

**CAS 2020/A/6978 Andrea Iannone v. FIM**  
**CAS 2020/A/7068 WADA v. FIM and Andrea Iannone**

## **ARBITRAL AWARD**

delivered by the

## **COURT OF ARBITRATION FOR SPORT**

sitting in the following composition:

President: **Dr. Hamid G. Gharavi**, Attorney-at-Law in Paris, France

Arbitrators: **The Hon. Franco Frattini**, Judge in Rome, Italy

**The Hon. Michael J. Beloff Q.C.**, Barrister in London, United Kingdom

in the arbitration between

**Andrea Iannone**, Lugano, Switzerland

Represented by Mr. Antonio de Rensis, Attorney-at-Law, San Giovanni in Persiceto, Italy

**Appellant/First Cross-Respondent**

and

**World Anti-Doping Agency**, Montreal, Canada

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

**Cross-Appellant**

and

**Fédération Internationale de Motocyclisme**, Mies, Switzerland

Represented by Mr. Jiri Janak, Attorney-at-Law, Prague, Czech Republic

**Respondent/Second Cross-Respondent**

**I. PARTIES**

1. Mr. Andrea Iannone (“Mr. Iannone”) is an Italian professional motorcycle racer of the Aprilia Racing Team Gresini who competed in the 2019 FIM World Championship MotoGP.
2. The World Anti-Doping Agency (“WADA”) is a non-profit organization based in Montreal, Canada, responsible for promoting, coordinating and monitoring fight against doping.
3. The *Fédération Internationale de Motocyclisme* (“FIM”) is an international organization based in Mies, Switzerland and recognized by the International Olympic Committee and the Global Association of International Sports Federations. FIM is responsible for the organization and supervision of motorcycling sports, notably the FIM World Championship MotoGP.
4. Mr. Iannone, WADA and FIM are hereinafter collectively referred to as “the Parties”.

**II. FACTS**

5. Below is a summary of some of the key relevant facts. Additional facts and/or allegations are set out, where relevant, in subsequent sections.
6. From 1 to 3 November 2019, the FIM World Championship MotoGP, to which Mr. Iannone participated, took place at Sepang, Malaysia.
7. On 3 November 2019, Mr. Iannone underwent an in-competition doping control during which Mr. Iannone’s urine sample (sample no. 4501429) was collected and sent for testing to the Institute of Doping Analysis and Sport Biochemistry (“IDAS”), the WADA accredited laboratory in Germany.
8. On 28 November 2019, the IDAS informed FIM that the analysis of Mr. Iannone’s A sample resulted in an adverse analytical finding (“AAF”) as it revealed the presence of drostanolone metabolite 2 $\alpha$ -methyl-5 $\alpha$ -androstane-3 $\alpha$ -ol-17-one (“Drostanolone”) in a concentration of approximately 1.5ng/ml.
9. By letter of 16 December 2019, FIM informed Mr. Iannone of the test result and, in light of this result, of his provisional suspension from participating in any motorcycling competition or activity as of 17 December 2019 until further notice. FIM also notified Mr. Iannone of the possibility to request testing of the B sample and indicated that in the event that Mr. Iannone elected not to use this option or that the analysis of the B sample confirmed the AAF, the case would be referred to FIM International Disciplinary Court (“CDI”).
10. By letter of 18 December 2019, Mr. Iannone informed FIM of his request to have the B sample tested. Consequently, analytical tests were conducted by the IDAS on Mr. Iannone’s B sample.
11. By letter of 8 January 2020, FIM informed Mr. Iannone that the analysis of the B sample confirmed the previous AAF and the presence of Drostanolone in a concentration of approximately 1.2ng/ml.

12. Drostanolone is a prohibited substance for which no quantitative threshold has been defined – i.e. the presence of Drostanolone at any level constitutes an ADRV (WADA 2019 Prohibited List – S.1.1.a, group of Anabolic Androgenic Steroids (AAS)).
13. On 1 January 2020, Mr. Iannone submitted his Statement of Defence together with supporting exhibits to the CDI, in which, *inter alia*, he asserted that the AAF was the result of his ingestion of contaminated meat.
14. Mr. Iannone has not denied the presence of a Prohibited Substance in his samples and has not contested having committed an ADRV under Article 2.1 ADC.
15. By letter of 17 January 2020, FIM informed Mr. Iannone that his case was being referred to the CDI and that a hearing would be held in Mies, Switzerland, on 4 February 2020. Further, FIM informed Mr. Iannone of the opportunity to file written submissions by 31 January 2020 or, even for any justified reasons, as late as the day of the hearing. Mr. Iannone was asked by the CDI Panel to answer to the following questions:
  1. *How did Mr Iannone ingest the prohibited substance?*
  2. *Why did Mr Iannone ingest the prohibited substance?*
  3. *Did Mr Iannone intend to enhance his sport performance in ingesting it?*
  4. *If any, what precautionary steps did Mr Iannone take to avoid the present anti-doping rule violations (i.e. presence, use and possession of Drostanolone metabolite 2a-methyl-5aandrostan-3a-ol-17-one)?*
16. On 4 February 2020, FIM submitted a written summary of its statements during the hearing. On 11 February 2020, FIM submitted further submissions and requested an extension of one week to provide the CDI with additional information provided by WADA. On 18 February 2020, FIM submitted its final submission to the CDI. On 28 February 2020, Mr. Iannone submitted its final reply, together with supporting exhibits, to the CDI.
17. On 31 March 2020, the CDI rendered its decision (the “Appealed Decision”). The CDI found that Mr. Iannone committed an Anti-Doping Rule Violation (“ADRV”) due to the presence of Drostanolone in his system, as revealed by the testing of Mr. Iannone’s A and B samples.
18. As per Article 10.2 of the FIM Anti-Doping Code (2019 edition) (“ADC”), “[t]he period of Ineligibility shall be four years where: [t]he anti-doping rule violation does not involve a Specified Substance, unless the Rider or other Person can establish that the anti-doping rule violation was not intentional”. The CDI found that Mr. Iannone discharged his burden of proof that the ADRV was not intentional by establishing on a balance of probabilities, that he was a “strong consumer of meat, both red and white meat, including during his stay in Malaysia and Singapore, and that [contamination] of meat by anabolic steroids in Asia, including Malaysia, is very likely”. The CDI held that there was a “probability” that the contaminated meat scenario was correct and therefore concluded that the ADRV was not intentional.
19. As per Article 10.4 ADC, the period of ineligibility shall be eliminated if the athlete demonstrates “No Fault or Negligence”. In consideration of Mr. Iannone’s eating habits

and of the meat contamination risk in Asia, the CDI considered that Mr. Iannone “*was expected to exercise caution as regards eating meat when travelling and staying in Asia for a longer period of time*”. Having failed to exercise such due care, the CDI found that it could not be said that there was “*No Fault or Negligence*” on the part of Mr. Iannone.

20. The CDI also ruled out application of Article 10.5.1.2 ADC, which allows for reduction of the ineligibility period if the athlete can establish “*No Significant Fault or Negligence and that the detected Prohibited Substance came from a Contaminated Product.*” The CDI found that Mr. Iannone could have found information on the risk of meat contamination by anabolic steroids in Asia in a “*reasonable internet search*” and therefore he could not benefit from a reduction of the period of ineligibility pursuant to Article 10.5.1.2 ADC.
21. Finally, as per Article 10.5.2 ADC, the CDI found that Mr. Iannone established that he bore “*No Significant Fault or Negligence*”. The CDI took into consideration that (i) only a small amount of Drostanolone was found in his system, which could be compatible with an unintentional occasional exposure to meat contaminated by Drostanolone, (ii) the negative hair test results confirmed that the small amount of Drostanolone found in the Mr. Iannone’s system could result from contaminated meat, (iii) Mr. Iannone was in an unknown place without access to the hospitality area, his usual food providers and assistants and (iv) Mr. Iannone ate his meals in “*high class hotels [...] where one does not expect to have contaminated food.*” The CDI concluded that Mr. Iannone’s fault was not significant in relation to the ADRV and therefore the applicable period of ineligibility shall be reduced to eighteen months, i.e. by six months.
22. The CDI held accordingly that Mr. Iannone should be suspended from participating in any motorcycling competition or activity during eighteen months as of 17 December 2019 and that Mr. Iannone’s competitive results obtained from the date of the positive sample collection, i.e. 1 November 2019, shall be disqualified.
23. The CDI’s holding is reproduced below:

*it is undisputable that **Mr Iannone committed an Anti-Doping Rule Violation** under Article 2.1 ADC, namely the presence of a Prohibited Substance or its Metabolite in the Rider’s Sample.*

[...]

*[T]he CDI finds that the Rider has, for the purpose of Article 10.2.1.1, established at the level of balance of probability that **his conduct constituting the Anti-Doping Rule Violation was not intentional.***

*Based on the above finding and pursuant to Articles 10.2.1.1 and 10.2.2 ADC read together, the period of Ineligibility shall be two years, subject to the possible application of Article 10.4 or 10.5 ADC, which is discussed below.*

[...]

*Based on the above the CDI finds that, for the purpose of Article 10.4 ADC, the Rider could reasonable have known, if he exercised caution and due care, that he was exposed to the risks of ingesting Prohibited Substances caused by eating a lot of meat that could be contaminated by anabolic steroids. Therefore, **he did not exercise the duty and care** that he was obliged to in order to ensure that no Prohibited Substance entered his body.*

*Consequently, it cannot be said that there was ‘No Fault or Negligence’ on the part of the Rider. Thus, the **Rider cannot benefit from Article 10.4 ADC and the period of Ineligibility cannot be eliminated.***

[...]

*The CDI considers that, viewed in the totality of the above mentioned circumstances, **the fault or negligence of the Rider was not significant** in relation to the Anti-Doping Rule Violation. Consequently, the sanction in the present case may be reduced based on the degree of the fault or negligence. However, the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable pursuant to Article 10.5.2 ADC*

[...]

*Consequently, the appropriate sanction to Mr Iannone in the present case is **Ineligibility for eighteen (18) months** and Disqualification of the results obtained in the Competition concerned (Grand Prix of Malaysia at Sepang on 3 November 2019). (emphasis added)*

24. Both Mr. Iannone and WADA appealed the Decision before the Court of Arbitration for Sport (the “CAS”), as summarized below.

