Arbitration CAS 2021/A/8125 Heiki Nabi v. Estonian Center for Integrity in Sports, award of 20 October 2022

Panel: Prof. Stefano Bastianon (Italy), President; Mrs Janie Soublière (Canada); Mr Benoît Pasquier (Switzerland)

Wrestling
Doping (letrozole)
Plausibility of meat contamination
Plausibility of contamination by transfer of sweat and/or saliva from other athlete or from gym equipment
Obligation to establish the specific source of the prohibited substance
Balance of probability
Reduction of the sanction based on the principle of proportionality

1. **Athletes who have a clean record and do not have uncharacteristically poor competitive results before the violation (and thus avoid the possible inference that they had a motive to cheat) or uncharacteristically good results thereafter (which might be suggested to confirm cheating) will improve their prospects yet further if they can show an invoice from a restaurant indicating they were served meat which could be traced to a wholesale supplier known or suspected by regulatory authorities to feed steroids or other prohibited substances to its livestock.**

2. **A theory of letrozole contamination by transfer of sweat and/or saliva from other athlete or from gym equipment must be rejected as unlikely (i) without tangible scientific evidence to support this theory, and (ii) given the complexities of letrozole effectively passing through two bodily systems and two skin barriers, and (iii) the athlete's inability to identify with any kind of certainty the individual who might have transmitted letrozole, and (iv) the fact the no other of the many athletes who train at the same gym and use the same equipment tested positive for letrozole.**

3. **Establishing the specific source of a prohibited substance is required when an athlete seeks to prove No Fault or Negligence or No Significant Fault or Negligence under the definitions of No Fault or Negligence and No Significant Fault or Negligence in the applicable anti-doping regulations. The *"narrowest corridor"* through which an athlete who has not been able to conclusively identify the specific source of the prohibited substance may pass to reach a finding of No (Significant) Fault or Negligence only applies to cases involving non-specified substances and only to allow athletes to pass from a four-year period of ineligibility to a two-year period of ineligibility, based on their lack of intention, in the event that in the face of extraordinary circumstances they are unable to establish the source of the adverse analytical finding.**

4. **The standard of proof of balance of probability requires that the occurrence of a scenario**

suggested by an athlete must be more likely than its non-occurrence, and not the most likely among competing scenarios.

5. The no fault or negligence and no significant fault or negligence exceptions to otherwise strict liability anti-doping rule are themselves embodiments of the principle of proportionality. Even an 'uncomfortable feeling' regarding a sanction mandated in the rules is not sufficient to involve the principle of proportionality where the applicable rules include a sanctioning regime which is proportionate and contains clear and concise mechanism which allows for a reduction of the applicable sanction.

I. THE PARTIES

1. Mr. Heiki Nabi (the "Appellant" or the "Athlete") is an Estonian world-class athlete in wrestling (Greco-Roman style, currently in the 130 kg category) and a multiple medal winner for Estonia at Olympic Games and World Championships, including a silver medal at the Olympic Games 2012 in London and two gold medals at the 2006 and 2013 World Championships.

2. The Estonian Center for Integrity in Sports (the "Respondent" or "ESTCIS") is the National Anti-Doping Agency for Estonia and tasked with carrying an anti-doping program that is compliant with the World Anti-Doping Code.

II. FACTUAL BACKGROUND

A. Background facts

3. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion below. While the Panel has considered all the facts, evidence, allegations and legal arguments submitted by the Parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

4. On 6 January 2021, the Athlete underwent an Out-of-Competition doping test in Tallinn, Estonia.

5. On 7 February 2021, the Respondent informed the Athlete that the analysis of his sample returned an adverse analytical finding ("AAF") for Letrozole, a Prohibited Substance under Section S4 of the 2021 World Anti-Doping Agency ("WADA") Prohibited List. More specifically, Letrozole is classified as a Section S4 Hormonal and Metabolic modulator, the use of which is prohibited both In-Competition and Out-of-Competition in Wrestling. Because

the Prohibited List has classified it as a Section S4.1 Aromatase Inhibitor, for the purposes of the sanctioning regime applicable under the Estonian Anti-Doping Rules ("EADR"), Letrozole is considered a Specified Substance.

6. In the same 7 February 2021 Notice, the Respondent informed the Athlete that his positive anti-doping test could violate Article 2.1 of the EADR, imposed a provisional suspension and offered him a myriad of procedural rights including the right to exercise his right to the analysis of his B sample, which the Appellant did.

7. On 8 April 2021, the Athlete's B-sample was analyzed and it confirmed the presence of Letrozole, thereby establishing the commission of an anti-doping rule violation ("ADRV") for "presence" pursuant to Article 2.1.2 EADR.

8. On 14 May 2021, the Appellant filed a request for a Provisional Hearing to try to lift his Provisional Suspension.

9. On 18 May 2021, the ESTCIS Disciplinary Board ("ESTCIS DB") lifted the Athlete's Provisional Suspension with immediate effect pending the outcome of the hearing.

10. A first instance hearing was held before the ESTCIS DB on 18 June 2021.

B. The First Instance Decision

11. On 27 June 2021, the ESTCIS DB issued the operative part of its decision and imposed a two-year period of ineligibility period on the Athlete:

"Pursuant to Article 10.2.2 of the Code, Heiki Nabi (ik 38506060258) will be banned from competing for two years from 18.06.2021, the last day of the ban is 19.03.2023.

To cancel all competition results of Heiki Nabi from 06.01.2021" (translation provided by the Appellant).

12. On 1 July 2021, the ESTCIS DB issued its reasoned decision (the "Appealed Decision") In finding against the Athlete, the ESTCIS DB *inter alia* held that:

- Contaminated food supplements or medical products as well as sabotage could be ruled out as the possible sources of Letrozole.

- It was *"very unlikely that letrozole entered the athlete's system through contaminated meat products. Letrozole has not been authorized by the European Medicines Agency as a veterinary medicinal product, and its use in veterinary or on animals in other way has not been established".*

- Contrary to the Athlete's arguments based on preliminary scientific studies investigating the use of Letrozole in the promotion of ovulation in young cattle, it is *"unreasonable that an animal about to be slaughtered would need ovulation promotion; on the other hand, it is unlikely that*

an animal receiving letrozole for this purpose will accumulate the amount of letrozole in the muscles or liver in such quantity, that it would be evident after consumption of this meat after pregnancy (approximately 9 months).The possibility that a cow treated with letrozole did not become pregnant and was therefore slaughtered is exceedingly small and exceptional considering the circumstances. No known case has been identified during the hearing in which the athlete's adverse analytical finding was due to the consumption of letrozole-contaminated meat".

- The evidence on file contradicted the Athlete's explanation that he had eaten contaminated bovine liver on 4 January 2021, since *"in the hair analysis, letrozole had the highest content in the hair segment corresponding to December 2020 (i.e. before the alleged liver consumption) but not in the segment corresponding to January 2021 (or in later segments)"*. The alternative explanation that Letrozole had entered the Athlete's system through another person's saliva, sweat or exposed surfaces, was to be rejected on the basis that *"[n]o known case has been identified […] in which the athlete's adverse analytical finding could have resulted in exposure to letrozole in such manner. There is also no reference to any scientific study suggesting that letrozole may enter the body in this way"*.

- The Athlete did not establish the source of Letrozole to the required standard of proof and was to be sanctioned with a two-year period of ineligibility.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

13. On 5 July 2021, the Athlete filed a request for urgent provisional measures with the Court of Arbitration for Sport ("CAS") requesting a stay of execution of the Appealed Decision. The Athlete requested that the stay of execution be granted *ex parte* due to the utmost urgency of the case (e.g. he wished to compete at the 2022 Tokyo Summer Olympic Games for which he has earned a quota spot). The Athlete submitted the following prayers for relief:

"1. The execution of the decision of the Estonian Center for Integrity in Sports Disciplinary Board of 27 June 2021 shall be stayed at least until the CAS's final decision on the present case;

Alternatively: The execution of the decision of the Estonian Center for Integrity in Sports Disciplinary Board of 27 June 2021 shall be stayed at least until the conclusion of the Games of the XXXII Olympiad in Tokyo (8 August 2021);

2. The stay of execution shall be ***ordered ex parte****;*

3. The Respondent shall be ordered to pay all costs and fees relating to these proceedings, including, but not limited to, the entire costs for the Applicant's lawyers, witnesses and experts, which the Applicant reserves the right to produce in due course" (emphasis in original).

14. Also on 5 July 2021, the CAS Court Office acknowledged receipt of the Athlete's request for a stay of execution of the Appealed Decision and initiated an appeals arbitration procedure under the reference *CAS 2021/A/8125 Heiki Nabi v. Estonian Center for Integrity in Sports.*

15. On the same day, the President of the CAS Appeals Arbitration Division (the "Division President") held that, since the Appellant requested a decision to be rendered by 11 July 2021, i.e. six days later, this was not a situation of "utmost urgency" within the meaning of Article R37(4) of the Code of Sports-related Arbitration (the "Code"). Accordingly, the Division President decided not to entertain the Applicant's request for *ex parte* provisional measures and granted the ESTCIS a short deadline to file its position on the request for a stay of execution.

16. On 8 July 2021, the ESTCIS filed its Answer to the request for a stay of execution, requesting that the Applicant's application be dismissed.

17. On 9 July 2021, the Division President communicated to the Parties the operative part of the Order on the request for a stay issued by rejecting the Appellant's application.

