

**DECISION OF THE INTERNATIONAL TENNIS FEDERATION
PURSUANT TO ARTICLE 7.14 OF THE 2021 TENNIS ANTI-DOPING PROGRAMME**

I. Introduction

1. The International Tennis Federation (the **ITF**) is the international governing body for the sport of tennis. Further to its obligations as a signatory to the World Anti-Doping Code (the **Code**) and its responsibilities as custodian of the sport, the ITF has issued the 2021 Tennis Anti-Doping Programme (the **TADP** or the **Programme**), which sets out Code-compliant anti-doping rules applicable to players competing in Covered Events.¹²
2. Filip Pieczonka (the **Player**) is an 18-year-old tennis player from Poland. He has competed on the Junior circuit since November 2018 and, more recently, on the ITF World Tennis Tour (in both singles and doubles competitions).³ When he registered online for an International Player Identification Number (IPIN) in 2015 and in subsequent years, the Player expressly agreed to be bound by and to comply with the Programme. By virtue of that agreement, and by virtue of his participation in ITF World Tennis Tour events (which fall within the definition of '**Covered Events**' under the TADP), the Player became bound by and was required to comply with the Programme.
3. The ITF charged the Player with the commission of an Anti-Doping Rule Violation under the TADP and has proposed certain Consequences based on its analysis of the degree of Fault that the Player bears for that violation. The Player has admitted the Anti-Doping Rule Violation charged and acceded to the Consequences proposed. The ITF therefore issues this decision further to TADP Article 7.14, which provides:

'7.14.1 At any time prior to a final decision by the Independent Tribunal, the ITF may invite the Player [...] to admit the Anti-Doping Rule Violation(s) charged and accede to specified Consequences [...]

7.14.2 In the event that [...] the Player [...] admits the Anti-Doping Rule Violation(s) asserted and accedes to the Consequences specified by the ITF [...], the ITF will promptly issue a reasoned decision confirming [...] the commission of the Anti-Doping Rule Violation(s) and the imposition of the specified Consequences [...], will send notice of the decision to the Player [...] and to each Interested Party, and (if applicable) will Publicly Disclose the decision in accordance with Article 8.6.

7.14.3 Any decision issued by the ITF in accordance with Article 7.14.2 that an Anti-Doping Rule Violation has been committed [...] will address and determine (without limitation): (1) the factual basis of the decision that an Anti-Doping Rule Violation was committed; and (2) all of the Consequences to be imposed for such Anti-Doping Rule Violation, including the reasons for imposing the Consequences specified, and in

¹ Any term in this Decision that begins with a capital letter and is not otherwise defined in this Decision has the meaning given to it in the Programme.

² The 2022 Tennis Anti-Doping Programme (the **2022 TADP**) came into force on 1 January 2022. The ITF has delegated all aspects of Doping Control and Education under the 2022 TADP to the International Tennis Integrity Agency, save for certain matters arising prior to 1 January 2022 (such as results management in respect of this case).

³ The Player first competed on the ITF World Tennis Tour in August 2019, but then did not compete again on the ITF World Tennis Tour until June 2021.

particular the reasons for exercising any discretion not to impose the full Consequences available under this Programme'.