### **III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

25. On 21 April 2020, Mr. Iannone filed its Statement of Appeal and supporting exhibits with the CAS against the Appealed Decision in accordance with R47 of the Code of Sports-related Arbitration (2019 edition) (the “CAS Code”). Mr. Iannone nominated The Hon. Franco Frattini as arbitrator as per Article R50 CAS Code, requested an extension of 14 days to submit his Appeal Brief, and that the language of the arbitration be Italian.
26. By letter of 22 April 2020, the CAS acknowledged receipt of Mr Iannone’s Statement of Appeal and, based on the CAS Emergency Guidelines in force as of 16 March 2020, granted the extension of 14 days. The CAS also invited FIM to proceed with the nomination of an arbitrator and to indicate whether it agreed with Mr. Iannone’s proposal that the language of the arbitration be Italian.
27. By email of 27 April 2020, FIM notified the CAS that it opposed the use of Italian as the language of the arbitration and instead requested the use of English.
28. By letter of 28 April 2020, the CAS acknowledged receipt of FIM’s email and indicated that, as per Art. R29 of the CAS Code, in the absence of agreement between the parties, the proceedings should be conducted in an official language of the CAS. The CAS, in consideration of the fact that Mr. Iannone filed his Statement of Appeal in English, consequently elected to conduct the proceedings in English.
29. By email of 4 May 2020, FIM nominated The Hon. Michael J. Beloff M.A. Q.C. as arbitrator.
30. On 12 May 2020, WADA filed its Statement of Appeal and supporting exhibits with the CAS against the Appealed Decision in accordance with R47 of the Case Code. WADA requested, as per Article R52 of the CAS Code, its appeal to be consolidated with

Mr Iannone's appeal as the two are directed against the same decision. Further, WADA indicated that in view of consolidation, it appointed the same arbitrator as FIM, i.e. The Hon. Michael J. Beloff M.A. Q.C.

31. By letter of 14 May 2020, the CAS acknowledged receipt of WADA's Statement of Appeal and invited Mr. Iannone's and FIM to indicate whether they agreed or not with WADA's request for consolidation, by 19 May 2020. Furthermore, and in case of a consolidation of the proceedings, the CAS Court Office suggested adaptation of a consolidated briefing schedule.
32. On 15 May 2020, Mr. Iannone submitted its Appeal Brief, together with supporting exhibits, to the CAS.
33. By emails of 19 May 2020, Mr. Iannone and FIM confirmed that they had no objection to the consolidation of the two proceedings.
34. By letter of 24 May 2020, the CAS informed the Parties that the procedures CAS 2020/A/6978 and CAS 2020/A/7068 were consolidated as per Article R52 of the CAS Code. The CAS also notified FIM and WADA of Mr. Iannone's Appeal Brief, submitted on 15 May 2020. Further, the CAS indicated that, pursuant to the Parties' approval, the following briefing schedule applied:

*1. Mr Iannone filed his Appeal Brief in CAS 2020/A/6978 on 15 May 2020 (which has been temporarily retained by the CAS Court Office pending definition of the briefing schedule);*

*2. WADA to file its Appeal Brief in CAS 2020/A/7068 and Answer in CAS 2020/A/6978 (in one submission or separately) and the FIM to file its Answer in CAS 2020/A/6978 within thirty (30) days from notification of Mr Iannone's Appeal Brief;*

*3. Mr Iannone and the FIM to file their Answers in CAS 2020/A/7068 within thirty (30) days from notification of WADA's Appeal Brief.*

35. By letter of 8 June 2020, the CAS informed the Parties that, following the consolidation of the procedures, the members of the Panel renewed their Statements of Independence and that The Hon. Michael J. Beloff MA QC wished to disclose new information. The CAS also reminded the Parties that should they wish to challenge an arbitrator as per Article R34 of the CAS Code, such challenge should be brought within 7 days.
36. By letter of 16 June 2020, the CAS noted that no challenge had been filed against the nomination of The Hon. Michael J. Beloff MA QC. The CAS therefore issued, as per Article R52 of the CAS Code and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the Notice of Formation of a Panel ("Panel") constituted as follows:
 

President: Dr Hamid G. Gharavi, Attorney-at-Law in Paris, France

Arbitrators: The Hon. Franco Frattini, Judge in Rome, Italy

The Hon. Michael J. Beloff M.A. Q.C., Barrister in London, United Kingdom
37. By letter of 22 June 2020, the CAS informed the Parties that a possible timeframe for a hearing, 14 October to 16 October 2020, had been identified by the Panel. The CAS

therefore invited the Parties to state their position on the holding of a hearing and indicate their availability on the aforementioned dates.

38. On 24 June 2020, FIM submitted its Answer to Mr. Iannone's Appeal brief to the CAS.
39. By emails of 25 June and 26 June 2020, the Parties informed the CAS that they did not object to a hearing. FIM and Mr. Iannone confirmed their availability on all the aforementioned dates while WADA indicated its availability only on 15 October 2020. Mr. Iannone further requested the hearing to be held publicly.
40. By letter of 1 July 2020, the CAS informed the Parties that the hearing would be held on 15 October 2020 and, in light of Mr. Iannone's request for a public hearing, invited the Parties to express their views on the organization of the public hearing.
41. On 8 July 2020, WADA filed its Joint Appeal Brief and Answer to Mr. Iannone's Appeal brief.
42. ON 4 August 2020 and 7 August 2020, FIM and Mr. Iannone filed their Answer to WADA's Appeal Brief, respectively as per the agreed briefing schedule.
43. By letter of 14 September 2020, the CAS informed the Parties of the Hearing Schedule determined by the Panel and invited the Parties to communicate their comments thereon.
44. By letter of 25 September 2020, the CAS informed the Parties that, in consideration of the current public-health situation and travel restrictions taken by the Swiss Government and Countries of residence of the persons involved in the present proceedings, the Panel informed the Parties of the impossibility of the hearing being held in public. Consequently, the Panel, pursuant to Article R57 (2) of the Code, decided to conduct a hybrid hearing instead, i.e. with participants attending both in Lausanne and via video-conference, thus allowing the date of the hearing to be maintained. The Parties were invited to comment on whether they agreed.
45. By emails of 29 and 30 September 2020, the Parties indicated that they agreed to a hybrid hearing. Mr. Iannone and WADA informed the CAS that they would prefer to attend the hearing in person.
46. By letter of 30 September 2020, the CAS communicated to the Parties the final Hearing Schedule determined by the Panel after consideration of the Parties' respective positions and comments.
47. By letter of 1 October 2020, the CAS confirmed the holding of a hybrid hearing. In this context, the CAS communicated to the Parties the Order of Procedure, which was returned signed by the Parties within the deadline set by the Panel.
48. On 15 October 2020, a hearing on the merits ("Hearing") took place in a hybrid form, i.e. by video-conference and in Lausanne, Switzerland.
49. In addition to the Panel and Mr. Giovanni Maria Fares, Counsel to the CAS, the following persons attended the Hearing:

- For Mr. Iannone: Mr. Andrea Iannone, Athlete;  
Mr. Antonio de Rensis, Counsel;  
Prof. Pascal Kintz, Expert;  
Prof. Alberto Salomone, Expert;  
Prof. Andrea Formigoni, Expert;  
Ms. Mara Pradelli, Interpreter; and  
Mr. Massimo Rivola, CEO of Aprilia Racing.
- For WADA: Mr. Ross Wenzel, Counsel;  
Mr. Anton Sotir, Counsel;  
Dr. Olivier Rabin, Expert (by video);  
Prof. Dr Bruno Le Bizec, Expert (by video);  
Dr. Detlef Thieme, Expert; and  
Prof. Dr Peter Van Eenoo, Expert (by video).
- For FIM: Mr. Jiri Janak, Counsel (by video);  
Mr. Jan Šťovíček, FIM Board Member (by video); and  
Ms. Sara Moreno, FIM Legal Counsel.

50. The Hearing held on 15 October 2020, started at 9.00am and ended at 8.30pm without any technical interruption or difficulty. The Parties were given at the Hearing a full opportunity to present their case, submit their arguments/submissions and answer the questions posed by the Panel and comments made by the Parties' experts on the issues in dispute. Mr. Iannone' representatives were accompanied by an English/Italian interpreter, which was used not only by Mr. Iannone as the Panel had anticipated from his previous request, but also by his counsel throughout the Hearing, who made submissions in Italian translated into English by the interpreter, which the Panel accommodated. It notes, however, that otherwise than by agreement, CAS proceedings should be conducted in one of the three CAS official languages, namely French, English and Spanish as per Article R29 CAS Code. The Parties expressly confirmed at the end of the Hearing, when questioned on the same by the President of the Panel, that they had no objection to the composition/constitution of the Panel or as to the way in which the proceedings had been conducted and that their right to be heard had been fully respected. As to the timing of the delivery of the present Award, none of the Parties requested the issue of its operative part in advance and within a specific date.

#### **IV. SUMMARY OF THE PARTIES' POSITIONS**

51. This section of the Award does not contain an exhaustive list of the contentions but rather only a summary of the principal arguments of Mr. Iannone (**A**), WADA (**B**) and FIM (**C**) in relation to both Appeals consolidated, as presented in the Parties' written submissions and during the Hearing. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in this arbitration, only the submission

and evidence required for purposes of its findings on law and fact are addressed in this Award.

**A. Mr. Iannone's Prayers for Relief and Submissions**

52. Mr. Iannone's Prayers for Relief (1) and Submissions (2) in Appeal procedure CAS 2020/A/6978 and Appeal procedure CAS 2020/A/7068, consolidated, are set forth in turn below.