18. On 21 July 2021, in accordance with Articles R47 and R48 of the Code, the Appellant filed his Statement of Appeal.

19. On 10 August 2021, the Appellant filed a submission with the CAS Court Office to the effect that, pursuant to Article R65.1 of the Code, he did not or should not have to pay any arbitration costs or advances on costs.

20. On 16 August 2021, the Division President issued her reasoned Order on the request for a stay.

21. On 7 September 2021, the CAS Court Office informed the Parties that the Panel appointed to hear and decide the matter was constituted as follows:

President:	Prof. Stefano Bastianon, Attorney at Law, Busto Arsizio, Italy
Arbitrators:	Mr. Benoît Pasquier, Attorney at Law, Zurich, Switzerland
	Ms. Janie Soublière, Attorney at Law, Montréal, Canada

22. On 13 September 2021, after having been granted extensions, the Appellant filed his Appeal Brief in accordance with Article R51 of the Code.

23. On 8 November 2021, after having been granted extensions, the Respondent filed its Answer in accordance with Article R55 of the Code.

24. On 19 November 2021, the Panel ruled that Article R65.1 of the Code did not apply in the present case with the grounds of its ruling to be exposed in the final Award.

25. On 6 December 2021, the Appellant and the Respondent signed the Order of Procedure.

26. On 11 May 2022, a hearing was held in Lausanne, Switzerland. The Panel was assisted by Ms. Delphine Deschenaux-Rochat, CAS Counsel, and joined by the following individuals:

For the Appellant

- Mr. Heiki Nabi, Athlete (in person)
- Mr. Paul Keres, counsel (in person)
- Dr. Rafael Braegger, counsel (in person)
- Mr. Aleksander Muru, counsel (in person)
- Ms. Ene Leigri, witness (by video-conference)
- Mr. Levi Earl, witness (by video-conference)
- Dr. Douwe De Boer, expert witness (in person)
- Prof. Pascal Kintz, expert witness (in person)
- Dr. Mihkel Mardna, expert witness (by video-conference)
- Dr. Keith R. Ashcroft, expert witness (by video-conference)
- Ms. Tiiu Soomer, translator (by video-conference)

For the Respondent

- Mr. Henn Vallimäe, Executive Director of the Respondent (in person)
- Ms. Ingeri Luik-Tamme, counsel (in person)
- Dr. Stephan Netzle, counsel (in person)
- Dr. Detlef Thieme, expert witness (in person)

27. At the outset of the hearing the Parties confirmed that that they had no objections concerning the proceedings so far and in particular the jurisdiction of CAS to decide on the matter, the composition of the Panel, and the hearing timetable.

28. During the hearing, the Parties were given a full opportunity to present their case, submit their argument and submissions, and answer the questions posed by the Panel. The Parties and the Panel had the opportunity to examine and cross-examine the witnesses, who were informed by the Panel to tell the truth subject to sanction of perjury under Swiss law.

29. After the Parties' final arguments, the Parties' counsels confirmed that they were satisfied with the hearing, the way in which the procedure has been conducted and that their right to be heard was fully respected.

30. Before closing the hearing, the Panel invited the Parties to file within ten days written submissions on their respective costs incurred in these proceedings.

IV. SUMMARY OF THE PARTIES' SUBMISSIONS

A. The Appellant

31. The Appellant first argues that even if he is unable to establish the source of the prohibited substance, he can be found to have no fault or negligence or no significant fault or negligence for the ADRV. *Inter alia* he submits that:

- The requirement to establish source is neither part of the actual provisions of Article 10.5 EADR or Article 10.6 EADR nor of the related comments (unlike, e.g., Article 10.2.1.1 EADR) but of the Definitions section only;

- If an athlete is able to rule out intentional doping as well as reasonably conceivable sources attributable to fault or negligence, then only scenarios involving no fault or negligence remain;

- Restricting the No Fault or Negligence and the No Significant Fault or Negligence pleas to cases where the source of the prohibited substance could conclusively be established is an impossible obligation to fulfil. According to the generally accepted legal principle, *"no one is obliged beyond wat he is able to do"*. In other words, legal obligations that are impossible to fulfil are void (*"ultra posse nemo obligatur"*);

- The Supreme Court of Estonia has held from the principle of good faith that the burden of proof is reversed in cases where the probability of an occurrence of circumstances has been substantiated. This is particularly so in cases where there is no objective possibility for one party to produce evidence.

32. The Athlete submits that the evidence he has compiled and tendered shows not only that it is impossible that he intentionally ingested any Letrozole, but also that he undertook everything that is reasonably possible to identify its source upon being confronted with the AAF:

- He underwent polygraph testing (Dr. Ashcroft);

- He had his medication and food supplements analyzed by a specialized laboratory in order to detect possible contamination (Prof. Kintz);

- He enquired with the restaurant where he ate (Argentina);

- He enquired with the producer of the meat he ate at that restaurant (Biovela);

- He enquired with his sparring partners about their potential use of Letrozole (Estonian wrestlers);

- He enquired with the gym where he trained (Sparta Sports Club);

- He enquired with the University of Tartu about conducting water quality analyses.

33. Further to all his research and efforts, the Athlete brings forward four possible ways in which Letrozole would have accidentally entered his system and which he finds are all possible.

34. The first scenario is the consumption of contaminated turkey of French origin which the Appellant ate on Christmas Eve 2020. He submits that Letrozole, as many other human drugs, has been found to be useful in the treatment of certain conditions in animal husbandry. In poultry farming, for example, a study has found that Letrozole is effective in significantly decreasing egg production and that it is possible that the turkey he ate on Christmas Eve 2020 could have contained Letrozole.

35. The second scenario is the Appellant's consumption of contaminated bovine liver of Lithuanian origin which the Appellant ate in December 2020 and on 4 January 2021, i.e. two days before the doping control in question. Relying on the "Contador test" (CAS 2011/A/2384), which was also applied in CAS 2019/A/6443 & 6593, the Appellant submits that meat contamination is a plausible explanation for the finding of Letrozole in his sample.

36. In this respect, the "Contador test" consists of the following steps, which he says apply here:

- a credible explanation of how the Prohibited Substance entered the athlete's body, i.e. proof that meat was consumed during the relevant period and which meat specifically, and meat that was theoretically subject to possible contamination by Letrozole;

- the specific origins of the meat in question, i.e. origin and source of the meat and whether it was contaminated with Letrozole (on a balance of probabilities); and

- identification and elimination of all other possible sources, or at least a demonstration that each other possible source is less likely than meat contamination. Meat must be the only possible way of ingestion of the prohibited substance or more probable than any other explanation.

37. Relying on the evidence of Dr. De Boer and a scientific study according to which a *"4-day letrozole-based protocol induced ovulation in a significantly greater proportion of animals and with significantly greater synchrony than the control treatment"*, the Appellant argues that the meat contamination scenario is utterly possible and that the specific organs where one would expect to find exogenous compounds such as Letrozole would be the liver and kidneys, which the Athlete regularly eats.

38. The third scenario is the transfer of sweat and/or saliva from another wrestler sparring with the Appellant using Letrozole without the Appellant's awareness.

39. The fourth scenario, related to the third scenario, is the use of contaminated gym equipment by the Appellant, i.e. equipment that was used by a Letrozole user who did not wipe the equipment clean before the Appellant used it.

40. He relies on the expert evidence of Dr. De Boer whose expert evidence is that Letrozole behaves very similarly to Phencyclidine and is thus excreted through saliva and sweat which, if ingested, could plausibly trigger an AAF. He argues that Wrestling is a contact sport, and it is certainly not beyond the realm of possibilities that from such contact (which is intense and lasts for minutes), the saliva or sweat of a doped athlete might enter a clean athlete's system, resulting in (minimal) concentrations of the Letrozole metabolite and its parent compound being detected in analyses, as was the case in the Appellant's hair and urine.

41. To support these scenarios, the Appellant relies on a study conducted by German sports investigative journalist Hajo Seppelt and his team, together with the renowned "Institut für Rechtsmedizin" (Institute for Forensic Medicine) of the university hospital in Cologne, Germany. Their experiment resulted in a video contribution titled *"Geheimsache Doping: Schuldig – Wie Sportler ungewollt zu Dopern werden können"* (*"Secret affair doping: Guilty – How athletes can unintentionally become dopers"*) which was aired on German public broadcaster ARD on 16 July 2021. In that experiment, twelve male individuals were administered a very low dose of anabolic steroids – hardly even visible to the human eye – together with a carrier substance. The steroids and carrier substance were applied once to their skin (on their neck, arm, or hand). In many cases, this resulted in AAFs for the same anabolic steroids to which these individuals had been exposed.

42. The Appellant also relies on the fact that a drug ring operating out of the Sparta gym had been discovered during the same time as his AAF. Evidence shows that Letrozole was found in the cache of drugs that had been allegedly pedalled out of the gym. The Appellant submits that he was at the Sparta Gym in December 2020 and in January 2021 and that there is a very real possibility that he might have been contaminated by the sweat or saliva or any of the many Gym members who were using various prohibited substances pedalled in the Gym, including Letrozole.

43. Finally, relying on the expert analyses of Dr. Keith Ashcroft, Dr. Douwe De Boer and Prof. Pascal Kintz the Appellant submits that intentional use of Letrozole can be ruled out. He concedes that contaminated medication and food supplements as the source of Letrozole can also be ruled out.

44. The Appellant concludes that his evidence and submission show that he:

- did not intentionally take Letrozole;
- has identified several plausible sources of Letrozole;
- has been able to rule out several other possible sources of Letrozole;

- undertook everything that is reasonably possible to identify the source of Letrozole.

