CAS 2023/A/9451 Association Russian Anti-Doping Agency (RUSADA) v Ms Kamila Valieva
CAS 2023/A/9455 International Skating Union (ISU) v Ms Kamila Valieva and The Russian Doping Agency
CAS 2023/A/9456 World Anti-Doping Agency (WADA) v Russian Anti-Doping Agency (RUSADA) and Ms Kamila Valieva

ARBITRAL AWARD

rendered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President of the Panel:	Mr James Drake, KC, Barrister, London, United Kingdom
Arbitrators:	Mr Jeffrey Mishkin, Attorney, New York, United States of America
	Prof. Dr Mathieu Maisonneuve, Professor of Law, Aix-Marseille, France

in the consolidated arbitrations between

Association Russian Anti-Doping Agency (RUSADA), Moscow, Russian Federation
Represented by Mr Graham Arthur, Solicitor, Liverpool, United Kingdom

Appellant in CAS 2023/A/9451
Second Respondent in CAS 2023/A/9455
First Respondent in CAS 2023/A/9456

and

International Skating Union (ISU), Lausanne, Switzerland
Represented by Mr Pierre Kobel, Attorney-at-Law, Athena Law, Geneva, Switzerland, and Ms Christine Cardis, ISU Antidoping Director, Lausanne, Switzerland

Appellant in CAS 2023/A/9455

and

World Anti-Doping Agency (WADA), Lausanne, Switzerland
Represented by Mr Ross Wenzel, WADA General Counsel, Lausanne, Switzerland, and by Mr Nicolas Zbinden, Mr Adam Taylor and Mr Anton Sotir, Attorneys-at-Law, Kellerhals Carrard, Lausanne, Switzerland

Appellant in CAS 2023/A/9456

and

Ms Kamila Valieva, Moscow, Russian Federation
Represented by Mr Andrea Pinna, Ms Raphaelle Haïk and Ms Olga Cucu, Attorneys-at-Law, Pinna Legal, Paris, France, and Mr Prosper Abega, Attorney-at-Law, Marseille, France

Respondent in CAS 2023/A/9451
First Respondent in CAS 2023/A/9455
Second Respondent in CAS 2023/A/9456

I. THE PARTIES

1. The Association Russian Anti-Doping Agency, often referred to as the Russian Anti-Doping Agency ("**RUSADA**"), is the National Anti-Doping Organisation ("**NADO**") for the Russian Federation (hereafter "**Russia**"). It operates pursuant to the provisions of the All Russian Anti-Doping Rules, being the Anti-Doping Rules approved by the order of the Ministry of Sport of the Russian Federation of 24 June 2021, No 464 (the "**Russian ADR**").

2. The International Skating Union (the "**ISU**") is the international federation ("**IF**") for the sport of figure skating and is recognised as such by the International Olympic Committee (the "**IOC**"). It has its registered seat in Lausanne, Switzerland. The ISU published the ISU Anti-Doping Rules compiled in accordance with the World Anti-Doping Code 2021 (effective date 1 January 2021 (the "**ISU ADR**").

3. The World Anti-Doping Agency ("**WADA**") is a Swiss private law foundation with its registered seat in Lausanne, Switzerland and its headquarters in Montreal, Canada. WADA was created in 1999 to promote, coordinate and monitor the fight against doping in sport. WADA publishes the World Anti-Doping Code, which provides the framework for anti-doping policies, rules, and regulations for sports organisations and related public bodies throughout the world, and on which the Russian ADR are based. The relevant version of the WADC for these appeals is the World Anti-Doping Code 2021 (the "**2021 WADC**")

4. Ms Kamila Valieva ("**Ms Valieva**" or the "**Athlete**") is an elite-level figure skater from Moscow, Russia. She is an "International-Level Athlete" as that term is used in the Russian ADR and the WADC. At the time of the events in question, the Athlete was 15 years of age, born in April 2006. She has enjoyed extraordinary success as an athlete: for example, she is the 2022 European champion, the 2021 Rostelecom Cup champion, the 2021 Skate Canada International champion, and a silver medallist in the Russian National Figure Skating Championships in 2021 and 2023. She took part in the XXIV Olympic Winter Games in Beijing (the "**Beijing Olympics**") where she was a member of the Russian Olympic Committee ("**ROC**") delegation and won the gold medal in the figure skating team event. It is common ground that the Athlete was at all material times a "**Protected Person**" according to the definition of that term in the Russian ADR (and the WADC), namely "*An Athlete … who at the time of the Rules violation: (a) has not reached the age of sixteen years …*".

5. The parties are collectively referred to herein as the "**Parties**".

II. OUTLINE OF THE APPEAL

6. This is the consolidation of appeals by RUSADA, the ISU and WADA to the Court of Arbitration for Sport ("**CAS**") pursuant to the Code of Sports-related Arbitration (2023 edition) (the "**CAS Code**") against a decision of the Russian Disciplinary Anti-Doping

Committee (the "**DADC**") dated 24 January 2023 (Decision No. 9/2023) (the "**Challenged Decision**").

7. As will be expanded upon below, these appeals concern an alleged anti-doping violation ("**ADRV**") on the part of the Athlete in a competition in Saint Petersburg, Russia on 25 December 2021, on which day the Athlete was subject to an in-competition anti-doping test conducted on behalf of RUSADA. The Athlete provided a urine sample which, as is customary practice, was divided into two: an 'A' sample numbered A170859V (the "**A Sample**") and a 'B' sample numbered B170859V (the "**B Sample**") (collectively, the "**Sample**"). The Sample was sent for analysis to the doping control laboratory at the Karolinska University Hospital in Stockholm, Sweden (the "**Stockholm Laboratory**"), accredited by WADA in respect of the analysis of biological samples. The Stockholm Laboratory analysed the A Sample and reported a presumptive "Adverse Analytical Finding" ("**AAF**") for trimetazidine. Trimetazidine ("**TMZ**") is, according to the WADA 2021 Prohibited List, a "Prohibited Substance". The presence of TMZ was confirmed by the Stockholm Laboratory's subsequent analysis of the B Sample. It is on the basis of the Stockholm Laboratory's analyses that the Athlete was charged with the ADRV.

8. By her Answer, the Athlete resisted these appeals on three grounds: (a) that the CAS does not have jurisdiction over these appeals; (b) that, if the CAS does have jurisdiction, then, on the merits, the alleged ADRV has not been proven; and (c) if the ADRV has been proven, then (i) her violation was not intentional or (ii) she bore no fault or negligence or (iii) she bore no significant fault or negligence. As to (b), the Athlete submitted that "*the Appellants' claims will be dismissed on the merits because no doping and no violation of RUSADA ADR is proven*". In particular, it was said that the Prohibited Substance was not "*validly found in the Athlete's Sample*" because "*in the present case … the analysis of the Athlete's Sample showed not to be in conformity with the applicable rules*" in that the Stockholm Laboratory conducted its analyses in a manner that did not conform to the applicable international standards. The Athlete sought a declaration that "*no violation of the RUSADA ADR is proven and re-establish the Athlete in the results obtained at the 2021 Russian Figure Skating Championships in St. Petersburg*".

9. In the event, during the hearing in Lausanne, and after the examination of the factual and expert witnesses as to the analyses performed by the Stockholm Laboratory, the Athlete withdrew her case on the merits, thereby accepting that the analyses performed by the Stockholm Laboratory were valid and that, accordingly, the Appellants had proven the ADRV.

10. That being so, the issues for determination on this appeal were narrowed to the following:

    a. Does the CAS have jurisdiction over these appeals?

    b. If yes, what sanctions, if any, should be imposed on the Athlete in respect of the ADRV?

III. FACTUAL BACKGROUND

A. General

11. Set out below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced in these proceedings (including an agreed chronology of events) and from matters of public knowledge. While the Panel has considered all matters put forward by the Parties, reference is made in this Award only to those matters necessary to explain the Panel's reasoning and its decision.

12. It may assist the reader of this award if certain individuals are identified at the outset:

    a. Ms Alsu Anvarovna Valieva is the Athlete's mother ("**Ms Alsu Valieva**").

    b. Mr Gennaidy Vasilyevich Solovyov is the father of the former partner of Ms Alsu Valieva and was referred to by the Athlete as her grandfather. He will be referred to in this Award as "**Mr Solovyov**" or the "**Grandfather**".

    c. Ms Etere Tutberidze is and was the Athlete's principal coach ("**Ms Tutberidze**"). The team of figure skaters coached by Ms Tutberidze will be referred to as the "**Tutberidze Team**". The Tutberidze Team trained in Moscow at the Khrustalny Ice Palace (the "**Ice Palace**").

    d. Ms Evgenia Tarasova, one of the Athlete's team-mates ("**Ms Tarasova**").

    e. Dr Fillip Shvetskiy, named by the Athlete as her doctor ("**Dr Shvetskiy**").

    f. Dr Anton Pohanka, director of the Stockholm Laboratory ("**Dr Pohanka**").

    g. Mr Leonid Ivanov, the RUSADA Deputy Director General for Security -- Head of Investigations Department ("**Mr Ivanov**").

13. On 31 May 2021, the ISU sent (under cover of an email from Ms Cardis, the ISU anti-doping director and others) to the Athlete notification that the Athlete had been included in the ISU Testing Pool (the "**ISU Testing Pool**") for 2021/2022. The notice included the following:

    "*ISU testing Pool, inclusion and corresponding obligations*

    ln accordance with the World Anti-Doping Code and its International Standards published by the World Anti-Doping Agency (WADA), as well as with the ISU Anti-Doping Rules and the ISU Anti-Doping Procedures, the ISU identifies each season the Skaters to be included in the [ISU Testing Pool] for the purpose of its Anti-Doping testing program. ..."

14. The cover email asked the Athlete to "*confirm by a return message that you have well received and understood the notice of inclusion in the* [ISU Testing Pool] *as well as the documents enclosed*".

15. The Athlete did so the same day, 31 May 2021, saying "*received and read, thank you*".

16. On 22 July 2021, the Athlete, together with her mother, Ms Alsu Valieva, signed the ISU's "*Declaration for Competitors and Officials entering ISU Events*" (the "**ISU Declaration for Competitors**"). The ISU Declaration for Competitors provided in relevant part as follows:

"*I, Kamila Valieva … hereby make the following declaration and confirm that it is applicable to all of the above-mentioned Competitor's or Official's activities, performances, services, rights and responsibilities in all Events and activities conducted under the auspices, sanction or jurisdiction of the ISU. Declarations of Competitors who have not reached the age of 18 (the age of majority in Swiss law which governs ISU matters) must be co-signed by at least one of the Competitor's parents or the Competitor's lawful guardian.*

I/we, the undersigned,

I) accept the ISU Constitution, which establishes an ISU Disciplinary Commission … and recognizes the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland as the arbitration tribunal authorized to issue final and binding awards involving the ISU, its Members and all participants in ISU activities, excluding all recourse to ordinary courts (Articles 26 & 27); and

…

VI) am familiar with the ISU Code of Ethics … as well as ISU Anti-Doping Rules and ISU Anti-Doping Procedures … and also with the current List of Prohibited Substances and Methods and I declare that I will fully comply with such Rules. …"

17. Article 27 of the ISU Constitution is irrelevant for present purposes. Article 26 of the ISU Constitution provides as follows (where DC stands for the ISU Disciplinary Commission):

"*Article 26 Court of Arbitration for Sport (CAS) – Appeals Arbitration*

1. Appeals

Appeals against decisions of the DC, and of the Council when allowed by explicit provision of this Constitution, may be filed with the Appeals Arbitration Division of the Court of Arbitration for Sport (CAS), Lausanne, Switzerland.

2. CAS Jurisdiction

The CAS shall have the power to hear and decide appeals in the following cases: a) Against any decision of the DC, or of the DC Chair in the case of Article 25, paragraph 8.e). b) Against decisions of the Council imposing any penalty on or suspension of ISU Membership of an ISU Member. c) Against any decision of the Council declaring ineligibility of a Skater, Official, Office Holder or other participant in ISU activities. d)

Against any decision of the Council sitting as a disciplinary body hearing charges against a member of the DC. e) Against any decision of the Council not sanctioning an Open International Competition relating primarily to the application of the ethical criteria or technical and sporting criteria. For any other dispute relating to the ISU's decision, the ISU will enter an arbitration agreement at the request of the Applicant to refer the matter to the ordinary arbitration procedure at CAS in accordance with the Code of Sports-Related Arbitration.

3. Appellant

The appeal may be filed by the person or ISU Member concerned (the "Offender") or by the ISU in cases under paragraph 2.a) of this Article 26.

4. Deadline

The appeal must be filed in writing with the CAS and the Secretariat within 21 days from the communication of the decision to the party having the right of appeal.

5. Language

All such sport appeal arbitration proceedings in the CAS shall be conducted in English under the Special Provisions of the CAS Code of Sport-Related Arbitration applicable to Appeal Arbitration Proceedings.

6. Finality of Decisions

Decisions of the CAS shall be final and binding to the exclusion of jurisdiction of any civil court. This is without prejudice to the right of appeal before the Swiss Federal Tribunal in accordance with Swiss law and the right to challenge the enforcement or recognition of an award on grounds of public policy in accordance with any applicable national procedural laws."

18. The Russian National Figure Skating Championships (the "**Russian National Championships**") were held from 21 December through to 26 December 2021 in St Petersburg, Russia. At the time the Athlete competed in the Russian National Championships, she was 15 years old. She competed in and won the women's free skating event on 25 December 2021.

19. As noted above, on the same day, 25 December 2021, the Athlete was subject to an in-competition anti-doping test conducted on behalf of RUSADA. The Athlete duly provided the Sample. The doping control form ("**DCF**") is dated 25 December 2021 and contains a declaration on the part of the Athlete that she had, over the previous seven days, used "*L-carnitine, Supradyn, Hypoxen*".

20. The Sample was sent for analysis to the Stockholm Laboratory, a laboratory at the Karolinska University Hospital in Stockholm, Sweden, and a WADA accredited laboratory. Within the Stockholm Laboratory, the following things took place:

a. On 29 December 2021, the Sample arrived via courier at the Stockholm Laboratory, which registered the receipt in the Stockholm Laboratory's Laboratory Management Information System ("**LIMS**"). The A Sample was assigned laboratory code 202107432A and the B Sample was assigned laboratory code 202107432B. The A Sample was opened and aliquoted, with five aliquots drawn, numbered 202107432A-1, 202107432A-2, 202107432A-3, 202107432A-4, and 202107432A-5.

b. On 30 December 2021, the Stockholm Laboratory commenced its Initial Testing Procedure ("**ITP**") of the aliquots of the A Sample. (The Parties and the Panel use the term Initial Testing Procedure according to its definition in the International Standard for Laboratories ("**ISL**") as follows: "*An Analytical Testing Procedure whose purpose is to identify those Samples which may contain a Prohibited Substance, Metabolite(s) of a Prohibited Substance, or Marker(s) of the Use of a Prohibited Substance or Prohibited Method or an elevated quantity of a Prohibited Substance, Metabolite(s) of a Prohibited Substance, or Marker(s) of the Use of a Prohibited Substance or Prohibited Method.*")

c. The Stockholm Laboratory was closed for the period 30 December 2021 through to and including 10 January 2022.

d. On 11 January 2022, the Stockholm Laboratory recorded that the ITP of the A Sample had returned a positive result for the drug Trimetazidine (or "**TMZ**"). (It is common ground that TMZ is included in S4.4 of the Prohibited List 2021 and is classified as a Non-Specified Substance.)

e. On 12 January 2022, the Stockholm Laboratory drew a further aliquot from the A Sample, denoted as "202107432A-6", for the purposes of assessing specific gravity.

f. On 12 January 2022, the Stockholm Laboratory commenced its Confirmation Procedure of the A Sample. An aliquot was taken for this purpose, denoted as "202107432A-7". (The Parties and the Panel use the term "**Confirmation Procedure**" according to its definition in the ISL as follows: "*An Analytical Testing Procedure that has the purpose of confirming the presence and/or, when applicable, confirming the concentration/ratio/score and/or establishing the origin (exogenous or endogenous) of one or more specific Prohibited Substances, Metabolite(s) of a Prohibited Substance, or Marker(s) of the Use of a Prohibited Substance or Prohibited Method in a Sample.*").

g. On 17 January 2022, the Stockholm Laboratory rejected the Confirmation Procedure on 202107432A-7 for "*unsatisfactory Quality Control results*". According to the Stockholm Laboratory, this was "*due to poor chromatographic peak shape of the reference material, providing unsymmetrical chromatographic peaks*".

h. On 19 January 2022, the Stockholm Laboratory took a further aliquot from the A Sample, denoted as "202107432A-8" and commenced a second Confirmation Procedure. This was also rejected for "*unsatisfactory Quality Control results*".

i. On the same day, 19 January 2022, the Stockholm Laboratory took a further aliquot from the A Sample, denoted as "202107432A-9", and began the Confirmation Procedure on that aliquot the same day.

j. On 20 January 2022, the Confirmation Procedure on 202107432A-9 was "*also rejected for* "*unsatisfactory Quality Control results*, specifically, an unsatisfactory *Quality Control chromatographic profile*".

k. On or about the same day, 20 January 2022, the Stockholm Laboratory took the decision "*to develop a new analytical method for the Confirmation Procedure, because the repeated failure of the peak shape was unexpected as the analytical method in force was deemed fit-for-purpose after validation*".

l. In the period 31 January to 3 February 2022, the Stockholm Laboratory prepared what is entitled "*Trimetazidine, Lomerizine and metabolite confirmation with UHPLC-HRMS, Validation plan*" (the "**Validation Plan**"). (UHPLC-HRMS stands for "*ultra-high performance liquid chromatography-high resolution mass spectrometry*".) The Validation Plan set forth a means by which "*a qualitative confirmation method for prohibited non-threshold compounds … shall be validated. Validation is carried out in accordance with the [ISL], section 'Confirmation Method for non-threshold substances'*", stating that "*the method validation shall demonstrate that the method is 'fit-for-purpose'*".

m. On 4 February 2022, a further aliquot was drawn from the A Sample, denoted as 202107432A-10.

n. On 7 February 2022, the Stockholm Laboratory issued its "*Trimetazidine, Lomerizine and metabolite, UHPLC-HRMS, Qualitative Confirmation, Validation report*" (the "**Validation Report**"). In the Validation Report, the Stockholm Laboratory concluded that the proposed method was "*fit-for-purpose*".

o. On the same day, 7 February 2022, the Stockholm Laboratory completed the Confirmation Procedure on 202107432A-10 and (i) recorded the result in the Stockholm Laboratory's LIMS and (ii) submitted to WADA's Anti-Doping Administration & Management System ("**ADAMS**") a "Test Report" stating that the test result was an "Adverse Analytical Finding" (or "**AAF**") for the A Sample for "*S4. Hormone and metabolite Modulators/ trimetazidine*".

p. On 8 February 2022, the Stockholm Laboratory provided to RUSADA (in response to an inquiry as to the level of concentration detected by the Stockholm Laboratory) an approximate concentration of 2.1 ng/mL (or 0.0021 mg/L). This was provided upon the stated qualification that there was no requirement to

report the concentrations of non-threshold substances (such as TMZ) and that "*the laboratory has applied a method that was developed for qualitative purposes and, other than having established that the mentioned substance is present in the Sample at a concentration above the method's limit of identification, assignment of the absolute concentration of the analyte in the Sample falls outside the intended purpose*".

q. On 9 February 2022, the Stockholm Laboratory issued its 'Laboratory Documentation Package' (the "**LDP**") with respect to the A Sample. Amongst other things, the LDP recorded the positive result for TMZ in the Athlete's A Sample.

21. On 4 February 2022, the Beijing Olympics formally commenced with the opening ceremony.

22. On 6 and 7 February 2022, as a member of the ROC delegation to the Beijing Olympics, the Athlete competed in the 'Team Event – Women's Single Skating – Free Skating', for which she and her Russian teammates took the gold medal.

23. On 8 February 2022, RUSADA notified the Athlete of the presumptive AAF in respect of the doping control that had been conducted on 25 December 2021 (as described above) and that she was provisionally suspended as from the date of the notice. In relevant part, the notice from RUSADA was as follows (emphasis in original):

"*The Russian Anti-Doping Agency "RUSADA" hereby informs you that it received from the Stockholm Anti-Doping Laboratory the conclusion about the discovery of* ***trimetazidine*** *according to the class S4.4 of the WADA 2021 Prohibited List in the doping sample* ***A170859V*** *taken from you at the Russian Figure Skating Championship in Saint-Petersburg on December 25, 2021.*

Please note that, pursuant to Article 9.4.1 of the All-Russian Anti-Doping Rules and Article 7.4.1 of the World Anti-Doping Code, ***you are provisionally suspended from participation in competitions and other activities under the provisions of Article 12.14.1 of the All-Russian Anti-Doping Rules and Art. 10.14.1 of the World Anti-Doping Code*** *as from the date of this Notice.*

You may submit a request for a preliminary hearing on the imposed Provisional Suspension or a final hearing to the RUSADA Disciplinary Anti-Doping Committee on an expedited basis in accordance with clause 9.4.4 of the All-Russia Anti-Doping Rules and Article 7.4.3 of the World Anti-Doping Code. The request should be sent to RUSADA by e-mail rusada@rusada.ru. …"

B. The Proceedings before the DADC (February 2022) (Provisional Suspension)

24. On or about 8 February 2022, the Athlete invoked her right to request a preliminary hearing before the DADC on the question of the provisional suspension.

25. On 9 February 2022, the DADC held a hearing (by videoconference) in Moscow. It appears that RUSADA and the Athlete appeared before the DADC.

26. The DADC decided that, on application of a standard of proof that there was a "*reasonable possibility*" that the Athlete consumed a contaminated product, the Athlete had established the circumstances in which she had consumed the prohibited substance and determined that, accordingly, she bore no fault and no consequences should therefore be imposed (the "**DADC Decision on Provisional Suspension**"). In particular, the DADC stated as follows:

"*The Committee believes that the contaminated product the Athlete could have consumed could have been contaminated by the drugs used in her inner circle. The Athlete assumes that the contamination occurred through dishes used by the Athlete and the Athlete's grandfather (through drinking liquid from the same glass, as well). … The entry of a prohibited substance into the Athlete's body through contamination is confirmed by the Athlete, with expert testimony among them.*"

27. The DADC Decision on Provisional Suspension was communicated to the Athlete and to RUSADA on the same day, 9 February 2022, and a formal decision was issued by the DADC on 24 February 2022.

C. The Proceedings before the CAS Ad Hoc Division – XXIV Winter Olympic Games in Beijing (February 2022) (Provisional Suspension)

28. On 11 and 12 February 2022 (i.e., before the formal decision was made available), the IOC, WADA, and the ISU appealed the DADC Decision on Provisional Suspension to the Ad Hoc Division – XXIV Winter Games in Beijing, which appeals were, by order of the panel (the "**Ad Hoc Panel**"), consolidated. The respondents in the appeals were RUSADA, the ROC, and the Athlete.

29. An expedited hearing was held by the Ad Hoc Panel on 13 February 2022, conducted by videoconference. Each of the appellants in that appeal sought (*inter alia*) to set aside the DADC Decision on Provisional Suspension, while the respondents sought (inter alia) the following relief (paraphrased):

a. RUSADA: for the CAS panel to conduct a de novo hearing "*at which all interested parties may be heard and a full consideration by CAS of all the relevant evidence to take place*" and that the panel determine, on the balance of probabilities whether grounds exist for the elimination of the provisional suspension.

b. ROC: for the appeals to be dismissed, provided that the CAS finds that it has jurisdiction.

c. The Athlete: for the panel to decline to hear the appeals on the basis that CAS Ad Hoc Division lacked jurisdiction over the Athlete; alternatively, confirmation of the DADC Decision on Provisional Suspension.

30. As just noted, the Athlete (then represented by different counsel) submitted at that stage that the CAS Ad Hoc Division had no jurisdiction with respect to a decision of the DADC and that the appeal should have been brought before the CAS Appeals Division. In particular, the Athlete submitted as follows:

    a. Article 15.2 of the Russian ADR provides that where International-Level Athletes are involved "A *decision to apply or lift a Provisional Suspension as a result of Provisional Hearings"* are to be appealed exclusively to CAS.

    b. "*Such appeals are adjudicated by the CAS Appeals Division.*"

    c. "*There is no provision in the RUS ADR giving jurisdiction to the CAS ADH to adjudicate a decision of the Disciplinary Anti-Doping Committee to lift a provisional suspension.*"

31. After hearing the parties, the Ad Hoc Panel (a) determined that the CAS Ad Hoc Division did have jurisdiction and (b) dismissed the appeals as follows:

    "*The Ad Hoc Division of the Court of Arbitration for Sport renders the following decision:*

    1. The Ad Hoc Division of the Court of Arbitration for Sport has jurisdiction to determine the Applications filed by the International Olympic Committee (IOC), World Anti-Doping Agency (WADA) and International Skating Union (ISU).

    2. The Applications filed by the International Olympic Committee (IOC), World Anti-Doping Agency (WADA) and International Skating Union (ISU) are dismissed."

32. It followed that the Athlete was free to continue to compete at the Beijing Olympics (and generally) pending the formal determination (or other resolution) of the ADRV.

33. The Athlete participated in the individual event at the Beijing Olympics on 15 and 17 February 2022 and finished in fourth place.