**1. Mr. Iannone's Prayers for relief**

53. In his Appeal Brief of 5 May 2020 submitted in the appeal procedure CAS 2020/A/6978, consolidated with CAS 2020/A/7068, Mr. Iannone requested the following relief from the CAS:

*In view of the foregoing, Mr Andrea Iannone respectfully request the CAS to rule as follow:*

*Primarily:*

*I. The Appeal lodged by Mr Andrea Iannone is upheld;*

*II. The Challenged Decision issued and notified by the FIM International Disciplinary Court on 31 March 2020, is set aside and annulled together with all the sanctions contained therein, with full acquittal of Mr Andrea Iannone from all charges, as a consequence of the application of art. 10.4 of the ADR;*

*On a subsidiary basis:*

*III. In the unlikely event that any liability is attributable [sic] to Mr Andrea Iannone, art. 10.5.2 of the ADR is applied along with the "No Significant Fault or Negligence" criterion and as a consequence the relative sanctions are reduced to the minimum established [sic] according to the afore-mentioned provision, corresponding to a reprimand;*

*On a further subsidiary basis:*

*IV. In the unlikely event that any liability is attributable [sic] to Mr Andrea Iannone, art. 10.5.2 of the ADR is applied along with the "No Significant Fault or Negligence" criterion and as a consequence the relevant sanctions are reduced to the minimum established [sic] according to the afore-mentioned provision, corresponding to one-year ineligibility [sic] period;*

*In any case:*

*V. The International Motorcycling Federation is condemned to reimburse Mr Andrea Iannone any and all costs and expenses incurred in the first instance proceeding that led to the issuance of the Challenged Decision in the amount of 21.000 CH or in the amount deemed fair and just by the Panel;*

*VI. The International Motorcycling Federation shall compensate Mr Andrea Iannone for the legal fees and other costs incurred in connection with this arbitration in an amount to be determined at the discretion of the Panel.*

54. In his Answer to WADA’s Appeal Brief in the appeal procedure CAS 2020/A/7068, consolidated with CAS 2020/A/6978, Mr. Iannone requested the following relief from the CAS:

*B. CAS 2020/A/7068 WADA v. ANDREA IANNONE AND FIM*

*126. With regard to the Appeal filed by WADA, Mr Iannone respectfully requests the Panel to rule as follows:*

*I. The Appeal of WADA is dismissed.*

*II. The arbitration costs shall be borne by WADA, or, in alternative, by WADA and FIM jointly and severally.*

**2. Mr. Iannone’s Submissions**

55. Mr. Iannone concurs with CDI’s findings as to the fact that the ADRV was not intentional as it resulted from the consumption by Mr. Iannone of contaminated meat. Consequently, the Appealed Decision is not challenged on this point.
56. Mr. Iannone primarily requests that the Appealed Decision be set aside and that, as per Article 10.4 ADC, the applicable ineligibility period be eliminated as he bears “*No Fault or Negligence*”. Alternatively, Mr. Iannone argues that, as per Article 10.5.1.2 ADC, the applicable period of ineligibility shall be reduced to the minimum under this Article, i.e. a reprimand, as he bears “*No Significant Fault or Negligence*” and Drostanolone “*came from a Contaminated Product.*” As a further alternative, Mr. Iannone submits that, as per Article 10.5.2 ADC, the applicable period of ineligibility shall be reduced to one year as he bears “*No Significant Fault or Negligence.*”
57. Mr. Iannone submits that the CDI failed to apply Article 10.4 ADC, which should have resulted in the elimination of the applicable period of ineligibility.
58. Mr. Iannone argues that the CDI wrongly considered that he failed to exercise due care to “*ensure that no prohibited substance entered his body*”. He claims to have carried out “*all the best sensible, logical, imaginable efforts required*” by “*attending upscale restaurants that, according to normal due diligence, are supposed to offer top-quality food.*”
59. Mr. Iannone’s also submits that his professional career should be taken into account by the Panel as he “*was always found to be negative.*”
60. Mr. Iannone also requests the Panel to take into consideration that he “*made any possible and reasonable efforts [...] to prove that he ate contaminated meat and that he was acted without any Fault or Negligence*” as he voluntarily underwent a hair test after having been notified of the AAF.
61. Mr. Iannone further submits, as an alternative basis, that the CDI failed to properly apply Article 10.5.1.2 ADC, which should have resulted in a reprimand as sanction in lieu of a period of ineligibility or, alternatively, in “*the most lenient sanction this Panel will deem appropriate.*”

62. Mr. Iannone argues that CDI erred in finding that he, Iannone could have obtained information on the risk of meat contamination through a “*reasonable internet research*”. The internet research included in Prof. Salomone’s expert opinion, submitted with Mr. Iannone’s Statement of Defence, was conducted by an expert and not by Mr. Iannone himself.
63. As a further alternative, Mr. Iannone argues that the CDI failed to properly apply Article 10.5.2 ADC, which should have resulted in a reduction of the sanction to one year instead of eighteen months for the same reasons set out above.
64. In its Answer to WADA’s Appeal Brief of 7 August 2020, Mr. Iannone added, in response to FIM’s submissions, that FIM’s suggestion that Mr. Iannone could have obtained information on the risk of meat contamination by contacting Malaysian local government is not “*credible*”. He contends that an ordinary individual such as Mr. Iannone himself would not have been able to obtain any information from the Malaysian government as to its commercial imports and the origin of the meat eaten in the country. Mr. Iannone further asserts that he “*diligently did everything he could do*” by contacting the hotel and restaurant at which he ate during his stay in Malaysia. On the contrary, according Mr. Iannone, it was FIM’s responsibility to contact the Malaysian Government, as a “*more authoritative and accredited interlocutor*”, to obtain information and accordingly provide the athletes with guidelines to follow.
65. Mr. Iannone rejects WADA’s assertion that the ADRV was intentional. He argues that the ADRV was not intentional as it resulted from eating contaminated meat during his stay in Asia, particularly in Singapore and in Malaysia before and during the competition. In this regard, Mr. Iannone submitted, before the CDI, witness statements from Mr. Stefano Marcaurelio, Ms. Monica Gasser and Mr. Marco Agostini. All testified that Mr. Iannone was a habitual (“*strong*”) consumer of meat.
66. Mr. Iannone asserts that he ate meat on several occurrences during his stay in Singapore and Malaysia. To support this allegation, Mr. Iannone provided the Panel with several food and beverage receipts from the *Sama Sama* hotel in Malaysia as well as an email addressed to the hotel dated 27 July 2020 in which he wrote that that he had “*eaten in your restaurants on the nights of 30<sup>th</sup> and 31<sup>st</sup> of October 2019 and of the 2<sup>nd</sup> and 3<sup>rd</sup> of November 2019 and I have consumed some meat. Therefore I need to know the origin of the meat that I have eaten.*” Mr. Iannone did not specify before the Hearing what he had precisely eaten at *Sama Sama* Hotel and did so only at the Hearing, when solicited by the President of the Panel, by claiming to have eaten “*meat*” and more particularly “*beef*” and suggesting that the entry on *Sama Sama* Hotel receipt dated 2 November 2019, with the description “*GP BF Dinner*” must have been referring to it.
67. Mr. Iannone further contends that he had dinner on 1 November 2019 at the *Marini’s on 57* Restaurant, in Malaysia, where he also ate meat. Mr. Iannone adduced a bank statement in support of this allegation showing an entry debit for 1 November 2019 in the amount of EUR 561.07 to the credit of the said restaurant. He provided an affidavit from Mr. Paolo Campinoti, a family friend, in which the latter claimed to have called the owner of the restaurant to inquire about the origin of the meat and that said owner refused to assist as he did not want to “*jeopardize the reputation of the restaurant [...] despite the fact that Andrea Iannone had eaten at that place before the race*”. It is, at this juncture and only when questioned by the President of the Panel at the Hearing as to his precise food consumption at said restaurant that Mr. Iannone proffered particulars, claiming that

he ate a “*large steak*”. However, his expert, Prof. Salomone, relied in his report dated 26 February 2020 on the Beef Wagyu Ribeye and Wagyu Tenderloin as the possible source of the contamination suggesting that this was actually consumed by or claimed to have been consumed by Mr. Iannone but rather on the basis that these dishes were available on the menu of *Marini’s on 57*.

68. At the Hearing, Mr. Iannone contended for the first time that he also ate meat, a “*ragout*” with beef, the day of the race, namely 3 November 2020, provided by a caterer present at the competition again when requested by the Panel to provide particulars as to what he actually consumed at the material time. Moreover, Mr. Iannone did so after his expert, Prof. Salomone, also claimed, in his presence, earlier during the Hearing, similarly for the first time and only when pressed by the Panel to give particulars, that Mr. Iannone had represented to him that he (Mr. Iannone) had eaten some “*ragout*.”
69. Mr. Iannone’s experts contend that Drostanolone is used as a growth promoting agent despite of its prohibition in Malaysia, being easily accessible on the market, particularly on internet or on the black market, at affordable prices. Mr. Iannone’s experts submitted publications supporting the possibility of Drostanolone being used for such purpose. Mr. Iannone’s experts further asserted that the tests performed on meat in Asia, particularly in Malaysia, are ineffective and therefore incapable of detecting the presence of Drostanolone.
70. Mr. Iannone’s experts also highlighted that Malaysia imported meat from numerous countries including, and in particular, from China which is known to have meat contamination issues.
71. In light of the foregoing, Prof. Salomone concluded in his report dated 31 January 2020 that the meat contamination scenario was “*very likely*”. Prof. Salomone confirmed in a subsequent report dated 30 July 2020 that there was a “*reasonable probability*” that Drostanolone is illicitly used as a growth promoting agent and therefore that it is “*very likely that Mr. Iannone was accidentally exposed to meat contaminated with drostanolone*”. In a joint-statement dated 15 May 2020, Prof. Salomone and Prof. Kintz concluded more circumspectly that such scenario was “*possible*”.
72. Mr. Iannone’s experts also referred to the hair test underwent by Mr. Iannone on 9 January 2020 which was negative, i.e. no Drostanolone was detected in the two segments of hair tested. The test was performed on two two-centimetre segments of hair covering 0 to 2 cm from the scalp, i.e. corresponding to the period from November 2019 to January 2020, and 2 cm to 4 cm from the scalp, i.e. corresponding to the period from September 2019 to November 2019. The hair test is, according to Mr. Iannone’s experts, to be considered as a complement to the urine test as it demonstrates that he was not exposed to the substance on a regular basis. Those experts contended that since Drostanolone is only effective if taken on weeks-long cycle, the hair test result demonstrates that the ADRV could not be intentional. To further underscore the relevance of the hair test, Mr. Iannone refers to a public statement made by Sir Craig Reddie, former President of WADA, according to which the hair test “*will create tremendous opportunities for advances in anti-doping and allow our scientist to explore alternative approaches to testing samples for prohibited substances.*”
73. Therefore Mr. Iannone argues that to determine whether the ADRV was intentional, the Panel should take into account the hair test result. He relies particularly on Jarrion Lawson