45. Against this background, the Appellant argues that it is irrelevant that he has not been successful in conclusively identifying the exact source of Letrozole detected in his urine sample (i.e., how it entered his system/body) and that all the possible scenarios he has brought forward should be sufficient for a Panel to conclude that all there is left are no-fault-related scenarios (contaminated meat or contamination through sweat/saliva/aerosol etc.).

46. Although the Appellant ultimately seeks a finding of No Fault, he does alternatively argue that, should the Panel deem that he has established the source of Letrozole, the No Significant Fault Provisions of the EADR should apply and that an assessment of his degree of fault should place him at the lower end of the spectrum of Article 10.6.1.1 of the EADR.

47. In any event, he argues that under the circumstances, the sanction he has already served is disproportionate to his infraction and that he has already been punished enough.

48. Lastly, in his written and oral submissions, the Appellant argues that the present case should be governed by Article 65.2 of the Code according to which appeals against decisions which are exclusively of a disciplinary nature and which are rendered by international federations or sports-body *"shall be free"* (the so-called "No Costs Rule").

49. The Appellant recognizes that in the present case the Appealed Decision was not issued by an international federation. However, the Appellant argues that:

(a) the second sentence of Article 65.1 of the Code states: *"It is not applicable to appeals against decisions related to sanctions imposed as a consequence of a dispute of an economic nature"*. Accordingly, Article 65.1 of the Code does not state that it would not apply to appeals against decisions rendered by a national federation or a sports-body;

(b) the present case is exclusively of a disciplinary nature;

(c) the Appellant is an international-level athlete pursuant to Article 13.2.1 EADR;

(d) the Appellant can exclusively appeal the Appealed Decision to CAS pursuant to Article 13.2.1 EADR.

50. The Appellant argues that the present proceedings should be free of charge in order to avoid any unequal, discriminatory and arbitrary treatment of his case as an international-level athlete appealing a disciplinary decision issued by an national anti-doping organisation (as opposed to a international federation).

51. The Appellant's requests for relief are as follows:

"1. The decision of the Estonian Center for Integrity in Sports Disciplinary Board of 27 June 2021 shall be set aside.

2. *It shall be held that the Appellant bears No Fault or Negligence for the Anti-Doping Rule Violation and no sanctions, in particular no period of ineligibility, shall be imposed on him.*

   Alternatively: It shall be held that the Appellant bears No Significant Fault or Negligence for the Anti-Doping Rule Violation and no sanctions, in particular no period of ineligibility, shall be imposed on him.

   Alternatively: It shall be held that the Appellant bears No Fault or Negligence for the Anti-Doping Rule Violation and a maximum sanction of a period of ineligibility of three months shall be imposed on him.

3. *The Respondent shall be ordered to pay all costs and fees relating to these proceedings, including, but not limited to, the entire costs for the Appellant's lawyers, witnesses and experts, which the Appellant reserves the right to produce in due course".*

B. The Respondent

52. The Respondent submits that it is a daring and wrong proposition for the Appellant to argue that a lack of intention must automatically lead to the acceptance that contamination of food, or equipment, or by physical contact with a competitor are the only possible explanations left to explain the presence of Letrozole in his sample. Lack of evidence of intent does not equate to lack of fault and there remains a statutory obligation for an athlete to establish the source of a prohibited substance detected in his or her urine sample in order to benefit from any reduction in sanction under the EADR.

53. Article 10.2.2 EADR is a rule of evidence and takes into account that the ADRV related to a Specified Substance "might have been" due to contamination. It cannot be read from this provision that the source was or must have been contamination or that intentional use must be excluded (although in this case it has been by virtue of the Respondent not establishing the intentional element of the ADRV). Pursuant to Article 10.2.1 EADR, lack of evidence of intent simply leads to a lower standard sanction, namely a two (2) year period of ineligibility as a starting point instead of the presumptive four (4) year period of ineligibility applicable for all international ADRVs.

54. The Respondent flatly rejects all of the Appellants arguments and submits that he cannot rewrite the law. Pursuant to the express definition of No Significant Fault or Negligence in the EADR, it is he who bears the burden of establishing the source of Letrozole in his sample and has failed to do so. As a result, he cannot avail himself of the No Fault and No Significant Fault provisions of the EADR.

55. The Respondent rejects all the expert evidence adduced by the Appellant.

56. In rejecting the Polygraph test, the Respondent argues as follows:

- First, it is the Appellant who must demonstrate how the prohibited substance entered his system and the polygraph test does not provide any answers to this end.

- Second, the question of whether the Appellant used Letrozole intentionally has already been answered without requiring recourse to the polygraph test.

- Third, the question whether the Appellant acted with No (Significant) Fault or Negligence is not a matter that has been subject to the polygraph test. This concerns whether the Appellant applied all reasonable efforts to avoid the prohibited substance entering his body. Here, the Appellant's acts and omissions are to be judged, not the verbal statements he made with the goal to escape a doping sanction.

- Fourth, in CAS proceedings and most European jurisdictions, the results of a polygraph test have no or a very limited probative value.

57. In rejecting the hair follicle analysis results, the Respondent also argues that to date, the results of a hair analysis have not been widely accepted as reliable evidence in doping procedures. Accepted analytical methods are defined in great detail in the International Standards and require certification by WADA of both the method itself and the laboratory which performs it. Hair analysis has not been identified as a certified analytical method by WADA. The Respondent also questions the reliability of Prof. Kintz' analyses and repeatedly amended expert opinions and testimony arguing that they are not objective in interpreting the results and making final unbiased conclusions.

58. In rejecting Scenario 3 and 4 (i.e. contamination through sweat/saliva), the Respondent argues that no study or evidence suggests that it is possible for an athlete to be contaminated through an inadvertent simple contact with sweat or saliva of another person – let alone one who took Letrozole, which should be a critical requirement to the success of this scenario. Relying on the opinion of Dr. Boer who says that *"as far as known, no alternative body fluids, such as saliva and skin excretions, have been studied in relation to letrozole"*, the Respondent argues that there are no studies that confirm Letrozole contamination from saliva or sweat has ever occurred. This is so because only a very small amount of Letrozole is excreted in the urine. Even less is secreted through the skin. The Respondent also rejects the contention that Letrozole could be transmitted from one person to another through the skin by way of saliva or sweat excretion or secretion through shared facilities, surfaces or sports equipment and submits that the Appellant has failed to provide any evidence to support these scenarios to this end. To the contrary: all the Appellant's sparring partners have stated that they did not use Letrozole, and gymnastic equipment is cleaned and disinfected more often these days than ever before, because of Covid-19 regulations.

59. The Respondent also rejects any attempt to liken this case to the other 'contamination cases' as the factual circumstances here are totally different. Succinctly, in those contamination cases:

- The transmitted substance was either Probenecid or Cocaine – not Letrozole;

- The affected athlete was able to demonstrate the specific contact or transmitting person who had used the prohibited substance and transferred it inadvertently to the athlete – which the Appellant fails to do;

- The prohibited substance entered the athlete's body through mucous membranes – not via the skin by sweat or saliva;

- The transmission occurred only hours before the collection of the urine sample which turned out to be positive – not days as would be the case for the Appellant.

60. The Respondent also:

- rejects the Appellant's reliance on the *USADA v. Virginia Fuchs* case because there, unlike here, the source/transmitting person of the substance was clearly identified (the athlete's boyfriend) and the substance was transmitted via sexual intercourse (i.e. via a mucous membrane) and not via skin contact or contaminated equipment or surfaces.

- rejects the broadcast documentary by German journalist Hajo Seppelt as completely irrelevant to the present case. The experiment concerned anabolic steroids and not Letrozole. In addition, anabolic steroids were applied to human skin together with a carrier substance. Therefore, contamination with a Prohibited Substance in such a way is only possible through intentional and well-planned sabotage, on which not even the Appellant relies in the present case. The documentary does not claim that it is possible for an athlete to be contaminated with Letrozole through an inadvertent, simple contact with saliva or sweat of another person who has used Letrozole.

61. The Respondent also argues that not one single case of transmission of Letrozole from one person to another through shared facilities, surfaces or sports equipment has been reported by any expert, study or publication. Even though Dr. de Boer compares Letrozole's pharmacokinetic properties to Phencydiline and Cannabinoids, and the excretion of all these substances might be similar, Dr. Boer confirmed during the course of the hearing that there are no scientific studies or other that have found that Letrozole (saliva or skin excretion) is easily absorbed through skin, which is designed to be a shield against external factors and more importantly through two skin barriers, as Letrozole would first need to be excreted by one individual's system and skin barrier before being passed on to another individual through another skin barrier and system before detected in urine. On this point, the Respondent also argues that such a possibility should also be mentioned in the summary of the product characteristics and the package leaflet for the medicine Femara®. The package leaflet for the medicine Femara® does not mention any such effect or risk. If such risk were known, the respective drug administration authorities would require a warning to be affixed on the patient information.

62. The Respondent also adduced evidence that, to date, only two positive samples for Letrozole have been found in the thousands of doping controls performed in Estonia. One is the Appellant's sample. The other is a confirmed case of intentional use. The Respondent argues

that other Estonian national team athletes also go to gym and use public areas and that other wrestlers are also exposed to the sweat or saliva of a training partner or competitor, yet no other case of contamination by Letrozole has arisen in Estonia, or elsewhere in the world. Considering the extensive list provided of top Estonian athletes who trained at the Sparta Gym and who have been subject to doping control by ESTCIS during the same time period, another AAF of Letrozole would have been almost inevitable if there had been a real risk of contamination at the gym. The Appellant's would not have been the only one.