D. The Results Management (Continued)

34. On 17 March 2022, at the Athlete's request, the Stockholm Laboratory conducted an opening and analysis of the B Sample in the presence of an ISU representative, an independent representative from Antidoping Sverige, and the Athlete's representative. The results indicated the presence of TMZ. The Stockholm Laboratory completed the Confirmation Procedure on the B Sample and (i) recorded the result in the Stockholm Laboratory's LIMS and (ii) submitted to ADAMS (on 18 March 2023) a test report stating that the test result was an AAF for the B Sample for "*S4. Hormone and metabolite Modulators/ trimetazidine*".

35. On 18 March 2022, RUSADA informed the Athlete of the results of the B Sample analysis:

"*RUSADA would like to inform you that according to your request the Stockholm Anti-Doping Laboratory performed an opening of the B170859V sample.*

The results of the test B170859V show the presence of trimetazidine which is prohibited in class S4.4 of the WADA List 2021 in your sample, which confirms the results of the test A170859V.

Please note that according to the provision of Article 5.1.2.b of the International Standard for results management, if the B Sample analysis confirms the A Sample analysis, you have the right to provide or add to your explanation as soon as possible. In addition, you are given the opportunity to admit the anti-doping rule violation in order to potentially benefit from a reduction of one year's Ineligibility period under Article 12.8.1 of the All-Russia Anti-Doping Rules and Article 10.8.1 of the World Anti-Doping Code."

36. On 4 April 2022, the Stockholm Laboratory issued its LDP for the B Sample. Amongst other things, the LDP recorded the positive result for TMZ in the Athlete's B Sample.

37. In mid-May 2022, RUSADA provided to the Athlete copies of the LDPs for the Sample and the Athlete asked RUSADA to obtain answers to a number of questions for the Stockholm Laboratory in relation to the contents of the LDPs. These questions were:

    a. "*What specific actions (strictly according to the list with a detailed description of each of them understandable to a non-specialist) and for what specific purpose were performed on January 17 and 19 with the athlete's sample?*"

    b. "*For what purposes and when were aliquots Nos. 7-9 taken, what actions were performed with them, and for what reason was this information not reflected in the laboratory packages?*"

38. On 27 May 2022, RUSADA forwarded to the Athlete the Stockholm Laboratory's answers to these questions. The answers were as follows:

    a. Question 1:

    "*On 2022-01-17 the Athlete sample 170859A was moved from storage in freezer 9036708 to sample reception and aliquoted for confirmation procedure of the presumptive adverse analytical finding of trimetazidine. Aliquot number was 2O22O7432A-8. After aliquoting, the sample was moved back on the same date 2O22-OI-17 to storage in freezer 9036708.*

    On 2022-01-19 the Athlete sample 170859A was moved from storage in freezer 9036708 to sample reception and aliquoted for confirmation procedure of the presumptive adverse analytical finding of trimetazidine. Aliquot number was

2O22O7432A-9. After aliquoting, the sample was moved back on the same date 2022-01-19 to storage in freezer 9036708."

b. Question 2:

"*On 2022-01-12, aliquot 202207432A-7 was produced at the same time as 202207432A-6, for confirmation procedure of the presumptive adverse analytical finding of trimetazidine. Thus, aliquots 202207432A-7, 202207432A-8, 202207432A-9 were all produced for confirmation procedure of the presumptive adverse analytical finding of trimetazidine. The three confirmation procedures were rejected due to unsatisfactory quality control results and are not basis for the reported result.*

ln the Laboratory Documentation package, the "A" Sample container Laboratory Internal Chain of Custody is present (page 7) and also the CP Aliquot Laboratory Internal Chain of Custody is present (page 10, aliquot 202L07432A-10). This is in accordance with technical document TD2022LDOC.

As aliquots 7-9 are not the basis for the reported confirmation procedure result, they are not included in the Laboratory Documentation package. Aliquot 10 is the basis for the reported confirmation procedure result and therefore included in the Laboratory Documentation package."

39. On 18 May 2022, the Athlete submitted an explanation to RUSADA. It was headed "WRITTEN STATEMENTS REGARDING THE RESULTS OF THE DOPING SAMPLE ANALYSIS OF THE ATHETE KAMILA VALIEVA COLLECTED ON 25TH DECEMBER 2021 AT THE RUSSIAN FIGURE SKATING CHAMPIONSHIP IN SANKT-PETERBURG**".** This will be referred to herein as the "**Athlete's May 2022 Explanation**". For present purposes, it is noted that the Athlete set forth the following "*possible scenarios*":

a. First, ingestion via food prepared by or shared with Mr Solovyev.

b. Second, via the contamination of one of the medications taken by the Athlete before her competitions.

c. Third, "*sabotage*" by "*an intruder*" by "*planting/slipping a prohibited substance in the food or water*" of the Athlete.

40. On a date unknown, the Athlete sought answers from the Stockholm Laboratory to the following further questions:

a. "*What are the real reasons for the delay in providing the results of the doping test?*"

b. "*Why were nine test results in a row (Aliquots Nos. 7-9) considered unsatisfactory by the Laboratory?*"

c. "*Are the results of comparison of retention time by isotope labelled ISTD method consistent with WADA Technical Document TD2021lDCR, and if not, how does the Laboratory explain the fact that this circumstance was not taken into account when determining the test result?*"

41. On 1 September 2022, the Stockholm Laboratory provided answers to the Athlete's further questions, as follows (in relevant part):

a. "*Confirmation procedures (CP) for aliquots 7, 8 and 9 were rejected due to unsatisfactory chromatography for the certified reference material. The CP was deemed unfit-for-purpose, and a new method for confirmation procedure was developed and validated. The validation was completed and authorized before the confirmation procedure of aliquot 10. Although the delay was due in part to the rejection of CPs and validation of a new method for CP, Covid-19 infections amongst staff severely affected the laboratory's ability to proceed faster.*"

b. "*Each confirmation procedure of trimetazidine contains three parameters. This means that three confirmation procedures will result in a total of nine parameter results. All parameters were rejected in conjunction with the rejection of the CPs.*"

c. "*The relative retention time criterium as stated in WADA technical document TD2A2I|DCR is fulfilled for both A and B sample analysis.*"

42. In early September 2022, the Athlete addressed further questions to the Stockholm Laboratory as follows:

"*As per your response dated 1 September 2022, confirmation procedures for aliquots nos. 7-9 were "rejected due to unsatisfactory chromatography for the certified material". We understand that there was no difference between method for confirmation applied for aliquots nos. 7-9 and method for confirmation applied for aliquots nos. 1 - 6. Could you please confirm this.*

If this is the case, why did confirmation procedures for aliquots nos. 1 - 6 and aliquots nos. 7-9 lead to different results; and does this mean that confirmation procedures for aliquots nos. 1- 6 were also conducted with wrong method?

If the method for confirmation procedure for aliquots nos. 1 - 6 was indeed different from aliquots nos. 7-9, what were the reasons for changing the method for confirmation?

ln any way, we kindly request to provide the results of confirmation procedure for aliquots nos. 7-9 for the sake of completeness.

Further, it is also stated in the response that "the CP was deemed unfit-for-purpose, and a new method for confirmation procedure was developed and validated. The validation was completed and authorized before the confirmation procedure of aliquot

10". What is the difference between the method for confirmation applied for aliquots nos. 7-9 and method for confirmation applied for aliquot no. 10?"

43. On 15 September 2022, the Stockholm Laboratory provided answers to those questions, as follows:

"*Aliquots 1 to 6:*

Aliquots 1 to 6 were not used for confirmation procedures of trimetazidine.

Aliquots 1 to 5 were aliquots taken from the sample A170859V to perform in-competition initial testing procedures (ITP) and additional requested analysis [EPOs (including recombinant EPOs and analogues) and GnRH, GHRF (GHS/GHRP)].

Aliquot 6 was used for analysis of specific gravity as it shall be analysed and reported in conjunction with confirmation procedure(s).

The confirmation procedures for aliquots 7 to 9 were rejected due to unsatisfactory chromatography for the certified material, ie there were no analytical result.

The confirmation procedure for aliquot 10 was optimized regarding sample preparation and parameters for the analytical platform; liquid chromatography coupled to high resolution mass spectrometry."

44. On 22 September 2022, RUSADA notified the Athlete of the "*continuation of the results management procedure of your possible violation of anti-doping rules under cl 4.1 and cl. 4.2 of the* [Russian ADR]" (the "**Notice of Charge**"). After noting the explanations provided for the presence of the prohibited substance in her body when tested, RUSADA said this:

"*Having considered the explanations provided by you, RAA RUSADA sends you a notice of charge for violation of cl 4.1 and cl. 4.2 of the Rules*.

On the basis of cl. 4.1 of the Rules it is the Athletes' personal duty to ensure that no prohibited substance enters their bodies. Athletes are responsible for any prohibited substance or its metabolites or markers found in their samples.

On the basis of cl. 4.2 of the Rules the sufficient evidence of a violation of the Rules is the presence of a prohibited substance or its metabolites or markers in an Athlete's A sample when the Athlete does not exercise the right to analyze the B sample and the B sample is not analyzed; and when the B sample analysis confirms the presence of the prohibited substance or its metabolites or markers in the Athlete's A sample.

Therefore, the fact that the B sample analysis confirmed an Adverse Analytical Finding of the A sample is sufficient evidence of the presence of a prohibited substance in you're a sample and of an anti-doping rule violation under cl. 4.1 and cl. 4.2 of the Rules. …

In accordance with cl. 11.1 of the Rules, all the results achieved by you on December 25, 2021, at the Russian Figure Skating Championship in Saint-Petersburg are subject to cancellation. In accordance with the cl. 12.10 of the Rules, all other results achieved by you in competitions from the date of a positive doping sample shall be cancelled with all the ensuing consequences, including forfeiture of medals, points and prizes, unless otherwise required by the principle of fairness. These consequences will be binding on all signatories in all sports and countries in accordance with cl. 18.1 of the Rules.

...

If you do not accept the proposed consequences, you may contest the charge in anti-doping rule violation in writing form [sic] *and/or submit a written request for a hearing before the Disciplinary Anti-Doping Committee. ...*"

45. On 12 October 2022, the Athlete responded to the Notice of Charge as follows (in relevant part):

"The athlete does not accept the charges brought against her by RUSADA, and does not agree with the sanctions – consequences proposed by RUSADA.

Athlete, in accordance with the Article 10.1.1 of the All-Russian Anti-Doping Rules ("Rules") (as well as 8.1 of the WADA Code), asks RUSADA to transfer the case on Charges Athletes for consideration by the RUSADA Disciplinary Anti-Doping Committee ("DAC RUSADA") according to the established procedure, which will conduct the appropriate hearings.

The athlete, taking into account the Article 10.6 of the Rules, reserves the right to submit a written position to the DAC RUSADA on the merits of the Charge from the moment she receives a full case of materials identical to the one that RUSADA will transfer to the DAC RUSADA."

E. The RUSADA/ WADA Investigation(s)

46. On 8 February 2022, RUSADA commenced an investigation (the "**RUSADA Investigation**") pursuant to Article 1.3 of the Russian ADR, which provides that, in the event of an ADRV by a Protected Person, RUSADA is obliged to carry out an investigation of the athlete's support personnel and to cooperate with WADA in connection with any such investigation. The investigation conducted by RUSADA was "*into the circumstances in which Ms Valieva ingested TMZ*", the subjects of the investigation being "*the Athlete Support Personnel with whom Ms Valieva was associated*". The RUSADA Investigation was headed by Mr Ivanov. Mr Ivanov conducted a number of interviews with the Athlete and with certain of her support personnel resulting in transcribed statements, while other support personnel and other relevant witnesses provided written statements to RUSADA.

47. On or around 28 February 2022, WADA commenced an investigation (the "**WADA Investigation**") pursuant to Article 20.7.14 of the WADC (which provides that one of

the roles and responsibilities under WADC is "[t]*o intiate its own investigations of anti-doping rule violations, non-compliance of Signatories and WADA-accredited laboratories, and other activities that may facilitate doping*"). The WADA Investigation was also concerned to understand how the Prohibited Substance entered the Athlete's body but had "*a broader scope and one which includes other matters, such as the possible involvement of others (i.e. Athlete Support Persons), compliance with International Standards, the nature and sufficiency of education provided to young athletes, the impact on and the treatment of the Athlete throughout the entirety of the process, including in particular, her participation in the 2022 Beijing Winter Olympics*". WADA also provided assistance to RUSADA with respect to the RUSADA Investigation. According to Mr Aaron Walker, Deputy Director, WADA Intelligence and Investigations Department ("**Mr Walker**") the mandate of the WADA Investigation was to ensure that the RUSADA investigation was compliant with the WADC and related International Standards and was "*conducted without interference or impediment*". WADA also investigated the reasons why the Stockholm Laboratory did not report the AAF until 7 February 2022.

48. On 15 March 2022, RUSADA conducted an interview of the Athlete's mother, Ms Alsu Valieva. Her statement may be summarised as follows:

a. Ms Valieva began figure skating in 2009. She joined the Tutberidze Team in April 2018.

b. The following people work with the Athlete at the Ice Palace:

a) Coaches: Ms Tutberidze, Mr Dudakov, Mr Gleikhengauz, Ms Kseneniya (the choreographer), and one Ms Zheleznyakov (for the jazz class).

b) Doctors: Dr Adamov, Dr Shumakov and Dr Shvetskiy.

c) Masseur: Mr Solomatin.

c. Dr Adamov and Dr Shumakov worked mainly with Ms Valieva (they worked in shifts); Dr Shvetskiy attended the Ice Palace "*from time to time*" and escorted the Athlete to competitions.

d. Ms Valieva undergoes Russian Federal Medical and Biological Agency (the "**FMBA**") examinations every six months "*as without it the athletes shall not be allowed to take part in the competitions*". The last examination was on 3 November 2021.

e. At the end of 2020, Ms Valieva was diagnosed with "*athlete's heart*" and was prescribed Hypoxen. For a period after that, she underwent a medical examination every month and an examination on 4 May 2021 showed that her heart had returned to "*normal*". "*After that there were no problems with the heart.*"

f. Ms Valieva uses Hypoxen "*occasionally in in-competition period*". It is recommended by Dr Adamov and Dr Shumakov and provided by Dr Shumakov.

g. Dr Shumakov usually prescribes and provides the medications to Ms Valieva. Dr Shvetskiy also provides medications before competitions.

h. The medications are "*given in the full sealed packages. Kamila checks them in RUSADA's system. Additionally, vitamin D3, calcium and magnesium were used.*"

i. The training schedule is as follows:

    a) Five days training, one day off [sic].

    b) Training starts at 10:30am. The second training starts at 3:30pm.

    c) Ms Valieva goes home between the sessions.

    d) She is a working woman and goes to work each weekday morning. She asked Mr Solovyov "*to attend the trainings and escort her to the trainings*". She did so because Ms Valieva was once followed by her male fans "*to become acquainted*" and because someone needs to be at the rink should Ms Valieva suffer an injury and need someone to take her to hospital.

    e) Mr Solovyov "*comes by car to our house, drives her to the training, picks her up after, stays with her at home, drives her to the training again and after that he leaves*".

j. On 21 December 2021, Mr Solovyov drove Ms Valieva to training at the Ice Palace and stayed with her there. In the evening of 21 December 2022, Mr Solovyov collected the Valievas' dog to look after it while the Valievas were away at the Russian National Championships.

k. On 22 December 2021, she and the Athlete (and all the other athletes on the Tutberidze Team) took the Sapsan train from Moscow at approximately 9:00am and arrived in St Petersburg for the Russian National Championships at approximately 1:30pm. They returned at approximately 7:00pm on 28 December 2021.

l. Mr Solovyov "*had high blood pressure (190/100) at the end of February*" 2021. He went to hospital but is now discharged. He needs a little time to recover before he can speak with RUSADA. He has had a heart disease for more than 20 years, he is monitored by doctors and has had heart surgery. As he lives separately, she "*was not interested in which medications*" he was taking. Once it was known that TMZ was found in Ms Valieva's system, she clarified with Mr Solovyov that he was taking TMZ.

49. On or shortly after 22 March 2022, the FMBA provided to RUSADA (in an undated letter) details of the medications and supplements prescribed by the FMBA in the period 1 January 2020 to 31 December 2021 as follows:

"[I]*n the period from 01.01.2020 to 31.12.2021 the athlete Kamila Valieva was given the following medications, sports nutrition and dietary supplements by the Center's doctors Mr Adamov, Mr Shvetskiy and Mr Shumakov: Amino Vital Multi Energy, Stimol, oral injection solution, Magnelis B6, Vitrum Superstress, Panangin Forte, Hypoxen capsules, L-Carnitine, fluid Mg complex, Kreon, Flitrum-STI, Imudon, Polyoxidonium, Ibuclin, Versatis plaster, Sustamin, Nimesulid, Traumeel S, Supadryn, ISODRINX, Orthomol Sport, Geladrink, Agisept, Grippferon, Doppelhertz aktiv, CoQ10, Glycine, Tot'hema, Ketrolac, Sorbifer Durules, Riboxin, Berocca Plus, Gorpils, Maxilac, Omega 3, Stimol, Amino Vital, Bilactin, Diara, Metoclopramide, Voltaren, Junior Active Complex, SportExpert, BCAA+, Esslial Forte, Amino Vital Gold, Aspirin C, Valmedin drops, Guarana 300, Carmolis lolly, Coldrex Maksgrip, Creatine Ox, Xylometazoline, Tot'hema, Cytovlavin pills, Tilaxine, Calcimine Advance, Imudon, Hypoxen, Alfa Normix, ACC … .*"

50. On 30 March 2022, RUSADA interviewed Ms Tutberidze, who also provided a written statement, a summary of which is as follows:

a. Ms Tutberidze has been coaching Ms Valieva since 2018.

b. Mr Gleykhengauz and Mr Dudakov have also been coaching her since that time.

c. The doctors providing medical support to Ms Valieva were Dr Shumakhov and Dr Adamov. Dr Shvetskiy is a "*mobile doctor of the national figure skating team assigned to my group of the athletes*"; he goes to the competitions with the team. Dr Ozerov is in charge of the admission of the athletes to the competitions and for the organisation of the medical examination by the FMBA.

d. As a coach, Ms Tutberidze "*do*[es] *not control and do*[es] *not discuss with the team doctors the medications and supplements, which are given to the athletes of the team*".

e. Ms Valieva did not complain about any problems with her heart except in March 2021 when the FMBA recommended, upon a detailed medical examination, that she decrease her workload.

f. Ms Tutberidze was aware that Dr Shvetskiy had been accused of violating anti-doping rules but did not consider this an issue given that "*he does not manage the medical treatment and provide medical support to the athletes but organizes the additional medical observation, consultations as well as escorts the team to the competitions as a sports doctor for the provision of the first aid*". The Russian Figure Skating Federation had no objections regarding the appointment of Dr Shvetskiy as a team doctor.

51. On 20 June 2022, Mr Ivanov interviewed Dr Shumakov, who provided a written statement, a summary of which is as follows:

    a. Dr Shumakov has a degree from Kazan State Medical University (1996-2001), in radiology and neurology and has been working as sports doctor since 2011 and since 2017 with the Tutberidze Team.

    b. Dr Shumakov has "*no scenarios on the ingestion of the prohibited substance trimetazidine in the Valieva`s body. The dietary supplements and medications are issued to the athletes from the list suggested by FMBA. I request them in advance before sports gatherings are held and, further, I give them to the athletes according to the recommendations*".

    c. He and his colleagues "*strictly forbid*" the athletes from buying any medications and dietary supplements not through FMBA.

    d. Hypoxen is not prohibited, if it was issued, it was done with consideration of the age.

    e. Ecdysterone has not been given.

    f. Ms Valieva had been diagnosed with heart disease and she was under FMBA care (he did not remember when). Dr Shumakov followed the given FMBA recommendations.

    g. Dr Shumakov did not use TMZ in his medical practice. He does not use prohibited methods and substances in his work.

    h. For the Russian National Championships in St Petersburg in December 2021, Dr Shumakov travelled separately from the Tutberidze Team. Dr Shumakov provided medical support to the Tutberidze Team at that event, together with Dr Shvetskiy, Dr Ozerov and Mr Solomatin (the team masseuse).

52. On 26 July 2022, RUSADA conducted an interview of the Athlete at the offices of Monastyrysky, Zyuba, Stepanov & Partners, the Athlete's legal representatives in Moscow. WADA also took part in the interview. The primary focus of the interview was as to "*how Trimetazidine could have been found in* [the Athlete's] *body*". This will be referred to herein as the "**Athlete's July 2022 Interview**".

53. The salient points in the interview may be summarised as follows:

    a. She left Moscow for the Russian National Championships in St Petersburg on 22 December 2021. She travelled by Sapsan train, returning to Moscow on 28 December 2021. She travelled with her mother and with the other members of the Tutberidze Team; they rode in the same carriage.

    b. The evening before, 21 December 2021, her grandfather gave her a strawberry dessert. She decided to take it with her on the short journey to St Petersburg. She

took it with her on the Sapsan and, closed, placed it into the fridge. It was enough for a few days. "*I do not eat it in one goal [sic]. I eat it by bits.*"

c. She was approached by the doping control officer (the "**DCO**") after the free skating program. She gave her sample and she signed the DCF. She listed in the DCF all substances that she could remember taking within the last seven days.

    a) She listed Hypoxen. She was "*prescribed with this by the sports doctor and recommended to use it before competitions*" – by Dr Shumakov and Dr Adamov.

    b) She listed L-carnitine. "*The sports doctors prescribe this too. They said it turns fat into energy*".

    c) She could not recall whether she had been using any other dietary supplement, sport nutrition or medication that were not reported on the DCF.

d. She offered three possible "*versions*" to explain the presence of TMZ in her system:

    a) The first version was it happened at lunch with her grandfather on a training day. "*Yes we had lunch, Grandfather also often gave me something like apple pure or a berry sweet made from berries … condensed milk, bananas or some juice, and maybe … He also takes pills following the doctors' recommendations and, probably, this pill got into a dessert, which he usually gives to me. Or, I saw a few times accidentally, that he crushed the pills with the knife and dissolves them in a glass, and took them. So I might have drunk from the same glass or there, at home, I might have eaten something from the same chopping board and so on.*"

    b) The second version is "*the contamination of some medications, as this happened before, those situations arose and that is why that could not be excluded*".

    c) The third version: "*In St Petersburg, in comparison with organisation of other events, with … Sochi or Olympic Games … the narrative during the Russian Championship in St Petersburg was not really good as the premises where the athletes were coming in, warming up, eating and generally getting ready before start, were full of strangers, who definitely should not be there. So, there were a lot of relatives of the athletes, who were freely moving around, had … free access to the dressing room as well as to the area where athletes were eating. Mother's friend also got an accreditation, however, I cannot say that she is somehow relevant to sport, but she still got the accreditation with high level of access, so she could get to the areas … .*"

e. She stores most of her medications and supplements in the dressing room at the Ice Palace in a unit with a combination lock and some in her house in a separate cabinet.

f. She used vitamin D3, calcium and magnesium that her mother bought for her, which she checked on the RUSADA anti-doping PRO system. She did not know where her mother bought these supplements.

g. There was no conflict with teammates or with any other competitors.

h. She could not recall taking Ecdysterone. She could not explain why it was found to be in her system by the Stockholm Laboratory.

i. At the end of 2020, during the regular six-monthly examination, the FMBA diagnosed her as having an "*athlete's heart*". She was told to reduce her training load and she was prescribed Hypoxen and L-carnitine. The FMBA checked in March 2021 and she was told that "*everything was fine and it has not happened since*".

j. She spends plenty of time with her grandfather and has, a few times, seen how he took his pills. "*He crushes them when he feels really bad.*" She was not watching him "*purposely*" but it was most likely that he mixed the crushed powder with water.

k. Mr Solovyov stores his pills in "*a personal bag*".

l. She was not "*really interested*" in the names of the pills taken by Mr Solovyov. She "*did not pay any attention; it was not needed*". It was "*only after I was found with doping I asked him whether he has such pill the same substance, drug, which was found in my sample.*"

m. She tried to avoid drinking from the same bottle or glass as Mr Solovyov but "*it is not always possible to avoid but I am trying to do my best to exclude this*".

n. No one has recommended that she use TMZ.

o. There was never a situation where her support personnel gave her pills the name of which she did not know. "*I always try to check even what is given to me by the sports doctor, just in case.*"

p. Her diet is recommended by a dietologist – "*balanced food, meat, grains, vegetables, fruits and sometimes something else*".

q. In the future she is going to be "*more concerned about every supplement and is going to be more careful*".

r. Her grandfather is not doing "*really well*", he was in hospital in March and his he suffers from high blood pressure. Since the Beijing Olympics, her grandfather has not prepared any food for her.