- v. IAAF (CAS 2019/A/6313) (“Lawson”) and indicates that in that case the panel there took into account Mr. Lawson’s hair test result when assessing his intent or lack thereof.
74. Mr. Iannone asserts that in addition to the hair test, the Panel should take into consideration his good faith as evidenced by, *inter alia*, the voluntarily performance of a hair test, his participation to the “athlete biological passport” program, and his clean track record. In this context, he refers to the Dominika Jamnicky v. CCES award (CAS 2019/A/6443 and CAS 2019/A/6593) (“Jamnicky”) and argues that the panel there included the “*personality and credibility of the athlete*” in its assessment of the intent.
75. At the hearing, Mr. Iannone also argued that the panels in Lawson and Jamnicky recognized that, in certain circumstances, it is simply impossible for the athlete to establish the origin of the substance since the specific piece of meat consumed by him or her cannot be retrieved and therefore cannot be tested. Mr. Iannone drew a parallel between these two cases and the present one as it is, according to Mr. Iannone, also impossible for him to identify the origin of the substance as the specific piece of meat consumed by him equally cannot be retrieved.
76. Mr. Iannone further submits that WADA’s experts have a close relationship with WADA accredited laboratories whereas Mr. Iannone’s experts are “*internationally known and of the high value*” and individuals with whom he had no previous relationship. In addition, Mr. Iannone asserts that WADA’s experts only presented “*counterargument based on simple statements without proven support*” and failed to provide “*adequate scientific arguments.*”
77. Mr. Iannone argues that WADA’s statement that “[i]f a claim of contaminated meat where accepted (in the absence of any specific evidence) [...], it would logically follow that any athletes found positive for low levels of steroid would have to be acquitted on an unsubstantiated claim of meat contamination” is “*totally unacceptable*”. According to Mr. Iannone, this statement shows that WADA considers this case as “*a matter of policy and principle*” and rejects the meat contamination scenario on the sole basis that it would entail a review of “*all the parameters of doping controls*”. On the contrary, Mr. Iannone asserts that this case should be seen as an opportunity to “*identify new illegal tools used in animal doping, which can be extremely harmful to athletes.*”
78. Finally, with regard to WADA’s argument in relation to “*No Fault or Negligence*”, Mr. Iannone submits that, as in Lawson, the Panel should find that he bears “*No Fault or Negligence*”. Mr. Iannone invites the Panel to follow the reasoning of the panel in Lawson, and therefore to take into account that (i) the ADRV resulted from meat contamination, (ii) he always tested negative during his professional career, (iii) he voluntarily underwent a hair test, and (iv) he “*made any possible and reasonable efforts [...] to prevent the contested anti-doping violation.*” Mr. Iannone further criticizes WADA’s position in relation to Lawson even if a CAS decision can be subject to criticisms, it cannot be “*attacked*” as WADA has done with a view to its disapplication in a later case.
79. Mr. Iannone submits, based on the foregoing, that WADA’s appeal should be dismissed.

## **B. FIM's Prayers for Relief and Submissions**

80. FIM's Prayers for Relief (1) and Submissions (2) in Appeal procedure CAS 2020/A/6978 and Appeal procedure CAS 2020/A/7068, consolidated, are set forth in turn below.

### **1. FIM's Prayers for Relief**

81. In its Answer to Mr. Iannone's Appeal Brief of 24 June 2020 submitted in the appeal procedure CAS 2020/A/6978, consolidated with CAS 2020/A/7068, FIM requested the following relief from the CAS:

*Based on the foregoing, the FIM respectfully requests the CAS to issue an award:*

*(i) DISMISSING the Appeal filed by Mr. Iannone.*

*(ii) UPHOLDING the Decision of the FIM International Disciplinary Court dated 31 March 2020.*

*(iii) ORDERING The Appellant to pay the arbitration costs of this proceeding and Respondent's legal costs.*

82. In its Answer to WADA's Appeal Brief of 30 July 2020 submitted in the appeal procedure CAS 2020/A/7068, consolidated with CAS 2020/A/6978, FIM requested the following relief from the CAS:

*Based on the foregoing, and in the light of the prayers for relief already submitted by FIM in its answer dated 24 June 2020, FIM respectfully requests the CAS to issue an award:*

*(i) DISMISSING the Appeal filed by WADA.*

*(ii) UPHOLDING the Decision of the FIM International Disciplinary Court dated 31 March 2020.*

*(iii) ORDERING The Appellant to pay the arbitration costs of this proceeding and the legal costs of FIM.*

### **2. FIM's Submissions**

83. FIM argues that the presence of Drostanolone was revealed by the test of Mr. Iannone's A sample and confirmed by the test of the B sample, which have been accepted by Mr. Iannone himself. FIM claims that the hair test underwent by Mr. Iannone is irrelevant as hair test is "*not suitable for general routine control*" and is "*considered solely as complement and not an alternative to the standard investigations.*"

84. FIM further asserts that, as stated in the Appealed Decision, as per Articles 10.2.1 and 10.2.1.1 ADC, if the violation is not intentional the applicable period of ineligibility shall be of maximum of two years. FIM considered that, although Mr. Iannone "*could have been more active or investigative*" by contacting the Malaysian competent authorities to obtain information on the risk of meat contamination, Mr. Iannone had demonstrated on a balance of probability that the presence of Drostanolone resulted from consumption of contaminated meat.

85. FIM also submits that Mr. Iannone cannot rely on Article 10.4 ADC to justify the elimination of the period of ineligibility. Article 10.4 ADC only applies in “*exceptional circumstances*” in which the athlete exercised the “*utmost caution in avoiding doping.*” According to FIM, Mr. Iannone failed to exercise the utmost caution as he should have known that there was a risk of meat contamination.
86. FIM concurs with the Appealed Decision and submits that as per Article 10.5.2 ADC, the period of ineligibility should be reduced by six months “*due to the fact that [Mr. Iannone] bears No Significant Fault or Negligence.*”
87. FIM agrees with WADA that to Mr. Iannone had failed to provide any concrete evidence supporting the “*food contamination scenario.*” In addition, FIM asserts that Mr. Iannone “*could have been more active and investigative*” in his efforts to identify the source of the prohibited substance. However, in spite of this failure, FIM claims that the violation should still be considered as not intentional as it is probable that such scenario is correct. Consequently, the default period of ineligibility should be of two years.
88. FIM contends in its Answer of 24 June 2020 that the circumstances justify that, as per Article 10.5 ADC, the period of ineligibility be reduced by six months.

### **C. WADA’s Prayers for Relief and Submissions**

89. WADA’s Prayers for Relief (1) and Submissions (2) in Appeal procedure CAS 2020/A/6978 and Appeal procedure CAS 2020/A/7068, consolidated, are set forth in turn below.

#### **1. WADA’s Prayers for Relief**

90. In its Joint Appeal Brief and Answer of 8 July 2020 in consolidated cases CAS 2020/A/6978 and CAS 2020/A/7068, WADA requested the following relief from the CAS:

*CAS 2020/A/6978 Andrea Iannone v. FIM*

*81. With regard to the appeal filed by the Athlete, WADA respectfully requests the Panel to rule as follows:*

*(1) The appeal of Andrea Iannone is dismissed.*

*(2) The arbitration costs shall be borne by Andrea Iannone, or, in the alternative, by Andrea Iannone and FIM jointly and severally.*

*(3) WADA is granted a significant contribution to its legal and other costs*

*CAS 2020/A/7068 WADA v. FIM and Andrea Iannone*

*82. With regard to the appeal filed by WADA, WADA respectfully requests the Panel to rule as follows:*

*(1) The Appeal of WADA is admissible.*

*(2) The decision dated 31 March 2020 rendered by the FIM International Disciplinary Court in the matter of Andrea Iannone is set aside.*

(3) *Andrea Iannone is found to have committed an anti-doping rule violation.*

(4) *Andrea Iannone 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 Andrea Iannone before the entry into force of the CAS award shall be credited against the total period of ineligibility to be served.*

(5) *All competitive results obtained by Andrea Iannone from and including 1 November 2019 until 16 December 2019 are disqualified, with all resulting consequences (including forfeiture of medals, points and prizes).*

(6) *The arbitration costs shall be borne by FIM and Andrea Iannone jointly and severally.*

(7) *WADA is granted a significant contribution to its legal and other costs.*

## **2. WADA's Submissions**

91. WADA argues that Mr. Iannone committed an ADRV as proved by the in-competition doping control he underwent on 3 November 2019. Such violation is not challenged by Mr. Iannone.
92. WADA contends that, as per Article 10.2.1.1 ADC, the period of ineligibility shall be of four years unless it is established that the ADRV was not intentional. WADA submits on the basis of several consistent CAS decisions, prior to Lawson and Jamnicky, that to demonstrate that the violation was not intentional, an athlete is generally required to establish the origin of the prohibited substance and that it is only in “*extremely rare*” cases with “*exceptional circumstances*” that an athlete might demonstrate that the violation was not intentional even if the origin of the prohibited substance cannot be established.
93. WADA asserts that Mr. Iannone’s case does not present “*exceptional circumstances*,” consequently he is required to demonstrate the origin of the prohibited substance.
94. WADA contends that, contrary to Mr. Iannone’s allegations, Lawson should not be followed as the panel “*misapplied (or ignored) express provisions in the World Anti-Doping Code [...] and departed from a consistent and long line of cases.*” WADA draws attention to the panel’s decision to place significant reliance on the athlete’s denials, polygraph results and clean track record in circumstances where previous CAS panels have consistently held that such elements are insufficient to establish to the required standard the lack of intent.
95. WADA also criticizes the panel’s decision in Lawson to allow the athlete to benefit from a plea of “*No Fault or Negligence*” without establishing the origin of the substance given that the Article 10.4 ADC definition of “*No Fault or Negligence*” expressly requires its establishment. WADA further notes that Lawson has been subject to criticism from such experts in anti-doping law as Mr. Jonathan Taylor QC and Prof. Ulrich Haas.
96. WADA adds that Lawson presents several material and factual differences to the present case which justify its non-application. In any event WADA refers to the fact that Mr. Lawson was able to identify what type of meat he ate, i.e. beef whence it was sourced by the restaurant where he ate it and Lawson concerned trenbolone which is a steroid permitted to be used in livestock farming in the United States, as well as other countries from which meat is there imported.

