Arbitration CAS 2017/A/5392 Fédération Internationale de Natation (FINA) v. Georgia Anti-Doping Agency (GADA) & Eastern Europe RADO & Irakli Bolkvadze, award of 11 June 2018

Panel: Prof. Jens Evald (Denmark), Sole Arbitrator

Aquatics (swimming)
Doping (stanozolol)
Duty to establish the origin of the prohibited substance
Burden and standard of proof of the unintentional nature of the anti-doping rule violation
Applicability of the principle of proportionality under the WADA Code

1. **To establish the origin of the prohibited substance, it is not sufficient for an athlete merely to make protestations of innocence and suggest that the prohibited substance may have entered his/her body inadvertently from supplement, medicine etc. Rather, an athlete must adduce concrete evidence to demonstrate that the particular supplement etc. that s/he took contained the substance in question.**

2. **An athlete might be able to demonstrate a lack of intent even where he/she cannot establish the origin of the prohibited substance, though such a situation may inevitably be extremely rare. Yet, where the origin of the prohibited substance has not been established by the athlete, the latter should demonstrate the existence of exceptional circumstances showing on the balance of probability that the anti-doping rule violation (ADRV) was not intentional to meet his burden of proof. Absent any exceptional circumstances, the ADRV must be deemed to be intentional.**

3. **The WADA Code has been drafted to reflect the principle of proportionality, according to which there must be a balance between the relevance of the breach committed and the sanction imposed. In other words, the principle of proportionality is "built into" the WADA Code therefore relieving the need for the appellate body to apply this principle.**

I. PARTIES

1. The Fédération Internationale de Natation ("FINA" or the "Appellant") is the international federation which promotes the development of five disciplines of aquatic sports throughout the world. FINA is responsible for carrying out, *inter alia*, a doping control program for both In-Competition and Out-of-Competition testing.

2. The Georgian Anti-Doping Agency ("GADA" or the "First Respondent") is the National Anti-Doping Organization of Georgia.

3. The Eastern Europe Regional Anti-Doping Organisation ("RADO" or the "Second Respondent") is a regional anti-doping organisation responsible for doping control programs in Albania, Armenia, Bosnia & Herzegovina, Georgia, Macedonia, Moldova and Montenegro.

4. Irakli Bolkvadze ("Athlete" or the "Third Respondent", together with the First and Second Respondents, the "Respondents") is a swimmer from Georgia.

II. FACTUAL BACKGROUND

5. 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 Sole Arbitrator considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.

6. On 6 July 2016, the Athlete underwent an out-of-competition doping control in Tbilisi, Georgia.

7. The analysis of the A Sample revealed the presence of 3´-hydroxystanozolol glucuronide, a metabolite of Stanozolol. Stanozolol is an Exogenous Anabolic Androgenic Steroid prohibited under S1.1.a of the WADA Prohibited List.

8. The Athlete requested the analysis of the B sample, which confirmed the findings of the A Sample. In both samples, the concentration of the prohibited substance was 26 ng/ml.

9. On 25 July 2016, the Athlete underwent another out-of-competition doping control. The results of the analysis of the sample were negative.

10. On 26 July 2016, the Athlete was provisionally suspended.

11. On 23 September 2016, the Athlete – on his own volition – sent a hair sample to the Salt Lake City WADA accredited laboratory. The analysis of the sample did not reveal the presence of Stanozolol or Stanozolol metabolites.

12. At the same time, the Athlete sent his food supplements (i.e. Scitec Nutrition) to the same laboratory for independent analysis. The results of the test established that the tested supplements did not reveal the presence of Stanozolol either.

13. On 12 January 2017, the Disciplinary Committee of GADA and the RADO imposed a two-year period of ineligibility on the Athlete. Indeed, and specific to this appeal, the Disciplinary Committee found that the Athlete did not commit the anti-doping rule violation intentionally (the "Initial Decision").

14. On internal appeal of the Initial Decision by FINA, the Georgian and Eastern Europe Regional Anti-Doping Appeal Commission confirmed the Initial Decision on 16 May 2017 (the "Appealed Decision"). The Appealed Decision was rendered on a majority of three against two (the Chairman and the Vice-Chairman).