54. On 2 August 2022, Mr Ivanov interviewed Dr Shvetskiy, who also provided a written statement, a summary of which is as follows:

a. Dr Shvetskiy graduated from the Perm Medical Academy in 2002 with a degree in general medicine. He is, additionally, qualified as a sports doctor and an anaesthesiologist, and has been working as a sports doctor since 2005 and is the sports doctor for the Russian national figure skating team. He has worked with the Tutberidze Team since 2018 and has therefore been working with the Athlete "*as one of her team doctors*".

b. In 2007, while a member of the Russian rowing national team, Dr Shvetskiy was sanctioned for the use of a prohibited method (injection of authorised medications by a prohibited method). After the end of his period of ineligibility in 2009, Dr Shvetskiy continued his work with the Russian national teams. He has since become "*more responsible with the compliance with the anti-doping rules as a doctor, an athlete support personnel and have started to be more attentive when working with the athletes requesting them to strictly follow the anti-doping rules*".

c. Dr Shvetskiy's main responsibility on the Tutberidze Team "*is the provision of medical support … during off-site activities (competitions, off-site trainings) as well as provision of the medical support during the on-site training at the skating rink*".

d. Dr Shvetskiy also organises "*consultative medical care*" for the members of the Tutberidze Team with various Moscow medical institutions.

e. Dr Shumakov is responsible for "*requesting dietary supplements, sports nutrition, medications*" for the Tutberidze Team. Any decision relating to placing an order for dietary supplements, sports nutrition and medications is made by Dr Shumakov.

f. Dr Adamov also provides medical support and is responsible the organisation of physiotherapy treatments and other "*detailed medical examinations*" in the FMBA.

g. In 2021, Ms Valieva was diagnosed with a "functional disorder of the conduction system of the heart muscle", which did not require any "*medical correction*" or for Ms Valieva to cease training. Dr Shvetskiy did not recommend to Ms Valieva "*any medications for correction of this disease, but someone from the other team doctors or doctors of FMBA might have prescribed something*".

h. Dr Shvetskiy did not recommend that Ms Valieva use Hypoxen.

i. As for Ecdysterone, it was "*not commonly prescribed to the athletes*" of the Tutberidze Team "*but probably was prescribed to some athlete once by someone from the team doctors. Probably someone from the team athletes, including Kamila Valieva, might have gotten Ecdysterone for the intensive training in the basic period, but I am not aware of that.*"

j. When Dr Shvetskiy prescribed dietary supplements or medications to the Tutberidze Team, he was "*guided by their appropriateness considering the age (+/- a year) and pursuant to the annotation to the dietary supplement or medication*".

k. Dr Shvetskiy and the other team doctors and coaches "*are carefully monitoring the athletes` weights, especially the young ones. The athletes are recommended the diets.*" They "*instructed the athletes and their parents … on the need to check all dietary supplements and medication for their presence in the WADA Prohibited List and the need to consult with the team doctor at the purchasing dietary supplement and medications in addition to the one given by FMBA*". Dr Shvetskiy and the other team doctors do not recommend purchasing any medications other than those given by FMBA.

l. In November-December 2021, "*the disorder of the biliary system in Kamila Valieva was detected following the results of the abdominal scan and biochemical analysis and the medications, which are not prohibited in sport, were recommended for the use and treatment, I don`t remember their name, but choleretics*". Mrs Valieva asked for recommendations in this regard. Dr Shvetskiy checked the names provided by Mrs Valieva and made sure that the medications were not included in the WADA Prohibited List and he approved their use.

m. Ms Valieva's grandfather always escorted her to the training during autumn 2021.

n. Dr Shvetskiy travelled to the Russian Championships in St. Petersburg separately from the Tutberidze Team.

o. It is important for the athletes to maintain their weight, so they "*carefully monitor*" their weights both during training and before competitions. The main control of the athletes' diet "*is conducted by their parents and in addition by coaches*".

p. Dr Shvetskiy expressed concern that Ms Valieva "*can consume deserts before and during competitions. I do not know whether Kamila Valieva consumed desserts before and during the competitions in St. Petersburg in 21-25 December 2021*".

q. Dr Shvetskiy did not recommend the use any substances prohibited in sport to the athletes on the Tutberidze Team.

r. Dr Shvetskiy has not prescribed TMZ to any of the athletes on the Tutberidze Team. He knows that it has been prohibited since 2009 and is concerned about the clinical effectiveness of this medication.

s. The organizers of the Russian Championship "*did not take the necessary measures … to restrict the access to the athletes` area (food court, dressing rooms). So, I consider, that someone might have contaminated the Kamila Valieva`s food, beverages and supplements with trimetazidine*".

t. Dr Shvetskiy believes that "*the most sufficient scenario is the ingestion of the trimetazidine in Kamila Valieva`s system through the contamination by the medication used by her grandfather*".

55. On 13 September 2022, Mr Ivanov issued a report in respect of the RUSADA Investigation (addressed to RUSADA Results Management). RUSADA concluded that "*it was not possible to confirm or deny the intentional use"* by the Athlete of TMZ and that it was not possible to confirm whether or not there had been any "inducement" on the part of the Athlete's support personnel with respect to the use of TMZ. It stated (in relevant part) as follows:

"*The Investigations Department is conducting an investigation of the personnel of the athlete Kamila Valieva, who passed a positive sample in which the prohibited substance trimetazidine was detected. The sample was taken on December 25, 2021 at the Russian Figure Skating Championships. The Athlete is a Protected Person.*

On February 08, 2022, an investigation was opened against the Athlete's personnel.

In the course of the investigation the official inquiries were sent to the Russian Figure Skating Federation, Federal Medical and Biological Agency FMBA and Center for Sports and Education… The responses have been received. The number of persons appointed as medical personnel of athlete Valieva and her coaches was established.

The doping control inspectors who conducted testing on December 25, 2021 in St Petersburg, where the athlete's sample was taken, were questioned.

The following persons were interviewed:

- *mother of athlete Kamila Valieva (legal representative of the athlete – Alsu Valieva;*

- *the athlete's coaches, namely Tutberidze E., Dudakov S., Gleikhengauz D.;*

- *sports doctors who worked with the athlete, namely: Shvetsky F., Shumakov Y., Adamov S., Ozerov A.;*

- *athlete Valieva Kamila.*

No information was obtained during the interviews to confirm the use or prescription of Trimetazidine or other prohibited substances by the athlete's personnel.

A request was sent to the FMBA of Russia to provide medical documents and the results of medical examinations, as well as information on sports nutrition, medications and supplements given to athlete Valieva by the sports doctors of FMBA. In the response of the FMBA of Russia there is no information about the presence of cardio diseases which require treatment. In the course of the audit, documents were received from FMBA of Russia, which noted all medical drugs, dietary supplements and sports nutrition issued to Valieva K in the period from 01.01.2020 to 31.12.2021. Trimetazidine is missing from the list of issued drugs.

The sports doctors responsible for Valieva K's medical care denied ever prescribing Trimetazidine to her.

There was no opportunity to interview the grandfather of the athlete Valieva K – Gennady Soloviev. His representatives refused to provide contacts and organise a face-to-face interview with him. G. Soloviev's representative presented medical documents and answered the questions of the Investigations Department by e-mail. G. Soloviev did not provide any documentary evidence of the prescription of the drug "Trimetazidine" to him.

Kamila Valieva was interviewed in person. The athlete reported that she had never been prescribed or offered Trimetazidine and did not know how it got into her system. Kamila Valieva put forward three hypothesized scenarios as to how Trimetazidine could have entered her system, namely:

- *contaminated food or liquid …;*

- *contaminated supplements or medications;*

- *sabotage.*

No documentary confirmation of these versions has been provided. It was not possible to confirm or deny these versions.

The law enforcement bodies … at the request of RUSADA (dated 17.02.2022) also conducted an inspection of the athlete's personnel … which did not establish the fact of inducement or use of prohibited substances and methods by the athlete's personnel, about which RUSADA was notified by a response letter from the Ministry of Internal Affairs.

On the basis of the above, I hereby inform you that in the course of the verification of the adverse analytical finding of the sample of athlete Kamila Valieva (Protected Person), it was not possible to confirm or deny the intentional use of Trimetazidine, a substance prohibited in sport, by the athlete. Also, as of the current date, it has not been possible to confirm the fact of inducement or use of the drug Trimetazidine in relation to the Athlete by the Athlete's personnel. … ."

56. As for the WADA Investigation, according to Mr Walker, by reason of the Russian-Ukraine war, it was not possible to complete its investigation.

F. The Proceedings before the DADC (December 2022)

57. On 14 December 2022, there was a hearing (in person) on the merits before the DADC in Moscow. It appears that the hearing was originally scheduled for 26 October but the Athlete's mother, Ms Alsu Valieva, acting as the Athlete's representative, requested an adjournment of the hearing, which the DADC granted.

58. The parties before the DADC were RUSADA and the Athlete. The Athlete did not challenge the presence of TMZ in her Samples but submitted that the intake of TMZ was unintentional on her part, and without fault or negligence. RUSADA did not challenge "*the unintentional intake*" of the TMZ. At the hearing, the Athlete put forward the three possible scenarios as had been described in the Athlete's May 2022 Explanation, but it was noted that "*the Athlete considers the first version to be the main one*" – i.e., ingestion via food prepared by or shared with Mr Solovyev.

59. The DADC issued its decision on 24 January 2023. The DADC decided that the applicable standard of proof to be met by the Athlete was not on the balance of probabilities but "*a reasonable possibility*" and, applying that standard, the DADC took the view that "*the Athlete`s version on the unintentional use of trimetazidine with the food cooked by the Athlete`s grandfather meets the requirements of the reasonable possibility standard of proof*".

60. The DADC went on to decide that (a) "*the Athlete bears no fault*" and (b) the Athlete's results at the Russian National Championships should be disqualified but not her results at the Beijing Olympics and (c) "*no period of ineligibility shall be applied*".

IV. PROCEEDINGS BEFORE THE CAS APPEALS ARBITRATION DIVISION

61. On 14 February 2023, in CAS 2023/A/9451, RUSADA filed its Statement of Appeal against the Athlete with respect to the Challenged Decision.

62. On 20 February 2023, in CAS 2023/A/9455, the ISU filed its Statement of Appeal against the Athlete, RUSADA and the Figure Skating Federation of Russia (the "**FSFR**") with respect to the Challenged Decision. In its Statement of Appeal, the ISU requested that its appeal be expedited in accordance with Article R52 of the CAS Code.

63. On 21 February 2023, in CAS 2023/A/9456, WADA filed its Statement of Appeal against the Athlete and RUSADA with respect to the Challenged Decision.

64. On 22 February 2023, the CAS Court Office informed that Parties of the three different proceedings and invited the Parties to indicate whether they agreed with the consolidation of the procedures and invited the Athlete, RUSADA and the FSFR to say whether they agreed to expedition in CAS 2023/A/9455.

65. On 24 February 2023 RUSADA notified the CAS Court Office that it agreed to consolidation but objected to the expedition of the appeal in CAS 2023/A/9455.

66. On 25 February 2023, the FSFR expressed "*surprise*" to the CAS Court Office at its inclusion as a respondent in CAS 2023/A/9455 on the basis that "*we have not been involved in this process as a party before*" and objected to expedition.

67. On 27 February 2023:

    a. The CAS Court office informed the Parties that, in the event that the procedures were consolidated, the formation of the Panel would proceed in accordance with Articles R41.1 and R54(7) of the CAS Code.

    b. WADA informed the CAS Court Office that, because the Parties had "*divergent interests*" as set forth in Article R41.1(3) of the CAS Code, the President of the CAS Appeals Division should appoint the arbitrators.

68. Also on 27 February 2023, the Athlete:

    a. objected to the jurisdiction of CAS and requested that the proceedings be bifurcated so as to address the issue of jurisdiction;

    b. agreed to consolidation;

    c. indicated that she did not agree with the ISU's request for an expedited procedure; and

    d. without waiving her objection to CAS jurisdiction, nominated Prof. Mathieu Maisonneuve as arbitrator.

69. On 28 February 2023:

    a. The ISU informed the CAS Court Office that it had no objection to consolidation of the appeals.

    b. In CAS 2023/A/9455 the CAS Court Office invited the ISU, RUSADA and the FSFR to comment on the Athlete's objection to jurisdiction and request for bifurcation on or before 7 March 2023.

70. On 1 March 2023:

a. The CAS Court Office notified the Parties that the procedures CAS 2023/A/9451, CAS 2023/A/9455 and CAS 2023/A/9456 were consolidated.

b. RUSADA notified the CAS Court Office of its objection to the Athlete's request for bifurcation of the proceedings.

71. On 3 March 2023:

a. The Athlete requested that:

a) RUSADA be attributed the procedural role of a claimant, having filed an appeal against the Challenged Decision and no relief being sought against RUSADA; and

b) in application of Article R41.1(2) of the CAS Code, CAS require the three appellants to nominate an arbitrator jointly.

b. The ISU notified the CAS Court Office of its opposition to any bifurcation of the proceedings/

c. The Russian Olympic Committee (the "**ROC**") applied to the CAS to intervene in CAS 2023/A/9455.

72. On 6 March 2023:

a. The FSFR informed the CAS that it:

a) did not object to the Athlete's nomination of Prof. Maisonneuve as arbitrator;

b) objected to WADA's request that the arbitrators be appointed by the CAS; and

c) did not object to the bifurcation of the proceedings proposed by Ms Valieva.

b. WADA objected to the Athlete's request for bifurcation of the proceedings.

73. On 7 March 2023:

a. WADA reiterated its position that Article R41.1(3) of the CAS Code should apply in the present proceedings.

b. The CAS Court Office extended the deadline for all Appellants (RUSADA, the ISU and WADA) to file their Appeal Briefs by 31 March 2023.

74. On 10 March 2023, the CAS Court Office informed the Parties that *"considering there are over three Parties in the present procedures and that the Parties have 'divergent interests' within the meaning of Article R41.1(3) of* [the CAS Code]*, the Parties are invited to jointly nominate both co-arbitrators by 20 March 2023.*

75. On 14 March 2023, the ROC withdrew its application for intervention in the case CAS 2023/A/9455.

76. On 15 March 2023, the Athlete disagreed with the CAS Court Office direction that there were "divergent interests" within the meaning of Article R41.1(3) of the CAS Code and submitted that "*the conditions for application of Article R41.1(2) are met instead and that she has validly and definitively nominated Prof. Mathieu Maisonneuve as arbitrator*".

77. On 20 March 2023:

    a. WADA informed the CAS Court Office that the Parties were unable to agree on the nomination of the co-arbitrators.

    b. The Athlete requested an extension of seven days, until 27 March 2023, to nominate the co-arbitrators.

78. On 21 March 2023:

    a. RUSADA agreed and WADA and the ISU objected to the Athlete's request for an extension of time to nominate the co-arbitrators.

    b. The CAS Court Office:

        a) informed the Parties that the Athlete's request for an extension of time was denied; and

        b) suggested *"taking into account RUSADA's position as both appellant and respondent in this consolidated case, that the co-arbitrators be nominated by WADA and the ISU on one hand, and by Ms Valieva and the FSFR on the other hand, with RUSADA refraining from participating in such nomination process"* and invited RUSADA to indicate by 24 March 2023 whether it agreed with such proposal.

79. On 24 March 2023, RUSADA agreed with the CAS Court Office proposal.

80. On 27 March 2023, the CAS Court Office requested WADA and the ISU jointly to nominate an arbitrator by 3 April 2023.

81. On 28 March 2023:

    a. WADA and the ISU jointly nominated Mr Jeffrey Mishkin as arbitrator.

b. The ISU withdrew its appeal against the FSFR, stating: *"unless the FSFR provides evidence that Ms. Kamila Valieva is one way or another subjected to the FSFR and the FSFR thus has an interest in this matter, it would appear that the FSFR has no standing in the current proceedings and therefore should be released from any obligation to participate in these proceedings"*.

c. WADA provided a witness statement dated 28 March 2023 of the Stockholm Laboratory's Dr Pohanka in relation to the steps taken by the Stockholm Laboratory with respect to the Sample,

82. On 3 April 2023, the CAS Court Office invited all Appellants to file their Appeal Briefs by 5 April 2023.

83. On 5 April 2023:

a. RUSADA, the ISU and WADA filed their Appeal Briefs.

b. The CAS Court Office notified RUSADA and the Athlete that pursuant to Article R55 of the CAS Code they should submit their Answers to the CAS within 20 days.

84. On 7 April 2023, the Athlete requested an extension of time until 25 May 2023 for submitting her Answer, referring to the fact that *"she did not oppose to* [sic] *RUSADA's, ISU's and WADA's requests for extension provided that she would benefit from an equal period for preparing the Answers"* and noting that *"the Appellants were eventually granted in total seven weeks to file their respective Appeal Briefs"*.

85. On 18 April 2023 the CAS Court Office:

a. granted the Athlete's request for an extension until 25 May 2023; and

b. informed the Parties that pursuant to Article R54 of the CAS Code the Panel appointed was constituted as follows:

President: Mr James Drake KC, Advocate, London, United Kingdom

Arbitrators: Mr Jeffrey Mishkin, Attorney-at-Law, New York, United States of America
Prof. Mathieu Maisonneuve, Professor of Law, Aix-en-Provence, France

86. On 19 April 2023, the Athlete made application for the bifurcation of the consolidated proceedings in order to address the issue of the jurisdiction of CAS over the Athlete. The CAS Court Office sought the comments of the other parties.

87. On 1 May 2023, WADA objected to bifurcation.

88. On 2 May 2023, RUSADA stated that it "*does not believe that the jurisdiction points raised on behalf of* [the Athlete] *are sufficiently compelling so as to warrant bifurcation*".

89. On 3 May 2023, the ISU objected to bifurcation.

90. On 11 May 2023, the Panel informed the Parties that the Athlete's application for bifurcation was dismissed.

91. On 15 May 2023, the Athlete made a request pursuant to Article R44.3(1) of the CAS Code for production by WADA of certain documents (made expressly without prejudice to her objection to jurisdiction). The documents requested were (paraphrased): (a) documents passing between WADA and the Stockholm Laboratory between 20 January 2022 and 4 February 2022 pertaining to (i) the "*new analytical method*" and the "*new confirmation analytical method*" referred to by the Stockholm Laboratory's Dr Pohanka and/or (ii) the testing of the Athlete's Sample by the Stockholm Laboratory; and (b) the validation by the Stockholm Laboratory of the "*new analytical method*".

92. Further to the Athlete's requests for documents:

    a. On 19 May 2023, the ISU submitted that the Athlete's request should be considered after the Athlete submitted her Answer.

    b. On 22 May 2023, WADA objected to the Athlete's document requests on the basis that they "*are moot or alternatively should be dismissed*".

    c. On 22 May 2023, the Athlete reiterated her requests for documents and sought an extension of time to file her Answer until one week after production of the documents.

    d. On 23 May 2022, RUSADA stated that it had no objection to the document requests.

    e. On 26 May 2023, WADA restated its objections to the document requests, asking for the requests to be "*dismissed*".

    f. On 26 May 2023, the ISU restated its objections to the document requests, also asking for the requests to be "*dismissed*"

93. On 7 June 2023, the Panel granted, in part, the Athlete's requests for documents. WADA was directed to produce by 17 June 2023 (paraphrased) all documents in the period 20 January 2022 through 4 February 2022 relating to the validation by the Stockholm Laboratory of the "*new Confirmation Procedure analytical method*" referred to by Dr Pohanka in his witness statement dated 28 March 2023.

94. On 16 June 2023, in response to the Panel's direction WADA produced: (a) a document entitled 'Trimetazidine, Lomerizine and metabolite confirmation with UHPLC-HRMS,

Validation plan' and (b) a document entitled 'Trimetazidine, Lomerizine and metabolite, UHPLC-HRMS Qualitative Confirmation, Validation report'.

95. On 19 June 2023 a case management conference was held by video-conference. The Panel issued various directions relating to the submission of the Answers and the conduct of the hearing. The Panel also discussed with the Parties the earliest convenient dates for the hearing.

96. On 21 June 2023, the CAS Court office informed the Parties that the hearing would commence on Tuesday 26 September 2023 and would continue on 27, 28 and 29 September 2023.

97. On 3 July 2023, the Athlete filed her 'Answer including the Objection to Jurisdiction' and RUSADA filed its 'Response Brief'.

98. On 29 August 2023 (the ISU), 4 September 2023 (WADA and the Athlete) and 7 September 2023 (RUSADA), the Parties signed and returned the Order of Procedure in these appeals.

99. The hearing began on 26 September 2023 at the CAS offices in Lausanne, Switzerland and continued on 27 and 28 September 2023. On the second day of the hearing, the Athlete made application for an order that RUSADA produce certain documents relating to its investigation. The Panel granted the application, directed that there be a further CMC on 16 October 2023, and adjourned the hearing until 9 and 10 November 2023.

100. On 9 October 2023, RUSADA produced to the Parties and the Panel certain documents relating to its investigation into the Athlete and her entourage.

101. On 16 October 2023, the Panel conducted a CMC as directed in order to address any outstanding issues and for the Parties to make any further procedural applications as may be advised in advance of the resumed hearing. At that CMC, the Athlete made the following further requests (paraphrased):

    a. that the Panel order RUSADA to produce the complete RUSADA Investigation file including in particular the documents referred to by Mr Ivanov as contained in "*a CD-R disc with 22 files*" and the final report prepared by Mr Ivanov;

    b. that the Panel order WADA to produce the correspondence between Prof. Rabin and Servier in relation to TMZ "*either before or after 10 February 2022*" and/or draw an adverse inference against WADA from its non-disclosure of the same to the effect that "*the contamination scenario is plausible from scientific, pharmacological and medical points of view*"; and

    c. that the Panel order WADA to produce its file relating to "*the investigation it initiated and carried out pursuant to Article 20.7.14 of the WADA Code*" and/or draw an adverse inference against WADA "*that the substance entered the*

Athlete [sic] *body by accidental contamination and that she bears No Fault or Negligence as the DADC found on 14 December 2022*".

102. The Panel made the following directions at the CMC (paraphrased):

a. By 19 October 2023, RUSADA shall produce the documents referred to by Mr Ivanov as contained in "*a CD-R disc with 22 files*" and the final report prepared by Mr Ivanov, with English translations.

b. By 23 October 2023, WADA shall produce a witness statement by Mr Walker in relation to the investigation conducted by WADA of the alleged ADRV committed by the Athlete.

c. The application for disclosure by WADA of its correspondence with Servier was denied.

103. On 20 October 2023, RUSADA produced to the Parties and the Panel the documents referred to by Mr Ivanov as contained in "*a CD-R disc with 22 files*" and the final report prepared by Mr Ivanov, together with English translations.

104. On 23 October 2023, WADA provided to the Parties and the Panel a witness statement of Mr Walker dated 16 October 2023.

105. On 30 October 2023, the Athlete informed the CAS Office and the Parties that she wished to cross-examine Mr Walker on his statement (or, alternatively, that WADA produce certain documents and answer certain questions in relation to the statement provided by Mr Walker). That request was granted by the Panel on 7 November 2023.

106. The hearing resumed on 9 November 2023 and was completed on 10 November 2023 (also at CAS in Lausanne, Switzerland).

107. The following people participated in the hearing (either in person or by video-conference and for some or all of the proceedings):

a. The Panel:

a) Mr James Drake KC

b) Mr Jeffrey Mishkin

c) Prof. Mathieu Maisonneuve

b. For RUSADA:

a) Mr Graham Arthur, Counsel

b) Ms Veronika Loginova, RUSADA

c) Ms Kristina Coburn, RUSADA

d) Ms Valeriya German, RUSADA

e) Mr Leonid Ivanov, Witness

c. For the ISU:

a) Mr Pierre Kobel, Counsel

b) Ms Christine Cardis, ISU Antidoping Director

d. For WADA:

a) Mr Nicolas Zbinden, Counsel

b) Mr Anton Sortir, Counsel

c) Mr Adam Taylor, Counsel

d) Mr Ross Wenzel, WADA General Counsel

e) Mr Cyril Troussard, WADA

f) Dr Anton Pohanka, Witness

g) Prof. Olivier Rabin, Witness

h) Prof. Christine Ayotte, Witness

i) Dr Olaf Schumacher, Witness

j) Dr Sergei Iljukov, Witness

e. For the Athlete:

a) Mr Andrea Pinna, Counsel

b) Ms Raphaelle Haïk, Counsel

c) Ms Olga Cucu, Counsel

d) Mr Prosper Abega, Counsel

e) Mr Maxim Kuzmin, Counsel

f) Ms Eva Valter, Counsel

g) Ms Kamila Valieva, the Athlete

h) Ms Alsu Valieva, Witness

i) Ms Evgenia Tarasova, Witness

j) Mr Daniil Gleikhengauz, Witness

k) Prof. Pascal Kintz, Witness

l) Mr Andrey Zholinsky, Witness

m) Mr Eduard Bezuglov, Witness

n) Mr Alexandre Ponomarev, Interpreter

f. For the CAS:

a) Mr Matthieu Reeb, Director General, CAS

b) Ms Delphine Deschenaux-Rochat, CAS Counsel

c) Mr Giovanni Maria Fares, CAS Counsel.

108. At the outset of the hearing, the Appellants confirmed that they had no objection to the jurisdiction of CAS in this appeal. The Athlete confirmed that she did object to the jurisdiction of CAS. The Parties confirmed that none had any objection to the composition of the Panel.

109. At the close of the hearing, the Appellants each confirmed that they had a full and fair opportunity to present their respective cases before the Panel. For the Athlete, it was said that her right to be heard had been breached by reason of the failure on the part of WADA to produce documents and that she was awaiting determination of her applications that certain adverse inferences be drawn against WADA. (These adverse inferences are addressed below at ¶317 *et seqq.*)

V. THE FACTUAL EVIDENCE

110. The Parties adduced factual evidence in support in the form of witness statements and/or by oral evidence at the hearing of the appeal as follows.

111. For RUSADA:

a. Dr Pohanka, the Director of Doping Control at the Stockholm Laboratory, who provided a witness statement dated 28 March 2023 and gave oral evidence at the hearing in relation to the conduct of the Stockholm Laboratory.

b. Mr Ivanov, head of the RUSADA Investigations Department, who did not provide a witness statement but gave oral evidence at the hearing in relation to the RUSADA Investigation.

112. For the ISU:

a. Dr Fillip Shvetskiy, one of the Athlete's doctors, who provided a witness statement to RUSADA and gave oral evidence at the hearing in relation to her medical treatment.