II. The Player's commission of an Anti-Doping Rule Violation

4. On 1 September 2021, while competing in the men's singles competition at the ITF Tennis World Tour M15 event held in Chornomorsk, Ukraine, from 30 August to 5 September 2021 (the **Event**), the Player was required to provide a urine sample under the TADP. The Player was 17 years and five months at the time, and therefore a Minor for the purposes of the TADP. The sample was given reference number 3168113, and was split into an A sample and a B sample, which were sealed in tamper-evident bottles and transported to the WADA-accredited laboratory in Montreal, Canada (the **Laboratory**) for analysis. The Laboratory reported an Adverse Analytical Finding for oxandrolone and its metabolites. Oxandrolone is an anabolic steroid that is prohibited both In- and Out-of-Competition under section S1 (Anabolic Agents) of the 2021 Prohibited List. The Player does not have a Therapeutic Use Exemption permitting use of oxandrolone.
5. The Adverse Analytical Finding reported by the Laboratory in respect of the A sample was considered by the independent Review Board in accordance with TADP Article 7.4. The Review Board did not identify any apparent departures from the sample collection procedures set out in the International Standard for Testing and Investigations or from the sample analysis procedures set out in the International Standard for Laboratories that could have caused the Adverse Analytical Finding. It therefore decided that the Player had a case to answer for breach of TADP Article 2.1 and/or TADP Article 2.2.
6. The ITF sent the Player a (pre-charge) Notice on 5 October 2021, notifying him that he may have committed an Anti-Doping Rule Violation under TADP Article 2.1 (presence of a Prohibited Substance in his Sample) and/or TADP Article 2.2 (Use or Attempted Use of a Prohibited Substance). Given that oxandrolone is classified as a non-Specified Substance under the TADP, the Player was subject to a mandatory provisional suspension under TADP Article 7.12.1, which came into effect on 15 October 2021.
7. On 22 October 2021, in his preliminary response to the Notice, the Player admitted that he had committed an Anti-Doping Rule Violation, but disputed the imposition of the default consequences described in the Notice on the basis that he had not ingested oxandrolone intentionally. The Player also waived his right to analysis of his B sample.
8. On 30 October 2021, the ITF formally charged the Player with the commission of an Anti-Doping Rule Violation under TADP Article 2.1 and/or TADP Article 2.2. TADP Article 2.1 is a strict liability offence that is established simply by proof that a Prohibited Substance was present in the player's Sample, i.e., the ITF does not have to prove how the substance got into the Player's system or that the Player took the substance intentionally (or even knowingly).
9. On 19 November 2021, the Player replied to the Charge Letter, restating that he admitted that he had committed the Anti-Doping Rule Violation with which he was charged, but denying that his violation was 'intentional' within the meaning of TADP Article 10.2.3 and therefore disputing the consequences described in the Charge Letter.

III. Consequences

III.A Period of Ineligibility

(a) How the oxandrolone got into the Player's system

10. In summary, the Player asserts that:

- 10.1 He has suffered from the herpes simplex virus since childhood, which has caused severe infections in his left eye (some of which have resulted in him being hospitalised) on several occasions, most recently while competing in the United Kingdom in November 2019. Pursuant to medical advice, he has sought to manage his condition by use of the antiviral medication Heviran, (i) in high doses when his eye becomes infected to treat the infection, and (ii) in lower doses as a prophylactic (i.e., to prevent infection) when ‘trigger’ factors – including aeroplane flights and windy and/or dusty outdoor conditions – are present.
- 10.2 When he started using Heviran prophylactically, he was advised by his doctor to take Heviran in 200 mg doses. However, he found that this caused unpleasant side effects (including headaches and gastrointestinal discomfort), and his doctor therefore advised him to take Heviran in 100 mg doses (i.e., half a 200 mg tablet) instead. As he found that the 200 mg tablets were difficult to break in half, he would periodically cut multiple tablets in half and store all the fragments in one of a number of small glass containers that were hand-labelled ‘Heviran’ (the **Heviran containers**), which he kept for this purpose. Following the incident in the United Kingdom in November 2019, he would keep a Heviran container in his tennis bag whenever he travelled to compete in tournaments and would use Heviran prophylactically if required.
- 10.3 Unknown to him and his family, in or around July/August 2020 his father had started using Anavar (i.e., oxandrolone) as part of his gym regime. His father was given approximately thirty 10 mg Anavar tablets by the owner of the gym that his father attended. As his father did not want to take 10 mg per dose, he cut all the tablets in half and stored the fragments in an unlabelled small glass container (the **Anavar container**), which he kept in his own tennis bag and which he would take to the gym. When Poland was placed back into lockdown due to the Covid-19 pandemic in October 2020, and his father’s gym closed as a consequence, there were still several fragments left in the Anavar container. By the time that his father started travelling to tournaments with him again in March 2021, his father had forgotten the Anavar container was still in his tennis bag.
- 10.4 He and his father attended the Junior circuit tournament held in Budapest, Hungary (between 18 and 22 August 2021) (the **Budapest Tournament**), at which the Player competed. He and his father returned home from the Budapest Tournament on 22 August 2021. A quick turnaround was necessary because he and his parents were departing the next day to travel to the ITF Tennis World Tour M25 event held in Poznan, Poland (between 23 August and 29 August 2021) (the **Poznan Tournament**), at which the Player was scheduled to compete. The next morning, in preparation for the Poznan Tournament, the Player topped up his Heviran container with additional Heviran fragments. Later that morning, while his mother was collecting dirty laundry from the Budapest Tournament, she found the Anavar container in a zipped pocket of his father’s tennis bag. As (i) the Anavar container and the Heviran containers were identical in all material respects (other than that the Anavar container was unlabelled), (ii) the Anavar fragments and the Heviran fragments stored in the respective containers appeared indistinguishable, and (iii) his mother was unaware that his father had previously used Anavar, his mother assumed that the Anavar container was in fact one of the Player’s spare Heviran containers, and that the Anavar fragments were Heviran fragments. His mother therefore took the Player’s Heviran container and