15. FINA was notified of the Appeal Decision on 22 October 2017.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

16. On 10 November 2017, FINA filed its Statement of Appeal against the GADO, RADA, and the Athlete with respect to the Appealed Decision with the Court of Arbitration for Sport (the "CAS") in accordance with Article 47 et seq. of the Code of Sports-related Arbitration (the "CAS Code"). FINA informed the CAS that its Statement of Appeal was to be regarded as its Appeal Brief. Furthermore, FINA requested the matter to be submitted to a sole arbitrator.

17. On 13 November 2017, the CAS Court Office opened this procedure and invited the Respondents to inform the CAS Court Office whether they agree to the appointment of a sole arbitrator, and in the absence of an answer or in case of disagreement, in accordance with Article R50 of the CAS Code, it would be for the President of the CAS Appeals Arbitration Division, or her Deputy, to decide the issue, taking into account the circumstances of the case. In case of agreement, the sole arbitrator should be appointed in accordance with Article R54 of the CAS Code.

18. On 16 November 2017, the CAS Court Office advised the Parties that DHL was not able to find the Athlete at the address mentioned in the Statement of Appeal. Therefore, the CAS Court Office invited the Appellant to provide a valid address for the Athlete.

19. On 21 November 2017, the Appellant informed the CAS that it had not obtained an alternative address for the Athlete. But, the Appellant suggested that all correspondence be sent to the Georgian Aquatic Sports National Federation for the attention of the Athlete.

20. On 21 November 2017, the CAS Court Office advised the Parties that all deadlines for the Athlete's attention will begin to run upon delivery of this letter to the Athlete at the new address provided.

21. By (undated) letter, delivered by email on 8 December 2017 to the CAS Court Office, the Athlete submitted his position concerning the case. In his submission, the Athlete *inter alia* requested the CAS to order DNA analysis of the A and B Samples to make sure that the samples truly belong to the Athlete, as alleged.

22. On 11 December 2017, the CAS Court Office advised the Parties that the Athlete's submission was to be considered as his Answer to the Statement of Appeal/Appeal Brief.

23. On 12 December 2017, the Appellant confirmed that it opposed the request to perform a DNA analysis as the samples has been secured by compliance with the process provided for in the International Standard for Laboratory, and notably the use of sealed A and B samples.

24. By email of 13 December 2017, the Athlete confirmed that his letter submitted by email 8 December 2017 was indeed his Answer.

25. On 13 December 2017, the CAS Court Office advised the Parties that neither the First nor Second Respondent filed an Answer. Furthermore, the Parties were invited to inform the CAS whether they preferred a hearing to be held in this matter or for the Panel/Sole Arbitrator to issue an award based solely on the parties' written submissions.

26. On 18 December 2017, the Athlete confirmed that he preferred to hold a hearing.

27. On 17 January 2018, in accordance with Article R54 of the CAS Code and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that Prof. Jens Evald had been appointed as the Sole Arbitrator. The Parties did not raise any objection to the constitution and the composition of the Panel.

28. On 26 January 2018, on behalf of the Sole Arbitrator, who had considered the Athlete's request for DNA examination of his sample, the Parties were advised that such request was denied. Furthermore, the Parties were advised that the Sole Arbitrator recognized the Athlete's request for a hearing.

29. On 8 and 9 March 2018, the Appellant and Third Respondent, respectively, signed and returned the Order of Procedure. Both the First and Second Respondent failed to return a duly signed copy of the Order of Procedure.

30. The hearing took place on 27 March 2018 at the Court of Arbitration for Sport in Lausanne Switzerland. The Sole Arbitrator was assisted at the hearing by Mr. Brent J. Nowicki, Managing Counsel to CAS and joined by the following: For the Appellant: Mr Nicolas Zbinden, counsel and Mr Romain Venard, FINA legal counsel; For the Athlete: Ms. Ketevan Buadze, counsel, and the Athlete, by Skype.

31. At the opening of the hearing, both parties confirmed that they had no objections to the appointment of the Sole Arbitrator, the admissibility of the appeal, or stated any objection with the procedure.

32. At the hearing, the Athlete referred to two new exhibits regarding the DNA test of the Athlete's hair in support of the assertion that the Athlete was most likely to be the victim of sabotage. The Appellant objected to the admissibility of the new exhibits.

33. In application of Article R56 of the CAS Code, the Sole Arbitrator excluded the new exhibits from the case file at the hearing.

34. At the conclusion of the hearing, the parties confirmed that their right to be heard has been fully respected.

IV. PARTIES' SUBMISSIONS

35. The following is a summary of the Parties' submissions and does not purport to be comprehensive. However, the Sole Arbitrator has thoroughly considered in his deliberation all of the evidence and arguments submitted by the Parties, even if no specific or detailed reference is made to those arguments in the following outline of their positions and in the ensuing discussion on the merits.