113. For the Athlete:

a. The Athlete, who provided a joint witness statement with the Mrs Valieva dated 30 June 2023 and gave oral evidence at the hearing.

b. Mrs Valieva, who provided a joint witness statement with the Athlete dated 30 June 2023 and gave oral evidence at the hearing.

c. Mr Gleikhengauz, who provided a witness statement dated 8 June 2023 and gave oral evidence at the hearing.

d. Ms Tarasova, who provided a witness statement dated 18 June 2021 and gave oral evidence at the hearing.

e. Ms Polina Naumova, who provided a witness statement dated 30 May 2023 but who was not required for cross-examination and therefore did not appear at the hearing.

VI. THE EXPERT EVIDENCE

114. The Parties also adduced expert evidence in the form of expert reports and by oral evidence at the hearing of the appeal.

115. For RUSADA:

a. Dr Anton Pohanka, the Director of Doping Control at the Stockholm Laboratory, who provided a witness statement dated 28 March 2023 and gave oral evidence at the hearing.

116. For WADA:

a. WADA called the following expert witnesses, each of whom provided an expert report and gave oral evidence at the hearing.

a) Prof. Christiane Ayotte, Director, INIS.

b) Prof. Olivier Rabin, Senior Director, Science and Medicine, WADA.

c) Dr Yorck Schumacher, Department of Sports Medicine, University of Freiburg, Freiburg, Germany and Dr Sergei Iljukov, University of Helsinki.

117. For the Athlete:

a. The Athlete called expert witnesses, who provided expert reports and appeared at the hearing to give evidence:

a) Prof. Pascal Kintz, who provided an expert report dated 29 June 2023 at VFE-9 and gave oral evidence at the hearing.

b) Dr Andrey Zholinsky who provided an expert report dated 23 May 2023 VFE-28 and gave oral evidence at the hearing.

c) Dr Eduard Bezuglov who provided an expert report dated 24 May 2023 VFE-29 and gave oral evidence at the hearing.

118. The experts referred in particular to two reports relating to the elimination profile of TMZ:

a. Jarek, A, Wojtowicz, M., Kwiatkowska, D., Kita, M., Turek-Lepa, E., Chajewska, K., Lewandowska-Pacheckab, S., and Pokrywkaa, A. 2014. The prevalence of trimetazidine use in athletes in Poland: excretion study after oral drug administration. *Drug Testing and Analysis*, 6, 1191-1196 (the "**Jarek Study**"); and

b. Wicka, M., Stanczyk, D., Michalak, D., Kaliszewski, P., Grucza, K., Kowalczyk, K., Pawluczyk, R., Kwiatkowska, D. 2018. Determination of excretion profile of trimetazidine in urine by means of LCMS/MS. Manfred Donike Workshop (the "**Wicka Study**").

VII. SUBMISSIONS OF THE PARTIES

119. On the basis of such evidence, the Parties made submissions, both in writing and orally at the hearing of the matter, which the Panel has carefully considered. The Panel sets out below the essential nature of the principal submissions advanced by each of the Parties, in this order: RUSADA, ISU, WADA, and the Athlete.

120. In this context, the Panel notes that in her written submissions the Athlete contended that the alleged ADRV had not been proven. She submitted that "*the Appellants' claims will be dismissed on the merits because no doping and no violation of RUSADA ADR is proven*". In particular, it was said that the TMZ was not "*validly found in the Athlete's Sample*" because "*in the present case … the analysis of the Athlete's Sample showed*

not to be in conformity with the applicable rules" in that the Stockholm Laboratory conducted its analyses in a manner that did not conform to the ISL.

121. In the event, during the course of the hearing, and after the examination of Dr Pohanka (from the Stockholm Laboratory) and of Prof. Ayotte (called by WADA) and Prof. Kintz (called by the Athlete), the Athlete withdrew her case in this respect, thereby accepting that the analyses performed by the Stockholm Laboratory was in conformance with the ISL and that the reported AAF was valid and that, accordingly, the Appellants had proven the ADRV. That being so, the disagreement between the Parties related not to whether or not the alleged ADRV had been established but as to the sanctions that should be imposed on the Athlete for that ADRV.

122. In these circumstances, the Panel will not in this Award outline the Parties' lengthy submissions in relation to the conduct of the Stockholm Laboratory in its analysis and reporting of the AAF.

A. RUSADA's Submissions

Jurisdiction

123. RUSADA submitted that CAS has jurisdiction over these appeals pursuant to the Russian ADR, which provide for compulsory arbitration before CAS. RUSADA's submissions on jurisdiction may be summarised as follows:

a. The Russian ADR were implemented pursuant to Russian Federal Law 329 dated 4 December 2007 'On the Physical Culture and Sport in the Russian Federation'.

b. The Athlete is an International-Level Athlete subject to the Russian ADR. Article 15.2.1 of the Russian ADR provides that appeals of decisions involving International-Level Athletes shall be made to CAS.

c. Article 15.2.3.1 of the Russian ADR confers on RUSADA, WADA and the ISU a right to appeal decisions of the DADC. This right to appeal provided to ISU and WADA in the Russian ADR avoids the need for a multiplicity of proceedings under different anti-doping rules.

d. An interpretation of the rules requiring individual consent by each athlete for each dispute under every set of applicable anti-doping rules would create a "*bureaucratic mountain*" of consents to negotiate and the appeals process would be unmanageable.

e. By virtue of her participation in competition regulated by the Russian ADR, the Athlete is subject to the Russian ADR including its compulsory arbitration provisions.

f. Compulsory arbitration in relation to the hearing of appeals before CAS is "*settled*" as valid under Swiss law under the European Court of Human Right's ("**ECHR**") decision in Mutu and Pechstein v Switzerland.

g. The Athlete has "*at no stage in these proceedings, be that in relation to the Provisional Suspension hearing before the DADC, or the subsequent appeals before the CAS Ad Hoc Division, raised any objection either as to the applicability of the ADR nor any individual provision of the ADR, including those relating to appeals*".

Applicable Rules

124. This matter is governed by the Russian ADR, which were implemented in accordance with the provisions of the WADC.

The ADRV

125. The burden is on RUSADA to establish that there has been an ADRV. In RUSADA's submission, the Panel should be comfortably satisfied that the Athlete has committed an ADRV.

a. The commission of an ADRV in violation of Article 4.1 of the Russian ADR is proved by the presence of a Prohibited Substance in the Athlete's Sample.

b. TMZ is not a "*Substance of Abuse*" nor a "*Specified Substance*" as those terms are defined in the Russian ADR; and TMZ is prohibited at all times.

c. TMZ is a Prohibited Substance and was identified as being present in the Athlete's A Sample.

d. There is no dispute that the A Sample was provided by the Athlete.

e. There is no evidence that any departure from the International Standards has either occurred or if it has occurred that it could reasonably have affected the finding of the TMZ in the A Sample.

f. The B Sample was analysed by the Stockholm Laboratory. The analysis of the B Sample confirmed the presence of TMZ in the A Sample.

126. The Panel may therefore be comfortably satisfied that the Athlete has committed an ADRV contrary to Article 4.1 of the Russian ADR by reason of the presence of the Prohibited Substance TMZ in her A Sample.

127. RUSADA addressed "*a number of findings*" made by the DADC in relation to the analytical processes conducted by the Stockholm Laboratory. RUSADA's submissions in relation to what took place at the Stockholm Laboratory may be summarised as follows:

a. The results of the Stockholm Laboratory's analysis are encapsulated in the AAF as to the presence of TMZ. The Stockholm Laboratory's LDP provides the information required by the ISL in relation to the analytical processes undertaken by the Stockholm Laboratory.

b. The DADC held that the Stockholm Laboratory "*substantially violated*" the ISL by reason of its delay in reporting. This is not correct.

c. The ISL provides, by Article 5.3.8.4, that the reporting of an athlete's A sample "*should occur*" within 20 days of receipt of the sample and that the testing laboratory should inform the testing authority of any delay in the reporting of the results.

d. This is a guideline and not a mandatory standard and the DADC was wrong to say otherwise. There are many reasons why the 20-day period "*may be unachievable in practice*". In this case there was a delay because the Stockholm Laboratory experienced staffing difficulties in the Covid-19 pandemic. The Stockholm Laboratory informed RUSADA as to the fact of and reasons for the delay.

e. In any event, the delay in reporting by the Stockholm Laboratory is "*completely irrelevant to any of the issues*" in this appeal. In this case, the results of the B Sample confirm the results of the A Sample.

The Sanctions

128. The applicable sanction in respect of a violation of Article 4.1 of the Russian ADR is provided by Article 12.2 of the Russian ADR, according to which the sanction to be applied to the Athlete is as follows:

a. The mandatory sanction is a period of ineligibility of four years.

b. The period of ineligibility may be eliminated entirely or reduced if the Athlete can establish that she bore No Fault or Negligence (under Article 12.5 of the Russian ADR) or No Significant Fault or Negligence (under Article 12.6 of the Russian ADR).

c. If the Athlete is unable to establish that she was at No Fault or Negligence or No Significant Fault or Negligence then the period of ineligibility may be reduced to two years if the Athlete can prove that she did not act intentionally (under Article 12.2 of the Russian ADR).

d. Pursuant to Article 5.1 of the Russian ADR, the burden of proof in respect of these matters lies with the Athlete and the standard of proof is on the balance of probabilities.

e. The Athlete was a Protected Person at the time of the ADRV and her status as such is relevant to the assessment of her Fault and to the evidence that she is required to provide.

Burden and Standard of Proof

129. The DADC decided that there was no Fault or Negligence on the part of the Athlete, but, in RUSADA's submission, did so in error. The DADC also fell into error in its application of the standard of proof as one of "*reasonable possibility*". The correct standard is on the balance of probabilities: see CAS 2019/A/6541 ("*the meaning of 'by a balance of probability' is that the occurrence of the scenario suggested by the athlete must be more likely that its non-occurrence and not the most likely among competing scenarios"*).

130. The primary issue in this appeal concerns the explanations provided by the Athlete. The burden is on her to prove that her explanations are more likely than not to have occurred.

131. In this respect, the Athlete is a Protected Person and as such does not have to establish how the Prohibited Substance entered her system for the purposes of Articles 12.5 and 12.6 of the Russian ADR. This is not however a "*free pass*" that allows the Athlete to avoid explaining how an ADRV happened, "*it is simply that* [she] *does not have to establish how* [the] *Prohibited Substance entered … her system when formulating an explanation*" in respect of a violation of Article 4.1 of the Russian ADR (as to presence). The fact that the Athlete does not have to establish how the Prohibited Substance entered her system "*has little practical impact because the Protected Person has to prove the 'totality of the circumstances' in any event, which must encompass establishing on a balance of probabilities at least the circumstances in which a Prohibited Substance entered his or her system*".

132. The Athlete, "*even as a Protected Person, must still provide an adequate explanation as to how her* [ADVR] *came about, albeit that what is properly considered to be 'adequate' may in part be shaped by the fact that she is a Protected Person. This is because the sanction applied in respect of an* [ADRV] *depends entirely on Ms Valieva's level of 'Fault' and her explanation is the only way of measuring that Fault. It is her burden to persuade the … Panel that it can accept her explanation on a balance of probabilities*".

133. When an athlete provides an explanation for an ADRV "*it needs to be based on evidence. Athlete testimony is evidence but on its own is not good enough to satisfy the balance of probabilities; in other words, if an athlete – even a Protected Person – provides an explanation that is simply based on the athlete's own word, and nothing else, then CAS has said repeatedly that this is insufficient to be accepted as being more likely than not. The* [Russian] *ADR places a burden of proof on Ms Valieva to provide an explanation … that includes her own word and testimony but also includes other evidence (which can be wholly circumstantial) to substantiate her explanation.*" See CAS 2019/A/6541.

134. It is obvious that TMZ entered the Athlete's system somehow. "*The burden to show how this happened is exclusively on Ms Valieva*" and "*it is both unnecessary and inappropriate for RUSADA (or any other party) to speculate as to the means by which TMZ entered Ms Valieva's system. The only material issue is Ms Valieva's explanation and whether it meets the standard of proof.*"

The Explanations

135. On 18 May 2022, the Athlete provided the Athlete's May 2022 Explanation. The May 2022 Explanation put forward the following possibilities: (i) sabotage by a person or persons unknown, (ii) contamination of a medication or supplement with TMZ and (iii) inadvertent use by ingestion as a result of spending time with her grandfather.

136. As to sabotage, the basis for this explanation is the assertion by the Athlete that the manufacturer of one of the supplements that she was using, Hypoxen, also manufactures TMZ such that there was a possibility of cross-contamination. There is "*nowhere near enough evidence to conclude that some sort of contaminated medication or supplement was the cause of or in any way related to*" the Athlete's ADRV and this explanation must also be discounted. The DADC did not accept this explanation either.

137. As to inadvertent use by ingestion as a result of spending time with Mr Solovyov, this is the explanation relied upon by the Athlete throughout this appeal. At the hearing before the DADC on 9 February 2022, the Athlete challenged the provisional suspension on the basis that the presence of the TMZ was likely by contamination as a result of "*domestic interaction*" with her grandfather who used TMZ after heart surgery. It is supported by what is said by the Athlete in the May 2022 Explanation and by a statement provided by Mr Solovyov dated 17 May 2022.

138. The essential components of the explanation relating to Mr Solovyov (referred to by RUSADA as the "**Grandfather Explanation**") are as follows:

    a. Mr Solovyov had a heart condition, for which he took TMZ.

    b. Mr Solovyov assisted the Athlete in getting to and from training at the Ice Palace in Moscow. This involved the Athlete spending time with Mr Solovyov and he prepared food for her.

    c. Prior to the Athlete going to St Petersburg for the Russian National Championships, Mr Solovyov prepared a strawberry dessert for the Athlete which she took with her.

    d. Mr Solovyov believes that this dessert became contaminated with TMZ either because he accidentally dropped a pill into the dessert while he was preparing it or because there were crushed residues of a TMZ tablet on the chopping board he used to prepare the dessert which found their way into the dessert.

e. The positive AAF was therefore cause by the Athlete eating a strawberry dessert contaminated with TMZ.

139. This Grandfather Explanation has, "*broadly speaking*", been made by or on behalf of the Athlete from the outset:

a. The first reference to the explanation involving Mr Solovyov "*was made very shortly*" after the Athlete was notified of the AAF and was noted by the DADC in the DADC Decision on Provisional Suspension (dated 24 February 2022), before whom the Athlete had adduced photographs of Mr Solovyov's TMZ medication.

b. The Athlete adduced further evidence in support of this explanation in the hearing before the Ad Hoc Panel on 13 February 2022 by way of a video-recording of a statement made by Mr Solovyov. In this recorded statement, Mr Solovyov told the panel he had a heart condition, that he bought TMZ in September-October 2021 and that he has been using it for three months, and that it was "*quite possible that there may have even been residues of these medications which may have remained on the surface of the glass*".

c. Mr Solovyov also provided a statement dated 17 May 2022 (as to which see above at ¶137]), in which the "*essentials*" of the Grandfather Explanation "*are maintained, with the additional detail as to the means by which TMZ may have entered food prepared by the Grandfather for* [the Athlete]".

d. The Athlete also advanced the Grandfather Explanation when interviewed by RUSADA on 26 July 2022, as to which see ¶53 above, when the Athlete "*referred to and repeated the essentials of the Grandfather Explanation*".

140. As to the Grandfather Explanation, RUSADA submits as follows:

a. There is no evidence from the Athlete that Mr Solovyov exists.

b. RUSADA does not dispute that Mr Solovyov had "*a chronic health condition that affects his heart function*".

c. RUSADA does not dispute the assertions by Mr Solovyov that he "*has been using TMZ at various stages since his cardiac function diagnosis*". RUSADA is also aware that TMZ is available for sale in pharmacies in Russia without prescription.

d. The photographs relied on at the DADC hearing simply show a packet of TMZ tablets and there is no evidence from the Athlete "*as to how, when and where the Grandfather acquired TMZ*".

e. There has been no reference as to "*how often the Grandfather used TMZ, what sort of packaging the TMZ was supplied in, where he kept it, or indeed anything*

that would enable the … Panel to be sure that he … was using TMZ in December 2021".

f. RUSADA is in no position to dispute the assertion that Mr Solovyov assisted the Athlete in preparing for and attending training or that he prepared food for the Athlete.

g. RUSADA is in no position to dispute that Mr Solovyov prepared a strawberry dessert for the Athlete before she left for St Petersburg, which she took with her.

h. The only evidence in relation to the strawberry dessert being the source of the TMZ is the assertion of Mr Solovyov. There is no other evidence—beyond his own assertion—that he can provide as to this claim. Nor is there other evidence—beyond his own assertion—that he was using TMZ at the time.

i. The Athlete contends that it is pharmacologically possible the source of the TMZ was the strawberry dessert. RUSADA has neither identified nor been provided with any evidence that "*either bolsters or undermines the plausibility of the Grandfather Explanation*".

j. In its investigation, RUSADA has "*not identified any evidence that suggests that [the Athlete] used TMZ; may have used a supplement or similar product that contained or was contaminated with TMZ; was administered TMZ without her knowledge; or that any of her Athlete Support Personnel were using TMZ*".

141. The issue as to whether the Grandfather Explanation "*satisfies the balance of probabilities test*" is the "*key issue*" for the Panel. In that regard, RUSADA made the following submissions:

a. The Grandfather Explanation was "*submitted within 24 hours*" of the AAF notification and has "*in essence, been adhered to since then*".

b. The Ad Hoc Panel found that the Athlete's arguments were "*sufficiently plausible*".

c. RUSADA is "*unconvinced that there was sufficient evidence for it to accept that it is more likely than not that the Grandfather was using TMZ at the relevant time and that the contamination happened in the way asserted*".

d. The Grandfather's evidence "*needs to be clarified and expanded in key areas in order for the … Panel to accept the Grandfather Explanation*".

e. RUSADA agrees that the Grandfather Explanation is plausible; but that is not the same as being more likely than not.

f. RUSADA's position in relation to the Grandfather Explanation is therefore "*that it is inherently and scientifically plausible, but that [the Athlete] must satisfy the*

Hearing Panel that it is more likely that TMZ came to be in the A sample in the manner described as per the Grandfather Explanation".

Intentional

142. Article 12.2.1 of the Russian ADR provides that, where the violation does not involve a Specified Substance, the Period of Ineligibility shall be four years unless the athlete "*can establish that the* [ADRV] *was not intentional*".

143. On the basis of its investigation, RUSADA "*has no reason to be believe that the ingestion of TMZ by Ms Valieva was anything other than inadvertent … an in-depth investigation into the circumstances of Ms Valieva's violation has not identified anything that suggests that Ms Valieva's conduct was intentional*".

No Fault or Negligence

144. In finding that the Athlete bore No Fault or Negligence, the DADC was in error. The Athlete cannot "*be deemed to have acted with No Fault in the circumstances described in the Grandfather Explanation*".

145. It is clear from the comment to Article 10.5 of the WADC that No Fault is intended to apply in "*exceptional circumstances*" and expressly excludes the situation where there has been "*sabotage of the Athlete's food or drink by a spouse, coach or other Person within the Athlete's circle of associates*". Accordingly, even if the Panel accepts the Grandfather Explanation, the application of No Fault is "*unequivocally*" excluded.

146. Further, even if the Grandfather Explanation is accepted by the Panel, the Athlete "*did not act with the 'utmost caution' because she did nothing at all to manage a risk that she should [have been] aware of. It would have been reasonable to expect any athlete who is spending a lot of time with someone that (a) she knows has a serious health condition and (b) is using medication to at the very least warn that person that they need to be careful with their medications*".

147. The Athlete was aware of her anti-doping responsibilities and of the need to avoid all Prohibited Substances. She was also aware that Mr Solovyov was using medications at the time he was preparing food for her. This is "*an obvious risk*" that she should have managed if she were exercising utmost caution.

No Significant Fault or Negligence

148. If the Grandfather Explanation is accepted then RUSADA submits that it is open to the Panel to find that the Athlete acted with No Significant Fault or Negligence. It appears that the Athlete inadvertently ingested TMZ through food prepared by Mr Solovyov such that "*her Fault is – not least given her Protected Person status – minimal*".

Period of Ineligibility

149. As to the Period of Ineligibility, RUSADA submits that the Panel should impose what it considers to be the appropriate consequences, which may include or be limited to a reprimand.

Disqualification

150. RUSADA submits that the results obtained by the Athlete on 25 December 2021 must be disqualified and that what should happen in relation to subsequent results is a matter for the Panel.

Costs

151. RUSADA, in its prayers for relief, seeks an order that the costs of the consolidated arbitration and a contribution towards legal costs to be awarded to RUSADA. RUSADA's position regarding the costs of the proceedings was further elaborated (and partially amended) in the submissions on costs filed on 1 December 2023.

Relief

152. RUSADA's prayers for relief were as follows:

"*180. RUSADA respectfully requests that:*

180.1 Decision 9/2023 dated 24 January 2023 be set aside.

180.2 The Hearing Panel determines that Ms Valieva has committed an Anti-Doping Rule Violation contrary to ADR Article 4.1.

180.3 The Hearing Panel imposes the appropriate Consequences (which may include or be limited to a reprimand) in respect of such Anti-Doping Rule Violation pursuant to the ADR.

180.4 That there shall be ordered disqualification of results obtained by Ms Valieva on 25 December 2021 and such forfeiture of results and prizes as determined as per ADR Article 12.10.

180.5 Costs including the costs of the consolidated arbitration and a contribution towards legal costs to be awarded to RUSADA in accordance with Rule 64.4 and Rule 65.5."

B. The ISU's Submissions

Jurisdiction

153. The ISU submitted that CAS has jurisdiction over these Appeals on several grounds, namely: Article R47 of the CAS Code, the Athlete's registration in the ISU Testing

Pool, the Athlete's agreement to the Declaration for Competitors and Officials entering ISU Events, and the Russian ADR. The ISU submissions in this respect may be summarised as follows.

154. Under the provisions of Article R47 of the CAS Code, "*an appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body*".

155. Article 13.2 of the ISU ADR and Article 15.2 of the Russian ADR provide that appeals of decisions pertaining to ADRVs involving International-Level Athletes "*may be appealed exclusively to CAS*". Those articles further identify the following parties as having "*the right to appeal*": (a) the Athlete/Skater or other person who is the subject of the decision being appealed; (b) the other party to the case in which the decision was rendered; (c) the relevant IF (here, the ISU); (d) the NADO of the person's country of residence or countries where the person is a national or license holder (here, RUSADA); and (f) WADA.

156. In the present case, the Challenged Decision was rendered by the DADC, which is a "*sports-related body*" under Article R47 of the CAS Code and involves an ADRV by an International-Level Athlete: "*As a result, the Appealed Decision qualifies as a decision subject to appeals exclusively to CAS*".

157. The Athlete expressly recognised and acknowledged the jurisdiction of the CAS Appeals Division during the course of the proceedings before the Ad Hoc Panel. As the Ad Hoc Panel noted (CAS OG 22/08-22/09-22/10 Award of 17 February 2022):

"*105. As a preliminary issue, the Second Respondent objected that the CAS Ad Hoc Division does not have jurisdiction to adjudicate this matter based on the following grounds.*

106. Although Article 15.2 Russian ADR, provides that 'a decision to apply or lift a provisional suspension based on a preliminary hearing' can be appealed before CAS, there is no provision in the Russian ADR granting jurisdiction to the CAS Ad Hoc Division; therefore, the CAS Appeals Division should be the competent body. . . ."

158. The Athlete has also "*repeatedly confirmed her express consent with all regulations applying to International-Level Athletes, including jurisdiction by CAS*".

a. First, the Athlete repeatedly registered for the ISU Testing Pool, including for the relevant 2021-2022 season. The notice sent in connection with her registration in the ISU Testing Pool stated: "*In accordance with the World Anti-Doping Code and its International Standards published by the World Anti-Doping Agency (WADA), as well as with the ISU Anti-Doping Rules and the ISU Anti-Doping Procedures, the ISU identifies each season the Skaters to be included in the ISU TP for the purpose of its Anti-Doping testing program*".

