385: "*It has been a known and widely publicised fact for several years that food supplements can be – and sometimes intentionally are – contaminated with products which are prohibited in sports. An athlete who ignores this fact, does so at his/her own risk. It would be all too simple and would frustrate all the efforts being made in the fight against doping to allow athletes the defence that they took whatever the team doctor gave them, plus attempting to shift the responsibility to someone else. The athlete's negligence lies in the fact that he/she uses food supplements which include a generally known risk of contamination. The extent of the precaution taken to reduce the risk of contamination may have a bearing on the extent of the sanctions.*"[8]

b. CAS 2009/A/1870: "*she could have conducted further investigations with a doctor or another reliable specialist; she could have had the supplements tested. Those circumstances actually show that H was indeed negligent, also considering that the risks associated with food supplements are well known among athletes, years after the first cases of antidoping rule violations caused by contamination or mislabelled products were detected and considered in the CAS jurisprudence*".[9]

c. CAS 2014/A/3798: "*The standard of care required for a no fault or negligence finding, i.e. utmost caution, requires that an athlete establishes that he has done all that is possible, within his medical treatment, to avoid a positive testing result. A professional and experienced athlete who, despite being familiar with repeated warnings from his International Federation, WADA and National Anti-Doping Organizations emphasizing the risk of contamination in nutritional supplements, choses to take the risk of using nutritional supplements anyway, fails to exercise the standard of care required for no fault or negligence, i.e. utmost caution. In the case of a positive test resulting from a contaminated vitamin or nutritional supplement, a reduction of the period of ineligibility under Article 10.5.2 of the FIRS ADP may be appropriate, for instance, if the athlete clearly establishes that the cause of the positive test was contamination in a common multiple vitamin purchased from a source with no connection to prohibited substances and that the athlete exercised care in not taking other nutritional supplements.*"[10]

---

8 CAS 2002/A/385, ¶50.

9 CAS 2009/A/1870, ¶120.

10 CAS 2014/A/3798, ¶¶3-4.

d. CAS 2012/A/2763: "*Even in the case where athletes may not be deemed informed athletes due to a lack of anti-doping education, they must be aware of the basic risks of contamination of nutritional supplements. If athletes have been taking a cocktail of supplements despite the numerous warnings in place about taking supplements, have failed to contact the manufacturers directly or arrange for the supplements to be tested before using them, did not seek advice from a qualified doctor or nutritionist, have failed to conduct a basic review of the packaging of the supplements and any basic Internet research about the supplements, they cannot be deemed to have taken any of the reasonable steps expected of them and cannot establish on the facts that they bear no significant fault or negligence.*"[11]

e. ***The case at hand***

i. Contamination of food supplements

120. Many inconsistencies in the Second Respondent's submissions and testimony prevent a finding that the Athlete's fault was not significant, even if the Sole Arbitrator were to authorize the Second Respondent's request to amend the requests for relief in view of exceptional circumstances and take the new evidence and explanations into account.

121. At the hearing, the Second Respondent was not sure of the dates when he took Performance Glutamine and admitted that he did not disclose the fact that he was taking the supplement on the doping forms before the competitions in July 2016 and August 2016.

122. In addition, the lists of medication taken by the Athlete, drawn up by the Athlete himself and his coach, Yulia Sukhavitskaya, were inconsistent, as were the various descriptions of the jar with Performance Glutamine by: (i) the Athlete, (ii) the Minsk Lab, and (iii) the Appellant. These inconsistencies are too significant to conclude that the Athlete bears no significant fault for the violation.

123. Finally, the Sole Arbitrator cannot ignore the fact that all this evidence appeared very late in the proceedings.

124. As a result, even if the Sole Arbitrator were to accept that Performance Glutamine was the source of the contamination and that meldonium entered the Athlete's body in this manner, it cannot be accepted that the Athlete's degree of fault or negligence is not significant. In the case at hand, the Athlete has not adduced credible evidence pointing to (i) the circumstances, (ii) dosage nor (iii) the time period during which he took Performance Glutamine.

ii. Polygraph evidence

125. The Respondents submit that on August 14, 2016, the Athlete and his coach, Mrs Yulia Sukhavitskaya, passed a polygraph examination on their own initiative. The

---

11 CAS 2012/A/2763, ¶5.

Respondents underline that the polygraph test results show that the Athlete and his coach told the truth and they did not know how meldonium entered the Athlete's body.