36. The FINA submissions, in essence, may be summarized as follows:

- Pursuant to Article 2.1 of the GADA Anti-Doping Rules ("GADA ADR"), the presence of a prohibited substance or its metabolites or markers in an athlete's sample constitutes an anti-doping rule violation.
- The analysis of the athlete's A and B Samples revealed the presence of 3`hydroxystanozolol, glucuronide, a metabolite of Stanozolol. Stanozolol is an Exogenous Anabolic Steroid prohibited under S1.1.a of the WADA Prohibited List. Stanozolol is a non-specified substance.
- Therefore, as correctly held by the previous instance, the violation of Article 2.1 of the GADA Anti-Doping Rules is established.
- According to Article 10.2.1.1 of the GADA Anti-Doping Rules, the period of ineligibility shall be four years where the anti-doping violation does not involve a specified substance, unless the Athlete can establish that the anti-doping rule violation was not intentional.
- In the present case, the Appealed Decision held that the violation was not intentional for the following reasons: i) the Athlete made some efforts (analyzing the B Sample, his supplements, and his hair), ii) the Athlete suspects that he was sabotaged, and iii) the Athlete was a successful swimmer. In respect of all three elements, FINA notes the following:
  - The fact that the Athlete had his B Sample, supplements and hair analyzed is obviously irrelevant in the assessment of whether the violation was intentional. Indeed, it would be too easy if all an Athlete had to do to avoid a four-year sanction was to carry out some investigations, already knowing that they would be negative. This would be irrational.
  - With respect to the sabotage scenario, the Athlete does not provide any evidence whatsoever supporting his theory.
  - The fact that the Athlete is a record-holder in different categories in Georgia does not give any indication as to whether the Athlete's violation was intentional or not.
- The Athlete failed to establish on the balance of probability that the doping rule violation was not intentional as he does not provide any evidence indicating how the prohibited

substance entered his body. Therefore, the violation must be deemed intentional and the Athlete sanctioned with a four-year ineligibility period.

37. In light of the above, FINA submits the following prayers for relief in the Statement of Appeal/Appeal Brief:

"1. The appeal of FINA is admissible.

2. The decision rendered by Georgian and Eastern Europe Regional Anti-Doping Appeal Commission on 16 May 2017 in the matter of Irakli Bolkvadze is set aside.

3. Irakli Bolkvadze 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 Irakli Bolkvadze before the entry into force of the CAS award shall be credited against the total period of ineligibility to be served.

4. All competitive results obtained by Irakli Bolkvadze from and including 6 July 2016 are disqualified, with all resulting consequences (including forfeiture of medals, points and prizes).

5. FINA is granted an award for costs".

38. The Athlete's submissions, in essence, may be summarized as follows:

- The Athlete's violation of the GADA Anti-Doping Rules was not intentional for the following reasons:
  - He requested the opening and analysis of his B Sample.
  - He conducted research into the food supplements he using at the time of the alleged offence.
  - He voluntarily submitted his hair sample for analysis in with a WADA-accredited laboratory. No Stanozolol or Stanozolol metabolites were detected in his hair samples.
  - Taking prohibited substances would be illogical for the Athlete because: i) he has been competing in professional sport since the age of 10, and for more than four years before the alleged offence he was preparing to compete in the Olympic Games, ii) he has the advantage of a high-paid foreign trainer, iii) his results have already put him at the top of all Georgian athletes, iv) he attended the doping control freely, and v) he has never before tested positive for a prohibited substance.
  - The Athlete has certain suspects with regard to the sabotage, however, acknowledges that sabotage should be proved with actual evidence.
  - The sanction to be imposed on the Athlete must be consistent with the principle of proportionality, according to which there must be a balance between the relevance of the breach committed and the sanction imposed.

39. In light of the above, the Athlete submits the following prayer of relief:

"1. The decision rendered by the Georgian and Eastern European Regional Anti-Doping Appeal Commission on 16 May 2017 is upheld.

2. The Athlete is exempted "from paying any of the court fees or any other charges for these proceedings".

40. Although duly invited, neither the First nor the Second Respondent filed an Answer to FINA's Statement of Appeal/Appeal Brief within the prescribed time limit or thereafter.