consolidated the few remaining Anavar fragments into that container, which the Player subsequently packed (not knowing that it had been contaminated with Anavar).

- 10.5 He and his parents attended the Poznan Tournament, in which the Player competed. Whilst at the Poznan Tournament, he ingested what he presumed to be approximately 100 mg of Heviran from his (contaminated) Heviran container on two occasions: on 24 August 2021 (afternoon) and 25 August 2021 (evening). He and his parents returned from the Poznan Tournament on 27 August 2021.
- 10.6 On 29 August, he repacked his bags in preparation for the Event but did not need to refill the Heviran container as it remained relatively full. On 30 August, he flew to the Event with his coach, Mr. Tolstyko. Due to the presence of several ‘trigger’ factors – namely the flight to Ukraine and the windy/dusty conditions (he was practising and competing on clay courts) – he consumed (what he presumed to be) approximately 100 mg of Heviran from his (contaminated) Heviran container on two occasions: on 30 August 2021 (evening) and 31 August 2021 (afternoon). On 1 September 2021, he underwent doping control at the Event, which resulted in him returning an Adverse Analytical Finding for oxandrolone.
- 10.7 His Adverse Analytical Finding for oxandrolone resulted from the unintentional ingestion of one fragment of an Anavar tablet on 30 August 2021 or 31 August 2021.

11. In support of his explanation, the Player provided (among other things):

- 11.1 Medical documentation evidencing (among other things) that (i) the Player has suffered from his medical condition since childhood, (ii) the Player’s medical condition has previously caused infections in his left eye, (iii) the Player was advised to use Heviran to treat such infections, (iv) the Player’s father enquired about the Player using Heviran prophylactically, in response to which the Player’s doctor confirmed that the Player could take a 200 mg Heviran dosage for such purpose, and (v) when the Player’s father subsequently informed the Player’s doctor that taking a 200 mg Heviran dosage caused the Player side effects (including headaches and gastrointestinal discomfort), the Player’s doctor confirmed the Player could reduce his prophylactic dosage to 100 mg.
- 11.2 A statement from the Player’s coach, asserting (among other things) that (i) he has previously seen the Player taking Heviran fragments from a small container as a preventative treatment, (ii) the Player is careful to take Heviran when the conditions outdoors are windy, (iii) the Player has previously informed him that he takes Heviran in fragments, rather than whole tablets, due to the side effects the Player experiences from taking whole tablets, and (iv) the Player consumed (what he presumed to be) Heviran fragments while at the Event.
- 11.3 Statements from the owner of the gym that the Player’s father attended, asserting that (i) the Player’s father became a member of his gym on 1 July 2020, and trained at the gym between July 2020 and September 2020, and (ii) he provided the Player’s father with approximately thirty 10 mg Anavar tablets in late July / early August 2020. The Player also provided a scanned copy of his father’s gym membership card, which contained his father’s name and the name, address, and contact details of the gym.
- 11.4 Statements from the Player’s father asserting (among other things) that (i) he decided to start using low doses of oxandrolone in an attempt to speed up his training progress,