97. WADA argues that Jamnicky (in which two of the three panel members had also determined Lawson), should equally not be followed by the Panel as it again took into account factors such as the athlete's credibility which had been consistently discounted as not material by previous CAS panels. WADA further argues that, in any event, Jamnicky is distinguishable from the present case as there, but not here, the parties had agreed that the ADRV was not intentional.
98. WADA also submits that the burden of proof as to the origin of the prohibited substance is the "*balance of probability*." Mr. Iannone failed to provide any "*concrete and contemporaneous evidence supporting the [...] food contamination scenario*." In this regard, WADA refers to Mr. Iannone's failure to identify precisely what type of meat he ate during his stay in Singapore and Malaysia. It argues that while Mr. Iannone referred to meals taken at the *Sama Sama* Hotel and at the *Marini's on 57* Restaurant none of the evidence produced by him whether hair test results, receipts, credit card statement, airplane ticket or other, themselves establish what he actually ate. WADA further points out that it was only, for the first time at the Hearing, that Mr. Iannone claimed that he ate "*ragout*" on the day of the competition but again without providing any particulars, information or witness testimony to corroborate this assertion.
99. WADA further submits that, in addition to being unable to identify with sufficient specificity the type of food he ate, Mr. Iannone failed to take reasonable and diligent steps to obtain information as to the origin of the meat he claimed to have eaten. With regard to the *Sama Sama* Hotel, WADA notes that it was only on 27 July 2020, i.e. after the submission of WADA's Joint Appeal Brief and Answer, that Mr. Iannone sent an email to the hotel to inquire about the origin of the meat. Despite the lack of answer from the hotel, Mr. Iannone failed to pursue his inquiries. With regard to the *Marini's on 57* Restaurant, WADA draws the same conclusion, namely that Mr. Iannone provided scant evidence and failed to demonstrate that he contacted the restaurant to obtain information on the origin of the meat. WADA considers that the only evidence adduced by Mr. Iannone, i.e. Mr. Campinoti's affidavit, has very little probative value given that the latter was not made available for cross-examination at the Hearing.
100. WADA submits that in light of the lack of evidence as to the use of Drostanolone in livestock, the probability of meat contamination with Drostanolone in Malaysia is "*vanishingly thin, if not to say zero*." One WADA's expert, Prof. Le Bizec concluded in his report dated 7 July 2020 that the probability of the contaminated meat scenario was "*infinitesimal*." Furthermore, another WADA's expert, Dr. Rabin, in its statement dated 12 February 2020 and at the Hearing, indicated that AAF with Drostanolone were "*fairly frequent*" with a slight increase in the recent years, which makes Drostanolone the third most reported anabolic steroid for doping in sport. In his second statement dated 6 July 2020, Dr. Rabin made particular reference to the fact that several AAF for Drostanolone were related to cases of bodybuilding. Dr. Rabin confirmed in his first statement, i.e. 12 February 2020, and at the Hearing that WADA has never encountered nor is aware of any case of meat contaminated with Drostanolone.
101. WADA rejects Mr. Iannone's allegation that hair test results should be taken into account by the Panel. WADA contends that negative hair test results do not exclude an intentional single administration of Drostanolone or even administration of repeated doses of Drostanolone. Further, according to WADA, a low dose of Drostanolone in the urine sample, even after an intentional use, is compatible with negative hair test results. Finally,

WADA asserts that, in any event, hair test results are irrelevant as they cannot establish the origin of the substance.

102. WADA concludes that Mr. Iannone failed to establish to the requisite standard, that the origin of Drostanolone in his urine resulted from meat contamination. Consequently, WADA submits that Mr. Iannone's ADRV must be considered intentional.
103. WADA added at the Hearing that, although it is not for WADA to put forward an alternative scenario explaining the ADRV, the presence of Drostanolone, which can be used for muscle recovery purposes, could be linked to an injury suffered by Mr. Iannone in September 2019 during the San Marino Grand Prix. WADA contended that the injury caused Mr. Iannone to be withdrawn from the San Marino Grand Prix and referred to a statement of Mr. Iannone as to the need to recover from this injury as quickly as possible.
104. WADA alternatively argues that even if the Panel was to consider that lack of intent can exceptionally be demonstrated without establishing the origin of the substance, Mr. Iannone failed to establish that the case at hand presents exceptional circumstances permitting a finding that the violation was not intentional. Mr. Iannone's reference to such matters as his clean track record, his lack of incentive to dope, the absence of any physical transformation in the period preceding the test the lack of potential effect of Drostanolone in the quantity found in his urine on his sports performance, are of insufficient materiality or weight to advance his case beyond his mere denial of its intentional ingestion.
105. In the further alternative, WADA asserts that Mr. Iannone cannot, in any event, benefit from an elimination or reduction of the applicable period of ineligibility on the basis of Article 10.4 and 10.5 ADC, namely "*No Fault or Negligence*" and "*No Significant Fault or Negligence*", as such finding always requires the athlete to establish how the substance entered his system. In this regard, WADA contends that the panel in Lawson erred by accepting the possibility that the athlete could benefit from No Fault or Negligence without establishing the origin of the substance. WADA argues that such finding is "*expressly contradicted by the definition of No Fault or Negligence*" (Article 10.4 ADC) as well as "*the definition of No Significant Fault or Negligence*" (Article 10.5 ADC).
106. Consequently, WADA submits that Mr. Iannone should be sanctioned with a four-year period of ineligibility, and that the results obtained during the 2019 FIM World Championship MotoGP as well as any results obtained since the date of the sample collection should be annulled.

## V. JURISDICTION

107. The jurisdiction of the CAS, which is not disputed by the Parties, derives from Article R47 of the CAS Code, and Article 13 ADC.
108. It follows from Article R47 of the CAS Code that "[a]n appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body."
109. Pursuant to Article 13.2 and 13.2.1 ADC, a decision that an ADRV was committed and imposing consequences for such violation may be appealed exclusively to the CAS when

the case arises from the participation in an international event or involving international-level riders.

110. In addition, Article 5 of FIM statutes provides that an appeal against a final decision handed down by FIM's jurisdictional bodies must be referred to the CAS.
111. The Panel therefore finds that it has jurisdiction to decide the present dispute within the scope of review set out in paragraphs 122 *et seq.*

## **VI. ADMISSIBILITY**

112. Article R49 of the CAS Code provides that the time limit for appeal is twenty-one days from the receipt of the appealed decision. This time limit applies only if the statutes or regulations of the relevant federation do not contain a time limit of their own. In this case, Article 13.7.1 ADC does provide for the following time limit:

*The time to file an appeal to CAS shall be twenty-one days from the date of receipt of the decision by the appealing party.*

[...]

*The above notwithstanding, the filing deadline for an appeal filed by WADA shall be the later of:*

- a) Twenty-one days after the last day on which any other party in the case could have appealed; or*
- b) Twenty-one days after WADA's receipt of the complete file relating to the decision.*

113. Mr. Iannone submitted his Statement of Appeal on 21 April 2020, i.e., within twenty-one days of the notification of the Appealed Decision dated 31 March 2020, and thus within the twenty-one-days' time limit set out at Article 13.7.1 (a) and (b) of the ADC. The admissibility of Mr. Iannone's appeal is not challenged by either WADA or FIM.
114. WADA submitted its Statement of Appeal on 12 May 2020, i.e., within twenty-one days after the last day on which Mr. Iannone could have appealed, namely 21 April 2020 and thus within the twenty-one days' time limit set out at Article 13.7.1 (a) and (b) of the ADC. The admissibility of WADA's appeal is not challenged by either Mr. Iannone or FIM.
115. The Panel therefore find that the appeals filed by Mr. Iannone and by WADA are admissible.

## **VII. APPLICABLE LAW**

116. According to Article R58 of the CAS Code:

*The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of*

*law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.*

117. The Introduction to the ADC provides:

*These Anti-Doping Rules shall apply to FIM, each Continental Union (CONU) and to each of its FMNs (FMN). They also apply to the following Riders, Rider Support Personnel and other Persons, each of whom is deemed, as a condition of his/her membership, accreditation and/or participation in the sport, to have agreed to be bound by these Anti-Doping Rules, and to have submitted to the authority of FIM to enforce these Anti-Doping Rules and to the jurisdiction of the hearing panels specified in Article 8 and Article 13 to hear and determine cases and appeals brought under these Anti-Doping Rules*

118. FIM, the sports organization that issued the Appealed Decision, has its seat in Switzerland.

119. The Panel notes that the Parties agreed that, as the Appealed Decision was rendered in application of the ADC Code, the ADC shall be applied to the present dispute.

120. The Panel therefore finds that the law applicable to the present dispute shall be the ADC and, subsidiarily, the law of Switzerland.

## **VIII. MERITS**

121. The Panel sets out below the scope and sequence of its review (**A**) followed by its decision on the appeals of WADA (**B**) and Mr. Iannone (**C**).

### **A. Scope and Sequence of the Panel's Review**

122. According to Article R57 of the CAS Code, “[t]he 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”.

123. The Panel will thus conduct a de novo review of the present dispute within the scope set out below of the appeals of Mr. Iannone and WADA.

124. Mr. Iannone indicates in his Appeal Brief that his appeal is directed at “*the sanctions imposed on the Rider and, of course, the reasoning behind them, which, as will be referred to below, cannot be shared in any manner*”. The Panel repeats that Mr. Iannone has not denied the presence of a Prohibited Substance in his samples and has not contested having committed an ADRV under Article 2.1 ADC. The scope of Mr. Iannone’s appeal is therefore limited to the Appealed Decision as to the application of Article 10.4 ADC (“*No Fault or Negligence*”), Article 10.5.1.2 ADC (“*Contaminated Products*”), and Article 10.5.2 (“*No Significant Fault or Negligence*”).

125. As noted in Section IV above, Mr. Iannone’s appeal seeks to set aside the Appealed Decision in relation to all sanctions imposed therein on him as a result of the ADRV, so that those sanctions are annulled or reduced. WADA’s appeal seeks to similarly set aside the Appealed Decision but in relation to its non-intentional ADRV finding, to have the same qualified as intentional and to increase the sanction to a four-year period of ineligibility.

126. Based on the foregoing, the Panel will first examine below WADA’s appeal, namely whether the ADRV is intentional pursuant to Article 10.2 ADC. Mr. Iannone’s appeal seeking, pursuant to Articles 10.4 and 10.5 ADC, the annulment of the sanctions and alternatively a reduction thereof falls to be considered pursuant to those Articles only if ADRV is found not to be intentional and WADA’s appeal dismissed. The Panel will do so based on the applicable provisions of ADC derived from the WADC, while it notes that that the WADC, in its latest incarnation effective as of 1 January 2021, no longer (i) provides that “*the term ‘intentional’ is meant to identify those Athletes who cheat*” and (ii) requires “*protected persons*” and “*recreational athlete*” to prove how the substance entered their system for purposes of No Fault and Negligence. This new version does not, however, apply to the dispute at hand, since the ADRV has been committed under the aegis of the present WADC and, in any event, Mr. Iannone would not fall under the category of “*protected persons*” and “*recreational athlete*”.