63. Thus to the Respondent, the Athlete does not establish the source of Letrozole to the required standard and cannot benefit from any reduction under Article 10.5 or 10.6 EADR. The first instance decision must be upheld and a two (2) year period of ineligibility confirmed as the applicable consequence that arises as a result of the Athlete's established ADRV.

64. The Respondent's requests for relief are as follows:

"1. to dismiss the Appeal of the Appellant and confirm the Decision of the Estonian Center for Integrity in Sports Disciplinary Board of 27 June 2021;

2. to order that

a. the Appellant's results achieved since 6 January 2021 are disqualified including forfeiture of any medals, points and prizes;

b. a period of ineligibility of two years shall apply to the Appellant, beginning at the date of the decision of the CAS, from which the period of provisional suspension already served shall be deducted;

3. to order that the Appellant shall bear the entire costs of this arbitration proceedings;

4. to order that the Appellant shall pay an adequate contribution to the legal costs of the Respondent, such as legal fees and the costs of experts and witnesses, which the Respondent reserves the right to produce in due course".

C. Oral Evidence

65. While both Parties' experts and expert witnesses provided thorough and ample written expert evidence in the course of the written submissions, the hearing provided a great opportunity for the expert witnesses to be examined and provide evidence on their respective positions and expert opinions and submitted reports.

a) Mr. Heiki Nabi

66. The Appellant explained that to this day he still does not know for sure where Letrozole came from and that he knows that he never took it intentionally.

67. He has done everything he could to try to establish where Letrozole could have come from. He was not aware that it was possible to get contamination from meat but has since sought out restaurant receipts from the Argentina restaurant and sought out information from the Coop grocery store to determine where they purchase their turkeys.

68. He explained that the Sparta Gym is the largest and cheapest Gym in Estonia and that it contains all the best and updated equipment with heavier weights. It is frequented by many Estonian National Team athletes and it is also frequented by some individuals who appear to be steroid users. Because he is well known in Estonia, people often go to see him to shake his hand and he always takes the time to do so.

69. He said he goes to the Sparta Gym four-five times a week, and that a key card reading could offer corroboration of the same but that the Gym did not want to provide these readings as it did not want to get involved.

70. He said he does not wipe down equipment before using it but it does so after being finished. He assumed that everyone would also wipe down their equipment because these are the rules.

71. With regards to supplements, he had been using the same high-quality supplement for years and never tested positive. He felt confident and comfortable in using these supplements. He had many of them tested (those that were available) after the positive finding just in case and none of the tests ended showed signs of Letrozole.

72. He explained that he eats a varied diet with a lot of meat, especially rare liver, cheese, milk and fish purchased in different markets and shops in Estonia, sometimes in *"funky stores"* as well. He said that he has never had any food contamination or food poisoning and he trusts all his market sources.

73. He confirmed that he never took Letrozole and has been honest throughout these proceedings and chose not to make up a story in his defense but to find the truth. He just does not know for sure where Letrozole came from, but he offers many possible scenarios, not knowing what else he can do to prove his innocence.

b) Mr. Henn Vallimäe

74. He explained that as the Director of ESTCIS, he is the one who received notification of the Letrozole AAF from the Laboratory and personally notified the Athlete of the AAF.

75. He submitted that since 2017 and in the aftermath of the 2019 Seefeld scandal in cross country skiing where Estonian Athletes were detained and charged by Austrian police, ESTCIS has endorsed a principle of good governance and a zero-tolerance approach to doping in Estonia.

76. He explained that the office prepared the documentation for the results management of the case, and that he participated in each step including attending the first instance hearing.

77. He said that the Appellant's arguments are not supported by science and that ESTCIS proceeded in accordance with their Rules.

78. He also conceded that ESTCIS learned a lot from its handling of this case, that they did the best they could to deal with it, even if it was their first of this kind, and admits that there are things they would do differently in future cases.

c) Ms. Ene Leigri

79. She is the Athlete's mother and confirmed her written statement.

80. She remembered her Christmas dinner in 2020 and recalled exactly that she prepared turkey and bought it from a Coop retail store. It was a deep freeze product from France.

d) Mr. Levi Earl

81. He is a trainer and metabolic analyst who has been collaborating with the Appellant for many years.

82. He has completed the United-Kingdom Anti-Doping ("UKAD") clean sport education course and National Sanitation Foundation ('NSF'). Certified supplements are the only recommendations he ever gives his clients in terms of supplement use. On this, he testified that the Appellant has always been clean, tested his supplements and used the same supplements for years because he was confident they would not return positive tests having never done so in the past.

83. He confirmed that the Appellant's training consists of going to go to the Sparta Gym four-five times a week because it is the only gym in Tallinn that has Olympic weights.

84. He also confirmed that on 4 January 2021, he and the Appellant ate roaster liver at the Argentina restaurant after doing a strength training session together at the Sparta Gym.

e) Dr. Douwe de Boer

85. Dr. Douwe de Boer is a biochemist, who worked in Sport Drug Testing laboratories from 1987 to 2004 and has since been working fulltime in the Central Diagnostic Laboratory (CDL), Maastricht University Medical Centre, the Netherlands. He opined that the level of Letrozole is so low, 0.49 ng/ml, *"as to render accidental contamination the most likely explanation from the outset"*.

86. His expert conclusions are as follows:

- There are no indications that Letrozole was inadequately identified by the Laboratory in its analysis and reporting;

- The reported concentration of Letrozole was very low, in the range of 0.6 ng/mL;

- Based on the fact that at the time of sample collection a Letrozole concentration of a mere 0.6 ng/mL was reported, Letrozole did not have any pharmacological significance or performance enhancing benefits at the time of sample collection;

- The evidence does not indicate that the Athlete administered Letrozole at a single therapeutic dosage or multiple dosages of 0.62 mg or 2.5 mg. Therefore, such scenarios cannot explain his AAF;

- Hair follicle analysis is essential in this case in order to distinguish between incidental and repetitive administration. Proof of repetitive administration would render alternative scenarios implausible. e.g. medication, supplements and meat contaminated with Letrozole residues and contamination through sweat after contact with other persons;

- Assuming that Letrozole had been administered unconsciously, the origin of Letrozole is unlikely to originate from tablets and incidental contaminations must be considered and looked for in a broad way. Scenarios to be checked are medication, supplements and meat contaminated with Letrozole residues as well as contamination through sweat after contact with other persons.

87. Dr. de Boer's oral evidence spoke to a similar case in Belgium where Letrozole was traced back to the milk powder used to produce supplements (so-called "Milk Theory"). He says that Letrozole has now been found to be used in some countries and dairy farms to control pregnancies and calf milk production and that trace of residual amounts of Letrozole can therefore be detected in dairy products, notably in milk powder which is not diluted. He explained that it should be the food authorities' responsibility to report the dairy farms' use of Letrozole but that they are not doing so because there currently is no reason to alert the general public of a possibility of trace amounts of Letrozole being found in milk, or dairy products.

88. Dr. de Boer also opined that it is possible that trace amounts of Letrozole could be found in calf or beef liver as the liver is the barge of the digestive system and if Letrozole was used by dairy or meet farms, it would necessarily be secreted by the liver.

89. Finally, although the saliva and sweat theory should be considered by the Panel, Dr. de Boer concedes that the probability of Letrozole contamination occurring as a result of indirect contact (saliva or sweat) having to pass through two skin barriers and be secreted or excreted by two bodily systems, is low.

90. According to Dr. De Boer, the most likely source of contamination of Letrozole is milk powder or meat contamination.

f) Prof. Pascal Kintz

91. Prof. Pascal Kintz is renowned expert in hair follicle analysis.

92. Prof. Kintz collected both head hair and axillary hair (from armpits) from the Athlete. The following results were obtained by the laboratory as provided in Prof. Kintz's report:

Segments	Letrozole concentrations (pg/mg)
0 to 1 cm	< 1 (0.8)
1 to 2 cm	< 1 (0.7)
2 to 3 cm (period of the urine test)	< 1 (0.9)
3 to 4 cm	< 1.4
Axillary hair	< 1 (0.2)

93. Prof. Kintz explained that the window of drug detection in a 4 cm head hair can cover about the last four months. In the Appellant's case, from early December 2020 to late March 2021. He also explained that the window of drug detection in axillary hair goes back four to eight months, in the Appellant's case as far back as May 2020.

94. He opined that studies show that a single Letrozole administration of 0.62 or 2.5 mg will produce hair concentrations ranging from 16 to 60 pg/mg. To the contrary, repetitive users of Letrozole have head hair concentrations higher than 160 pg/mg. In a known case of a confirmed ADRV for Letrozole, the athlete presented Letrozole concentrations of 310 and 245 pg/mg in the 2 x 2 cm segments. Conversely, the concentrations measured in the Appellant's hair specimens are much lower than what can be expected after even just a single exposure to Letrozole. Prof. Kintz conclusion is that these results demonstrate that the Athlete was incidentally exposed to trace amounts of Letrozole within two to four months preceding sample collection. (Noting that the Athlete was tested in September and was negative).

95. With regards to axillary hair, Prof. Kintz conceded that there is no international consensus in terms of what segments should be used for analysis given the varying nature of the axillary hair. While head hair its linear and experts know that the incorporation rate of the hair is 85%, axillary hair is not linear. Each fiber has its own life and can be curvy.