126. In CAS 2008/A/1515, the CAS panel stated that since a polygraph test is inadmissible as per se evidence under Swiss law, the CAS panel could take into consideration the appellant's statements as mere personal statements, with no additional evidentiary value whatsoever given the circumstance that they were rendered during a lie detector test.[12]

127. Further, in CAS 96/156, the CAS panel was prevented from admitting polygraph tests as evidence for the following reasons: (i) the question is a procedural question on which the CAS Procedural Rules are silent, (ii) in Switzerland civil and criminal procedures are governed by the laws of each Canton individually, and nowhere are polygraphs accepted as evidence by Swiss courts, (iii) to allow such evidence because it was permitted under the law applicable to previous national hearing in the same matter would, on an international level, undermine a level playing field for athletes.[13]

128. It follows that the polygraph test results are not admitted in evidence and the Sole Arbitrator will not attribute any evidentiary weight to them.

iii. Factors taken into consideration by BNADA and the BTF

129. The BNADA Disciplinary Commission and the Disciplinary Committee of the BTF considered the following factors that contributed to a limitation of the sanction, side from the polygraph examination:

a. a hostile environment and a fierce competition between the members of the Belarussian National Taekwondo Team;

b. animosity between the coaches Igor Romashkevich and Anatoly Likhadziyeuski and the personal coach of the Athlete, Yulia Sukhavitskaya;

c. the fact that coaches Igor Romashkevich and Anatoly Likhadziyeuski had easy access to the personal belongings, food products and the room where the Athlete stayed during the European Taekwondo Championships in May 2016 in Switzerland, and

d. the fact that coaches Igor Romashkevich and Anatoly Likhadziyeuski refused to take the polygraph examination.

130. However, the lack of evidence and of corroboration of these statements, in addition to the above comments on polygraph examinations, give these factors little weight in assessing the Athlete's fault.

---

12 CAS 2008/A/1515, ¶119.

13 CAS 96/156, ¶14.1.1.

131. As a result, the ADRV must be deemed intentional.

C. SANCTION

132. The Appellant recalls that according to Art. 10.2.1.1 of the WTF ADR, the period of ineligibility is four years where the ADRV does not involve a specified substance, unless the athlete can establish that the ADRV was not intentional.

133. The Appellant argues that the Athlete should be sanctioned with a four-year ineligibility period.

134. The Respondents submit that the applicable sanction should be a one-year period of ineligibility starting on the date on which this CAS award enters into force with the credit of 159 days of the provisional suspension imposed by BNADA.

135. The Sole Arbitrator determines that the applicable sanction shall be a four-year period of ineligibility starting on the date on which this CAS award enters into force, because the Athlete has failed to establish that the violation was not intentional.

136. Any period of provisional suspension or ineligibility effectively served by the Athlete before the entry into force of this CAS award, *i.e.* 159 days of the provisional suspension imposed by BNADA, shall be credited against the total period of ineligibility to be served.

137. All competitive results obtained by the Athlete from and including July 13, 2016 until August 11, 2016, are disqualified.

X. COSTS

138. Pursuant to Article 64.1 of the CAS, Code, upon filing the statement of appeal, the Appellant shall pay a non-refundable Court Office fee of CHF 1000 (one thousand Swiss Francs). The Court Office fee of CHF 1000 was paid by the Appellant on January 17, 2017.

139. Further, pursuant to Article 64.2 of the Code, the CAS Court Office shall fix an estimate of the costs of arbitration, which shall be borne by the parties in accordance with Article 64.4 off the Code. The advance shall be paid in equal shares by the Appellant and the Respondents.

140. Pursuant to Article 64.4. of the Code, at the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include: (i) the CAS Court Office fee, (ii) the administrative costs of the CAS calculated in accordance with the CAS scale, (iii) the costs and fees of the arbitrators, (iv) the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale, (v) a contribution towards the expenses of the CAS, and (vi) the costs of witnesses, experts and interpreters.

141. Pursuant to Article 64.5 of the Code, in the arbitral award, the Sole Arbitrator shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. The Sole Arbitrator has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters.

142. Taking into consideration the circumstances of the case, the Sole Arbitrator considers it appropriate for the Respondents to bear jointly and severally the costs of arbitration. The Parties shall support their own legal fees.

******

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on January 17, 2017 by World Anti-Doping Agency against the decision rendered by the Disciplinary Committee of the Belarus Taekwondo Federation on November 23, 2016 in the matter of Arman-Marshall Silla is upheld.

2. The decision rendered by the Disciplinary Committee of the Belarus Taekwondo Federation on November 23, 2016 in the matter of Mr Arman-Marshall Silla is set aside.

3. Mr Arman-Marshall Silla is sanctioned with a four-year (4) period of ineligibility starting on the date on which this CAS award enters into force. Any period of provisional suspension or ineligibility effectively served by Mr Arman-Marshall Silla before the entry into force of this CAS award shall be credited against the total period of ineligibility to be served.

4. All competitive results obtained by Mr Arman-Marshall Silla from and including July 13, 2016 until August 11, 2016, are disqualified.

5. The costs of the present arbitration, to be determined and served to the parties by the CAS Court Office, are to be jointly and severally borne by the Belarus Taekwondo Federation and Mr Arman-Marshall Silla.

6. The parties shall bear their own costs.

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

Seat of arbitration: Lausanne, Switzerland

Date: 20 July 2017

THE COURT OF ARBITRATION FOR SPORT

Romano Subiotto QC
Sole Arbitrator