- (ii) he was provided with approximately thirty 10 mg Anavar tablets by the gym owner in a plastic bottle, (iii) he cut all the Anavar tablets in half at once and stored the fragments in the Anavar container that he kept in his tennis bag (which he used as a gym bag), (iv) he concealed his use of Anavar from his family, ingesting the fragments in his car on his way to and/or when returning from the gym, and (v) he stopped using Anavar when his gym closed in October 2020, and subsequently forgot that the Anavar container (which still contained several fragments) was stored in his tennis bag.
- 11.5 A statement from the Player's mother asserting (among other things) that (i) the Player has multiple Heviran containers, (ii) given the Player's medical condition, and the Player's longstanding use of Heviran to manage his condition (whether in the event of infection or prophylactically), as far as she was concerned any small container filled with fragments of white tablets was a Heviran container, (iii) while repacking for the Poznan Tournament, she found the Anavar container in the Player's father's tennis bag and – assuming that it was a Heviran container – transferred the contents into the Heviran container, and (iv) there was no reason for her to suspect that the Anavar container was not a Heviran container, as the respective containers looked identical and both contained fragments of white tablets.
- 11.6 An expert report from Professor Alberto Salomone PhD, a forensic toxicologist (the **Expert Report**), in which he concludes (among other things) that (i) the ingestion of 5 mg of oxandrolone (i.e., half a tablet of Anavar) would likely result in the detection of low levels of oxandrolone in the hours following the intake, up to a maximum of approximately three days, (ii) the ingestion of 5 mg of oxandrolone would likely result in the detection of low levels of the long-term metabolite of oxandrolone in the hours following the intake, up to a maximum of approximately 17 to 18 days, and (iii) the estimated concentration of oxandrolone (41 ng/mL) and its long-term metabolite (24 ng/mL) in the Player's sample is therefore consistent with the ingestion of 5 mg of oxandrolone approximately 1 – 3 days prior to sample collection.
- 11.7 The Heviran container that the Player took to the Event and the Anavar container, both of which the ITF had tested by the Laboratory. While no fragments of Heviran or Anavar remained in the Heviran container (those fragments having been disposed of in anger by the Player's mother after the contamination of the Heviran container was discovered), the testing by the Laboratory identified oxandrolone in the residue of both containers. The ITF also verified that the respective containers were identical in all material respects, other than that the Heviran container was labelled and the Anavar container was not.
12. The ITF consulted Professor Christiane Ayotte, Director of the Laboratory, regarding the Player's explanation for his Adverse Analytical Finding and the findings of the Expert Report. Professor Ayotte concluded that while it was not possible to deduce the timing of the administration, dosage and repetitions (if any) of oxandrolone, the estimated concentration of oxandrolone and its long-term metabolite in the Player's sample was consistent with a very recent (i.e., within a few days) administration of oxandrolone. The reported Adverse Analytical therefore did not prove, nor disprove, the Player's explanation.
13. The Player did not declare the use of Heviran (or acyclovir, the active ingredient in Heviran) on his Doping Control Form (**DCF**) dated 1 September 2021, in the section requiring disclosure of '**any prescription/non-prescription medications or supplements, including vitamins and minerals, taken over the past 7 days**'. The explanation provided by the Player for this omission is that he was caught up in the euphoria of winning his first ATP point and that he (incorrectly)

thought that his use of Heviran did not need to be disclosed on the DCF because Heviran can be purchased without a prescription in Poland.

14. In all the circumstances, and in light of the evidence provided by the Player described at paragraph 11 above, the ITF accepts that the Player has established that it is more likely than not that the presence of oxandrolone found in the Player's sample was caused by his inadvertent ingestion of a half-tablet of Anavar from the contaminated Heviran container on either 30 August or 31 August 2021 in the manner asserted by the Player, in an attempt to take Heviran prophylactically to manage his medical condition.