(ISU Ex. 51.) The Athlete confirmed that she received and read the notice, and thus "*confirmed her status as an International-Level Athlete fully subject to the ISU ADR*".

b. Second, the Athlete agreed to arbitration before CAS when signing the ISU Declaration for Competitors on 22 July 2021, stating: "*I/we, the undersigned, I) accept the ISU Constitution, which establishes an ISU Disciplinary Commission (Article 25) and recognizes the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland as the arbitration tribunal authorized to issue final and binding awards involving the ISU, its Members and all participants in ISU activities, excluding all recourse to ordinary courts (Articles 26 & 27). . . . VI) am familiar with the ISU Code of Ethics (ISU Communications 2215 or any update of this Communication) as well as ISU Anti-Doping Rules and ISU Anti-Doping Procedures (ISU Communication 2213 & 2243 or any update of these Communications) and also with the current List of Prohibited Substances and Methods and I declare that I will fully comply with such Rules*".

c. "[T]*he scope of the ISU ADR is not limited to Events organized by the ISU, such as international competitions*". Instead, the ISU ADR apply to "*any Person who competes in sport at the international level (as defined by each International Federation) or the national level (as defined by each National Anti-Doping Organization)*". As a result, the ISU ADR apply to skaters "*competing in a National Championship, at least at the level of an appeal filed against the decision of the national authorities, in the present case against the DADC decision*".

d. The Declaration for Competitors signed by the Athlete is identical to the one signed and found valid in Mutu and Pechstein v. Switzerland.

e. By agreeing to be included in the ISU Testing Pool and by signing the Declaration for Competitors, the Athlete provided "[i]*ndirect consent to CAS jurisdiction*". The Swiss Federal Tribunal (or "**SFT**") has confirmed that indirect consent by way of global reference to a separate document is a valid consent to arbitrate. In 4P.230/2000, the SFT explained: "*According to Art. 178 para. 1, the arbitration agreement must be in writing, by telegram, telex, facsimile or any other form of transmission that allows the agreement to be evidenced by text. This proof does not require that the arbitration clause is contained in the contractual documents exchanged by the parties themselves. Rather, it is sufficient to prove the arbitration clause by text that reference is made to it in such documents. The reference need not expressly mention the arbitration clause, but may also include as a global reference a document containing such a clause*".

f. Similarly, in SFT 4A_460/2008, the SFT confirmed the jurisdiction of CAS based on a global reference to FIFA rules:

"*These FIFA Rules are binding for the appellant. He is a professional football player with international participation and member of the Brazilian Football Association which is Member of FIFA. Accordingly, the FIFA Rules, including the CAS jurisdiction according to Art. 61 of the FIFA Articles, also bind the appellant. This was rightfully recognized by CAS. The appellant [to the SFT] is of the opinion that the requirement of R47 of the TAS-Code under which appeal from decisions of an association can be made to TAS if the articles or regulations of the said association so provide is not met where the rules of the Brazilian association itself does not foresee such recourse to CAS.*

This opinion cannot be followed. Art. 1 para 2 of the Brazilian Football Association foresees that the players belonging to the said association have to observe the rules of FIFA. That global reference to the FIFA Rules and among them the right to appeal from FIFA or WADA to CAS in the FIFA-Articles is enough to secure and justify the jurisdiction of CAS in light of R47 of the CAS Code, as per the existing jurisprudence which confirms the validity of a global reference to the arbitration clause contained in articles of an association".

g. ISU submits that "*such a lenient approach is certainly justified in doping matters, as no athlete can reasonably contend that he or she ignored the existence of the arbitration clause. Indeed, the jurisdiction of the CAS over doping disputes involving international competitions and international-level athletes is mandatory for all sports entities who are signatories of the WADA Code.*"

h. Third, the Athlete is subject to the Russian ADR. The Ministry of Sports of the Russian Federation promulgated the Russian ADR by Order Nr. 464 of 24 June 2021. Under this Russian State Order, the Russian ADR, which provide for appeal of anti-doping rule violations to CAS exclusively, are applicable to all athletes who are citizens or residents of Russia.

i. Order 464 approving the Russian ADR, including its provisions providing for compulsory arbitration, "*is posterior and specific*" and "*certainly supersedes the provisions of the Russian Code of Procedure*".

Applicable Rules

159. The ISU submitted that this matter is governed by the ISU ADR and the Russian ADR, both of which were implemented in accordance with the provisions of the WADC. "*Both sets of rules are applicable and therefore have to be taken into consideration by the Panel.*"

The ADRV

160. Before the DADC, the Athlete did not contest the ADRV, as a result of which the ADRV is "*confirmed*".

The Sanctions

161. Since the ADRV has been confirmed, the question is what sanctions should be applied on the Athlete.

162. The results achieved by the Athlete during the Russian National Championships "*must be disqualified*". As to what further sanctions should be imposed, the questions are as follows:

a. whether the Athlete failed to show that the ADRV was not intentional under Article 10.2.1.1 of the ISU ADR and/or Article 12.2.1.1 of the Russian ADR in which case the period of ineligibility is four years pursuant to Article 10.2.1 of the ISU ADR and/or Article 12.2.1 of the Russian ADR;

b. whether the Athlete established that the ADRV was not intentional under Article 10.2.1.1 of the ISU ADR and/or Article 12.2.1.1 of the Russian ADR but failed to show No Fault or Negligence under Article 10.5 of the ISU ADR and/or Article 12.5 of the Russian ADR, in which case the period of ineligibility is two years pursuant to Article 10.2.2 of the ISU ADR and/or Article 12.2.2 of the Russian ADR;

c. whether as a Protected Person the Athlete did show that she had No Significant Fault or Negligence under Article 10.6.1.3 of the ISU ADR and/or Article 12.6.1.3 of the Russian ADR, in which case she may be sanctioned at a minimum with a reprimand and at a maximum with a period of ineligibility of two years;

d. whether as a Protected Person the Athlete did show that the Prohibited Substance came from a Contaminated Product, in which case she may be sanctioned at a minimum with a reprimand and at a maximum with a period of ineligibility of two years; and

e. whether the Athlete established that she bears No Fault or Negligence in which case there is no period of ineligibility under Article 10.5 of the ISU ADR and or Article 12.5 of the Russian ADR.

163. In the ISU's submission:

a. the Athlete failed to show that the ADRV was unintentional, so that a four year period of ineligibility applies;

b. if she did not, then she failed to show No Fault or Negligence, so that a period of ineligibility of two years applies; and/or

c. if she showed No Significant Fault or Negligence, her Fault is on the high range of the spectrum, so that a period of ineligibility of slightly less than two years applies.

Intentional

164. As to intention, the ISU's submissions may be summarised in the following way:

a. Article 10.2.1 of the ISU ADR and/or Article 12.2.1 Russian ADR provide that, where the violation does not involve a Specified Substance, the Period of Ineligibility shall be four years – unless the athlete "*can establish that the* [ADRV] *was not intentional*". … .

b. Intention is defined in Article 12.2.3 of the Russian ADR as follows: "*The term 'intentional' … is meant to identify those Athletes … engaged in conduct which he or she knew constituted a violation of the Rules or knew that there was a significant risk that the conduct might constitute or result in the violation of the Rules and manifestly disregarded that risk*". (Article 10.2.3 of the ISU ADR sets out a similar definition.)

c. The question is: did the Athlete take the TMZ intentionally?

d. In the ISU's submission, it is more likely than not that she did so. That she did so finds support from the following matters:

a) The Athlete was taking Hypoxen and L-carnitine. There is expert evidence to suggest that TMZ has a synergistic relationship with these substances.

b) Mr Solovyov is unrelated to the Athlete.

c) Despite the fact that he had a weak heart and had suffered four heart attacks, Mr Solovyov drove two hours every day to drive the Athlete to the Ice Palace which was 200m away from the Athlete's apartment.

d) The Athlete did not provide any evidence that her mother's work prevented her from preparing food for the Athlete.

e) Mr Solovyov said that his handling of his medication was affected by his poor eyesight and yet in the two video recordings of his depositions he was not wearing glasses.

f) No medical records were produced in relation to Mr Solovyov's heart condition between a 2008 medical record and the undated medical record following the Beijing Olympics.

g) When someone takes medication twice a day, it is usually once in the morning and once in the evening and yet Mr Solovyov speaks of chewing his pills while driving the car and taking his medication at noon.

h) Mr Solovyov refused to participate directly in the hearings.

i) Mr Solovyov refused any direct interview with RUSADA.

j) While the Athlete claims to have received a dessert from Mr Solovyov for her trip to St Petersburg, which may have been contaminated with TMZ, she offered no evidence from other athletes who travelled with her about that dessert.

e. The possibility that the Athlete intentionally took TMZ is "*as likely if not more likely*" than the Athlete's account of contamination via Mr Solovyov.

f. Whether or not the concentration of TMZ detected in the Athlete's Sample improved performance or not is "*irrelevant*". The violation is the presence of a Prohibited Substance regardless of intent. Further, the measured quantity depends on the excretion time which depends on the actual prescription of the substance. Since the amount, timing and duration of the intake are not known here, what is left in the Athlete's system "*cannot serve as a judgment as about intention or not*".

g. So is the suggested risks to the Athlete's health: "*this question is irrelevant when intent is to be assessed*". The characteristic of an intentional breach is that risks are not considered or they are rated as sufficiently low or remote. The stated side effects may or may not happen, depending on the physiology of each athlete and the dosage concerned.

h. The fact that there was a delay by the Stockholm Laboratory beyond the recommended 20 days has no bearing on the ability of the Athlete to adduce documentary evidence to support the explanation that Mr Solovyov was the source of the TMZ. "*An athlete and her entourage would not wait 20 days and then throw such receipts away because the approximate time recommended for the report* [of the AAF] *... may have lapsed*".

i. The Athlete has "*failed to meet the stringent requirement to offer persuasive evidence that the explanation she offers for an AAF is more likely than not to be correct, by providing specific, objective and persuasive evidence of her submissions*".

165. As a result, the Athlete should be sanctioned with a period of ineligibility of four years.

No Fault or Negligence

166. The ISU submitted that, for the purposes of No Fault or Negligence, the Athlete must show that she did not suspect and could not reasonably have known or suspected even with the exercise of utmost caution that she used or had been administered the TMZ.

167. As to this, the ISU makes the following submissions:

a. The standard of proof is on the balance of probability. "*That would mean that the grandfather scenario was confirmed by the Panel as more likely to have*

happened than any intentional doping, that is by 51% or more as part of the balance of probabilities."

b. The Athlete's evidence is that she took what her medical team prescribed for her; she had a "*blind relationship*" with her sports doctors. She does not appear to have inquired of her doctors whether the substances they prescribed were legal or not.

c. The ISU's position is that he ADRV was "*most likely*" intentional but "*the less severe construction of conscious negligence*" where the Athlete took the substances prescribed to her without regard to the risk that they included a Prohibited Substance is more likely than the absence of any fault or negligence.

d. The same is true with respect to the Grandfather Explanation. It shows "*her and her family's complete disregard*" for their obligations to consider the risks associated with Mr Solovyov's medication and his interaction with the Athlete.

e. The Athlete was aware of her obligations with respect to anti-doping and it is likely that her mother and Mr Solovyov were as well. It appears that the Athlete and her mother knew of Mr Solovyov's heart condition and knew that he was taking medications and that Mr Solovyov "*was quite negligent*" in the way he handled his medications, which negligence appears to have been "*casually accepted*". The logic is therefore that they also "*casually accepted*" the possibility of contamination via Mr Solovyov's use of his medications.

f. This "*would constitute ... intention*" but if not intentional, then "*the intake of a doping substance is the outcome of a serious fault by the Athlete and her entire family, as all saw and were aware of the very negligent handling of his medication by Mr Solovyov but did nothing avoid any contamination*".

168. As a result, if the Grandfather Explanation is to be accepted, and intention is excluded, then "*the more likely scenario is that the Athlete and her family have been grossly negligent* [and] *a two year ineligible would be required under Art. 10.2.2 of the ISU ADR and Art. 12.2.2 of the* [Russian ADR]".

No Significant Fault or Negligence

169. As to No Significant Fault or Negligence, the ISU made the following submissions:

a. The relevant rules are set forth in Article 10.6.1.3 of the ISU ADR and Article 12.6.1.3 of the Russian ADR.

b. Pursuant to CAS 2021/A/8056, the Panel must look at the totality of the circumstances, paying attention to the specific facts of the case at hand. A finding of No Significant Fault or Negligence is only justified in "*truly exceptional*" cases, though the bar should not be set too high, and a claim of No

Significant Fault or Negligence is consistent with some degree of fault and cannot be excluded simply because the athlete left some stones unturned.

c. In this case, the Athlete has not tried to turn every stone. There has been no attempt to provide direct evidence of contamination via Mr Solovyov; to the contrary, the Athlete has "*carefully avoided*" doing so.

d. The "*key element*" is that a reduction of the sanction should remain exceptional and granted only if the Athlete and her entourage have been exercising "utmost caution".

e. If one assumes that the ingestion of TMZ was not intentional but only negligent then "*the characterisation of that negligence and thus of Ms Valieva's fault should be in the higher end of the ineligible spectrum*" with a Period of Ineligibility of two years.

f. Article 10.5 of the ISU ADR and Article 12.5 of the Russian ADR provide for the elimination of the period of ineligibility where there has been no fault or negligence on the part of the athlete. This is not open to the Athlete unless she has shown no intention under Article 10.2.1.1 of the ISU ADR and/or Article 12.2.1.1 of the Russian ADR.

Start of the Period of Ineligibility

170. The ISU submitted that the ineligible period should start on the day the Sample was collected, 25 December 2021.

171. This would be consistent with the fact that there were many delays here, some not caused by the Athlete and some caused by the Athlete.

a. The first delays were caused by the Stockholm Laboratory.

b. There were delays caused by the Athlete changing lawyers, twice – on 14 April 2022 and 3 November 2022.

c. There were delays caused by "*slow investigations*" such that the DADC decision was not issued until 14 December 2022.

d. The early start of the Period of Ineligibility would ensure that the ineligible decision "*remains connected to the facts*" and would be a solution that is fair to the Athlete "given the fact that the testing took place" some time ago.

e. An ineligible period imposed now "*would have an even greater impact on her career*".

Disqualification

172. The ISU submitted that all the Athlete's competitive results during this Period of Ineligibility should be disqualified.

Costs

173. The ISU seeks an order that RUSADA and the Athlete are ordered to bear the costs of arbitration and the ISU's legal fees and expenses. The ISU's position regarding the costs of the proceedings was further elaborated in its submissions on costs filed on 1 December 2023.

Relief

174. ISU's prayers for relief were as follows:

"*ISU respectfully requests the CAS to decide as follows:*

1. The present Appeal is admissible.

2. The decision Nr. 9/2023 made on 14 December 2022 by the Disciplinary Anti-Doping Committee of the Russian Anti-Doping Agency is set aside.

3. A period of Ineligibility of four (4) years is imposed on Ms. Kamila Valieva, starting from 25 December 2021 onwards.

4. Subsidiarily, a period of Ineligibility of two (2) years is imposed on Ms. Kamila Valieva, starting from 25 December 2021 onwards.

5. More subsidiarily, a period of Ineligibility of less than two (2) years but close to two (2) years is imposed on Ms. Kamila Valieva, starting from 25 December 2021 onwards, the duration of which is left to the discretion of the CAS Panel.

6. All competitive results achieved by Ms. Kamila Valieva during this period of Ineligibility are disqualified and all medals, points and prizes are forfeited.

7. RUSADA and Ms. Kamila Valieva are ordered to bear the costs of arbitration and the Appellant's legal fees and expenses."

C. WADA's Submissions

Jurisdiction

175. WADA submissions on jurisdiction may be summarised as follows.

176. WADA agreed with and adopted the submissions of RUSADA and the ISU with respect to jurisdiction. For the following reasons, it is "*abundantly clear*" that the Athlete is

bound by the Russian ADR, which provide WADA, RUSADA and the ISU rights of appeal to CAS.

a. The Russian ADR were implemented by order of the Russian Ministry for Sport pursuant to federal law. There is no dispute the Athlete is bound by that law requiring athletes to comply with the anti-doping rules.

b. The Russian ADR provide for compulsory arbitration before CAS, and give WADA, ISU and RUSADA a right to appeal to CAS.

c. The SFT recognised in case 4A_600/2020 that compulsory arbitration is permissible so long as it complies with Article 6 of the ECHR, which arbitration before CAS clearly does.

d. By choosing to participate as an International-Level Athlete, the Athlete is bound by the Russian ADR implemented pursuant to federal law, including its provisions for compulsory arbitration before CAS.

e. Notwithstanding that the Athlete is subject to compulsory arbitration before CAS under the Russian ADR, the Athlete also has consented to CAS's jurisdiction by proceeding without objection with the disciplinary process under the Russian ADR. Specifically, the doping control giving rise to these proceedings was conducted under the Russian ADR, the Athlete signed the respective Doping Control Form, she was prosecuted under the Russian ADR, and she requested a hearing before the DADC under the Russian ADR. At no point during the process has she ever challenged her submission to the Russian ADR.

f. In addition, during the Cas Ad Hoc proceedings, the Athlete argued that the CAS Ad Hoc Division was not the correct appeals avenue, and that WADA should have appealed to the CAS Appeals Division instead.

The Applicable Rules

177. WADA submitted that the Challenged Decision was made in application of the Russian ADR and that therefore the Russian ADR are applicable to the present appeal.

The ADRV

178. The Stockholm Laboratory reported the AAF on 7 February 2022. The concentration of TMZ detected was estimated at 2.1 ng/mL. The Athlete has not denied the presence of TMZ as a Prohibited Substance and the DADC held that the Athlete had committed an ADRV in violation of Article 4.1 of the Russian ADR.

The Sanction

179. The DADC decided that the Athlete bore no Fault or Negligence for the ADRV and therefore imposed no Period of Ineligibility. In WADA's submission, the DADC

"*fundamentally erred*" in doing so. WADA's submissions in relation to the appropriate sanction(s) are summarised below.

Burden and Standard of Proof

180. Article 5.1 of the Russian ADR provides that, where the rules place the burden of proof on an athlete, the standard of proof is the balance of probability.

181. The balance of probability standard "*entails that the athlete has the burden of convincing the panel that the occurrence of the circumstances on which the athlete relies is more probable than their non-occurrence*". To show that an explanation is possible is not enough; it is not the same as probable.

182. The DADC reduced the standard of proof from on the balance of probability to that of "*reasonable possibility*". There was no proper basis to do so.

Intentional

183. Article 12.2 of the Russian ADR provides in relevant part as follows:

"If there are no grounds for elimination, reduction or suspension pursuant to Clauses 12.5, 12.6, or 12.7 hereof, the period of Ineligibility for a violation of Clauses 4.1, 4.2, or 4.6 of the Rules shall be determined as follows.

12.2.1. Subject to Clause 12.2.4 hereof, the period of Ineligibility shall be four years in the following cases:

12.2.1.1. The violation of the Rules does not involve a Specified Substance or a Specified Method unless the Athlete or other Person can establish that the violation of the Rules was not intentional.

12.2.1.2. The violation of the Rules involves a Specified Substance or a Specified Method and RUSADA can establish that the violation of the Rules was intentional.

12.2.2. In cases not specified in Clauses 12.2.1 and 12.2.4.1 hereof, the period of Ineligibility shall be two years.

12.2.3. The term "intentional" as used in Clause 12.2 hereof is meant to identify those Athletes or other Persons engaged in conduct which he or she knew constituted a violation of the Rules or knew that there was a significant risk that the conduct might constitute or result in the violation of the Rules and manifestly disregarded that risk. ..."

184. TMZ is not a Specified Substance so that the period of ineligibility is four years unless the Athlete can establish that her ADRV was not intentional.

185. This rule applies to all athletes, including those who are Protected Persons. The reason for this is that, if a Protected Person is held to have committed an ADRV intentionally,

there is no reason to treat them any differently than an adult athlete. The test with respect to intention is therefore the same whether the athlete is an adult or a Protected Person.

186. The correct test for intention is whether an athlete has "*proven, by a balance of probabilities, that he did not engage in conduct which he knew constituted an anti-doping rule violation or knew that there was a significant risk that said conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk*": CAS 2017/A/5016 & 5036.

187. A "*whole series*" of CAS cases has held that "*the athlete must necessarily establish how the substance entered his/her body*" (see e.g. CAS 2017/A/5248; CAS 2017/A/5295; CAS 2017/A/5335; CAS 2017 2017/A/5392; and CAS 2018/A/5570). The logic behind this line of cases is explained in CCES v Findlay, SDRCC DT 16-0242 at ¶77 as follows:

"*It appears to me that logically, I cannot fathom nor rule on the intention of an athlete without having initially been provided with evidence as to how she had ingested the product which, she says, contained the* [Prohibited Substance]. *With respect to for the contrary view, I fail to see how I can determine whether or not an athlete intended to cheat if I do not know how the substance entered her body.*"

188. Some CAS cases have "*ever so slightly departed*" from this line of cases holding that a lack of intent could theoretically be established without establishing the source of the Prohibited Substance: e.g. CAS 2016/A/4534 ("*where an athlete cannot prove source it leaves the narrowest of corridors through which such athlete must pass to discharge the burden which lies upon him*"); CAS 2016/A/4919 ("*while this Panel assumes in favour of the Athlete that he does not have to necessarily establish how the* [Prohibited Substance] *entered his system when attempting to prove on the balance of probabilities the absence of intent, in all but the rarest cases the issue is academic"*); CAS 2021/A/7579 ("*But unconscious contamination by the spiking of supplements in a manner which is of course not indicated on the label, or as a result of using common facilities at a gym, does not lend itself to such proof. Still, it is not impossible. It is ultimately a question of evidence – what one means by the notion of proof.*").

189. Only in "*the rarest of cases*" will an athlete be able to establish a lack of intent without demonstrating how the substance got into their body; "*it is difficult to conceive how a panel could assess an athlete's conduct under art 10.2.3 of the* [WADC] *without knowing how the substance entered the athlete's body"*.

190. This is codified in the WADC by the comment to Article 10.2.1 of the WADC:

"*While it is theoretically possible for an Athlete or other Person to establish that the anti-doping rule violation was not intentional without showing how the Prohibited Substance entered one's system, it is highly unlikely that in a doping case under Article 2.1 an Athlete will be successful in proving that the Athlete acted unintentionally without establishing the source of the Prohibited Substance.*"

191. An athlete must provide actual evidence to support his protestations of innocence; he or she must provide "*concrete and persuasive evidence establishing such lack of intent on the balance of probabilities*"; protestations of innocence, however credible they appear, "*carry no material weight in the analysis of intent*": CAS 2020/A/7068 at ¶134. The same applies to a "*lack of a demonstrable sporting incentive to dope, diligent attempts to discover the origin of the prohibited substance or the athlete's clean record*", which have constantly been rejected as justifications for a plea of lack of intent: see e.g. CAS 2017/O/ 5218 at ¶166.

192. The burden in this respect is solely on the athlete. It is not for the anti-doping organisations or for the panel: CAS 2017/A/5016 and 5036 at ¶131. The standard is on the balance of probability: the Athlete is required to establish a lack of intent on the balance of probability in order to avoid the four-year period of ineligibility imposed by Article 2.2.1 of the Russian ADR.

193. The Athlete has put forward three possible explanations for the presence of the TMZ in her body: (a) the so-called Grandfather Explanation; (b) contamination of medication/ supplements; and (c) sabotage. The Athlete has focused her attention on the first and has called no evidence as to the second and third.

194. The Grandfather Explanation evolved over time:

    a. At the hearing before the DADC on 14 December 2022, the Athlete argued that "*This substance, this drug, is present in the home. There could be absolutely different ways in which it got there. For example, the grandfather drank from a glass, some saliva got into it, the glass was then used by the athlete. For example, the medication was lying on some surface, some traces were left behind, and then the medication was lying on this surface and then the athlete drank it. That is, there are many different ways in which the drug could have come into contact. But the very fact that it is in the family home, the very fact of proving that it is more likely than not that there was contamination, must be taken into account.*"

    b. In its appeal to the CAS Ad Hoc Division, WADA challenged this explanation, pointing to the fact that the Athlete left for St Petersburg on 22 December 2021 and competed on 25 December 2021 during which time she had no contact with her grandfather.

    c. In order to meet that challenge, the Athlete now says that she took with her on 22 December 2021 a strawberry dessert made for her by her grandfather and that it likely contained traces of her grandfather's TMZ and was thus the cause of her positive result.

195. The Grandfather Explanation "*has no evidentiary basis whatsoever*" and "*is more or less entirely unsubstantiated*":

a. There is no documentary evidence that Mr Solovyov used TMZ at the relevant time.

b. There is no evidence of Mr Solovyov purchasing TMZ.

c. There is no documentary evidence relating to Mr Solovyov's use of TMZ prior to 25 December 2021.

d. The only evidence in relation to his use of TMZ are two medical records dated March 2022 and December 2022 – i.e. after the notification to the Athlete on 8 February 2022 of the AAF. Produced after the event, these have "*no evidentiary value whatsoever*".

e. Mr Solovyov "*has refused to testify on account of health issues*". His evidence before the DADC was a pre-recorded video and a written statement. None of his evidence has been tested.

f. There is no independent evidence to support Mr Solovyov's use of TMZ.

g. It is "*nearly impossible*" to believe that a person can take medication over many years in connection with a heart issue "*without there being any contemporaneous evidence of it*".

h. There is no independent evidence as to how the TMZ made its way into the strawberry dessert. Mr Solovyov's evidence on this is "*inconsistent*". In his evidence on 8 February 2022, he said that he "*always*" takes the tablets by chewing them; in his explanation of 17 May 2022 he stated that he crushes the tablets on a chopping board and that the TMZ in the strawberry dessert could have been picked up from using the same chopping board.

i. There is no independent evidence to support the Athlete's evidence that she took the strawberry dessert with her on the train from Moscow to St Petersburg or as to how and when she ate the dessert prior to 25 December 2021.

j. The Athlete's mother did not mention a strawberry dessert when she was interviewed on 15 March 2022; yet in testimony before the DADC she stated that the Athlete took the strawberry dessert with her to St Petersburg.

k. It is "*inherently implausible*" that an athlete at this elite level would take a homemade strawberry dessert with her across Russia and eat it during a competition period.

196. The evidence put forward by the Athlete "*cannot be sufficient for a Panel to be satisfied, on a balance of probabilities, that the Athlete's explanation is more likely to be the cause of the positive than not*".