## **B. WADA’s Appeal**

127. The Panel sets out the criteria, burden and standard of proof applicable in determining whether the ADRV was intentional pursuant to Article 10.2 ADC (1) before applying the same to the case at hand (2) and setting the corresponding sanction (3).

### **1. Criteria and Standard and Burden of Proof under Article 10.2 ADC**

128. Article 10.2 ADC provides:

*The period of Ineligibility shall be four years where: [t]he anti-doping rule violation does not involve a Specified Substance, unless the Rider or other Person can establish that the anti-doping rule violation was not intentional.*

129. The term intentional is defined at Article 10.2.3 ADC as follows:

*[T]he term “intentional” is meant to identify those Riders who cheat. The term therefore requires that the Rider 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.*

130. It is therefore for the athlete charged with an ADRV to demonstrate that the ADRV was not intentional, on a balance of probabilities pursuant to Article 3.1 ADC:

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

131. As has been recognized and applied in CAS cases (see, for example, CAS 2016/A/4626; CAS 2017/A/5335; CAS 2017/A/5392; CAS 2016/A/4662) and is common ground between the Parties and accepted by the Panel.

132. The definitions of “*No Fault or Negligence*” and “*No Significant Fault or Negligence*” at Article 10.4 and 10.5 ADC explicitly require the athlete to establish the origin of the prohibited substance to benefit from an elimination or reduction of the otherwise applicable substance. By contrast, Article 10.2 ADC contains no such requirement.

133. There is thus a possibility for an athlete to avoid having his or her ADVR be held to be intentional under Article 10.2 ADC in cases where the origin of the prohibited substance cannot be established, subject to the athlete's meeting his or her burden of proof on a balance of probabilities that the ADVR was not intentional. This too is common ground between the Parties and accepted by the Panel.
134. What is more controversial is the extent of this possibility. It has until recently nevertheless been characterized by CAS awards and commentators as somewhat "*theoretical*" or limited to "*exceptional circumstances*" (CAS 2016/A/4676; CAS 2017/A/5335). CAS panels have held that when the athlete is not able to establish the origin of the substance, the athlete will have to pass through the "*narrowest of corridors*" to discharge the burden of proof weighing upon him (CAS 2016/A/4534). Even in such cases, it is clear that the athlete cannot rely on simple protestations of innocence or mere speculation as to what must have happened but must instead adduce concrete and persuasive evidence establishing, on a balance of probabilities, a lack of intent (see for example, CAS 2017/A/5369; CAS 2016/A/4919; CAS 2016/A/4676; CAS 2017/A/5335). Lawson and Jamnicky, the most recent cases, are outliers inasmuch as they apparently propose an enlargement of that possibility.
135. The Panel notes that CAS does not have a doctrine of binding precedent, such as it exists in common law jurisdiction, though in the interest of maintaining a consistent jurisprudence, any panel will pay respectful attention to the awards of its predecessors raising similar issues to those of the case before it. However, when an award departs from some well-established CAS case law, proper reasons for such change should be sufficiently stated. That said, failing a *stare decisis* effect or precedential value of CAS awards, this Panel is therefore not obliged to follow the legal analysis conducted by previous panels (CAS Code Commentary Mavromati/Reeb, Art. R46 no. 47).
136. Apart from the general difficulty in proving a negative, the Panel accepts that it is in practice challenging to establish the non-intentional character of an ADVR in the absence of a demonstration of the origin of the prohibited substance, an assessment of the corridor depends on the very specific objective and subjective circumstances of the case, especially as no one case is exactly the same as another and will present its own specific human, factual and scientific particulars. This is in line with the very text and spirit of Article 10.2 ADC, always bearing in mind the ground rules on the burden of proof, whose standard is set by Article 3.1.
137. Because of the fact specific nature of its assessment, the Panel does not need to comment on whether, and if so, to what extent the decisions of Lawson and Jamnicky represent a deviation from the path plotted by Articles 10.2 and 3.1 ADC.
138. In summary, to avoid the standard four-year period of ineligibility, Mr. Iannone has to demonstrate either a lack of intent by providing concrete and persuasive evidence establishing such lack of intent on a balance of probabilities – i.e. the test to which the Panel is bound to apply, nothing less, nothing more – or that such period should be reduced based on no significant fault or negligence (Article.10.5. ADC).

## 2. Application

139. The Panel finds that Mr. Iannone has not established on a balance of probabilities that the ADRV was unintentional and thus it upholds WADA's Appeal and sets aside in its entirety the Appealed Decision. It will now proceed to set out its reasons for its finding.
140. The Panel mentions, by way of preliminary remark, that it is not particularly impressed by the finding of facts and merits analysis of the Appealed Decision, as worded, in application of Articles 3.1 and 10.2 ADC. The CDI's finding of fact at paragraph 45 that Mr. Iannone is a "*strong consumer of meat, both red and white meat,*" is devoid of any particulars as to what exactly was eaten, where, and its possible source. Its consideration of whether said ingestion is consistent with a meat contamination by Drostanolone, appears to the Panel to be somewhat cursory.
141. The same criticism applies to the legal analysis set out at paragraphs 61 and 62. It is difficult to comprehend how the CDI jumped from its assessment at paragraph 61 that the hypotheses of meat contamination advanced was a probability ("*there is a probability that the above presented hypothesis is correct*") to its conclusion without intervening exegesis at paragraph 62 that the burden of proving the same on balance of probabilities was met ("*[t]herefore, the CDI finds that the Rider has, for the purpose of Article 10.2.1.1, established at the level of balance of probability that his conduct constituting the Anti-Doping Rule Violation was not intentional*").
142. The Panel has, in any event, the full power to review the facts and law pursuant to R57 of the CAS Code, independently of any appealed decision. As already noted, Mr. Iannone contends that his ADVR resulted from his consumption in Singapore or Malaysia of meat contaminated by Drostanolone prior to his routine control of 3 November 2019 when the urine sample that tested positive for Drostanolone was taken. As again already noted, mere statement or speculation is not enough. Mr. Iannone must prove the facts which support his scenario on the balance of probabilities standard.
143. The very first fact that Mr. Iannone must prove is that he consumed meat during the relevant period, namely prior to his 3 November 2019 control, moreover, not just any meat but specifically meat that could, at least theoretically, be subject to possible contamination by Drostanolone. In this regard, the Panel notes that Mr. Iannone must prove what type of red meat he ate as it was recognized by the experts, namely in the report dated 12 February 2020 of Dr. Rabin and confirmed at the hearing by Mr. Iannone's expert, and in any event found by the Panel that the use of anabolic steroids for poultry was not of high interest in comparison to cattle. It is then, and only then, after this first or threshold point has been established, that the question of the origin or source of the meat and whether it was contaminated by Drostanolone, would fall for consideration. At that second stage, each element of his scenario would need to be established again on a balance of probabilities.
144. The Panel finds that Mr. Iannone failed at every juncture to prove what the law requires him to prove.
145. Mr. Iannone's case founders at the first or threshold point, since he has still not provided any sufficient particulars, let alone evidence, of what he ate during his stay in Singapore and Malaysia in the period preceding his control.

146. Mr. Iannone contends that he had dinner at the *Marini's on 57* Restaurant on 1 November 2019, where he consumed red meat possibly contaminated by Drostanolone. But as to this:
- (i) There are no particulars and certainly no evidence of this, documentary or otherwise, on the record.
  - (ii) Mr. Iannone's expert, Prof. Salomone, merely speculates that the contamination could have resulted from consumption of Beef Wagyu Ribeye and Wagyu Tenderloin, because they figure on the menu of *Marini's on 57*.
  - (iii) Prof. Salomone does not claim that Mr. Iannone consumed either of these dishes or even that Mr. Iannone told him that he did so. There is no indication in any of the many reports of Prof. Salomone that he even asked Mr. Iannone what precisely he ate although Mr. Iannone has been easily accessible to him for some time. For example, he was present by the side of Mr. Iannone when his B Sample was analysed back on 7 and 8 January 2020, and he has since submitted a number of reports before the CDI and this Panel in support of Mr. Iannone's case that the ADRV resulted from meat contamination.
  - (iv) That Prof. Salomone based his expert report not on what Mr. Iannone actually consumed but on what was available on the menu of the said restaurant is all the more incomprehensible given that Prof. Salomone acknowledged at the Hearing that the Panel's understanding that the actual food consumed would have narrowed down the margin of speculation as to the source of the contamination was correct.
  - (v) There was no witness testimony on the record as to what Mr. Iannone precisely consumed at *Marini's on 57*, even though he indicated at the Hearing that he was accompanied by about five persons at *Marini's on 57*.
  - (vi) It was only at the hearing that, at the Panel's request, Mr. Iannone gave his own testimony, as to precisely what he ate at the restaurant in question and at other venues prior to his control and when pressed by the Panel on the same at the Hearing, was only able to offer a vague answer, i.e. that he ate a "*large steak*", without sufficient reference to any specific meal.
  - (vii) No efforts were made by Mr. Iannone to collect documentary evidence to prove what he consumed. The only evidence provided to the Panel is a bank statement that shows a debit entry for a transaction that occurred on 1 November 2019 in the amount of EUR 567.07 in favour of *Marini's on 57*. It is a mere bank statement, as opposed to a receipt, and contains thus no details as to the food eaten or more particularly the type of red meat eaten by him. When the Panel inquired at the Hearing about why he did not provide a restaurant bill/receipt, he asserted that the receipt must have been misplaced by members of his entourage who paid the bill with his credit card. But Mr. Iannone could offer no persuasive explanation when asked why no duplicate was at least requested, when the issue was material to his case. The Panel cannot comprehend why an athlete such as Mr. Iannone, assisted by a team composed of technical, legal and sport professionals, claiming that that his ADRV resulted from consumption of red meat and knowing that his professional career was at stake, did not engage in efforts to, at least try, secure a duplicate of potential evidence in support of his case.