(b) TADP Article 10.2

15. This is the Player's first Anti-Doping Rule Violation.
16. In order to calculate the relevant period of Ineligibility, TADP Article 10.2.1 specifies that a TADP Article 2.1 violation that is '**intentional**' attracts a mandatory four-year ban. If the Prohibited Substance in question is not classified as a Specified Substance (as here), TADP Article 10.2.1.1 specifies that the Player has the burden of proving (on the balance of probabilities⁴) that the violation was not '**intentional**'. If the Player can discharge that burden, TADP Article 10.2.2 provides for a two-year period of Ineligibility, subject to mitigation. If the Player cannot discharge that burden, TADP Article 10.2.1.1 provides for a four-year period of Ineligibility. TADP Article 10.2.3 explains that in this context '**the term "intentional" is meant to identify those Players or other Persons who engage in conduct that they 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**'. The jurisprudence is clear that what counts in this context is what the Player actually knew, not what he should have known.⁵
17. Since the ITF has accepted that the Player has shown it was more likely than not that the presence of oxandrolone in his sample was due to inadvertent ingestion of a half-tablet of Anavar that had (unknown to him) been added to his Heviran container, and which was indistinguishable from the Heviran fragments, the ITF accepts that the Player has discharged his burden of proving that the commission of the violation was not '**intentional**' within the meaning of TADP Articles 10.2.1 and 10.2.3. The two-year period of Ineligibility prescribed by the application of TADP Article 10.2.2 therefore applies, subject to possible reduction in accordance with TADP Article 10.5 or 10.6.

⁴ See TADP Article 3.1.2 ('Where this Programme places the burden of proof on the Player or other Person alleged to have committed an Anti-Doping Rule Violation to rebut a presumption or establish facts or circumstances, then except as provided in Articles 3.2.4 and 3.2.5 the standard of proof will be by a balance of probability').

⁵ *ITF v Sharapova*, Independent Tribunal decision dated 6 June 2016, para 77 ('It is clear from the wording of article 10.2.3 that whether conduct is intentional is to be judged on the actual knowledge of the player, not on the basis of what he ought to have known or understood') and para 71 ('the concession that the player did not know that he was taking a Prohibited Substance resolves both elements of article 10.2.3. On neither basis was the conduct of the player intentional').

(c) TADP Articles 10.5 and 10.6

18. For the sanction to be eliminated or reduced below two years, the Player must show that he bears 'No Fault or Negligence' for the violation under TADP Article 10.5, or (alternatively) that he bears 'No Significant Fault or Negligence' for the violation under TADP Article 10.6.
19. TADP Article 10.5 provides that if a player establishes that they bear No Fault or Negligence for the Anti-Doping Rule Violation in question, the otherwise applicable period of Ineligibility will be eliminated. No Fault or Negligence is defined in the TADP as follows: '**The Player or other Person establishing that they did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that they had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule**'.
20. TADP Article 10.6.2 provides that where TADP Article 10.6.1 is not applicable (as here), if the player can establish that they bear No Significant Fault or Negligence for their violation, then the otherwise applicable two-year period of Ineligibility may be reduced based on the player's degree of Fault, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable, i.e., here, between 12 and 24 months. No Significant Fault or Negligence is defined in the TADP as follows: '**The Player or other Person establishing that his/her Fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the Anti-Doping Rule Violation**'.
21. It is a precondition of any mitigation of sanction for No (or No Significant) Fault or Negligence that the player proves on the balance of probabilities how the Prohibited Substance(s) found in their Sample entered their system.⁶ Otherwise, it is impossible to assess the degree of Fault that the player bears for the presence of the Prohibited Substance(s) in their system. As detailed above, the Player has met that burden on the facts of this case.
22. A plea of No Fault or Negligence or No Significant Fault or Negligence is assessed by considering how far the player departed from their duty under the TADP to use '**utmost caution**' to ensure that they would not ingest any Prohibited Substances or otherwise do anything that might constitute or result in the commission of an Anti-Doping Rule Violation.⁷ '**The difference between the two [...] is one of degree: to establish No Fault or Negligence, the athlete must show that he took every step available to him to avoid the violation, and could not have done any more; whereas to establish No Significant Fault or Negligence, he must show that, to the extent he failed to take certain steps that were available to him to avoid the violation, the circumstances were exceptional and therefore that failure was not significant**'.⁸ The TADP definition of 'Fault' makes clear that the first question is how far the player departed from the

⁶ See definitions of 'No Fault or Negligence' and 'No Significant Fault or Negligence ('[...] Except in the case of a Protected Person or Recreational Athlete, for any violation of Article 2.1 the Player must also establish how the Prohibited Substance entered their system').