197. This conclusion is "*all the more warranted*" when one takes account of the contextual background:

a. As explained by Prof. Schumacher and Dr Iljukov, TMZ is recommended for use in Russian sport. It has been recommended in the Russian National Guidelines on Sports Medicine and a review of the scientific literature in Russia shows that "*TMZ is widely recommended in elite sport in particular in support of the heart in connection with heavy training*" – in circumstances where the Athlete was diagnosed with a heart condition at the end of 2020.

b. Russian medical literature indicates that TMZ is also prescribed to young athletes. Ex 45 ref 10 and 11

c. The Athlete was using Hypoxen and L-Carnitine at the time of the positive doping control (as disclosed on the DCF) and was also using Ecdysterone (which was not disclosed on her DCF but was detected in her Sample by the Stockholm Laboratory). Prof. Schumacher and Dr Iljukov state that these three substances as well as TMZ are "*typical pharmacological support provided to athletes in Russia to assist in heavy training load and improve recovery*" and that there is likely a synergistic relationship among Hypoxen, L-carnitine and TMZ.

d. The Athlete was using products beyond Hypoxen, L-carnitine and Ecdysterone. According to FMBA, for the two year period 2020-2021 the Athlete was given approximately 60 different medications and supplements.

e. Ms Tutberidze was the Athlete's head coach. In an interview in 2019 Ms Tutberidze confirmed that meldonium was provided to Russian athletes for improved recovery and in support of the heart muscle and that after meldonium was banned by WADA in 2016 "*we had to look for something new*". TMZ and meldonium have similar properties.

f. Dr Shvetskiy (who was named by the Athlete as her doctor in the DCF) was sanctioned in 2007 for the use of substances by a prohibited method and in 2016 a sample of one of his skaters was found to contain meldonium.

198. These matters present "*a particularly compelling picture*" and in these circumstances "*the evidence of contamination would have to be all the more convincing in order to be accepted as being more likely than not*".

199. Taking all these matters into account, the Athlete "*simply cannot be found ... to have established, on the balance of probabilities, the origin of the TMZ in her sample*". It follows that the Athlete's ADRV "*must be deemed intentional"*, and a sanction of four years must be imposed per Rule 12.2.1 of the Russian ADR.

No (Significant) Fault or Negligence

200. Rules 12.5 (No Fault or Negligence) and 12.6.1.3 (No Significant Fault or Negligence) are not, as a matter of principle, applicable in circumstances where the Athlete cannot discharge her burden of establishing that the ADRV was unintentional. This is made

clear by the comment to Article 10.6.2 of the WADC precludes the application of these rules to ADRVs "*where intent is an element*" of the violation or sanction.

201. In any event, WADA submits that the Athlete has not established a case of No Fault or Negligence or No Significant Fault or Negligence. The Athlete "*has not established the source of the TMZ in her system, and has provided no other concrete and objective elements to conclude that her level of Fault was not significant in relation to her violation*".

202. Even if the Athlete's Grandfather Explanation is taken at face value, the Athlete's level of fault is significant. In particular:

a. There is no independent evidence of any diligence on the part of the Athlete. There is no evidence that she cross-checks her medications/ supplements against the Prohibited List.

b. The Athlete was "*astonishingly careless*". She knew that her grandfather was taking pills and that he was crushing them on a chopping board on which he also prepared food for her. She also knew there was a risk of contamination. Nonetheless, she did not ask anyone what the pills were or take any steps to make sure that the pills or any residues would not get into her system. She also admitted that she might have shared a glass with her grandfather or that she might have taken one of his pills.

c. The fact that the Athlete was a minor at the time should not be brought to account when assessing fault. She is an experienced athlete, with significant anti-doping experience. She is knowledgeable of the degree of care that is required to avoid ingesting a prohibited substance.

203. In view of these matters, the Athlete's level of fault was significant "*such that a sanction of two years would be applicable*" and a sanction towards the higher end would be warranted.

204. *A fortiori*, the Athlete's degree of fault cannot justify a finding of No Fault or Negligence as was held by the DADC. No Fault or Negligence has only been found in the "*most exceptional cases*" and the Athlete "*is nowhere near*" the required standard of care.

Start of the Period of Ineligibility

205. WADA submitted that the Period of Ineligibility of four years should start on the date of the award issued by the Panel and that there was no basis to backdate the commencement of the period.

Disqualification

206. WADA submitted that Article 12.10 of the Russian ADR provides for disqualification "*unless otherwise required by the principle of fairness*".

207. The burden is on the Athlete to establish that the fairness exception applies. "*If the Athlete does not meet that burden, all her results from 25 December 2021 … must be disqualified*".

Costs

208. WADA seeks an order that the arbitration costs shall be borne by RUSADA or, in the alternative, by the Respondents jointly and severally. WADA's position regarding the costs of the proceedings was further elaborated in its submissions on costs filed on 1 December 2023.

209. It was submitted that, according to consistent case law at CAS, the decision of the DADC is "*attributed*" to RUSADA and costs are to be imposed against it in the event that the appeal is upheld. It follows that RUSADA should bear the costs of these proceedings.

210. As to legal and other costs, WADA submitted that, in light of the DADC's erroneous disregard of the applicable standard of proof, RUSADA or alternatively the Respondents should be ordered to make a significant contribution to WADA's legal and other costs "*in the amount that the Panel deems appropriate*".

Relief

211. WADA's prayers for relief were as follows:

"93 *WADA respectfully requests the CAS to rule as follows:*

1. The Appeal of WADA is upheld.

2. The decision dated 14 December 2022 (with reasons of 26 January 2023) rendered by the Disciplinary Anti-Doping Committee of RUSADA in the matter of Kamila Valieva is set aside.

3. Kamila Valieva is found to have committed an anti-doping rule violation under art. 4.1 and/or 4.2 of the RUSADA ADR.

4. Kamila Valieva is sanctioned with a period of ineligibility of four years starting on the date on which the CAS award enters into force. Any period of provisional suspension effectively served by Kamila Valieva before the entry into force of the CAS award shall be credited against the total period of ineligible to be served.

5. All competitive results obtained by Kamila Valieva from and including 25 December 2021 until (and including) the date on which the CAS award enters into force are disqualified, with all resulting consequences (including forfeiture of medals, points and prizes).

6. The arbitration costs shall be borne by RUSADA or, in the alternative, by the Respondents jointly and severally.

7. WADA is granted a significant contribution to its legal and other costs."

D. The Athlete's Submissions

CAS Jurisdiction

212. The Athlete contested CAS's jurisdiction on the overarching basis that "*no consent to arbitrate the present dispute exists as the Athlete has not signed a declaration of acceptance of CAS arbitration for appeal against DADC decisions and has not accepted CAS arbitration by bringing a claim before CAS*".

213. The Athlete advanced various grounds objecting to jurisdiction, summarised in the following paragraphs.

214. The Challenged Decision was issued by the DADC, a sports-related body within the meaning of Article 47(1) of the CAS Code. But the Russian ADR do not provide for CAS jurisdiction without consent. "*In fact, this provision does not provide that consent is not required for a CAS panel to have jurisdiction. This provision simply indicates that appeals against a decision issued by RUSADA's disciplinary body may be lodged before CAS. This is not sufficient per se for an arbitral tribunal to retain jurisdiction ratione voluntatis regarding the Athlete.*"

215. The Athlete "*has not expressly accepted in writing the possible arbitration procedure contemplated by Article 15.2.1*" of the Russian ADR and "*the Appellants' argument is based on a confusion between the applicability of* [the Russian ADR]*, in general, and consent to arbitrate disputes designated by its Article 15.2, in particular. Indeed, the general applicability of RUSADA ADR as an administrative act, which is not disputed, is not sufficient to justify the jurisdiction of CAS in appeal proceedings referred to by its Article 15.2*".

216. In the cases of Mutu and Pechstein, "*consent to arbitrate although forced, existed by declarations signed and by the fact that these athletes were appellants and brought claims before CAS, which embodied their acceptance of CAS jurisdiction*". Here, the consent to arbitrate by the athlete does not exist.

217. Article 22.1 of the Russian Code of Civil Procedure confirms the requirement of consent to arbitrate, stating: "*Disputes arising from civil legal relations, as well as individual labour disputes of athletes and coaches in professional sport and high performance sport may be referred by the parties to an arbitration court if there is a valid arbitration agreement between the parties to the dispute, unless otherwise provided for by federal law*".

218. Even if Article 15.2 of the Russian ADR "*may have intended to introduce compulsory arbitration without consent (which is contested), it could not have validly done so by 'superseding' the requirement of a valid arbitration agreement under Article 22.1 of the Russian Code of Civil Procedure. Indeed, Article 22.1 of the Russian Code of Civil Procedure was introduced by a Federal Law. . . . In Russian law, as in any legal system,*

an administrative act, such as the Ministry of Sports Order 464 dated 24 June 2021, which is lower in the hierarchy of norms, cannot derogate to a superior norm".

219. With respect to the Athlete's inclusion in the ISU Testing Pool, there is no precedent in CAS arbitrations to justify jurisdiction solely on the basis of inclusion in a testing pool. The ISU notice as to the Athlete's inclusion in the ISU Testing Pool did not refer to CAS or to an appeal of a decision of the DADC. In any event, the Athlete's inclusion in the ISU Testing Pool cannot provide a basis for jurisdiction because these proceedings are governed by the Russian ADR and not the ISU ADR.

220. By the ISU Declaration for Competitors, "*the Athlete only accepted the ISU Constitution which does not make a global reference to CAS jurisdiction, but rather a reference limited to the specific disputes mentioned in ISU Constitution*". The Declaration referred to Article 26 of the ISU Constitution; this includes an arbitration clause which refers solely to appeals against the decisions issued by the ISU's Disciplinary Commission and not to appeals against the decisions issued by the DADC. "*The dispute at hand is not covered by this arbitration clause as the present proceedings are not an appeal against a decision issued by the DC (ISU's disciplinary body), but against a decision of the DADC (RUSADA's disciplinary body). Consequently, the ISU Declaration does not contain the Athlete's consent to arbitrate the present dispute.*"

221. With respect to the proceedings before the CAS Ad Hoc Panel, "[t]*he Appellants misinterpret the Athlete counsel's statements . . . [as] the Athlete's objection to jurisdiction pertained to ratione materiae, i.e., it related to the scope of the arbitration agreement and the matters to be attributed to the CAS ad hoc division. The objection to jurisdiction did not relate to the ratione voluntatis, i.e. the existence of consent to arbitration*". The Athlete "*argued that Article 15.2 of RUSADA ADR does not attribute jurisdiction to the CAS Ad Hoc Division. This statement neither explicitly nor implicitly indicates that she has given her consent to arbitrate appeals under Article 15.2*".

The Applicable Rules

222. The Athlete submitted that Russian ADR apply to this appeal and that she has never contended otherwise. The ISU ADR do not apply. The fact that the Athlete has accepted the ISU Constitution does not mean that the ISU ADR are applicable to the present case:

a. This is an appeal from the DADC, which decided the case on the application of the Russian ADR.

b. It is "*impossible to imagine*" deciding the appeal before CAS on a different set of rules.

c. The application of the ISU ADR is the responsibility of the ISU Disciplinary Commission, which is not seised of this case.

d. The scope of the ISU ADR does not cover the present appeal which concerns a positive test carried out at a Russian national competition that was not organised

by the ISU. The collection of the Athlete's Sample and results management were carried out by RUSADA pursuant to the Russian ADR, and not by the ISU pursuant to the ISU ADR.

The ADRV

223. As noted above:

a. In her Answer (dated 3 July 2023), the Athlete submitted that the appeals should be dismissed on the merits because "*no doping and no violation of RUSADA ADR is proven*".

b. During the hearing, and after the examination and cross-examination of Dr Pohanka, Prof. Ayotte and Prof. Kintz, the Athlete withdrew this defence on the merits and thereby accepted that the ADRV as alleged had been proven.

The Sanction

224. As to the appropriate sanction(s), the Athlete submitted as follows:

a. The Athlete bears No Fault or Negligence under the Russian ADR.

b. The Athlete bears No Significant Fault or Negligence under the Russian ADR.

c. The Athlete did not commit an intentional violation of the rules.

d. Any Period of Ineligibility should start on 25 December 2021.

e. The Athlete's results subsequent to 25 December 2021 should not be disqualified.

Burden and Standard of Proof

225. The Athlete is a Protected Person. Protected Persons "*benefit from a more favourable regime in terms of applicable sanctions, burden of proof, assessment of degree of fault, and disclosure of doping cases*".

226. The standard of proof has been "*extensively discussed*" by the Appellants but they have not addressed the object of the proof. Under the Russian ADR, as a Protected Person, when seeking to establish No (Significant) Fault or Negligence the Athlete is under no obligation to establish how the prohibited substance entered her system.

No Fault or Negligence

227. In the first place, the Athlete "*did not commit a Fault or Negligence*":

a. The Athlete exercised "*utmost caution*" to keep clean.

b. "*The 'grandfather' contamination scenario is the most probable one and most likely has happened than not.*"

c. The 'grandfather' contamination scenario is corroborated by scientific evidence.

Utmost Caution

228. Article 12.5 of the Russian ADR provides that *"If an Athlete or other Person establishes in an individual case that he or she bears No Fault or Negligence, the otherwise applicable period of ineligibility shall be eliminated"* where "No Fault or Negligence" is defined as: "*The establishment by an Athlete … 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 administrated the Prohibited Substance".*

229. In this context, the "*central element*" to be proven by the Athlete "*is the ignorance of having been administered a prohibited substance. This ignorance is assessed both subjectively (a particular athlete has ignored) and objectively (a reasonable athlete in the same situation would have equally ignored)*".

230. The Athlete, as a Protected Person seeking to establish No (Significant) Fault or Negligence, is under no obligation to establish how the prohibited substance entered her system. For abundant caution, however, "*the Athlete will demonstrate that the origin of the contamination via her grandfather is the most probable scenario and most likely happened than not".*

231. In order for the Panel to find that the Athlete bears no Fault or Negligence, the Panel "*must assess on a balance of probability that the Athlete exercised utmost caution to keep clean*". No Fault or Negligence cases are not common but they are not "*nonexistent*": see CAS 2009/A/1926; CAS 2017/A/5296; CCES v Barber SDRC 2016. Some cases have involved the consumption of contaminated meat: World Rugby v Perinchief 2013; ITF v Farah 2020; and CAS 2019/A/6593; and contaminated water: CAS 2013/A/3370.

232. In CAS 2006/A/1025, the CAS panel decided that the athlete bore No Significant Fault or Negligence when the athlete unwittingly drank from a glass of water to which his wife had just added a prohibited substance. In doing so, the panel noted that the athlete could not show No Fault or Negligence because he was aware of his wife's long-standing use of the substance and therefore was obliged to undertake strict precautions. By contrast, in the present case, "*the Athlete did not know that her grandfather was taking a medication containing a prohibited substance*" which would point to the absence of Fault or Negligence.

233. An assessment of the significance of any Fault or Negligence "*must be viewed in the totality of the circumstances*"; then the Panel can decide whether the Athlete "*exercised utmost caution to keep herself clean of any prohibited substance*". It is also necessary to take into account the status of the Athlete as a Protected Person.

234. The Athlete pointed to the following matters:

a. The Athlete has been a clean athlete. She has provided 17 samples and, apart from 25 December 2021, she has never tested positive.

b. The Athlete systematically verified her medication and supplements. The Athlete used RUSADA's "Anti-Doping PRO" application, "*where her medication and supplements were scrutinized for any prohibited substances*". When she did not find a medication or supplement in application "*she sent a request … for verification of the medication in order to know if it contains something prohibited*". She did this on five occasions. One example was the "Mega Fat Burner", the subject of her request in January 2022.

c. The application is no longer available. The Athlete now checks her medication directly on the RUSADA website.

d. The Athlete "*is also particularly attentive to the storage of her belongings and medication*". She takes a "*lockable suitcase*" with her to competitions, and "*never leaves it unsupervised and unlocked*". She took this suitcase with her to St Petersburg on 22 December 2021 "*as well as a grey bag and did her best to always keep them under control*". The Athlete's "*cautious and responsible attitude*" in this respect is confirmed by her teammate Ms Tarasova.

e. In the months preceding the positive test, the Athlete underwent four educational anti-doping programs: 15 September 2021, 19 October 2021, 15 December 2021 and 17 December 2021. Having said that, "*contamination through food or the use of shared dishes was not indicated as a mode of contamination in any of the RUSADA programs she has attended*".

f. The Athlete was "*repeatedly instructed by her coaches*" as to the need to take precautions with their belongings and their food and drink. "*The Athlete was indeed taught to be cautious with what she drank or eat* [sic]*, that she should not accept food or drink from strangers, should not leave her belongings unattended, should not consume suspicious beverages, should not drink from open bottles, and should check her supplements or medications to ensure that they do not contain prohibited substances. The Athlete complied with all these directives.*"

g. However, "*it is not the role of a 15-year old child to imagine various potential contamination scenarios in order to avoid them, It would be disproportionate to ask her to do this. The Athlete, due to her young age and trusted relationship with her grandfather, could not have known or suspected, or even imagined that a contamination could happen through a home-made dessert."*

h. The Athlete did not know that her grandfather was taking a prohibited substance as a heart medication until after the positive doping test. It was not until 8

February 2022, when notified of the AAF, that the Athlete and her mother knew the grandfather was taking medication that contained a prohibited substance.

i. The fact that the Athlete saw her grandfather crushing pills with a knife and dissolving them into a glass does not mean that she was not cautious – "*she was simply unaware of the potential risk of contamination*" and therefore did not investigate what medications her grandfather was taking.

235. Based on all of these matters, "*it is clear that the Athlete did everything in her power to prevent a prohibited substance from entering her body and behaved with the 'utmost caution*'". The case of 2017/A/5301 (where the panel held that the athlete was negligent) is distinguishable on the facts and the case of CAS 2019/A/6482 (where the panel held that there was no fault or negligence) is more in line with the Athlete's circumstances. Moreover, neither athlete in those cases was a Protected Athlete – "*therefore, taking into account all the circumstances of the Athlete's case, it follows that it most likely leans towards a No Fault or Negligence*".

Contamination via the Grandfather

236. Even though, as a Protected Person, the Athlete is under no obligation to establish how the prohibited substance entered her system, the Athlete has "*the grandfather contamination route is the most probable one and that it has most likely happened than not*".

237. The evidence supporting the grandfather contamination route is as follows:

a. The Athlete lives with her mother in Moscow. Ms Alsu Valieva leaves early in the morning for work (as an accountant) and she works until 15:30. The Athlete has on-line schooling in the morning.

b. The Athlete trains at the Ice Palace. The morning session is from 10:30 to 13:30. The afternoon session is from 15:30 until 19:30.

c. The Athlete has a warm relationship with Mr Solovyov, whom she regards as her grandfather (he is not her blood grandfather). He was a "*stable presence*" in her life in the three months leading up to the Russian Championships in December 2021.

d. Mr Solovyov has had heart problems since 2000. He suffers from ischemic heart disease and angina pectoris. He has had four heart attacks and has had two surgeries. As a result he was "systematically taking medications to maintain proper cardiac activity. This is confirmed by: (i) his 22 December 2008 discharge summary which confirms that he suffered from ischemic heart disease and angina pectoris; (ii) an extract form his medical record of 10 March 2022 which confirms that he was recommended to take 35mg TMZ twice a day, courses two times a year for three months; and (iii) an extract form his medical record of 2 December 2022 which confirms that he suffers from ischemic heart

disease and angina pectoris and that he "*constantly takes Trimetazidine 35mg twice a day (course one in 3 months)*".

e. Mr Solovyov started using TMZ "*approximately since 2018*". TMZ is "*freely sold in Russian cities, in the form of 20mg or 35mg tablets, and its purchase does not require a prescription*". He started another three month course in October 2021 "*and he was using this medication at the moment when this substance entered the Athlete's system, i.e. in December 2021*".

f. Because she works, Ms Alsu Valieva asked Mr Solovyov to escort the Athlete to the Ice Palace and to attend the training sessions. Mr Solovyov drove from his house in Lukashenko village to the Athlete's house and then drove the Athlete to the Ice Palace for the morning session. He did so in order to ensure her safety ("*so that no one knows her home address*") and to be there in case of an emergency (such as an injury). Ms Alsu Valieva went to the Ice Palace at 16:30 in order to take the Athlete home after training.

g. On 20 December 2021, Mr Solovyov accompanied the Athlete to training and after the morning session they had lunch together at the Athlete's home. Mr Solovyov then drove the Athlete back to the Ice Palace for the afternoon session. He left when Ms Alsu Valieva arrived at around 16:30.

h. According to the Athlete's witness declaration, on 21 December 2021, Mr Solovyov drove the Athlete to the Ice Palace in the morning and drover her home again at lunch time. They had lunch together. Mr Solovyov gave the Athlete a strawberry dessert. Mr Solovyov then drove the Athlete back to the Ice Palace for the afternoon session. Ms Alsu Valieva also came for the afternoon session. Mr Solovyov left at the end of the session, taking with him the Valievas' dog, which he was looking after while they were in St Petersburg.

i. The Athlete has stated that Mr Solovyov gave the Athlete the strawberry dessert "*to take with me to St Petersburg the next day. Grandfather was making this dessert at his home and it is likely, as he later informed my mother and me, that he used the same board on which he had previously crushed a tablet of trimetazidine to make the dessert and cut bananas and strawberries. I put the strawberry dessert in the fridge in the [train] during the journey and then in the fridge when I arrived at the hotel*".

j. In the morning of 22 December 2022, the Athlete and her mother took the train to St Petersburg, arriving in the afternoon. The Athlete had breakfast on the train. Upon arrival in St Petersburg, the Athlete and her mother checked into the River Palace Hotel, staying in different rooms. On that day, "*instead of lunch, the Athlete ate her grandfather's strawberry dessert*".

k. On 23 December 2023, the Athlete "*ate again some of her grandfather's dessert*" instead of dinner.

l. On 24 December 2021, the Athlete ate breakfast at the hotel (at the hotel buffet). The same day, the Athlete ate a cooked meal which her mother had bought from a delicatessen. She completed her short programme at around 18:20; at 21:00 she took part in a press conference; and at 23:00 returned to the hotel by taxi.

m. On 25 December 2021, the Athlete ate breakfast alone in the hotel and did not have lunch. She made two round trips to the skating rink for training sessions. She began her event at 20:40. She was met by the DCO immediately after the event.

238. Given this detailed agenda, and taking into account the Athlete's "*cautious behaviour with regard to storage an intake of her medications, the supervision of her belongings and her overall responsible attitude*" then *"the only viable explanation of her contamination with trimetazidine is via domestic interaction, i.e. due to eating food her grandfather cooked or using shared dishes*".

Contamination via the Grandfather is corroborated by scientific evidence

239. The Athlete submits that this "*contamination scenario*" is corroborated by the scientific evidence. In particular:

a. TMZ has no proven efficacy effect and the Appellants' expert evidence lacks data on efficacy.

b. TMZ has numerous side effects and is contra-indicated for people under 18 years of age.

c. There is no synergistic effect between TMZ, L-carnitine and Hypoxen.

d. The Athlete's "*athletic heart*" is irrelevant.

e. Interpretation of the concentration in the Athlete's Sample.

f. TMZ is not recommended for use in Russian sport.

240. TMZ has no proven efficacy effect:

a. TMZ is a Prohibited Substance belonging to the S.4 Hormone and metabolic modulators class. Its use in sport is banned at all times as it could potentially help the heart to function better. But "*this has never been demonstrated*".

b. The expert report of Prof. Schumacher and Mr Iljukov lacks data on the effectiveness of TMZ. They draw broad generalisations regarding the use of TMZ which are unsupported by any data. Their report is misleading in many respects and should not be relied upon.

c. According to Dr Zholinsky and Prof Kintz, a "*systematic review*" was conducted in 2022 in order to identify studies on the efficacy of TMZ. It concluded that

there had been no trials on the efficacy of TMZ on athletes and that, with respect to healthy non-professional athletes, no studies have shown a positive effect of TMZ on any aspect of physical performance and post-exercise recovery. It follows that "*no one can claim that the use of trimetazidine improve athletic performance*".

d. In relation to the use of TMZ in people with cardiac pathology and healthy people, "*the only option is a course of varying durations*" and the effect of taking TMZ should be evaluated after three months' use. There are no studies in relation to the effect of taking a single dose of TMZ. The 2013 book, Sports Medicine: A National Guide, notes that a single dose of TMZ is not enough.

e. The use of TMZ in sport before its ban "*was very limited*", being detected in 0.1% to 0.23% of all doping sample analyses. In the vast majority of cases, TMZ was detected in sports "*where endurance was important, e.g. cycling, athletics, swimming, triathlon*". The WADA statistics published in 2021 show that 2197 AAFs were reported, of which 37 were due to TMZ, being 1.7% of the total and in 2020 the percentage was 0.2% (or 3 out of 1513). According to Prof. Kintz, the increase in 2021 from previous years "*should be interpreted as an increase in contaminated supplements and not a sudden interest for the drug*".

f. TMZ does not have any efficacy in "*hard-to-coordinate sports, particularly in figure skating*".

g. There are cases of supplements contaminated with TMZ; for example CAS 2018/A/5866 and CAS ADD (OG PyeongChang) AD 18/005.

241. TMZ has numerous side effects and is contra-indicated for people under 18 years of age:

a. TMZ has numerous side effects including dizziness, headache, vomiting, fast or irregular palpitations, and other cardiovascular, nervous and digestive reactions.

b. TMZ is also contra-indicated for persons under 18. It is banned in paediatrics; under no circumstances "can it have been prescribed to a minor".