- (viii) As to the written witness statement dated 22 July 2020 of Mr. Campinoti, it is vague, and does not in any event address what Mr. Iannone ate or any efforts made to obtain a duplicate of the invoice. Rather, Mr. Campinoti testifies only that he attempted to reach the owner of *Marini's on 57* at an unspecified date to request him to assist and even then, not to prove the origin of the meat consumed by Mr. Iannone or of any specific dishes identified or to be identified that were ordered back on 1 November 2019 by Mr. Iannone and his guests or available on the restaurant's menu at the time, but only to certify "*the origin of the meat usually served in the restaurant*" without any particulars or date referred to.
147. Mr. Iannone's parallel allegation of consumption of meat at the *Sama Sama* Hotel during the period from 30 October 2019 to 2 November 2019 is similarly unparticularized and unsubstantiated. Mr. Iannone, here again, has failed to advance any particulars, let alone to establish what precisely he ate during his stay at this hotel.
- (i) He submitted several receipts in support of his contention. Yet, these receipts do not reflect the consumption of any red meat, on which Mr. Iannone's whole case rests. Rather they show many orders of chicken breasts on several occasions, namely on 30 October, 1 and 2 November 2019.
  - (ii) Further, while one of the receipts refers to buffet lunch consumed by two persons on 1 November 2019, Mr. Iannone candidly indicated at the Hearing that it was not him but his girlfriend and a friend of hers who must have had the buffet lunch on that date, since he was on track.
  - (iii) When questioned by the Panel as to what precise red meat he consumed during his stay at *Sama Sama* Hotel, Mr. Iannone replied that he ate "*meat*" and more particularly "*beef*" but yet again without any particulars as to the exact dish.
  - (iv) When asked by the Panel why this item did not figure on any of the invoices, he first suggested that the hotel must have made a mistake when making the receipt entries. The Panel is not satisfied by this improvised speculation, particularly as it is based (as it transpired from his testimony) on adverse clichés and/or gratuitous suggestions of incompetence directed at the hospitality industry in the region of the said hotel in Malaysia.
  - (v) Nor is the Panel satisfied by the additional explanation next proffered by Mr. Iannone at the Hearing, namely that the reference to "*GP BF Dinner*" found in the invoice dated 2 November 2019 must necessarily have been to beef or steak that he consumed. This is speculation. The reference BF could more plausibly refer to a buffet dinner or to another dish.
  - (vi) Moreover, and in any event, there is no proof that Mr. Iannone had effectively beef, assuming any was ordered, as opposed to chicken breasts, six orders of which appear on the very same invoice.
148. Finally, at the Hearing, Mr. Iannone suggested additionally that, on the day of the race, he ate some sort of "*ragout*" with beef at a race stand catered by one of the service providers. As to this:

- (i) This additional piece of information was earlier proposed in his presence at the Hearing by his expert Prof. Salomone.
  - (ii) This is the first time any such suggestion had been made either before the CDI or in the CAS proceedings.
  - (iii) The suggestion was made only in response to the question pressed by the Panel as to Mr. Iannone's position as to what he had consumed.
  - (iv) Mr. Iannone failed to advance any particulars, let alone evidence, as to what type of ragout he ate beyond these generalities that he tendered for the first time at the Hearing.
  - (v) Mr Iannone did not provide any explanation as to why he failed to mention this supposed fact earlier or to make basic inquiries.
  - (vi) Mr. Iannone made no inquiries as to what type of "ragout" he consumed that day or its provenance, notwithstanding the importance of proving what he ate to support his case and safeguard his professional career.
149. Accordingly, the Panel does not find this evidence about the consumption of "ragout" to be at all persuasive
150. More generally Mr Iannone's failure to pursue with due diligence obvious lines of enquiry to support his case stands in sharp contrast to the cases on which he relies, namely Jamnicky, where the panel held that the athlete had done as much as could be expected of her and Lawson, where the athlete advanced and proved (including by way of actual restaurant receipts and not just bank statements) not only the particulars of the type of meat he consumed but also of the part of the animal that he had eaten where steroids could have been injected.
151. The Panel finds that in any event the outcome would not have been any different had Mr. Iannone advanced particulars and established consumption of a specific meat, as he has failed to establish, on a balance of probabilities basis, that any meat that he may have possibly consumed in Singapore and/or Malaysia could have been contaminated by Drostanolone.
- (i) Mr. Iannone's has not established the origin of any meat allegedly consumed at the material time.
  - (ii) Again, the evidence on the record does not even demonstrate that sufficient efforts were made to this end.
  - (iii) Such evidence as was produced on this point is one document evidence and witness statement only.
  - (iv) The documentary evidence consists of an email dated 27 July 2020 sent by Mr. Iannone to the *Sama Sama* Hotel as follows:
 

*"Dears,*  
*I, the undersigned, Andrea Iannone, born in Vasto, the 9th of August of 1989, hereby declare that:*

*I have stayed in your hotel from the 30th of October 2019 to the 3rd of November 2019. During the stay I have eaten in your restaurants on the nights of 30th and 31st of October 2019 and of the 2nd and 3rd of November 2019 and I have consumed some meat. Therefore, I need to know the origin of the meat that I have eaten.*

*Thank you in advance.*

*Best regards.*

*Andrea Iannone”*

152. The Panel finds this email to be “*too little too late*” to assist Mr. Iannone in satisfying his burden of proof and to have any meaningful probative value.

153. The Panel finds it too late because:

- (i) it was only on 27 July 2020, when his failure to make sufficient inquiries had already been flagged by WADA in its submission dated 8 July 2020, that Mr. Iannone sent this email;
- (ii) the Panel would have expected Mr. Iannone to make a forceful inquiry immediately or promptly or at least not later than a month or so after his notification on 16 December 2019 of the AAF given his position that the same resulted from meat contamination;
- (iii) the timing is even more surprising given that by 27 July 2020, nearly all of the experts had issued their reports addressing the likelihood that the ADRV resulted from meat contamination by Drostanolone;
- (iv) logic and the self-interest of the athlete, who bears the burden of proof and thus needs to reduce the margin of speculation, would require that the origin or source of the meat be established, or that efforts to this end be explored to the full extent before addressing the likelihood that the ADRV resulted from the consumption of meat contaminated by Drostanolone.

154. The Panel finds it email too little because:

- (i) its content lacks particulars. Mr. Iannone does not specify precisely what he ate but claims only to have “*consumed some meat*,” nor does he flag why the issue is important to him, whereas these are very basic components of any inquiry on a matter of such materiality;
- (ii) its content is even less comprehensible as the email was sent at a very advanced stage of the dispute, when he and his team composed of counsel and experts were fully aware of the materiality of the issue on which the burden of proof rested on the athlete’s shoulders;
- (iii) as there was no follow up such as one would have been expected from any athlete in similar circumstances, let alone from Mr. Iannone, who had been proclaiming his innocence so vehemently and was assisted by counsel and experts;
- (iv) more specifically, the Panel would have expected Mr. Iannone if not earlier or at least on 27 July 2020 to send via his counsel if not himself, a firm letter addressed to the hotel requesting precise information within a fixed date on the origin of the red meat served at the hotel corresponding to the specific receipts or at the very

least more generally during this period, with emphasis on the materiality of the matter to his career, and reserving his rights to the full extent of the law against the hotel;

- (v) as to Mr. Iannone’s claim, raised for the first time at the Hearing when asked by the Panel to explain the tardiness of his inquiry, that other earlier emails had been sent to the hotel, but lost, it is unspecific (in terms of their timing, their author(s) and why they could not be traced) and uncorroborated by any evidence. The 27 July 2020 email itself does not refer to any previous emails. Nor could any earlier emails in any event justify the absence of prompt follow ups with the required foregoing particulars and content;
  - (vi) thought the 27 July 2020 email elicited no answer from the hotel, in its view, Mr. Iannone could have increased his chances to obtain an answer had he persisted with his inquiries and such answer by the same token could have constituted evidence as to the origin and source of the meat.
155. As to the testimonial evidence proffered by Mr. Iannone, it consists of the above-mentioned witness testimony provided by Mr. Campinoti. Mr. Campinoti claims to have contacted the owner of *Marini’s on the 57* to inquire about the origin of the meat but that the owner declined to cooperate so as not to prejudice the reputation of his restaurant. As to this
- (i) the Panel finds the testimony to be vague. As mentioned above, Mr. Campinoti does not say when the telephone conversation occurred and does not indicate that he provided the owner with any particulars about the date or period of the alleged consumption, the precise red meat consumed or the materiality of the issue to Mr. Iannone. Mr. Campinoti merely requested the owner to provide a certificate on the origin of the meat usually served at the restaurant without any reference to any particular date or period of time;
  - (ii) moreover, and in any event, what the Panel would have expected from any athlete in these circumstances, let alone Mr. Iannone, would be to follow this call up with a firm letter drafted by his counsel or at least himself providing these particulars and requesting with all reservation of rights that the owner cooperate in the establishment of the truth within a certain date.
156. As to the “*ragout*” that Mr. Iannone alleged (for the first time at the Hearing) to have eaten on the day of the race, namely on 3 November 2019, Mr. Iannone failed not only to make good that allegation, but also to adduce any evidence showing that he contacted the caterer or the race organizers to inquire about the origin of the meat or ever sought by any other means to ascertain its origin.
157. Based on the foregoing, the Panel finds that Mr. Iannone has failed to establish not only the particular red meat that he claimed to have consumed but also its or even that of the meat generally served at the restaurants and premises where he ate. Moreover, the Panel finds that Mr. Iannone has not even made reasonable efforts to obtain evidence to support these points.
158. Moreover, assuming Mr. Iannone had proven the same, his case would in any event have still failed, for the reasons set out below, in establishing, on balance of probabilities, that

the meat served at these restaurants and premises in Singapore and/or Malaysia were contaminated by Drostanolone. In particular:

- (i) Mr. Iannone’s evidence consists of analysis of mere generalities and speculation. He alleges that meat contamination is an issue in Asia. Yet Asia is a very large continent, such generalities are of limited assistance.
- (ii) Singapore or Malaysia are not reported to suffer from any meat contamination.
- (iii) While Mr. Iannone has provided evidence that a very small fraction, representing around 533 tonnes out of approximately 230,903 tonnes, i.e. around 0.23% of the yearly meat imports of Malaysia come from China, this is insufficient to give rise to the inference that the country suffers from meat contamination because China suffers from the same, *a fortiori* for purposes of proving causation as it pertains to Mr. Iannone’s specific case on contamination.
- (iv) The Panel cannot accept the suggestion by Mr. Iannone’s experts that the Panel should draw the conclusion that Malaysia suffers from meat contamination by Drostanolone on the basis that no effective control of the same could exist in Malaysia since, according to the same experts’ averment that no such effective controls exist in western countries.
- (v) The Panel is satisfied with the expert reports of Prof. Van Eenoo and Dr. Rabin, respectively dated 7 February 2020 and 6 July 2020, that Malaysia does not represent an elevated risk level of steroid contamination of meat.