⁷ See, e.g., Kutrovsky v ITE, CAS 2012/A/2804, para 9.49 ('the athlete's fault is measured against the fundamental duty that he or he owes under the Programme and the WADC to do everything in his or his power to avoid ingesting any prohibited substance'); FIFA & WADA, CAS 2005/C/976 & 986, paras 73-75 ('The WADC imposes on the athlete a *duty of utmost caution* to avoid that a prohibited substance enters his or his body. [...] It is this standard of utmost care against which the behaviour of an athlete is measured if an anti-doping violation has been identified').

⁸ IBAF v Luque, IBAF Anti-Doping Tribunal decision dated 13 December 2010, para 6.10.

duty of utmost caution (objective fault) and the second question is whether there is any acceptable explanation for that failure (subjective fault).⁹

23. The Court of Arbitration for Sport (**CAS**) jurisprudence is clear that the standard of ‘**utmost caution**’ is very onerous and requires a player to show that they ‘made every conceivable effort to avoid taking a prohibited substance’.¹⁰ It follows that ‘**even in cases of inadvertent use of a Prohibited Substance, the principle of the Athlete’s personal responsibility will usually result in a conclusion that there has been some degree of fault or negligence**’.¹¹
24. The Player (rightly) does not plead No Fault or Negligence. However, for the reasons explained below, the ITF accepts that, in the specific circumstances of this case, the Player has established that he bears No Significant Fault or Negligence for his violation within the meaning of TADP Article 10.6.2, and therefore a reduction from the two-year starting point is justified.
25. TADP Article 10.6.2 provides for a sanction in the range between 12 to 24 months, based on the degree of Fault borne by the Player.
 - 25.1 The CAS panel’s decision in *Cilic v ITF*, CAS 2013/A/3327 provides helpful guidance when assessing where a player’s Fault lies within a range. In discussing Article 10.4 of the 2009 World Anti-Doping Code – where a reduction below two years was permitted if the athlete could establish how a Specified Substance entered their body and that such Specified Substance was not intended to enhance sport performance or mask the use of a performance-enhancing substance – the panel established the following three categories of fault: (a) a ‘[s]ignificant degree of or considerable fault: 16 – 24 months, with a “standard” significant fault leading to a suspension of 20 months’; (b) a ‘[n]ormal degree of fault: 8 – 16 months, with a “standard” normal degree of fault leading to a suspension of 12 months’; and (c) a ‘[l]ight degree of fault: 0 – 8 months, with a “standard” light degree of fault leading to a suspension of 4 months’.¹²
 - 25.2 However, since the adoption of the 2015 World Anti-Doping Code – which did not contain a provision equivalent to Article 10.4 of the 2009 World Anti-Doping Code – a reduction below two years based on the degree of Fault borne by an athlete has been permitted only if the athlete can establish No Significant Fault or Negligence for their Anti-Doping Rule Violation. Consequently, CAS panels have adapted the *Cilic* framework accordingly for Code Article 10.5.1 (i.e., TADP Article 10.6.1) cases: ‘**The time span of 24 months which is still available [under the 2015 WADA Code] now covers only two instead of three categories of fault: normal degree of fault (over 12 months and up to 24 months with a standard normal degree leading to an 18-month period of ineligibility); and light degree of fault (0 – 12 months with a standard light degree leading to a 6-month period of ineligibility).** The other guiding principles identified in *Cilic* in order to determine the degree of fault in an individual case

⁹ See definition of ‘Fault’ (‘[...] In assessing the Player’s or other Person’s degree of Fault, the circumstances considered must be specific and relevant to explain the Player’s or other Person’s departure from the expected standard of behaviour’).