96. Still to Prof. Kintz, one month of growth in head hair is sufficient to understand timing of use. Four-eight months of axillary hair of growth is used for analysis. If we are dealing with one-time exposure of a limited amount of a drug, there would be a small spot of one month in head hair and for axillary hair it would be even less. The concentration of a substance detected in head hair would always be higher than that detected in axillary hair.

97. Confident with his analysis, Prof. Kintz explained that if the Athlete had taken just one pill or more *"we know what would have been expected concentration. It would be higher"*. Here he explained that the concentration of Letrozole detected in the Athlete's axillary hair was lower than the

concentration of 0.62 mg detected in his urine. To him, Letrozole could not have come from a voluntary ingestion of a Letrozole pill or repetitive ingestion of Letrozole for a performance enhancing benefit. In either case, Letrozole would have been detected on the axillary hair (and head head) in higher concentrations, which it was not.

98. Prof. Kintz also explained that while it may be more complicated to have exact results with just axillary hair, here, the axillary hair confirms the measurement from the head hair. It confirms not only that the AAF was likely caused by a singular incidental exposure or repetitive incidental exposure at a very low level, but additionally, because the concentration in the urine is so low and the results are so low in both the head and axillary hair – keeping in mind the negative urine test in September – the possibility that the Athlete inadvertently consumed more than what would be normally contained in just one Letrozole pill (which would offer no performance enhancement benefit whatsoever) can be excluded.

99. To Prof. Kintz, in the present case, we are dealing with one or more incidental exposures of Letrozole. Results of both the head and axillary hair analysis confirm and corroborate the same. Based on the timing of the tests (negative in September), it can be concluded that Letrozole to which the Athlete was exposed was less than a single voluntary exposure or single pill. It was minimal exposure with only traces of Letrozole in December 2020 and in January 2021, thus it was an accidental exposure

g) Dr. Mihkel Mardna

100. Dr. Marda is an Orthopedic surgeon who shares a doctor/patient relationship with the Appellant.

101. He has known the Athlete a long time. He explains that through hard work and dedication, the Athlete put on 12 kg in 12 years just working out, training and eating properly.

102. He submitted that he conducted a High Density Lipo-Protein ("HDL") test after the reporting of the AAF. This HDL test results were not produced but he explained that the results of the HDL test for a person who regularly uses Letrozole would show a lower HDL than normal. In the Athlete's case the results were normal.

103. He argued that it is crucial to give athletes the chance to defend themselves when very small concentrations of a substance that offer no performance enhancement are detected and that sanctioning clean athletes is a political tool. He submitted that the Athlete did not use Letrozole and should not be sanctioned for the inadvertent finding of a trace of Letrozole in his sample, especially as it is of no performance enhancing benefit to him.

h) Dr. Keith R. Ashcroft

104. Dr. Ashcroft is a Forensic Polygraph Examiner and Consultant, who was trained at the British Polygraph Academy, London and accredited by the American Polygraph Association and the British Accreditation Council.

105. Dr. Ashcroft formulated three questions to which the Athlete answered No.

- Did you ever purposefully take Letrozole?
- Did you even intentionally administer Letrozole to yourself?
- Did you ever deliberately use Letrozole?

106. Dr. Ashcroft opined that the analytical result of the Polygraph supports the conclusion that there were no significant reactions indicative of deception in the loading of the recorded changes in physiological activity in the response to the relevant test stimuli during his examination.

107. The purpose behind the questions was to determine if there was purposeful or intentional use of Letrozole. Dr. Ashcroft's conclusion is that the Appellant did not intentionally ingest Letrozole.

i) Dr. Detlef Thieme

108. He is Forensic Toxicologist and currently the Director of the Institute of Doping Analysis und Sports Biochemistry Dresden in Kreischa (IDAS Dresden).

109. Dr. Thieme opined that hair analysis is a valid scientific method employed to obtain additional evidence that can be useful to confirm the finding in urine or blood samples. He even suggested that Ms. Katia Shultz from his laboratory perform the hair extraction test in accordance with the forensic analysis of samples. Although he explained this was not done because ESTCIS refused to ask the laboratory to perform the analysis.

110. When discussing axillary hair, he explained that in principle it has a better retrospection than head hair, of up to eighteen months. It contains a smaller portion of hair that can be up to eighteen months old and act as a mirror of what was in an athlete's blood stream during that period of time.

111. Based on the factual evidence before him, Dr. Thieme concluded that there was no intake of Letrozole prior to June 2020 and no intake of Letrozole prior to September 2020.

112. The 6 January 2021 test result of 0.6 ng/mL is a low concentration but according to Dr. Thieme, this is a typical concentration for substances such as Letrozole unless the intake is intentional. He also confirmed that the limit of detection for Letrozole at his laboratory is 0.2 ng/mL and as far he knows, this the same as other WADA accredited laboratories.

113. Based on this finding, if it were the tail end of ongoing Letrozole abuse by the Appellant, the use would have had to take place between the end of September 2020 and the end of November 2020. There is no way you would do this and leave a trace amount of 0.6 ng/ml in

January 2021; the intake would have had to have been significant. Dr. Thieme stated that one single therapeutic application of Letrozole in October of November cannot be ruled out. But he agreed that there is no benefit to one single dose.

D. Additional Written Witness Statements

114. The Panel has also considered the statements of the following individuals who did not testify at the hearing but did file written submissions summarized below.

a) Mr. Ivar Kotkas

115. Ivar Kotkas is the Appellant's trainer. He explains that he has worked with the Appellant for years and describes him as a disciplined, exemplary and experienced athlete and role model.

116. He opines that the Athlete did not intentionally use Letrozole and this is most probably a case of accidental contamination for which the Athlete should not be responsible.

b) Mr. Henn Polluste

117. Henn Polluste was the Appellant's coach from 2022-2016. Under this guidance the Athlete won a silver medal at the London Olympic Games and was World Champion twice (2006 and 2013).

118. He explains that the Athlete has always been vigilant about proper nutrition and has always followed a strict nutrition and training regime. The Athlete is an honest and sincere person. He has always had good stamina and worked very hard to reach his goals.

119. For the minute finding of Letrozole to be confirmed to be the result of accidental exposure would be a relief and hopefully result in a quick ending to this case.

c) Mr. Jaanus Paeväli

120. Jaanus Paeväli is the President of the Estonian Wrestling Federation. He explains that the Appellant is a diligent and honest Athlete and role model and the best Greco-Roman wrestler in the history of Estonian wrestling.

121. He was shocked further to being informed of the positive finding of Letrozole and is convinced that because of its low concentration, it must have entered the Athlete's system accidentally. This is because he is a careful athlete who shows care in everything he eats and consumes in order to achieve the best physical form.

122. The Athlete's unwarranted punishment is taking a toll on his mental and physical health and his reputation, all of which are undeserved. There is no logic in punishing him further.

d) Mr. Tarvi Thomberg

123. Tarvi Thomberg is a member of the Management Board of the Estonian Wrestling Federation. He also submits that the Appellant is and has always been an exemplary athlete who has, to his knowledge, always understood and respected the fight against doping in sport.

124. The fact that the concentration of Letrozole was very low suggests accidental contamination and perhaps it came from the gym where he trains. To this end, Mr. Thomberg personally contacted the Gym to determine if there had been any other doping cases involving the Gym's members, but the Gym refused to disclose such information.

125. He says that punishing the Athlete with ineligibility seems unfair under the circumstances of accidental contamination.

V. CAS JURISDICTION

126. Article R.47 of the Code provides as follows:

> *"An appeal against the decision of a federation, association or sports-related body may be filed with the 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".*

127. The Appellant brings his case under Article 13.2.1 EADR which reads as follows:

> *"In cases arising from participation in an International Event or in cases involving International-Level Athletes, the decision may be appealed exclusively to CAS".*

128. The Parties confirmed CAS jurisdiction when they signed the Order of Procedure. The Panel accordingly confirms CAS jurisdiction.

VI. ADMISSIBILITY OF THE APPEAL

129. The Appealed Decision was taken on 27 June 2021 and notified to the Appellant, with grounds, on 1 July 2021. His Statement of Appeal was filed on 21 July 2021 and therefore within the 21-day deadline set out in Article 13.12.1 EADR. It further complied with the requirements of Article R48 of the Code.

130. In the absence of any objection to the admissibility of this appeal, the Panel confirms it as such.

VII. APPLICABLE LAW

131. Article R58 of the Code provides as follows:

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

132. In the present case, the *"applicable regulations"* for the purposes of Article R58 of the Code are those of the EADR because the appeal is directed against a decision issued by the Respondent in application thereof.

133. Article 24.3 EADR provides as follows:

"These Anti-Doping Rules have been adopted pursuant to the applicable provisions of the Code [i.e. the WADC] *and the International Standards and shall be interpreted in a manner that is consistent with applicable provisions of the Code and the International Standards. The Code and the International Standards shall be considered integral parts of these Anti-Doping Rules and shall prevail in case of conflict".*

134. The Panel finds that the applicable regulations are all pertinent EADR which reflect the WADC. In view of the fact that ESTCIS has its seat in Tallinn (Estonia), the Panel holds that, in principle, Estonian law shall apply on a subsidiary basis.

VIII. RELEVANT EADR PROVISIONS

135. The following provisions of the EADR are material to this appeal:

Article 2 EADR (Anti-Doping Rule Violations)

"The purpose of Article 2 is to specify the circumstances and conduct which constitute anti-doping rule violations. Hearings in cases will proceed based on the assertion that one or more of these specific rules have been violated.