159. Neither Mr. Iannone nor his experts were able to establish specifically that there is an issue of meat contamination by Drostanolone.

- (i) There were no reported cases drawn to the Panel’s attention of such contamination in practice.
- (ii) The mere assertion that Drostanolone can be procured over the Internet and can be used in livestock does not prove that it is actually used, let alone in Malaysia or in countries that export meat to Malaysia.
- (iii) Because Malaysia implemented a regulatory framework with regard to the use of anabolic steroids under which between five and six anabolic steroids are authorized in the country, likewise all the main countries from which Malaysia imports meat, namely Australia, New Zealand and the United States. There is no reason for producers to use Drostanolone in the place of one of the authorized anabolic steroids as “*the value of using drostanolone or other similar molecules not approved by the authorities is not reasonable*” and “*the risk-benefit ratio is definitely not in favor of an illegal use of steroid not registered by the competent authority, e.g. drostanolone*”.

160. Therefore, the Panel finds that Mr. Iannone has not established anything more than that the use of Drostanolone as a growth promoter agent on livestock was possible, not that this actually occurred or is occurring to any meaningful extent, or that it specifically occurs to meat marketed in Malaysia, let alone to the meat that may have been actually consumed by Mr. Iannone in Singapore or in Malaysia during the relevant period.

161. Against this background and for the foregoing reasons, the Panel finds unpersuasive the conclusion reached by Prof. Salomone in his report dated 31 January 2020, and cited above, namely that the contaminated meat scenario is “*very likely*” as well as that reached in his subsequent report dated 30 July 2020 that there was a “*reasonable probability*” that Drostanolone is illicitly used as a growth promoter agent and therefore that it is “*very likely that Mr. Iannone was accidentally exposed to meat contaminated with drostanolone.*”
162. The extent of the Panel’s acceptance of the expert evidence adduced on Mr. Iannone’s behalf is Prof. Salomone and Prof. Kintz’s joint expert statement dated 15 May 2020 that the scenario of meat contamination was “*possible.*” But “*possible*” is not the same as probable. All things which do not defy the law of science are in one sense possible. However, it was for Mr. Iannone to prove that his meat contamination scenario is more likely than not. And in the Panel’s view, he has failed to do so at every critical stage of his submission.
163. Mr. Iannone has essentially left the Panel with protestations of innocence, his clean record and his alleged lack of incentive to dope. Such factors are insufficient to establish, on a balance of probability that Mr. Iannone’s ADRV was not intentional (CAS 2018/A/5584).
164. As to the hair test, the Panel considers the following:
- (i) Its probative value is controversial in the context of an ADRV. Moreover, it was carried out by Mr. Iannone after the results of the B sample, namely after 9 January 2020, as opposed to earlier, i.e. after the results of the A sample, namely after 16 December 2019, whereas it could, and ideally should have been carried out earlier given that the window of detection of drugs in hair can be affected by the washing out of acidic or neutral drugs, as established by Dr. Thieme in his report dated 6 July 2020 at paragraph 8, as well as by environmental causes, as established by the testimony given by the experts for WADA and Mr. Iannone at the Hearing.
  - (ii) Prof. Salomone explained at the Hearing that the fact that the test was carried out on 9 January 2020 and not earlier was the result of advice he gave to Mr. Iannone to wait before carrying out the test so as to allow the hair to grow so that the test would cover a longer period of time. The Panel would accept that the advice was intended to assist in the establishment of the truth. Yet, it does not change the very fact that this delay, not random or due of any specific obstacles but a deliberate move on the part of Mr. Iannone, prolonged on the other hand the “*wash out*” period and so undermined the probative value of the evidence.
  - (iii) Moreover, as flagged by the Panel and agreed by Prof. Salomone at the Hearing, nothing prevented Mr. Iannone from undergoing two hair tests, one promptly upon the notification of the A sample results, and another later after the notification of the B sample results, so as to reconcile these conflicting interests.
  - (iv) Putting the matter at its highest, the hair test result cannot exclude the intentional use of Drostanolone but could at most suggest that Mr. Iannone was not ingesting that substance over a longer time frame than this single instance. For that reason, a hair test cannot trump a urine test.

- (v) Mr. Iannone asserts that there was not any logic or incentive for him to administer a limited dose. Even this is controversial given WADA's suggestion that he could have used a single dose to ease recuperation from an injury alleged to have occurred in September 2019 at the San Marino Grand Prix or even, a point canvassed before the CDI if not before the Panel, to enhance the definition of his physique on Instagram.
165. Nor can the above factors summarized in paragraphs 163 and 164 advanced by Mr. Iannone override or even counter-balance the material independent flaws set out in paragraphs 146 *et seq* in Mr. Iannone's case in establishing that his ADRV was the result of consumption of meat contaminated by Drostanolone. To achieve such outcome the Panel would have to disregard or misapply the ground rules of ADRV and sanction under Articles 3.1 and 10.2 ADC and render any Drostanolone based ADRV ineffective if it were to find that the ADRV was not intentional in the case for an athlete who claimed to have consumed meat contaminated by Drostanolone but who (i) did not advance particulars as to what precise type of meat he ate; (ii) did not establish the origin of the meat eaten or served at the restaurant or premises where he ate; (iii) did not take all the reasonable and diligent steps he could have taken to establish the foregoing; and (iv) did not advance any reported case of use of Drostanolone as a growth promoter agent in the countries of alleged consumption or in the main importing countries thereto.
166. The Panel draws particular attention to the following feature of the Articles of the ADC (and current WADC) which bear on intention. Because it is for an athlete to establish on the balance of probabilities that an ADRV is not intentional, his inability to do so means that he is deemed to have committed an intentional ADRV and enjoys no presumption of innocence. So while the Articles stipulate that "*the term intentional is meant to identify those athletes who cheat*", in fact they may subject to the sanction of ineligibility for cases such as Mr Iannone's who did not cheat in that sense, but have simply failed to prove that they did not. The Panel acknowledges how the fight against doping in sport may require such an outcome.
167. Therefore, the Panel is not required to and does not purport to eliminate the possibility that Mr. Iannone's ADRV may be the result of consumption of meat contaminated by Drostanolone, but concludes simply that Mr. Iannone has not been able to meet his burden of proof to establish the same on a balance of probabilities for purposes of establishing that the ADRV that he committed was unintentional pursuant to Article 10.2 of ADC. The Panel notes that this apparent awkwardness, referred to in the previous paragraph, in the present WADC, from which the ADC is derived, will be eliminated in the next version of the WADC. As set out at paragraph 126, the 2021 WADC, effective as of 1 January 2021, no longer provides that "*the term 'intentional' is meant to identify those Athletes who cheat.*"
168. The Panel thus finds, contrary to the Appealed Decision, the ADRV committed by Mr. Iannone to be treated as intentional for purposes of Article 10.2 ADC, and therefore upholds WADA's Appeal and sets aside in its entirety the Appealed Decision.

### 3. Sanction

169. As per Article 10.2 ADC, the standard ineligibility sanction is a four-year period. As Mr. Iannone failed to demonstrate that the ADRV was not intentional, the applicable sanction shall be of four years.

170. Article 10.11.3 ADC provides that if a period of ineligibility is served pursuant to a decision that is subsequently appealed, the athlete shall receive a credit for such period of ineligibility served against any period of ineligibility which may ultimately be imposed on appeal.
171. Mr. Iannone serves a period of ineligibility since 17 December 2019 and is therefore eligible for credit from 17 December 2019 to the date of this Award. Considering that the period of eligibility is being served without any interruption so far, the start date of Mr. Iannone's 4-year period of ineligibility shall be backdated to 17 December 2019.
172. As per Article 9 and 10.8 ADC, Mr. Iannone shall also be sanctioned with disqualification of the results obtained in the completion in which the violation occurred, as well as any other competitive results of Mr. Iannone obtained from the date the positive sample was collected through the commencement of any provisional suspension or ineligibility period. Such disqualification shall result in forfeiture of any medals, points and prizes related to such results.
173. All competitive results obtained by Mr. Iannone from and including 1 November 2019 until 16 December 2019 are disqualified, all medals, points and prizes shall be considered as forfeited.

### **C. Mr. Iannone's Appeal**

174. Mr. Iannone's Appeal against the Appealed Decision is necessarily dismissed as a result of the upholding of WADA's Appeal, as much as he is seeking the annulment of the sanctions which requires him to prove that his ADRV was not intentional. His alternative plea for a reduction thereof pursuant to Articles 10.4 and 10.5 ADC, is also necessarily dismissed since those Articles are engaged only if the ADRV is found not to be intentional and because in order to benefit from these Articles, it is *sine qua non* for Mr. Iannone to establish how the prohibited substance entered his body, which the Panel finds that he has not been able to do.

## **IX. COSTS OF THE ARBITRATION**

175. (...)

## **ON THESE GROUNDS**

### **The Court of Arbitration for Sport rules:**

1. The appeal filed by Mr. Iannone on 21 April 2020 against the decision rendered by the International Disciplinary Court of the Fédération Internationale de Motocyclisme dated 31 March 2020 is rejected.
2. The appeal filed by WADA on 12 May 2020 against the decision rendered by the International Disciplinary Court of the Fédération Internationale de Motocyclisme dated 31 March 2020 is upheld.
3. The decision rendered by the International Disciplinary Court of the Fédération Internationale de Motocyclisme dated 31 March 2020 is set aside.
4. Mr. Iannone is sanctioned with a period of ineligibility of four years commencing on 17 December 2019.
5. All competitive results obtained by Mr. Iannone within from and including 1 November 2019 through the commencement of his suspension are disqualified, with all resulting consequences, including forfeiture of any medals, points and prizes.
6. (...)
7. (...)
8. (...)
9. All other or further requests or motions for relief are dismissed.

Lausanne, 10 November 2020

### **THE COURT OF ARBITRATION FOR SPORT**

Dr. Hamid G. Gharavi  
President of the Panel

The Hon. Michael J. Beloff M.A., QC  
Co-arbitrator

The Hon. Franco Frattini  
Co-arbitrator