¹⁰ *Knauss v FIS*, CAS 2005/A/847, para 7.3.1; *WADA v NSAM et al*, CAS 2007/A/1395, para 80 (‘**The burden is therefore shifted to the athlete to establish that he/he has done all that is possible to avoid a positive testing result**’).

¹¹ *Adams v CCESS*, CAS 2007/A/131, para 155.

¹² *ITF v Cilic*, CAS 2013/A/3327, para 70.

continue to be applicable'.¹³ Similarly, for Code Article 10.5.2 (i.e., TADP Article 10.6.2 cases), CAS panels have split the permitted range (12 – 24 months) into two categories, one for 'light fault' (12 – 18 months) and one for 'normal fault' (18 – 24 months).¹⁴

- 25.3 The CAS Panel in ITF v Cilic stated that:¹⁵
 - 25.3.1 it is 'helpful to consider both the objective and the subjective level of fault. The objective element describes what standard of care could have been expected from a reasonable person in the athlete's situation. The subjective element describes what could have been expected from that particular athlete, in light of his personal capacities';
 - 25.3.2 'the objective element should be foremost in determining into which of the three relevant categories [now two relevant categories] a particular case falls'; and
 - 25.3.3 'the subjective element can then be used to move a particular athlete up or down within that category' (or, exceptionally, between categories).

26. In assessing the Player's objective level of Fault, it is clear – and it is accepted by the Player – that he departed from the standard of utmost caution required of him:

- 26.1 It is the 'personal responsibility' of each player bound by the TADP to 'be knowledgeable of and comply with this Programme at all times' (TADP Article 1.3.1.1), to 'take responsibility for what they Use' (TADP Article 1.3.1.3) and to 'ensure that any medical treatment they receive does not violate this Programme'.
- 26.2 It is well established that in determining whether or not an athlete has complied with their duty of utmost caution, the athlete is affixed with personal responsibility not only for their own acts and omissions, but also the acts and omissions of their 'entourage', i.e., any persons – whether friends, relatives, coaches, doctors, or otherwise – to whom the Player delegated any part of their anti-doping responsibilities.¹⁶ Consequently, the Player is personally responsible for his parent's actions, and '[t]he degree of fault exercised by [the Player's parents] is to be imputed' to the Player.¹⁷

¹³ Errani v ITF, CAS 2017/A/5301, paras 194 – 195. See also ITF v Kozlova, ITF agreed decision dated 27 May 2015, para 2.12.1.

¹⁴ FIFA v CONMEBOL & Fernández, CAS 2016/A/4416, para 77. See also Stewart v Federation Internationale de Motocyclisme, CAS 2015/A/3876, para 84.

¹⁵ ITF v Cilic, CAS 2013/A/3327, paras 71 – 73.

¹⁶ Errani v ITF, CAS 2017/A/5301, para 198 ('The Athlete's responsibility includes that she is responsible for the behaviour of her entourage, be it her coaches, medical staff etc. or, in the present case, the members of her family living in the same house and, in particular, her mother who was preparing the food which was consumed by the whole family, including the athlete on 13 and/or 14 February 2017'); IAAF v AFI & Ashwini et al., CAS 2012/A/2763, para 9.22 ('CAS jurisprudence is clear that athletes cannot shift their responsibility onto third parties simply by claiming that they were acting under instruction or they were doing what they were told. [...] That would be all too simple and would completely frustrate all the efforts being made in the fight against doping').

¹⁷ Errani v ITF, CAS 2017/A/5301, para 199 ('The degree of fault exercise by the Athlete's mother is to be imputed to the Athlete herself because she entrusted her mother to prepare the meal she ate').