V. JURISDICTION

41. Article R47 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 said body".

42. Article 13.2.3 of the GADA ADR states: *"For cases under Article 13.2.2, WADA, the International Olympic Committee, the International Paralympic Committee, and the relevant International Federation shall also have the right to appeal to CAS with respect to the decision of the national-level appeal body".*

43. The jurisdiction of CAS is not contested by the Respondents.

44. Hence, it follows that CAS has jurisdiction to adjudicate and decide on the present dispute.

VI. ADMISSIBILITY

45. Article R49 of the Code provides as follows:

"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late".

46. According to Article 13.7.1 of the GADA ADR, the deadline to appeal to CAS is *"twenty-one days from receipt of the file".*

47. FINA received the case file on 22 October 2017. As the Statement of Appeal was filed on 10 November 2017, the appeal was lodged within the deadline set forth under Article 13.7.1 of the GADA ADR. The appeal complied with all other requirements of Article R47 of the CAS Code.

48. It follows that the appeal is admissible.

VII. APPLICABLE LAW

49. Article R58 of the CAS 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 the law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

50. The Sole Arbitrator notes that pursuant to Article 13.1.1 of the GADA ADR, the GADA ADR applies *inter alia* to (a) all athletes who are members or license-holders of any national federation in Georgia or (b) all athletes participating in Events, Competitions and other activities organized or recognized by any national federation in Georgia, or by any federation in Georgia (including any clubs, teams, associations or leagues), wherever held. Article 1.3.2 of the GADA ADR adds that: *"These Anti-Doping Rules also apply to all other Persons over whom the Code gives GADA jurisdiction, including all Athletes who are nationals of or resident in Georgia, and all Athletes who are present in Georgia, whether to compete or to train or otherwise".*

51. Therefore, the GADA ADR applies to the Athlete.

52. In accordance with Article R58 of the CAS Code, the applicable regulation to this case is the GADA ADR.

53. As the "seat" of this arbitration is Lausanne, Switzerland, Swiss Law governs all procedural aspects of this proceeding.

VIII. MERITS

A. Due Process Rights

54. The Athlete asserts that he has *"reasonable doubt, that the procedures held by GADA violated the rules and terms of GADA"* for the following reasons:

"Firstly, while the Athlete got provisional suspension, the terms of notification were violated. Also, it took a long time to open B sample. On 12 August 2016 we were asked to open B sample, on that day GADA presented us the form of provisional suspension that was signed by the Athlete. While GADA knew about the decision of the Athlete to open and make analyses of B sample, GADA presented the Form only in English, including lots of specific terms and the Athlete decided that this was a form of the request of opening B sample and signed it. Later, it turned out that this form declared, that Athlete did not want to open B sample and admitted the fact of using the prohibited substance. Moreover, all of the communications with the Laboratories and WADA was private, while at the beginning they explained that we would have a direct communication with them, but in spite that, none of the attorneys were included […]".

55. The Sole Arbitrator notes that Article 57 of the CAS Code entails a procedure *de novo* (*"The Panel shall have full power to review the facts and the law"*) and that such review by the CAS, as repeatedly decided by well-established CAS jurisprudence, cures any procedural irregularities in the proceedings below, cf. CAS 2008/A/1545; CAS 2009/A/1880-1881; CAS 2013/A/3262; CAS 2014/A/3467; and MAVOMATI/REEB, The Code of the Court of Arbitration for Sports, Wolters Kluwer, 2015, p. 513 f.

56. Therefore, the Sole Arbitrator considers that any possible infringement of the Athlete's due process rights committed by GADA are hereby cured and thus insignificant for this procedure. As a result, the Sole Arbitrator may proceed to rule on the sole issue in this procedure, the Athlete's appropriate period of ineligibility, if any.

B. Period of Ineligibility

57. In consideration of the foregoing, the principle issue for determination by the Sole Arbitrator is the appropriate length of the Athlete's period of ineligibility, if any, under the GADA ADR. All factual determinations and rulings of the Georgian and Eastern European Regional Anti-Doping Appeal Commission that have not been contested by the parties will be treated as uncontested.

58. The Sole Arbitrator will address this principle issue in four parts as follows:

i. The Occurrence of an Anti-Doping Rule Violation (ADRV)

ii. Burden and Standard of Proof

iii. Was the Athlete's ADRV intentional?

iv. Sanctions

i. The Occurrence of an ADRV and the Standard Sanction

59. With regard to the Athlete's ADRV, the Sole Arbitrator notes that it is undisputed that the Athlete's A and B Samples revealed the presence of a non-specified substance 3´hydroxystanozolol glucuronide, a metabolite of Stanozolol. Stanozolol is an Exogenous Anabolic Steroid prohibited under S1.1.a of the WADA Prohibited List, known to be sport performance enhancing.