242. There is no synergistic effect between TMZ, L-carnitine and Hypoxen:

a. WADA and ISU contend that there is a synergistic effect between TMZ, L-Carnitine and Hypoxen. They rely on Merchant, H. 2022. The synergistic combination of trimetazidine, hypoxen and L-carnitine in endurance sports. *British Journal of Pharmacy*, pp 1-3. https://doi .org/10.5920/bjpharm.1303.

b. That article does provide evidence for "*the cumulative combination of these drugs*". The papers is speculative and does not quote any study addressing such a claim. There is no clinical study evaluating the potential impact of this combination of drugs.

c. The three drugs have "*different pharmacological properties*".

d. The use of Hypoxen and TMZ in clinical practice "*is quite different*" and they are not used together. TMZ is used mainly as "*a metabolic therapy against the background of ischemic lesions of the heart muscle*". Hypoxen is used mainly "*to reduce tissue and multiple organ hypoxia against the background of lung diseases, diseases of the cardiovascular system, as well as after respiratory viral diseases*".

e. L-carnitine "*is a metabolic agent that transports the long chain fatty acids into the mitochondria, allowing the cells to break down fat and get energy from the stored fat reserves*". It works in the opposite way to TMZ because L-Carnitine increases the breakdown of fatty acids while TMZ blocks this process. If they are used together they will block each other's pharmacological action, so there is no cumulative effect.

243. The Athlete's "*athletic heart*" is irrelevant:

a. WADA argues that the Athlete's heart condition explains the presence of TMZ. This argument "*must be rejected*".

b. The Athlete was diagnosed with an "*athletic heart*" in December 2020 but her heart condition "*disappeared in March 2021*". By the time of the positive sample in December 2021, the Athlete was no longer suffering from this heart condition.

c. This was confirmed by her doctor in a medical examination in April 2021.

244. Interpretation of the concentration in the Athlete's Sample:

a. The literature relating to the excretion time of TMZ "*is very poor*". The experts cite two reports: (i) the Jarek Study and (ii) the Wicka Study.

b. In the Jarek Study, of five athletes using TMZ the drug was identified in concentrations "*in the range 16,000 to 29,000 ng/mL*".

c. The concentration of TMZ found in the Athlete's Sample was 2.1 ng/mL. This is "*an extremely low concentration*" and, according to Prof. Kintz, "*far below the concentrations in cheating athletes*".

d. "*A low or a very low urine concentration can be interpreted in two different ways: (1) it can be the tail of a drug use or (2) it is the direct consequence of contamination.*"

e. In CAS jurisprudence, a low concentration of TMZ "*has been interpreted as the consequence of contamination*": for example CAS 2018/A/5866 and CAS ADD (OG PyeongChang) AD 18/005.

f. The Jarek Study involved six volunteers. After a single dose of 35 mg, the peak urine concentration was obtained four hours after ingestion at concentrations in the range 23,000 to 59,000 ng/mL declining to 1,000 to 9,200 ng/mL after 24 hours. One volunteer was observed for 72 hours, with a concentration of 131 ng/mL at 72 hours. This shows that the detected concentration after three days was "*many times higher*" than the concentration detected in the Athlete's Sample. Another volunteer took TMZ as a course, twice a day. The detected concentration was "*significantly higher after 12 hours (43,000 ng/mL) and 24 hours (37,400 ng/mL)*"

g. On these figures, according to Dr Bezuglov (who gave evidence in support of the Athlete at the Ad Hoc hearing in February 2022), a concentration of 2 ng/mL would require a single use of 35 mg five-seven days before the competition. "*This is most likely consistent with the result of Jarek study having reported a concentration of 131 ng/mL after 3 days.*"

h. Nothing is known about the "*elimination profile*" of micro-dosages of TMZ, "*a situation that would mimic contamination*". Typical contamination doses in supplements are in the low ng/mL range with very low urine concentrations: CAS 2018/A/5866 (4 ng/mL TMZ per tablet with a urine concentration of 0.1ng/mL) and CAS ADD (OG PyeongChang) AD 18/005 (2-30 ng/mL TMZ per tablet gave a "*very low*" urine concentration).

i. The Jarek Study supports the contamination scenario put forward by the Athlete. Taking into account the excretion data for a single dose of 35 mg TMZ "*it follows that the Athlete's contamination could have occurred from December 19 onwards. The Athlete saw her grandfather on 20 and 21 December, he was present at her training sessions, and they had lunch together. The Athlete could also have been contaminated with* [TMZ] *by eating her dessert (via drug residues on the knife, board), which she consumed in the days preceding the positive doping test on 22 and 23 December. The grandfather gave the dessert to the Athlete on 21 December. As the Athlete explained, she did not eat the dessert in one goal* [sic]*, she ate it by bits. This likely explains the extremely low quantity of* [TMZ] *in her urine.*"

j. Applying the ratio found in CAS 2018/A/5866 (4 ng/mL TMZ per tablet with a urine concentration of 0.1 ng/mL), a urine concentration of 2.1 ng/mL equates to 84 ng/mL of TMZ tablet. "*This is an extremely small quantity, perhaps even invisible to the naked eye. The Athlete's grandfather did not see well, it is possible that he did not observe the residues in the medication on the dishes when he was preparing food for the Athlete. The contamination scenario is therefore the most probable one and it has most likely happened than not.*"

k. As for the Wicka Study, it evaluated the elimination rate of a volunteer who took 60 doses of 35 mg of TMZ for 36 days. 11-12 days after the end of the 36 day treatment period, the urinary concentration of TMZ was 2.5-4.5 ng/mL and 27 days after the end of the period it was approximately 1 ng/mL. Considering these

numbers, a concentration of 2.1 ng/mL in the Athlete's urine would have been achieved 24 days after the end of the treatment period, which is "*incompatible with the circumstances of this case*".

l. As Dr Zholinsky explains, in light of (i) the need to take a course of TMZ to achieve any effect, (ii) a long elimination period, and (iii) on 25 December 2021 the Athlete was in the testing pool and therefore subject to testing at any time, "*it is impossible that an athlete of this class would intentionally take trimetazidine*".

m. As Prof. Kintz says, "*there is nothing in the scientific literature that prevents the scenario of contamination"*.

245. TMZ is not recommended for use in Russian sport:

a. TMZ has not, as WADA submitted, been recommended for use in Russian sport up until the end of 2022. The WADA experts rely on the 2013 Guidelines, which were published before the ban of TMZ in 2014.

b. The 2022 Guidelines make no recommendation of the use of TMZ.

c. In any event, the Guidelines represent a private opinion of the authors and are not mandatory for use by physicians in Russia.

d. Dr Bezuglov and Dr Zholinsky are not aware of any use of TMZ by Russian athletes.

246. The expert report of Prof. Schumacher and Mr Iljukov lacks data:

a. TMZ has not, as WADA submitted, been recommended for use in Russian sport up until the end of 2022. The WADA experts rely on the 2013 Guidelines, which were published before the ban of TMZ in 2014.

b. Numerous side effects including dizziness, headache, vomiting, fast or irregular palpitations, and other cardiovascular, nervous and digestive reactions.

c. TMZ is also contra-indicated for persons under 18. It is banned in paediatrics; under no circumstances "can it have been prescribed to a minor".

No Significant Fault or Negligence

247. Protected Persons have "*specific status*" under the WADC and the Russian ADR.

248. The comment in the WADC to the definition of Protected Person says:

"*127 Comment to Protected Person: The Code treats Protected Persons differently than other Athletes or Persons in certain circumstances based on the understanding that, below a certain age or intellectual capacity, an Athlete or other Person may not possess*

the mental capacity to understand and appreciate the prohibitions against conduct contained in the Code. …"

249. This different treatment has several consequences.

a. First, when assessing Fault.

b. Second, a Protected Person has "*a lower standard of proof and does not have to establish how the prohibited substance entered her system*" in order to establish No Significant Fault or Negligence. Instead the Panel has to take into account all the surrounding circumstances of the doping violation in order to evaluate to what degree the Athlete complied with her diligence duties.

c. Third, the Protected Person "*must be treated differently with regard to the applicable sanction*". Article 12.6.1.3 of the Russian ADR provides that where an ADRV is committed by a Protected Person who can establish No Significant Fault or Negligence then the period of ineligibility shall be in the range from a reprimand up to two years, depending on the degree of Fault.

d. The significance of the Athlete's Fault is established "*by reference to the standard of utmost caution*". The Athlete must establish that, when viewed in the totality of the circumstances, her Fault or Negligence was not significant in relation to the violation. The "*key element to be proven is that the Athlete's fault or negligence in not knowing that she had been administered a prohibited substance was not significant*".

e. The Athlete always complied with "*her duty of utmost caution*".

f. Consequently, if the Panel considers that the Athlete "*had committed a fault*" then the fault "*would have been insignificant*" and the "*fairest*" and "*most proportionate sanction"* is a reprimand without the assignment of a period of ineligibility.

No Intention

250. The Athlete also submits that the ADRV was not intentional. Her submissions in this respect may be summarised in the following way.

251. Pursuant to Article 12.2 of the Russian ADR, if the Athlete is unable to establish that she bears No Fault or Negligence or No Significant Fault or Negligence but is able to show that her violation was not intentional the basic sanction is a two-year period of ineligibility. If the Athlete is unable to discharge her burden to establish on the balance of probability that her violation was not intentional then the basic sanction is a four-year period of ineligibility.

252. The Athlete must therefore prove that she did not engage in conduct which she knew constituted an ADRV or knew that there was a significant risk that her conduct might constitute or result in an ADRV and manifestly disregarded that risk.

253. The Russian ADR do not require the Athlete to prove the origin of the TMZ in order to establish that her violation was not intentional. The establishment of the source of a prohibited substance is not a *sine qua non* of the proof of the absence of intent. As established by CAS jurisprudence, there may be circumstances in which a panel can be satisfied that the AAF was not intentional despite not being able to show the origin of the substance. As was stated in CAS 2018/A/5580, where a minor is unable to prove the origin of the prohibited substance then the panel has to evaluate, based on the overall circumstances of the case, if the athlete acted with or without intent; see also CAS 2016/A/4676; CAS 2017/A/5016; CAS 2019/A/6313.

254. In the present proceedings, the Athlete "*has demonstrated on the basis of the objective circumstances and behavior her lack of intent to dope. Indeed, she demonstrated that she did not commit any Fault or Negligence, or at least not any Significant Fault or Negligence and that she always complied with her duty of utmost caution.*" This implies that she "*did not engage in a conduct which she knew constituted an* [ADRV] *or knew that there was a significant risk that the conduct might constitute or result in an* [ADRV] *and manifestly disregarded that risk*".

255. The Athlete would not have risked 11 years of hard work as well as her participation in the Olympic Games "*to use a medication with unproven efficacy on the athletic performance and numerous side effects, including dizziness*". As Prof Kintz points out these side effects prevent the voluntary use of TMZ in sport and especially the sport of figure-skating.

256. Further:

    a. The Athlete tested for a very low concentration.

    b. The Athlete has always been a clean athlete.

257. The Athlete has demonstrated that the chain of events as presented by her and the contamination with TMZ via interaction with her grandfather "*did happen more likely than not and that the Rules' violation was not intentional. Therefore, a period of ineligibility of 4-years cannot represent the appropriate sanction*".

Start of the Period of Ineligibility

258. The Athlete's ineligibility period, if any, should start on the day of the doping test, 25 December 2021. There were numerous delays relating to the notification of the AAF and the hearing process and "*the early start of the ineligibility period would ensure that the sanction remains connected to the facts*".

259. According to established CAS practice, in cases where delays are not attributable to the athlete the starting point of the period of ineligibility may be backdated. Due to delays at the Stockholm Laboratory, the Athlete was not notified of the AAF until 8 February 2022; and more than 18 months has elapsed between the doping test and the hearing before the Panel.

260. Neither of these delays was attributable to the Athlete and the period of ineligibility should commence to run on 25 December 2021.

Disqualification

261. Article 11.1 of the Russian ADR provides that for a violation of the rules in an individual sport upon an in-competition test leads to the disqualification of the results in that competition.

262. According to this principle, the DADC disqualified the results obtained by the Athlete in the Russian Championships in December 2021. That disqualification is automatic; any further disqualification "*is left to the pure discretion of the Panel*" pursuant to Article 12.10 of the Russian ADR.

263. Article 12.10 of the Russian ADR provides for disqualification "*unless otherwise required by the principle of fairness*". The Panel therefore must decide whether, in accordance with the principle of fairness, all of the Athlete's results since 25 December 2021 should also be disqualified. The issue of fairness should be looked at primarily from the Athlete's point of view and the Panel should take a "*broad approach*" (as the panel did in CAS 2013/A/3274), taking into account any delays in results management, severity of the ADRV, and the impact of the violation on subsequent results.

264. CAS jurisprudence confirms that where there have been "*particularly lengthy*" delays in the results management which are not attributable to the athlete then "fairness may dictate that only some of the athlete's results be invalidated (CAS 2009/A/1782; CAS (Oceana Registry) A2/2009).

265. The Athlete was tested on 25 December 2021 but due to delays not attributable to her she was not notified of the AAF until 8 February 2022, 44 days later, during which time she had won the European Figure Skating Championship on 13 January 2022 and a gold medal in the team event on 7 February 2022 at the Beijing Olympics.

266. There were further delays in the hearing process, not attributable to the Athlete and on 14 December 2022 the DADC issued its decision which was appealed by the Appellants two months later. In the meantime, the Athlete achieved the following results:

a. first place in the Russian Grand-Prix event in Moscow on 21-23 October 2022;

b. first place in the Russian Grand-Prix event in Kazan on 4-6 November 2022;

c. first place in the Russian Jumping Championship in St Petersburg on 4 December 2022;

d. second place in the Russian Championship in St Petersburg on 24-25 December 2022; and

e. second place in the Russian Grand-Prix Final in March 2023.

267. A good deal of time, 21 months, has passed between the date of the positive test and this CAS hearing, which delay is not the Athlete's fault. "*Too much time has elapsed since the positive doping test, and it would be unfair to deprive the Athlete of all these results fairly achieved.*"

268. The Athlete's degree of Fault may be taken into account with respect to this discretion. If the Panel decides that the Athlete "*has committed a fault, it would be an insignificant fault*", such that fairness requires that results after 25 December 2021 should not be disqualified.

269. If an athlete can establish that results achieved after the positive test "*were not affected by the finding of a prohibited substance in his or her system*" then fairness may require that such subsequent results should stand (CAS 2011/A/2671; CAS 2007/A/1283). That is the case here, as demonstrated by the fact that Athlete's subsequent doping tests were all negative: 13 January 2022; 7 February 2022; 17 February 2022; 5 July 2022; 17 September 2022; 5 November 2022; 24 December 2022; and 17 January 2023. Further, the Panel should take account of the fact that there is no scientific evidence that TMZ improves sporting performance.

270. The Panel should also consider that the disqualification of the Athlete's result in the Beijing Olympics "*could have significant negative consequences for her, which would grossly violate the principle of fairness*". The Athlete competed at the Beijing Olympics. She did not know that proceedings would be initiated against her until 8 February 2022. The results of her positive were leaked to the press, which put the Athlete under "*unprecedented psychological pressure*". There is no certainty that she will compete in the next Olympic Games. It follows "*that it would be unfair to disqualify the Athlete's results at the* [Beijing Olympics]".

271. Fairness requires only that the Athlete's result at the Russian Championship in 2021 be disqualified. Alternatively, should the Panel decide otherwise, the principle of fairness requires that the Athlete's results obtained between the sample collection on 25 December 2021 and the date of the delayed AAF notification on 8 February 2022 be maintained or, should the Panel decide that the period of ineligibility should start on the date of the award, the results obtained between the date of the sample collection and the award should not be disqualified.

Costs

272. The Athlete sought an order that the Appellants jointly and severally to pay all costs incurred by the Athlete in connection with this arbitration, including "*all the prior proceedings related to this case*", together with the legal costs and expenses incurred by the Athlete in her defence of these appeals. The Athlete's position regarding the costs of the proceedings was further elaborated in its submissions on costs filed on 1 December 2023.

Relief

273. The Athlete's prayers for relief were as follows (as amended during the hearing):

"*507. For all the reasons set out above the Athlete respectfully requests that the Panel:*

***On jurisdiction**:*

- *Declare that it lacks jurisdiction over WADA, ISU, and RUSADA claims;*

(withdrawn at the hearing) On anti-doping violation:

- *In the alternative, declare that no violation of the RUSADA is proven and re-establish the Athlete in the results obtained at the 2021 Russian Figure Skating Championships in St Petersburg;*

***On sanctions**:*

- *In the alternative, declare that the Athlete beard* [sic] *No Fault or Negligence defence under RUSADA ADR and therefore confirm the 14 December 2022 DADC decision.*

- *In the alternative, declare that the Athlete did not commit a Significant Fault or Negligence and decide that the appropriate sanction is a reprimand without a period of ineligibility.*

- *In the alternative, decide that the violation of the rules was not intentional, so that the period of ineligibility shall be at most 2 years.*

- *In case a period of ineligibility is imposed on the Athlete, decide that the later* [sic] *shall start on 25 December 2021.*

- *In the event that it will be held that the Athlete had committed an anti-doping violation, decide that the Athlete's results obtained after 25 December 2021 shall not be disqualified.*

- *In the alternative, decide that the Athlete's results obtained after the collection of the sample (25 December 2021) and before the date of the delayed notification (8 February 2022) shall not be disqualified.*

- *In the alternative and in case the period of ineligibility shall start on the day of the award, decide that the results obtained between the collection of the sample and the date of the award shall not be disqualified.*

***On costs**:*

- *In any event, order WADA, ISU and RUSADA jointly and severally to pay all costs incurred in connection with this arbitration, and with all the prior*

proceedings related to this case, including the fees and expenses of the Panel and the Court of Arbitration for Sport, along with all costs and expenses incurred in the Athlete's defense including the fees and expenses of her legal counsel, experts and consultants, plus interest thereon."

VIII. JURISDICTION OF CAS

274. Article R47 of the CAS Code provides as follows:

"*An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Player has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.*

An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned."

275. The Appellants seek to ground jurisdiction on the basis that, pursuant to Article R47 of the CAS Code, the Challenged Decision is a decision of the DADC, which is a sports-related body as referred to in Article R47, and Russian ADR Clause 15.2 (as well as the ISU ADR) "*so provide*" for an appeal by RUSADA, ISU and WADA to the CAS.

276. Clause 15.2 of the Russian ADR provides in relevant part:

"***Appeal from Decisions Regarding Violations of the Rules, Consequences, Provisional Suspensions, Implementation of Decisions and Jurisdiction***
The decisions specified below may be appealed exclusively pursuant to the procedure stipulated by Clause 15.2:

- *A decision that the Rules' violation was committed*
- *A decision to impose or not to impose Consequences for the Rules' violation*
- *A decision that the Rules' violation was not committed*
- *A decision that the Rules' violation proceeding cannot go forward for procedural reasons (including, for example, expiry of the period of limitation)*
- *A decision by WADA not to grant an exception to the six-month notice requirement for a retired Athlete to return to participation in Competition under Clause 7.6.1 of the Rules*
- *A decision by WADA assigning Results Management under Article 7.1 of the Code*
- *A decision by RUSADA not to bring forward an Adverse Analytical Finding or an Atypical Finding as the Rules' violation*
- *A decision not to go forward a violation of the Rules after an investigation pursuant to the International Standard for Results Management*

- *A decision to impose or lift Provisional Suspension as a result of Provisional Hearings*
- *Decisions and actions of RUSADA connected with the application of Clause 9.4 hereof*
- *A decision that RUSADA does not have the authority to review an alleged violation of the Rules or its Consequences*
- *A decision to eliminate or not to eliminate the Consequences of a violation or to reinstate or not reinstate the Consequences under Clause 12.7.1 hereof*
- *Decisions and actions connected with the Article 7.1.4 and 7.1.5 of the Code*
- *Decisions and actions connected with the application of Clause 12.8.1 hereof*
- *A decision by RUSADA not to implement the decision of another Anti-Doping Organization under Chapter XVIII of the Rules*
- *A decision connected with the application of Articles 27.3 of the Code.*"

277. Clause 15.2.1 of the Russian ADR provides in relevant part as follows:

"*Appeals of Decisions involving International-Level Athletes or International Events*

If a violation occurred during an International Event or International-Level Athletes are involved, the decision made may be appealed exclusively to CAS."

278. For these defined terms:

a. An "*International Event*" is defined in the Russian ADR to mean: "*An Event or Competition where the International Olympic Committee, the International Paralympic Committee, an International Federation, a Major Event Organization or another international sports organization is the ruling body for the Event or appoints the technical officials for the Event.*"

b. An "*International-Level Athlete*" is defined in the Russian ADR to mean: "*Athletes who compete in sports at the international level, as defined by the respective International Federation, in accordance with the International Standard for Testing and Investigations*."

279. Clause 15.2.3 of the Russian ADR provides in relevant part as follows:

"*15.2.3 Persons entitled to appeal*

15.2.3.1. In cases stipulated by Clauses 15.2.1 and 15.2.2 hereof, the following parties shall have the right to appeal:

a) An Athlete or other Person who is the subject of the decision being appealed

b) The other party to the case with respect to which the decision was rendered

c) The relevant International Federation

d) RUSADA or the National Anti-Doping Organization of the country of residence of that Person or the country whose citizen he/she is or the country which issued a license

e) The International Olympic Committee or International Paralympic Committee, as applicable, where the decision may have an effect in relation to the Olympic Games or Paralympic Games, including decisions affecting eligibility for the Olympic Games or Paralympic Games

f) WADA."

280. On their face, the Russian ADR provide that a decision that an ADRV was committed or a decision to impose or not to impose consequences for an ADRV involving an International-Level Athlete may be appealed by, *inter alia*, RUSADA, the relevant IF (here, ISU) and WADA exclusively to CAS.

281. It is undisputed that the Athlete is subject to the Russian ADR and that the decision of the DADC, a sports-related body as referred to in Article R47 of the CAS Code, was made pursuant to the Russian ADR.

282. It is further undisputed that while the anti-doping rule violation at issue did not involve an "*International Event*," the Athlete is an "*International-Level Athlete*" under the Russian ADR.

283. The question that arises is whether or not the Athlete must specifically consent to arbitrate disputes designated by Article 15.2 of the Russian ADR for CAS to have jurisdiction.

284. Article 178 of the PILA provides in relevant part as follows:

"*The arbitration agreement shall be valid if made in writing or in any other manner that can be evidenced by text.*

As regards its substance, the arbitration agreement shall be valid if it conforms to the law chosen by the parties, or to the law applicable to the dispute, in particular the law governing the main contract, or to Swiss law."

285. In the Panel's view, Article 15.2 of the Russian ADR, issued pursuant to Russian federal law, provides for valid compulsory arbitration consistent with Swiss law.

286. The Russian ADR, including the compulsory arbitration provisions of Article 15.2 therein, were promulgated pursuant to Russian Federal Law No. 329-FZ dated 4 December 2007 'On the Physical Culture and Sport in the Russian Federation' (the "**Russian Federal Law on Sport**"), which provides, *inter alia*, that "*athletes are obliged to comply with the anti-doping rules provided for in Article 26 of this Federal Law*". The Athlete does not dispute that the Russian ADR were validly issued pursuant to the Russian Federal Law on Sport.

287. Article 26 of the Russian Federal Law on Sport states that "[t]*he prevention of doping in sport and the fight against doping in sport shall be carried out in accordance with the World Anti-Doping Code, anti-doping rules approved by international anti-doping organisations and the All-Russian anti-doping rules developed with due regard to the said Code and rules, approved by the All-Russian anti-doping organisation in accordance with the procedure established by the federal executive body in the field of physical culture and sport in coordination with it (hereinafter also referred to as anti-doping rules). All Russian anti-doping rules shall contain, among other things, provisions mandatory for inclusion in the said rules in accordance with the World Anti-Doping Code*".

288. The Panel is not persuaded by the Athlete's argument that Article 15.2 of the Russian ADR providing for compulsory arbitration is superseded by Article 22.1 of the Russian Code of Civil Procedure.

289. Although the Russian ADR are an administrative act of The Ministry for Sport of the Russian Federation, the Russian ADR were specifically authorised, and indeed mandated by the Russian Federal Law on Sport.

290. The Russian Code of Civil Procedure is a generic legislative act. It provides, *inter alia*, that disputes arising from civil relations as well as individual labour disputes of athletes in professional and other high-performance sport may be referred to arbitration if there is a valid arbitration agreement between the parties. It makes no mention of anti-doping disputes at all.

291. By contrast, the Russian ADR, issued pursuant to an administrative directive expressly authorised and mandated by federal law, are a specific (and detailed) effort to govern the subject matter of anti-doping activities in Russia. The Athlete does not dispute that the Russian ADR were promulgated after the adoption of Article 22.1 of the Russian Code of Civil Procedure. The Russian ADR should therefore, in the Panel's view, be understood as a comprehensive and specific enactment intended to cover the field with respect to anti-doping in Russia. In this sense, the doctrine of *lex specialis* is applicable, so that, as the law governing the specific subject matter of anti-doping, the Russian ADR override the general provisions of Article 22.1 of the Russian Code of Civil Procedure.

292. Put another way, the Panel concludes that the Russian ADR and its specific provisions for compulsory arbitration of ADRV decisions before CAS, having been authorised by federal law, take precedence over the general arbitration language set forth in Article 22.1 of the Russian Code of Civil Procedure.

293. In this context, the Panel also recognises that, in 2006, Russia ratified the UNESCO International Convention against Doping in Sport, in which it expressly undertook to commit to the principles set forth in the WADC. These principles include exclusive appeal to CAS in cases involving International-Level Athletes (see Bundesgerichtshof (BGH), June 7, 2016, Claudia Pechstein v/ International Skating Union (ISU), KZR 6, ¶9 of the CAS English translation).