Athletes or other Persons shall be responsible for knowing what constitutes an anti-doping rule violation and the substances and methods which have been included on the Prohibited List.

The following constitute anti-doping rule violations:

2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample.

[…]".

Article 10.2 EADR (Ineligibility for Presence, Use or Attempted Use or Possession of a Prohibited Substance or Prohibited Method)

"The period of Ineligibility imposed for a violation of Article 2.1, 2.2 or 2.6 shall be as follows, subject to potential elimination, reduction or suspension pursuant to Article 10.5, 10.6 or 10.7:

10.2.1 The period of Ineligibility, subject to Article 10.2.4, shall be four (4) years where:

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

10.2.1.2 The anti-doping rule violation involves a Specified Substance or a Specified Method and ESTICS can establish that the anti-doping rule violation was intentional.

10.2.2 If Article 10.2.1 does not apply, subject to Article 10.2.4.1, the period of Ineligibility shall be two (2) years.

10.2.3 As used in Articles 10.2 and 10.3, the term 'intentional' is meant to identify those Athletes or other Persons who engage in conduct which they knew constituted and 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. […]".

Article 10.5 EADR (Elimination of the Period of Ineligibility where there is No Fault or Negligence)

"If an Athlete or other Person establishes in an individual case that he or she bears No Fault or Negligence, then the otherwise applicable period of ineligibility shall be eliminated".

"[Comment to Article 10.5: This Article and Article 10.6 apply only to the imposition of sanctions; they are not applicable in the determination of whether an anti-doping rule violation has occurred. They will only apply in exceptional circumstances, for example, where an Athlete could prove that, despite all due care, he or she was sabotaged by a competitor. Conversely, No Fault or Negligence would not apply in the following circumstances: (a) positive test resulting from a mislabeled or contaminated vitamin or nutritional supplement (Athletes are responsible for what they ingest (Article 2.1) and have been warned against the possibility of supplement contamination); (b) the Administration of a Prohibited Substance by the Athlete's personal physician or trainer without disclosure to the Athlete (Athletes are responsible for their choice of medical personnel and for advising medical personnel that they cannot be given any Prohibited Substance); (c) sabotage of the Athlete's food or drink by a spouse, coach or other Person within the Athlete's circle of associates (Athletes are responsible for what they ingest and for the conduct of those Persons to whom they entrust access to their food and drink). However, depending on the unique facts of a particular case, any of the referenced illustrations could result in a reduced sanction under Article 10.6 based on No Significant Fault or Negligence]".

Article 10.6 EADR (Reduction of the Period of Ineligibility based on No Significant Fault or Negligence)

"10.6.1 Reduction of sanctions in Particular Circumstances for Violations of Article 2.1, 2.2 or 2.6.

All reductions under Article 10.6.1 are mutually exclusive and not cumulative.

10.6.1.1 Specified Substances or Specified Methods.

Where the anti-doping rule violation involves a Specified Substance (other than a Substance of Abuse) or Specified Method, and the Athlete or other Person can establish No Significant Fault or Negligence, then the period of ineligibility shall be, at minimum, a reprimand and no period of ineligibility, and at a maximum, two (2) years of ineligibility, depending on the Athlete's or other Person's degree of fault.

10.6.1.2 Contaminated Products

In cases where the Athlete or other Person can establish both No Significant Fault or Negligence and that the detected Prohibited Substance (other than a Substance of Abuse) came from a contaminated Product, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two (2) years of ineligibility, depending on the Athlete's or other Person's degree of fault".

[Comment to Article 10.6.1.2: In order to receive the benefit of this Article, the Athlete or other Person must establish Not only that the Detected Prohibited Substance came from a Contaminated Product, bust must also separately establish No Significant Fault or Negligence. It should be further noted that Athletes are on notice that they take nutritional supplements at their own risk. The sanction reduction based on No Significant Fault or Negligence has rarely been applied in Contaminated Product cases unless the Athlete has exercised a high level of caution before taking the Contaminated Product. In assessing whether the Athlete can establish the source of the Prohibited Substance, it would, for example, be significant for purposes of establishing whether the Athlete actually used the Contaminated Product, whether the Athlete had declared the product which was subsequently determined to be contaminated on the Doping Control Form. (…)]".

Appendix 1 - Definitions

"No fault or Negligence: The Athlete or other Peron's establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule. ***Except in the case of a Protected Person o Recreational Athlete, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered the Athlete's system****"* (emphasis added).

"No Significant Fault or Negligence: The Athlete or other Person's establishing that any 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. ***Except in the case of a Protected Person or Recreational Athlete, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered the Athlete's system****"* (emphasis added).

IX. PRELIMINARY MATTERS

A. The application of Article R65.2 of the Code

136. The Panel notes that Article R65.1 of the Code clearly *"applies to appeals against decisions which are exclusively of a disciplinary nature and which are rendered by international federations or sports-body"*. In the present case, the Appealed Decision was issued by the ESTCIS DB which is clearly neither an international federation, nor an international sports-body under the Code.

137. The Panel also notes that the history of Article R65.1 of the Code and its evolution compared to previous versions confirms that the drafters wanted to restrict the scope of the No Cost Rule, not to broaden it, and, in particular, to exclude decisions issued by a national federation or sports-body acting by delegation of powers of an international federation or sports-body from its scope of application.

138. Against this reasoning, the second sentence of Article R65.1 of the Code invoked by the Appellant is irrelevant.

139. Therefore, the Panel rules that the present case is not governed by Article R65 of the Code.

B. The admissibility of Mr. Heene Villamae's testimony

140. At the outset and closing of the hearing, the Appellant requested to strike Mr. Heene Villamae's testimony from the record because:

- His name was not mentioned in the Respondent's Answer of 8 November 2021;
- His name is not on the Respondent's list of hearing participants dated 28 December 2021;
- His name was announced after the expiring of the deadline to update the Respondent's list of hearing participants.

141. The Respondent argued that Mr. Heene Villamae is the Executive Director of ESTCIS and the Respondent's legal representative. He was not called as a witness. That does not preclude him from making statements as a party and answering the Panel's questions. Besides, at the closing of the hearing, the Respondent pointed out the fact the Appellant had brought forward Dr. De Boer's Milk Theory without evidence in support or objection from the Respondent.

142. Although both individuals' testimonies were admitted into the record, the Panel notes that neither evidence had any material bearing on the Panel's decision.

X. THE MERITS

A. Common Grounds Between the Parties

142. It is common ground that:

a. The Athlete's commission of an ADRV had been established by virtue of Article 2.1.2 EADR further to the B sample analysis confirming the finding of Letrozole in the Athlete's A sample;

b. ESTCIS was not able to establish that the ADRV was intentional; therefore, the starting point for the period of ineligibility is two-year under Article 10.2.2 EADR (subject to reduction or elimination based on other provisions of the EADR);

c. The Athlete bears the burden of establishing, on a balance of probabilities, that he is entitled to benefit from an elimination or reduction of the presumptive two-year period of ineligibility sanction under Article 10.5 (No Fault or Negligence) or 10.6 (No Significant Fault or Negligence).

B. Main Issues

143. In order to determine the appropriate sanction for the Athlete's non-intentional ADRV, the Panel must make findings on the following:

a. Has the Athlete established how Letrozole entered his system on a balance of probabilities?

b. Can the Athlete successfully rely on Article 10.5 EADR (No Fault or Negligence) or Article 10.6 EADR (No Significant Fault or Negligence) to benefit from a reduction in the mandated two-year period of ineligibility?

c. Should the two-year period of ineligibility be reduced based on the principle of proportionality?

a. Has the Athlete established how Letrozole entered his system on a balance of probabilities?

144. Not being contested that the ADRV was non-intentional the Panel must now consider each of the Appellant's theories to determine if any one of them allows him to satisfy his burden of proof on a balance of probabilities.

i. First Scenario: Consumption of Contaminated Turkey

145. The Panel offers the following succinct findings on this theory.

146. The Appellant has argued that Letrozole has been found to be useful to treat certain conditions and has been proven effective to decrease egg production in poultry farms where control of reproduction is necessary and that it is viewed as a viable alternative to steroid-based veterinary protocols due to Letrozole's lesser impact on consumer health, which is specifically relevant to the European Union where steroid-based veterinary treatment protocols are banned.

147. On Christmas Eve 2020, the Appellant ate turkey originated from an unknown French source. It has been impossible to trace the origin back to a producer other than his mother's recollection that it was packaged with a French national flag and the label was in French. Her evidence during the hearing supported the same.

148. The Panel accepts that the Appellant ate turkey for Christmas dinner in 2020 as prepared by his mother. However, the Panel notes that the Appellant did not provide credible and reliable evidence that Letrozole is in fact used in poultry, let alone turkey, farms relying uniquely on an article which indicated that Letrozole was found to have been used in Quail Farms in Japan.

149. In fact, his scientific reference is an article discussing control of reproduction in quails (dated 2019) and another article discussing the potential use of aromatase inhibitors for controlling ovarian function in cattle (dated 2017). However, according to the latter no reference was found on the actual use of aromatase inhibitors as a treatment for clinical conditions in animals, specifically turkeys. Moreover, the excretion of Letrozole in milk or residues in meat of treated animals has not been assessed or studied.

150. The Appellant was neither able to provide the required level of probability as to the origin of the turkey, nor the real possibility that it may have been contaminated by Letrozole.