- 26.3 The Player's father departed from the standard of utmost caution by leaving the Anavar container in his tennis bag in circumstances where he should have appreciated the risk that the Anavar container could be mistaken for a Heviran container. The Player's mother departed from the standard of utmost caution by presuming that the Anavar container was a Heviran container, and proceeding to deposit the contents of the Anavar container into the Heviran container, without first checking with the Player or the Player's father.
- 26.4 Furthermore, the Player personally departed from the standard of utmost caution, in that he chose to store Heviran fragments in, and ingest Heviran fragments from, containers that multiple persons in his household were able to access, thereby assuming the risk that those containers could be contaminated (whether accidentally or otherwise). The Player could have eliminated this risk by taking the Heviran tablets directly from the packet, even if this would have entailed the inconvenience of cutting the tablets in half on each occasion that he needed to take Heviran.
- 26.5 Consequently, the ITF considers that the Player bears a normal degree of Fault for his Anti-Doping Rule Violation, such that the period of Ineligibility imposed should be in the 18 – 24 month range.
27. In assessing the Player's subjective level of Fault, the Player contends that the relevant subjective factors justify the imposition of a period of Ineligibility at the lower end of the 18 – 24 month range. In particular, the Player notes that: (i) he had used Heviran to treat his medical condition since childhood without incident, and had previously confirmed that Heviran did not contain any prohibited substance(s); (ii) he had used Heviran prophylactically in 100 mg doses (i.e., half tablets), in accordance with his doctor's advice, solely for the purpose of preventing incidents of infection while also avoiding the debilitating side-effects that resulted from taking whole tablets; (iii) he was only seventeen at the time of his Anti-Doping Rule Violation, and had only competed on the ITF World Tennis Tour on four occasions prior to the Event; and (iv) while the Player erred in storing Heviran fragments in a container that was at risk of contamination, having made that error there was no reason for the Player to have any suspicion that his Heviran container had in fact been contaminated, given that he was unaware his father had previously used Anavar, and he was unaware that his mother had added additional tablet fragments to his Heviran container.
28. The ITF therefore has proposed, and the Player has acceded to, a period of Ineligibility of eighteen months. In accordance with TADP Article 10.13.2, this period of ineligibility will be deemed to have commenced on the date that a Provisional Suspension was imposed on the Player, namely 15 October 2021, and so will expire at midnight on 14 April 2023.

III.B Disqualification of results

29. The Player's results at the Event are automatically disqualified in accordance with TADP Article 9.1, with all resulting consequences (including forfeiture of any medals, titles, ranking points, and prize money received as a result of participation in the Event).
30. The Player competed in two events between the date of Sample collection (1 September 2021) and the commencement of his Provisional Suspension (15 October 2021); the Junior Circuit J1 event held in Charleroi-Marcinelle, Belgium (between 20 and 25 September 2021) and the Junior circuit J2 event held in Istanbul, Turkey (between 11 and 16 October 2021). The Player's results

in those events are disqualified in accordance with TADP Article 10.10, with all resulting consequences (including forfeiture of any medals, titles, ranking points, and prize money received as a result of participation in those events), as fairness does not require otherwise.

III.C Costs

31. Each party shall bear its own costs of dealings with this matter.

III.D Publication

32. In accordance with TADP Articles 7.14.2 and 8.6, this Decision will be publicly reported by being posted (in full and/or summary form) on the ITF's website.

III.E Acceptance by the Player

33. The Player has accepted the Consequences proposed above by the ITF for his Anti-Doping Rule Violation and has expressly waived his right to have those Consequences determined by the Independent Tribunal at a hearing.

IV. Rights of appeal

34. This Decision constitutes the final decision of the ITF, resolving this matter pursuant to TADP Article 7.14.
35. Further to TADP Article 13.2, each of WADA and the Polish Anti-Doping Agency (**POLADA**) has a right to appeal against this Decision to the CAS in Lausanne, Switzerland, in accordance with the procedure set out at TADP Article 13.9.
36. As part of the resolution of this matter, the Player has waived his right to appeal against or otherwise challenge any aspect of this Decision (both as to the finding that the Player has committed an Anti-Doping Rule Violation and as to the imposition of the Consequences set out above), whether pursuant to TADP Article 13.2 or otherwise. However, if an appeal is filed with the CAS against this decision either by WADA or POLADA, the Player will be entitled (if so advised) to exercise his right of cross-appeal in accordance with TADP Article 13.9.4.

London, 1 August 2022