60. Furthermore, the Sole Arbitrator notes that the Georgian and Eastern European Regional Anti-Doping Appeal Commission ruled that an ADRV was established pursuant to Article 2.1 of the GADA ADR, which was not disputed by the Athlete. This issue is not disputed.

61. With respect to the appropriate period of ineligibility, Article 10.2 of the GADA ADR provides that:

The period of ineligibility for a violation of Article 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension pursuant to Article 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

…

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

62. The Sole Arbitrator 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.

ii. Burden and Standard of Proof

63. In the present case, the burden of proof that the ADRV was not intentional falls on the Athlete (Article 10.2.1 of the GADA ADR) and it naturally follows that the Athlete must also establish how the substance entered her body (see e.g., CAS 2016/A/4377 and CAS 2016/A/4845).

64. Pursuant to Article 3.1 of the GADA ADR, the standard of proof is the balance of probabilities:

[…] Where these Anti-Doping Rules place the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by balance of probability.

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

iii. Was the Athlete's ADRV intentional?

66. The main relevant rule in question in the present case is Article 10.2.3 of the GADA ADR, 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".

67. The 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.*

68. The Sole Arbitrator in the present case aligns with the Panel in CAS 2016/A/4377 that the Athlete must establish how the substance entered her body, and that to establish the origin of the prohibited substance it is not sufficient for an Athlete to *"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"*.

69. In CAS 2014/A/3820, 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"*.

70. The Sole Arbitrator notes the Athlete's submission that the following facts point to the Athlete's violation not to be intentional: i) the Athlete had his B Sample, supplements and hair analyzed, ii) the Athlete suspects that he was sabotaged, and iii) the Athlete is a successful swimmer. The Sole Arbitrator finds that the Athlete's explanations have virtually no evidentiary basis supporting them. As for the Athlete's explanations, the Sole Arbitrator holds as follows:

- The Athlete explains that he requested tests into the food supplements he used at the time of the alleged offence. The Athlete asserts that the fact he requested such tests shows that he did his best *"to prove his innocence within his possibility"*. The Sole Arbitrator aligns with the Panel in CAS 2014/A/3615 which stated: *"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 Sole Arbitrator observes that it is clear from constant CAS practice that it is not sufficient for an Athlete merely to make protestations of innocence and suggest that the prohibited substance may have entered his/her body inadvertently from supplement, medicine etc. Rather, an athlete must adduce concrete evidence to demonstrate that the particular supplement etc. that he/she took contained the substance in question. In the present case, the Sole Arbitrator observes that no Stanozolol or Stanozolol metabolites were detected in the supplements. The Sole Arbitrator finds that the mere fact that the Athlete requested an analysis of the food supplement he used at the time of the alleged offence does not prove on the balance of probability that the violation was not intentional.
- Further, the Athlete explains that he submitted his hair sample for analysis with a WADA-accredited laboratory. The Athlete asserts that either the A and B Samples do not belong to the Athlete, or the concentration of Stanozolol was too low and not detectable in the hair, *"Therefore it has entered Athlete's body without his intention"*. The Sole Arbitrator notes that

the identity of the urine sample has been secured by compliance with the International Standard for Testing, which has not been contested by the Athlete, and both the A and B Sample revealed the presence of Stanozolol. Therefore, the Sole Arbitrator finds that the fact that the hair analysis was negative does not demonstrate on the balance of probability i) how the prohibited substance entered the Athlete's body, and ii) that the violation was not intentional. It follows that the Sole Arbitrator finds the hair analysis to be of no relevance in the present case.

- With respect to the Athlete's suspicion of sabotage, the Sole Arbitrator observes that the Athlete acknowledges that, *"sabotage shall be approved with actual evidence"*. The Sole Arbitrator notes that the Athlete did not provide any evidence that the ADRV is the result of sabotage, and therefore the Sole Arbitrator finds such allegation unsubstantiated.
- The Athlete submits that it would be illogical for him to take a prohibited substance because he was a successful, professional swimmer and that he has never before tested positive for a prohibited substance. The Sole Arbitrator reiterates with respect to the Athlete's requirement to prove the origin of the prohibited substance, that the Athlete must adduce concrete evidence to demonstrate how a particular substance entered his/her body. In the present case, the Sole Arbitrator finds that "logic" and the fact that the Athlete has never tested positive for a prohibited substance before are not concrete evidence that prove on the balance of probability that the violation was not intentional.