151. Therefore, the Panel finds that the Appellant did not establish on a balance of probabilities that Letrozole detected in his urine sample came from the turkey.

ii. Second Scenario: Consumption of Contaminated Bovine Liver

152. The Appellant argues that the restaurant where the Athlete consumed the bovine liver on 4 January 2021 is a reputable restaurant where the Athlete has eaten, with no issues, on numerous occasions. It was explained that because the restaurant did not have Estonian liver on the day in question, it served Lithuanian liver from a company called Biovela.

153. Biovela has not provided any indication or responses to the Appellant's request on its veterinary treatment protocols.

154. Although the Athlete has relied upon the *Contador test* (CAS 2011/A/2384 & 2386) to establish the plausibility of a meat contamination case, the Panel finds the Respondent's argument to be more compelling than those of the Appellant on this point.

155. CAS 2020/A/7579 & 7580 offers additional guidance on some points germane to this case at para 147 wherein the Panel states:

> *"Athletes who have a clean record and do not have uncharacteristically poor competitive results before the violation (and thus avoid the possible inference that they had a motive to cheat) or uncharacteristically good results thereafter (which might be suggested to confirm cheating) will improve their prospects yet further if they can show an invoice from a restaurant indicating they were served meat which could be traced to a wholesale supplier known or suspected by regulatory authorities to feed steroids to its livestock".*

156. Applied here, the Panel notes that the Athlete has failed to trace the meat to a *"wholesale supplier known or suspected by regulatory authorities to feed steroids to its livestock".*

157. On the evidence, the Panel finds that there are no known or reported or even studied cases of Letrozole caused by meat contamination. There is no evidence that the restaurant's meat was or even may have been contaminated. The previously cited 2017 scientific study simply indicated that Letrozole may be used in some cattle farms even if not provided for or permitted by relevant cattle farming regulations in Europe and Dr. de Boer's testimony indicating that the liver is the *"garbage of the body"* and might be where Letrozole would find itself in a calf is unsupported.

158. Consequently, the Panel is of the view that none of these arguments allow the Appellant to satisfy his burden of proof of establishing that the bovine liver is more likely than not the source of Letrozole.

iii. Third and Fourth Scenarios: Transfer of Sweat and or Saliva from Other Wrestler Sparring or from Gym Equipment

159. In his written submissions, Dr. de Boer gave expert evidence that Letrozole behaves very similarly to Phencyclidine and that it is excreted in saliva and sweat which, if ingested and transmitted dermally, could plausibly trigger an AAF in the athlete's system. Wrestling is a contact sport, and it is certainly not beyond the realm of possibilities that from such contact (which is intense and lasts for minutes), the saliva or sweat of a doped athlete might enter the clean athlete's system, resulting in the (minimal) concentrations of the Letrozole metabolite and the parent compound being detected in urine or hair.

160. The Appellant argued that the same scenario is plausible when contaminated gym equipment is used, where the contaminated sweat might enter one's system by, for example, wiping one's face with the hand that had touched the contaminated gym equipment before. He explains that, as a power sports athlete, he is a regular user of the "Sparta Sports Club", a gym located in Tallinn which is also frequented by many clients who are amateur bodybuilders. *"These are people who do not compete at a professional level and are therefore not subject to doping controls but who nevertheless work on shaping their muscles and increasing their mass for the sake of appearance, not strength. In the course of his visits to Sparta Sports Club, the Appellant has noticed a number of other regular visitors who he seriously suspects of using steroids. Because there are so many of them, it is inevitable that the Appellant at times used the same gym equipment, shared toilets, washrooms, etc. with them".* The Appellant argues

that it is entirely possible that he was exposed to the sweat of doping users in December 2020 and/or January 2021 at the Sparta Gym.

161. In this regard, the Appellant relies on the Virginia Fuchs case were a low-concentration AAF in the urine of a U.S. boxer resulted in USADA accepting the athlete's science-based argument that the offending compound had entered her system through sexual intercourse with her boyfriend who had been receiving a Letrozole-based treatment protocol.

162. To additionally support this scenario, the Appellant also relies on a study conducted by German sports investigative journalist Hajo Seppelt and his team, together with the renowned "Institut für Rechtsmedizin" (Institute for Forensic Medicine) of the university hospital in Cologne/GER and the fact the Sparta Gym was found to be at the center of a drug bust in which Letrozole packets were found.

163. While this explanation may have swayed the Panel if it had been able to be supported by compelling expert testimony and scientific studies, in the end it was quickly discarded as a possible source of Letrozole when Dr. de Boer at the hearing confirmed that this scenario was less probable than the one of meat contamination, which the Panel has already rejected.

164. As the First Instance Panel found, *"no known case has been identified during the hearing in which the athlete's adverse analytical finding could have resulted in exposure to letrozole in such manner. There is also no reference to any scientific study suggesting that letrozole may enter the body in this way. In practice, reference has been made to the potential for transmission of doping substances through human contact, but in such cases, there has always been evidence of the user of the particular substance through which the doping substance was transmitted. There is no such evidence in this case".*

165. In such a context, the Panel finds that (i) without tangible scientific evidence to support this theory, and (ii) given the complexities of Letrozole effectively passing through two bodily systems and two skin barriers, and (iii) the Athlete's inability to identify with any kind of certainty the individual who might have transmitted Letrozole, and (iv) the fact the no other of the many Estonian athletes who train at the Sparta Gym tested positive from Letrozole, this theory must be rejected as unlikely.

iv. The Milk powder theory

166. A final theory was brought forward during the hearing by Dr. de Boer according to which, in a case involving a Belgian cyclist, Letrozole would allegedly have been detected in milk powder. However, the Panel has not been tendered any specific submissions in this regard and therefore, while potentially interesting, the Panel does not rely on this evidence.

v. Finding

167. The Panel finds, as submitted, that the Appellant has successfully ruled out the following other scenarios involving no fault or negligence:

- Intentional use of the Substance (analyses by Dr. Ashcroft, Dr. de Boer and Prof. Kintz);
- Contaminated medication (analysis by Prof. Kintz);
- Contaminated food supplements (analysis by Prof. Kintz);
- Sabotage (due to the extremely low concentration of the Substance).

168. However, for the reasons provided above, the Panel finds that none of the alternative theories the Appellant has brought forth are sufficiently scientifically probable to convince the Panel on a preponderance of the evidence that their occurrence is more likely that their non-occurrence. He thus fails to establish to source of Letrozole to the required standard of proof.

b. Can the Athlete successfully rely on Articles 10.5 EADR (No Fault or Negligence) or 10.6 EADR (No Significant Fault or Negligence) to benefit from a reduction in the mandated two-year period of ineligibility?

169. The Athlete claims that the development in analysis capabilities has led to *"conclusively establishing the source of the prohibited substance being unrealistic ad unattainable in many instances"*. Relying on CAS 2019/A/6313 and CAS 2019/A/6443 & 6593, the Athlete argues that the EADR must also be understood to leave a corridor open through which an athlete who has not been able to conclusively identify the specific source of the prohibited substance may pass to reach such a finding of No (Significant) Fault or Negligence.

170. The Panel begins with what it considers the foundation of its analysis, namely that establishing the specific source of a prohibited substance is required when an athlete seeks to prove No Fault or Negligence or No Significant Fault or Negligence under the definitions of No Fault or Negligence and No Significant Fault or Negligence in the EADR (reproduced with emphasis above).

171. Unlike Article 10.2.1.1 EADR, which does not explicitly require an athlete to establish how the prohibited substance entered in his or her system in order to establish that an ADRV was not intentional, the very definitions of No Fault or Negligence and No Significant Fault or Negligence in the EADR unambiguously require, for any such finding under Articles 10.5 and 10.6 EADR, that the athlete *"establish how the prohibited substance entered his or her system"*. The Panel finds the definition clear and unequivocal.

172. The Appellant argues that the establishment of how the prohibited substance entered the athlete's system *"is not part neither of the actual provisions of art. 10.5 EADR and art. 10.6 EADR nor of the related comments (unlike, e.g., art. 10.2.1.1 EADR) but of the Definitions section only. The requirement is therefore from the outset not of the same legal significance as if it were part of the actual provisions"*.

173. However, the Panel rejects this argument because Article 24.4 EADR clearly provides that *"the introduction and Appendix 1 shall be considered integral parts of these Anti-Doping Rules"*.

174. The Panel also notes that the *"narrowest corridor"* invoked by the Appellant only applies to cases involving non-specified substances and only to allow an athlete to pass from a four-year period of ineligibility to a two-year period of ineligibility, based on their lack of intention, in the event that in the face of extraordinary circumstances they are unable to establish the source of the AAF.

175. The Panel thus finds that intention is irrelevant in this case when assessing the applicability of Articles 10.5 or 10.6 EADR, as the substance is a Specified Substance. In any event, on the evidence, the Panel reiterates that it is undisputed that the ADRV was not intentional.

176. This evidence includes the Polygraph test results, which both Parties confirm support the general conclusions that the Appellant's ingestion of Letrozole was not intentional. On this, the written and oral evidence of Dr. Ashcroft is not contested and thus accepted by the Panel.