71. The Sole Arbitrator finds that even if the Athlete's assertions were true, the Athlete did not prove on the balance of probability how the prohibited substance entered his body or the origin of the prohibited substance.

72. The Sole Arbitrator is mindful of CAS 2016/A/4534 and CAS 2016/A/4676, where the Panels considered that an Athlete might be able to demonstrate a lack of intent even where he/she cannot establish the origin of the prohibited substance. In CAS 2016/A/4676, at para 72, it is, *inter alia*, stated that *"the Panel can envisage the theoretical possibility that it might be persuaded by a Player's simple assertion of his innocence of intent when considering not only his demeanour, but also his character and history, even if such a situation may inevitably be extremely rare"*. The Sole Arbitrator finds, however, that there are no exceptional circumstances in the present case which show on the balance of probability that the ADRV was not intentional (without the Athlete having to establish the origin of the prohibited substance).

73. Accordingly, the Sole Arbitrator finds that the Athlete has not met his burden of proof, and the ADRV must be deemed to be intentional. The Athlete must therefore be sanctioned with a four-year period of ineligibility under the GADA ADR.

74. As the Sole Arbitrator has established that the Athlete's ADRV was intentional, the Sole Arbitrator cannot consider the application of Article 10.5.2 of the GADA ADR.

75. The Sole Arbitrator observes that the Athlete asserts that the sanction imposed must be consistent with the principle proportionality, according to which there must be a balance between the relevance of the breach committed and the sanction imposed. For the sake of completeness, the Sole Arbitrator notes that the WADA Code has been drafted to reflect the

principle of proportionality, thereby relieving the need for the appellate body to apply this principle, cf. WADA Code 2015 (introduction): *"The Code has been drafted giving consideration to the principles of proportionality and human rights"*. In other words, the principle of proportionality is "built into" the WADA Code and the GADA ADR (see also CAS 2007/A/1290). It follows, therefore, that the Sole Arbitrator cannot consider the application of the principle of proportionality.

iv. Sanctions

a) Disqualification

76. Article 10.8 of the GADA ADR reads as follows:

Disqualification of Results in Competitions Subsequent to Sample Collection or Commission of an Anti-Doping Rule Violation

In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9, all other competitive results of the Athlete obtained from the date a positive sample was collected (whether In-Competition or Out-of-Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all the resulting Consequences including forfeiture of any medals, points and prizes.

77. The Sole Arbitrator rules that pursuant to Article 10.8 of the GADA ADR, all competitive results obtained by the Athlete from and including 6 July 2016 (i.e. the date of the sample collection) are disqualified, with all resulting consequences, including forfeiture of medals, points and prizes.

b) Period of Ineligibility Start Date

78. With respect to the sanction start date, the Sole Arbitrator is guided by Article 10.11 of the GADA ADR which provides as follows:

"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".

79. Article 10.11.3 of the GADA ADR is titled "Credit for Provisional Suspension or Period of Ineligibility" 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".

80. In this case, the sample collection was made on 6 July 2016, and according to the Georgian and Eastern European Regional Anti-Doping Appeal Commission Decision, the Athlete was

provisionally suspended on 26 July 2016. It follows therefore, that the Athlete should receive 'credit' for the period of ineligibility already served. In this regard, the Sole Arbitrator determines that the Athlete's four-year period of ineligibility shall commence as from the date of his provisional suspension (i.e. 26 July 2016), thus giving him full credit for time already served in accordance with Article 10.2 of the GADA ADR. Consequently, the period of ineligibility starts as from 26 July 2016.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 10 November 2017 by the Fédération Internationale de Natation against the 16 May 2017 Decision of the Georgian and Eastern European Regional Anti-Doping Appeal Commission is upheld.

2. The decision rendered by the Georgian and Eastern European Regional Anti-Doping Appeal Commission on 16 May 2017 is set aside.

3. Mr Irakli Bolkvadze is suspended for a period of four (4) years starting as from 26 July 2016.

4. All competitive results earned Mr Irakli Bolkvadze as from 6 July 2016 are disqualified, with all resulting consequences (including forfeiture of any titles, awards, medals, profits, prizes, and appearance money).

5. (…).

6. (…).

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