177. This evidence also includes the hair analysis results. On this, the Appellant successfully relies on CAS 2019/A/6313, CAS 2020/A/6978 & 7068 and CAS 2017/A/5301 that have all placed evidentiary weight and relied on hair analysis, when considered alongside all the other evidence in the case file in their reasons. The Panel accepts the evidence of Prof. Kintz, whom both parties agreed was a reliable scientific expert. Taking into consideration the estimated concentration of Letrozole detected in the Athlete's sample and the results of the hair tests, the Panel accepts that the method by which Letrozole entered the Athlete's system was inadvertent exposure to Letrozole, because (in simple terms):

- The urine concentration of Letrozole is low when compared to what can be measured after repetitive use of Letrozole;
- The concentration of Letrozole measured in the Athlete's head hair and axillary hair is very low and therefore could only be explained by a single use;
- There is no pharmacological gain to use Letrozole on one single occasion.

178. Relying on the maxim *"Ultra posse nemo obligatur"*, according to which no one is obliged beyond what he is able to do, the Appellant also argues that he has done everything reasonably possible to satisfy his burden of proof. He further notes that while the detection of trace amounts of prohibited substance has helped the fight against doping in sport, it has concurrently increased the risk of sanctioning innocent athletes. He thus argues that the burden of proof should favor the athlete and that this Panel should give the Appellant the benefit of the doubt because the more preferrable outcome remains to acquit a guilty athlete than to sanction an innocent athlete.

179. The Panel notes that the burden of proof in this case is the same as in all other doping cases. Article 3.1 of the EADR provides that:

"ESTCIS shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether ESTCIS has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules place the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, except as provided in Articles 3.2.2 and 3.2.3, the standard of proof shall be by a balance of probability".

180. Here, pursuant to Article 2.1.2 EADR, the Respondent has established the commission of an ADRV by virtue of the B sample analysis confirming the A sample finding of Letrozole in the Athlete's Sample and the ADRV is not contested by the Appellant.

181. Therefore, pursuant to Article 3.1 EADR, the Appellant bears the burden to rebut the presumption that the ADRV occurred and/or bears the burden to establish the source of Letrozole on a balance of probabilities.

Additionally, the Panel notes that all athletes are bound by the principle of strict liability meaning essentially that all athletes, including the Appellant, are responsible for any prohibited substance found in their sample. As defined in Appendix 1 of the EADR, the term *Strict Liability* refers to *"The rule which provides that under Article 2.1 and Article 2.2,* ***it is not necessary that intent, Fault, Negligence, or knowing Use on the Athlete's part be demonstrated*** *by the Anti-Doping Organization in order to establish an anti-doping rule violation"* (emphasis added).

182. Against this, the Panel accepts that CAS case law has found that it is not necessary to identify one particular source as the most likely one for the Appellant to be able to benefit from Articles 10.5 or 10.6 EADR and a possible reduction in sanction. As the Panel held in CAS 2017/A/5301 & 5302 (cf. also CAS 2014/A/3615, para. 52; CAS 2012/A/2759, paras. 11.31–11.32):

"The standard of proof of balance of probability requires that the occurrence of a scenario suggested by an athlete must be more likely than its non-occurrence, and not the most likely among competing scenarios".

183. In the present case, as was the case in CAS 2020/A/7579 & 7580, conclusive evidence of contamination in some ultimately unidentifiable way is practically impossible. And still, while the Panel accepts that such contamination did conceivably occur, there remains an obligation to identify a source of origin of the prohibited substance.

184. In CAS 2020/A/7579 & 7580, the athlete was unable to identify a source or origin of the AAF (there for Ligandrol) and argued that as far *"as she knows (or so she says), her exposure to contamination could have taken place practically anywhere – gym, pool, public toilet, hotel, baggage claim at an airport, and so on"* (Para 160). That contention was difficult to sustain for the Panel in CAS 2020/A/7579 & 7580 and was ultimately rejected; this notwithstanding the apparent communicability of Ligandrol, an essential element the Appellant has not been able to establish here as Letrozole has not been proven to be communicable, thus rendering the Appellant's contentions even harder for the Panel to accept.

185. It must also be noted that in CAS 2020/A/7579 & 7580, notwithstanding her protestations of innocence, the athlete accepted at an early stage in the appeal process that she had failed to avoid ingestion of a prohibited substance. To be clear, in circumstances similar to the ones at hand, the athlete accepted that because she could not establish the source of the Ligandrol to the required standard of proof, she could not benefit from a reduction of sanction based on Articles 10.5 or 10.6 EADR and her degree of fault. She instead focused her appeal on her lack of intention under Article 10.2.1 to try to get her period of ineligibility reduced from four to two years (which as explained above is not in issue here as it widely accepted that the Athlete's ADRV is not intentional).

186. The Panel relies on CAS 2020/A/7579 & 7580 , wherein when discussing the indiscriminate effect of anti-doping rules, the Panel stated at para 106:

> *"**Disciplinary bodies do not make the rules and are tasked with applying them**. But in the semiotic interstices of the texts one can find significant space for result-oriented ratiocination, and the one-size-fits-all characteristics of the rule on reduction of ineligibility may tempt arbitrators to make allowances for specific circumstances – such as the great difference from sport to sport of the likelihood of being able to compete at an elite international level of competition, and thus the different impact of the same period of ineligibility on athletes whose international competitiveness may be of greatly contrasting duration given the physical demands of their sport. But **the time and place for making such allowances is when such rules are drafted (and amended), not in making individual decisions**"* (emphasis added).

187. Thus, as it is of course *"highly desirable that rules be applied in a uniform manner, in order that those affected by their application may be aware of the consequences of their action and satisfied that they are given the same treatment as others in their situation"*, this Panel cannot apply Articles 10.5 and 10.6 of the EADR (and reduce the Athlete's two year period of ineligibility based on his (absence of) fault) because he has ultimately been unable to establish the source of Letrozole in his urine sample to the required standard of proof as expressly required in the applicable rules.

188. While the Appellant valiantly argues otherwise, it cannot be disputed, as expressly stated in the EADR definition of both No Fault on Negligence and No Significant Fault or Negligence, that in order to benefit from any elimination or reduction in a mandated two-year sanction, an athlete is required to establish how the prohibited substance entered his body (i.e. the source of the Prohibited Substance), and that he has not done so.

189. Therefore, the Panel rejects all of the Athlete's contentions that he need not establish the source of the Prohibited Substance in order to successfully rely upon and benefit from Articles 5 and 6 of the EADR. Because the Appellant failed to establish, on a balance of probabilities, how Letrozole entered his system, he cannot benefit from a reduction in his period of ineligibility on the basis of having No Fault or No Significant Fault for the ADRV.

c. Should the two-year period of ineligibility be reduced based on the principle of proportionality?

190. The Appellant has argued that the principle of proportionality should apply here to reduce his presumptive two-year sanction based on the exceptional circumstances of his case.

191. The Panel relies on CAS case law which confirms that the principle of proportionality has already been considered and incorporated in the drafting of Articles 10.5 and 10.6 of the WADC (corresponding to Article 10.5 and 10.6 EADR).

192. As set out in CAS 2008/A/1489, *"the no fault or negligence and no significant fault or negligence exceptions to otherwise strict liability anti-doping rule are themselves embodiments of the principle of proportionality"* (see also CAS 2017/A/5015 & CAS 2017/A/5110, CAS 2016/A/4643, CAS 2017/A/5546 & 5571).

193. Likewise, in CAS 2019/A/6451 the Panel underlined that, *"even an 'uncomfortable feeling' regarding a sanction mandated in the rules, had there been one, would not have been sufficient to involve the principle of proportionality where the applicable rules include a sanctioning regime which is proportionate and contains clear and concise mechanism which allows for a reduction of the applicable sanction"* (see also CAS 2005/A/830, CAS 2008/A/1473).

194. Here, the Panel indeed has *"an uncomfortable feeling"* regarding the applicable period of ineligibility. Notwithstanding the same, relying on the above case law, the Panel stresses that this uncomfortable feeling is not sufficient to involve the principle of proportionality by reducing the sanction that has been ruled appropriate on the basis of facts and evidence before the Panel, and more conclusively on the basis of the applicable rules.

C. Conclusion

195. The Panel is satisfied on a balance of probabilities that the finding of Letrozole in the Athlete's sample is the result of incidental exposure. However, the Panel cannot rewrite the law. The EADR explicitly define what requirements are necessary in order for an athlete to benefit from their No Fault or No Significant Fault provisions. The source of the AAF must be established on a balance of probabilities and here – it is not.

196. In fact, none of the possible scenarios provided allow the Athlete to satisfy, on a balance of probabilities, his burden to establish the source of Letrozole detected in his urine sample.

197. The Panel acknowledges the difficulty in such an outcome. The Appellant is a world class athlete, a credible witness and unfortunate victim of what has been determined to be inadvertent administration of trace amounts of Letrozole from an unknown source. He is paying a heavy price for incidental circumstances that may, or may not, have been outside of his control, and should not be branded as a cheater or a doper.

198. Against this, however, the Panel must apply the rules and the applicable law, and the law clearly states that the source of the substance must be established in order to benefit from any reduction under Articles 10.5 or 10.6 EADR.

199. Therefore, on the legal basis that he has not established the source of Letrozole on a balance of probabilities, the Panel cannot grant the Appellant's request for relief. As a result, he must serve out the rest of his two-year period of ineligibility imposed in accordance with Article 10.2.2 EADR.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr. Heiki Nabi on 21 July 2021 against the decision issued by the Disciplinary Board of the Estonian Center for Integrity in Sports on 27 June 2021 is dismissed.

2. The decision issued by the Disciplinary Board of the Estonian Center for Integrity in Sports on 27 June 2021 is confirmed.

3. (…).

4. (…).

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