294. Furthermore, the compulsory arbitration provisions of Article 15.2 of the Russian ADR are consistent with Swiss law. In Mutu and Pechstein v Switzerland, the European Court of Human Rights (the "ECtHR") confirmed that compulsory or "forced" arbitration is not prohibited, but the arbitration process must provide the guarantees of Article 6 §1 of the European Convention on Human Rights (the "**ECHR**"), in particular those of independence and impartiality.

295. The SFT has concluded in SFT 4A_600/2020, "[i]*n examining whether the CAS can be regarded as an 'independent and impartial tribunal established by law' within the meaning of the aforementioned provision, the ECtHR has held that it has the appearance of a tribunal established by law and that it is genuinely independent and impartial*". Accordingly, the Panel finds that compulsory arbitration before CAS under Article 15.2 of the Russian ADR is valid under Swiss law.

296. It is also to be noted that the Athlete previously acknowledged that Article 15.2 of the Russian ADR conferred jurisdiction on the CAS Appeals Division. As noted above, before the CAS Ad Hoc Panel, the Athlete argued that "[a]*lthough Article 15.2 Russian ADR provides that 'a decision to apply or lift a provisional suspension based on a preliminary hearing' can be appealed before CAS, there is no provision in the Russian ADR granting jurisdiction to the CAS Ad Hoc Division; therefore the CAS Appeals Division should be the competent body*" (CAS OG 22/08-CAS OG 22/09 22/10 ¶106).

297. The Athlete further argued that "*the expedited procedure before the CAS Ad Hoc Division does not allow sufficient time to safeguard the Athlete's due process rights; while the Athlete would have more possibilities to defend her case before the CAS Appeals Division (also considering that she was not allowed to have her B-Sample analyzed yet):'Had the Applicants filed their applications before the CAS Appeals Arbitration Division, as they should have, Kamila would at least then have had the right to appoint an arbitrator and would have had sufficient time to prepare her defense, including by presenting medical science based detailed expert evidence*'" (Id. ¶110).

298. The Athlete thus expressly acknowledged in the CAS Ad Hoc proceedings that Article 15.2 of the Russian ADR conferred jurisdiction on the CAS Appeals Division. The Panel rejects the Athlete's arguments to the contrary in this proceeding.

299. Apart from and in addition to the Panel's conclusion that the Russian ADR provide for valid compulsory arbitration, the Panel further finds that the Athlete in fact consented to arbitration before CAS. It is axiomatic that an athlete who decides to take part in a competitive sport accepts the rules applicable to his or her participation. The Athlete acknowledges that she is subject to the Russian ADR as a result of her decision to participate in athletic competition. That same decision to participate constitutes an implicit agreement to accept all of the rules of the Russian ADR, including its provisions requiring compulsory arbitration before CAS.

300. As the SFT explained in 4A_600/2020, "*the fact that* [the Athlete] *did not . . . freely consent to the arbitration clause in favour of the CAS . . . does not mean that such a clause cannot be invoked against* [her]". Instead, once the Athlete decided to participate

and thus subjected herself to the Russian ADR, she had "*no choice but to accept the arbitration clause*". Accordingly, the Panel concludes that the Athlete, by virtue of her participation in elite competition, is bound by the "forced arbitration" provisions set forth in Article 15.2 of the Russian ADR.

301. The Panel notes the ISU's arguments that the Athlete further consented to CAS's jurisdiction through the ISU's ADR by virtue of her inclusion in the ISU Testing Pool and having signed the ISU Declaration for Competitors.

302. The Panel, therefore, confirms that CAS has jurisdiction to decide this appeal.

IX. ADMISSIBILITY

303. Article R49 of the CAS Code provides in relevant part as follows:

"*In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against.*"

304. There is no issue in this appeal that the appeal was lodged by the Appellants in time, such that the appeals are admissible on that basis and there is no other objection to the admissibility of the appeals.

305. The Panel therefore confirms that the appeals are admissible.

X. SCOPE OF THE PANEL'S REVIEW

306. Article R57 of the CAS Code provides in relevant part as follows:

"*The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decisions challenged or annul the decision and refer the case back to the previous instance … .*"

307. The Panel therefore has full power to examine *de novo* the facts, matters and circumstances in these appeals in order to assess whether or not the ADRV has been established and what, if any, sanctions should follow.

XI. APPLICABLE LAW

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

309. All of the Parties agreed that the applicable regulations governing these appeals are the Russian ADR, with Swiss law applying subsidiarily.

310. The ISU also contended that the ISU ADR governed as well. The Panel disagrees. For the reasons advanced by the Athlete (see ¶222above), the ISU ADR have no application to the present appeals.

311. Accordingly, the Panel will decide these appeals according to the Russian ADR. It is common ground that the WADC does not apply directly to the Athlete but that the Russian ADR are to be interpreted in a manner that is consistent with the WADC. In this respect, it is to be noted that Clause 20 of the Russian ADR expressly provides that the comments set forth in the WADC are incorporated by reference into the Russian ADR, treated as if fully set out in the Russian ADR and used to interpret the Russian ADR.

312. The salient provisions of the Russian ADR are as follows.

"***II. Roles and Responsibilities of Athletes and Other Persons***

2.1. Roles and Responsibilities of Athletes. Athletes shall:

2.1.1. Know these Rules and comply with them.

2.1.2. Be available for Sample collection at all times.

2.1.3. Take responsibility, in the context of anti-doping, for what they ingest and what substances and methods they use.

2.1.4. Inform Athlete Support Personnel of their obligation not to Use Prohibited Substances and Prohibited Methods, to take responsibility to make sure that any medical treatment received does not violate an anti-doping policy pursuant to the Rules.

2.1.5. Inform RUSADA and their International Federation of any decision of an organization which did not sign the Code on an anti-doping rule violation by an Athlete within the previous ten years.

2.1.6. Cooperate with Anti-Doping Organizations investigating anti-doping rule violations.

2.1.7. Compensate RUSADA for costs for Testing and Sample analysis if an anti-doping rule violation is established during the Testing conducted pursuant to Clause 12.14.1 of the Rules.

2.2. Roles and Responsibilities of Athlete Support Personnel. Athlete Support Personnel shall:

2.2.1. Know these Rules and comply with them.

2.2.2. Cooperate with RUSADA in the Athlete Testing programs.

2.2.3. Use their influence on Athlete, Athlete's values and behavior to foster anti-doping attitudes.

2.2.4. Inform RUSADA and their International Federation of any decision of an organization which did not sign the Code on an anti-doping rule violation by Athlete Support Personnel within the previous ten years.

2.2.5. Cooperate with Anti-Doping Organizations investigating anti-doping rule violations.

2.2.6. Not use any Prohibited Substance or Prohibited Method without valid justification.

2.3. Roles and Responsibilities of Other Persons to whom the Rules apply:

2.3.1. Know these Rules and comply with them.

2.3.2. Inform RUSADA and the International Federation of any decision of an organization which did not sign the Code on an anti-doping rule violation by Athlete Support Personnel within the previous ten years

2.3.3. Cooperate with Anti-Doping Organizations investigating anti-doping rule violations.

…

IV. Definition of Doping and Violation of the Rules

Doping is defined as the occurrence of one or more violations of the rules specified in Clause 4.1–4.11 of the Rules.

The purpose of this Chapter is to specify the circumstances and conduct which constitute the violations of the Rules. Hearings in doping cases will proceed based on the assertion that one or more Clause of the 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 the Rules` violations:

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

4.1.1. It is the Athletes' personal duty to ensure that no Prohibited Substance enters their bodies. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, Negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation under Clause 4.1 hereof.

4.1.2. Sufficient proof of the Rules` violation under Clause 4.1 shall be the presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample:

where the Athlete waives analysis of the B Sample and the B Sample is not analyzed,

where the Athlete's B Sample is analyzed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample,…

V. Proof of Doping

5.1. Burdens and Standards of Proof

RUSADA shall have the burden of establishing that violation of the Rules has occurred. The standard of proof shall be whether RUSADA has established violation of the Rules 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 the Rules place the burden of proof upon the Athlete or other Person alleged to have committed violation of the Rules to rebut a presumption or establish specified facts or circumstances, except as provided in Clauses 5.2.2 and 5.2.3 hereof, the standard of proof shall be a balance of probability.

5.2. Methods of Establishing Facts and Presumptions

Facts related to violations of the Rules may be established by any reliable means, including admissions.

…

XI. Automatic Disqualification of Individual Results

11.1. A violation of the Rules in Individual Sports in connection with an In-Competition test automatically leads to Disqualification of the result obtained in that Competition with all resulting Consequences, including forfeiture of any medals, points and prizes.

XII. Sanctions on Individuals

12.1. Disqualification of Results in the Event During Which a Violation of the Rules Occurs

12.1.1. A violation of the Rules occurring during or in connection with an Event may, upon the decision of the ruling body of the Event, lead to Disqualification of all of the Athlete's individual results obtained in that Event with all resulting Consequences, including forfeiture of all medals, points and prizes, except as provided in Clause 12.1.2 hereof.

Factors to be included in considering whether to disqualify other results in an Event might include, for example, the seriousness of the Athlete's violation of the Rules and whether the Athlete tested negative in other Competitions.

12.1.2. If the Athlete establishes that he or she bears no Fault or Negligence in his/her actions, the Athlete`s individual results in other Competitions shall not be disqualified. If a violation of the Rules could have affected the Athlete's results in other Competitions, such results shall be disqualified.

12.2. Ineligibility for Presence, Use or Attempted Use of a Prohibited Substance or Prohibited Method or Possession of a Prohibited Substance or Prohibited Method

If there are no grounds for elimination, reduction or suspension pursuant to Clauses 12.5, 12.6, or 12.7 hereof, the period of Ineligibility for a violation of Clauses 4.1, 4.2, or 4.6 of the Rules shall be determined as follows.

12.2.1. Subject to Clause 12.2.4 hereof, the period of Ineligibility shall be four years in the following cases:

12.2.1.1. The violation of the Rules does not involve a Specified Substance or a Specified Method unless the Athlete or other Person can establish that the violation of the Rules was not intentional.

12.2.1.2. The violation of the Rules involves a Specified Substance or a Specified Method and RUSADA can establish that the violation of the Rules was intentional.

12.2.2. In cases not specified in Clauses 12.2.1 and 12.2.4.1 hereof, the period of Ineligibility shall be two years.

12.2.3. The term "intentional" as used in Clause 12.2 hereof is meant to identify those Athletes or other Persons engaged in conduct which he or she knew constituted a violation of the Rules or knew that there was a significant risk that the conduct might constitute or result in the violation of the Rules and manifestly disregarded that risk.

A violation of the Rules resulting from an Adverse Analytical Finding for a substance which is a Specified Substance and is prohibited only In-Competition and the Athlete

can establish that the Prohibited Substance was Used Out-of-Competition, shall be rebuttably presumed to be not intentional unless it is proved otherwise.

A violation of the Rules resulting from an Adverse Analytical Finding for a substance which is not a Specified Substance and is prohibited only In-Competition shall be considered not intentional if the Athlete can establish that the Prohibited Substance was Used Out-of-Competition and in a context not related to sport performance.

12.2.4. Notwithstanding the provisions of Clause 12.2 hereof, when the Rules` violation involves a Substance of Abuse:

12.2.4.1. If the Athlete can establish that any ingestion or use occurred Out-of-Competition and was unrelated to sport performance, the period of Ineligibility shall be three months Ineligibility.

The period of Ineligibility calculated under this Clause of the Rules may be reduced to one month if the Athlete or other Person has satisfactorily completed a RUSADA-approved treatment program with respect to the Substance of Abuse. The period of Ineligibility established in this Clause of the Rules shall not be reduced based on the provisions of Clause 12.6 hereof.

12.2.4.2. If ingestion, Use or Possession occurred In-Competition and the Athlete can establish that ingestion, Use or Possession of a Substance of Abuse was unrelated to sport performance, this case shall not be considered intentional for the purposes of Clause 12.2.1 hereof and shall not provide a basis for a finding of Aggravating Circumstance pursuant to Clause 12.4 hereof.

…

12.5. 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, the otherwise applicable period of Ineligibility shall be eliminated.

12.6. Reduction of the Period of Ineligibility Based on Insignificant Fault or Negligence

12.6.1. Reductions of sanctions in particular circumstances for violations of Clauses 4.1, 4.2, or 4.6 of the Rules.

All reductions of sanctions under Clause 12.6.1 hereof shall be mutually exclusive and not cumulative.

12.6.1.1. Specified substances or Specified Methods

Where a violation of the Rules involves a Specified Substance (other than a Substance of Abuse) or a Specified Method and an Athlete or other Person can establish No

Significant Fault or Negligence, then the period of Ineligibility shall be at a maximum two years of Ineligibility and at a minimum of a reprimand without assignment of a period of Ineligibility, depending on the degree of Fault of the Athlete or other Person.

12.6.1.2. Contaminated Products

Where an Athlete or other Person can establish that there is 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 maximum, two years Ineligibility and, at a minimum, a reprimand without assignment of a period of Ineligibility, depending on the degree of Fault of the Athlete or other Person.

12.6.1.3. Protected Persons and Recreational Athletes

Where the Rules` violation not involving a Substance of Abuse Use is committed by a Protected Person or Recreational Athlete who can establish that there is No Significant Fault or Negligence, the period of Ineligibility shall be, at a maximum, of two years of Ineligibility and, at a minimum, a reprimand without assignment of a period of Ineligibility, depending on the degree of Fault of Protected Person or Recreational Athlete.

12.6.2. Application of No Significant Fault or Negligence beyond the application of Clause 12.6.1 hereof

If an Athlete or other Person establishes, in an individual case where Clause 12.6.1 is not applicable, that he or she bears No Significant Fault or Negligence, then, subject to further reduction or elimination as provided in Clause 12.7 hereof, the otherwise applicable period of Ineligibility may be reduced based on the Athlete or other Person's degree of Fault, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this Clause may be no less than eight years.

…

12.10. Disqualification of Competition Results Subsequent to Sample Collection or Commission of an Anti-Doping Rule Violation

In addition to an automatic Disqualification of results achieved at a Competition during which a positive test was collected, pursuant to Chapter XI of the Rules (In-Competition or Out-of-Competition), all other results achieved by the Athlete at Competitions, starting from the date on which the Athlete tested positive or the date on which the other violation of the Rules was committed (including the period of Provisional Suspension or Ineligibility), shall be disqualified with all resulting Consequences, including forfeiture of all medals, points and prizes, unless otherwise required by the principle of fairness.

…

12.13. Commencement of the Period of Ineligibility

Where an Athlete is already serving a period of Ineligibility for the Rules` violation, any new period of Ineligibility shall commence on the next day after the expiry of the current period of Ineligibility. In addition to the situations described below, the period of Ineligibility shall commence on the date on which a final decision is made at the hearing pursuant to which the period of Ineligibility was assigned, or, if the right to hearings has not been exercised or hearings were not held, from the date on which the Athlete or other Person accepted Ineligibility or from the date of its imposition by RUSADA.

12.13.1. Delays not attributable to the Athlete or other Person

Where there have been substantial delays in the hearing process or at other phases of Doping Control and an Athlete or other Person can prove that such delays are caused by circumstances not attributable to the Athlete or other Person, RUSADA or the Disciplinary Anti-Doping Committee, depending on who is assigning the sanctions, may start the period of Ineligibility at an earlier date, i.e., the date of Sample collection or the date on which the latest violation of the Rules occurred. All competitive results achieved during the period of Ineligibility, including retroactive Ineligibility, shall be disqualified.

…

XX. Amendments and Interpretation of the Rules

20.1. The Rules and any amendments hereto shall take effect from the moment of their approval by a federal executive authority for physical culture and sports.

20.2. Annexes to the Rules shall be an integral part hereof.

20.3. The comments annotating various provisions of the Code are incorporated by reference into these Rules. The comments shall be treated as if set out fully herein and shall be used to interpret these Rules.

…

Annex to the Rules

Definitions Given in Law and Regulations and Used in the Rules

…

Contaminated Product

A product that contains a Prohibited Substance that is not disclosed on the product label or in information available in a reasonable Internet search.

…

Fault

Fault is any breach of duty or any lack of care appropriate to a particular situation.

Factors to be taken into consideration in assessing an Athlete or other Person's degree of Fault include, for example, the Athlete's or other Person's experience, whether the Athlete or other Person is a Protected Person, special considerations such as impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In assessing the Athlete's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behavior. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Athlete only has a short time left in his/her career, or the timing of the sporting calendar would not be relevant factors to be considered in reducing the period of Ineligibility under Clauses 12.6.1 or 12.6.2 hereof.

…

International-Level Athlete

Athletes who compete in sports at the international level, as defined by the respective International Federation, in accordance with the International Standard for Testing and Investigations.

…

No Fault or Negligence

The establishment by an Athlete or other Person 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 the Rules. Except in the case of a Protected Person or Recreational Athlete, for any violation of Clause 4.1 hereof, the Athlete must also establish how the Prohibited Substance entered the Athlete's system.

No Significant Fault or Negligence

Establishment by an Athlete or other Person that his or her Fault or Negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relation to the Rules` violation. Except in the case of a Protected Person or Recreational Athlete, for any violation of Clause 4.1 hereof, the Athlete must also establish how the Prohibited Substance entered the Athlete's system.

…

Protected Person

An Athlete or other natural Person who at the time of the Rules violation: (a) has not reached the age of sixteen years; (b) has not reached the age of eighteen years old and is not included in any Registered Testing Pool and has never competed in any International Event in an open category; or (c) for reasons other than age has been determined to lack legal capacity under applicable national legislation. …"

XII. PROCEDURAL ISSUES

313. Before turning to the merits, the Panel will address certain procedural issues that arose in the course of these appeals.

A. Bifurcation

314. As noted above, the Athlete made application to bifurcate these proceedings so as to deal with the question of the jurisdiction of CAS as a preliminary issue. The application was opposed by RUSADA, the ISU and WADA.

315. Upon consideration, the Panel took the view that the most efficient route to a determination of the Athlete's liability for the alleged ADRV was by means of a single set of proceedings that made allowance for the Parties to address jurisdiction and the merits at one and the same time. The Panel was concerned that the factual and legal complexities of the issue of jurisdiction would only serve to delay the outcome of these appeals if jurisdiction were hived off as a preliminary issue.

316. The application was therefore denied.

B. Adverse Inferences

317. As also noted above, the Athlete sought orders from the Panel as follows:

a. An order that WADA produce the correspondence between Prof. Rabin and Servier in relation to TMZ "*either before or after 10 February 2022*" and/or draw an adverse inference against WADA from its non-disclosure of the same to the effect that "*the contamination scenario is plausible from scientific, pharmacological and medical points of view*".

b. An order that WADA produce its file relating to "*the investigation it initiated and carried out pursuant to Article 20.7.14 of the WADA Code*" and/or draw an adverse inference against WADA "*that the substance entered the Athlete* [sic] *body by accidental contamination and that she bears No Fault or Negligence as the DADC found on 14 December 2022*".

318. The Panel denied the first application, and with it declines the invitation to draw an adverse inference in the manner sought by the Athlete. The material provided by Servier that was on the record provided a sufficient basis for the Parties, the Athlete included, and the Panel to form a view as to the pharmacological characteristics of TMZ. There was, moreover, no explanation proffered by the Athlete why such an application had not been made long before October 2023.

319. In any event, even if it were to draw such an inference, which it expressly declines to do, for the reasons set forth below whether or not the "*contamination scenario*" (which is taken by the Panel to mean what the Parties called the "Grandfather Explanation") is plausible is not the right question and would not assist the Athlete; the right question is instead whether, on the balance of probabilities, the Athlete has discharged her burden of showing that her ingestion of TMZ was unintentional.

320. As for the second application, the Panel ordered instead that WADA file a witness statement by Mr Walker, Deputy Director, WADA Intelligence and Investigations Department, in relation to the WADA Investigation and ordered that Mr Walker be made available for cross-examination at the hearing. There is in any event no logical link between the documents sought and the adverse inference to be drawn. In the result, the Panel takes the view that it would not be appropriate to draw any adverse inference against WADA in this respect, whether in the manner suggested by the Athlete or at all.

XIII. THE MERITS OF THE APPEAL

321. The Panel turns to the merits of the appeal.

The ADRV

322. The relevant legal framework under to the Russian ADR is as follows:

IV. Definition of Doping and Violation of the Rules

Doping is defined as the occurrence of one or more violations of the rules specified in Clause 4.1–4.11 of the Rules.

The purpose of this Chapter is to specify the circumstances and conduct which constitute the violations of the Rules. Hearings in doping cases will proceed based on the assertion that one or more Clause of the 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 the Rules` violations:

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

4.1.1. It is the Athletes' personal duty to ensure that no Prohibited Substance enters their bodies. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, Negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation under Clause 4.1 hereof.

4.1.2. Sufficient proof of the Rules` violation under Clause 4.1 shall be the presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample:

where the Athlete waives analysis of the B Sample and the B Sample is not analyzed,

where the Athlete's B Sample is analyzed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample,…

323. A "Prohibited Substance" is defined in the Russian ADR as: "*Any substance or class of substances so described on the Prohibited List*". It is common ground that TMZ is a included in S4.4 of the Prohibited List, that it is classified as a Non-Specified Substance, Prohibited Substance and that it is prohibited at all times.

324. The Sample was taken on 25 December 2021. There are no issues in this respect. The Sample was duly forwarded to the Stockholm Laboratory for analysis.

325. The Stockholm Laboratory (after some delay) reported the AAF on 7 February 2022. The concentration of TMZ detected in the Athlete's A Sample was estimated at 2.1 ng/mL. The presence of TMZ was confirmed by the Athlete's B Sample.

326. As noted above, by her Answer the Athlete contended that the alleged ADRV had not been proven. The Athlete submitted that "*the Appellants' claims will be dismissed on the merits because no doping and no violation of RUSADA ADR is proven*". The basis of the challenge was that the Prohibited Substance was not "*validly found in the Athlete's Sample*" because "*in the present case … the analysis of the Athlete's Sample showed not to be in conformity with the applicable rules*" in that the Stockholm Laboratory conducted its analyses in a manner that did not conform to the applicable international standards. The Athlete sought a declaration that "*no violation of the RUSADA ADR is proven and re-establish the Athlete in the results obtained at the 2021 Russian Figure Skating Championships in St. Petersburg*".

327. In the event, during the hearing in Lausanne, and after the examination of the factual and expert witnesses as to the analyses performed by the Stockholm Laboratory (namely Dr Pohanka, Prof. Ayotte, and Prof. Kintz), the Athlete formally withdrew her case on the merits, thereby accepting that the analyses performed by the Stockholm Laboratory were valid and that, accordingly, the Appellants had proven the ADRV.

328. In the circumstances, the Panel finds that the Athlete has committed an ADRV under Clause 4.1 of the Russian ADR by reason of the presence of a Prohibited Substance, namely TMZ, in the Athlete's Sample.

The Sanctions

329. The overarching issue therefore is: what sanctions, if any, should be imposed on the Athlete in respect of the ADRV?

330. The legal framework with respect to sanctions is set forth in the Russian ADR, the relevant clauses of which are set forth the below. The relevant sanctions provided for within this legal framework are as follows:

a. Imposition of a period of ineligibility pursuant to Clause 12.2 of the Russian ADR.

b. Automatic disqualification under Clause 11.1 of the Russian ADR of her result in the women's free skating event at the Russian National Championships on 25 December 2021.

c. Disqualification under Clause 12.1 of the Russian ADR of other competition results at the Russian National Championships on 25 December 2021.

d. Disqualification under Clause 12.10 of the Russian ADR of competition results subsequent to 25 December 2021.

331. By way of general observations, the Panel notes as follows.

332. First, it is axiomatic that the Russian ADR are to be interpreted according to and consistent with the WADC and, in this respect, the Russian ADR expressly provide at Clause 20.3 that *"The comments annotating various provisions of the Code are incorporated by reference into these Rules. The comments shall be treated as if set out fully herein and shall be used to interpret these Rules.*"

333. Second, the Athlete is a Protected Person under the Russian ADR. A Protected Person is defined as follows:

"***Protected Person***

An Athlete or other natural Person who at the time of the Rules violation: (a) has not reached the age of sixteen years; (b) has not reached the age of eighteen years old and is not included in any Registered Testing Pool and has never competed in any International Event in an open category; or (c) for reasons other than age has been determined to lack legal capacity under applicable national legislation. ..."

334. This means that, in some contexts – but, as the Panel will develop, not all contexts – the Athlete is to be treated differently to adult athletes. As is explained in the 2021 WADC by way of comment (and therefore expressly incorporated into the Russian ADR):

"127 Comment to Protected Person: The Code treats Protected Persons differently than other Athletes or Persons in certain circumstances based on the understanding that, below a certain age or intellectual capacity, an Athlete or other Person may not possess the mental capacity to understand and appreciate the prohibitions against conduct contained in the Code. This would include, for example, a Paralympic Athlete with a documented lack of legal capacity due to an intellectual impairment. …"

335. Third, as can be seen, the Russian ADR (and the 2021 WADC) provide for a sanctioning regime that is intended to visit harsher penalties on athletes who violate the rules intentionally. This was first introduced by WADA in the 2015 WADC, amending the 2009 WADC which did not refer to intentional violations of the rules in the context of sanctions. The scheme under the 2009 WADC was that an ADRV would attract a period of ineligibility of two years (for a first violation), to be calibrated down if there were "*exceptional circumstances*", which included No Fault or Negligence and No Significant Fault or Negligence on the part of the athlete, or calibrated up to a maximum of four years if there were "*Aggravating Circumstances*" which justified the imposition of a longer period of ineligibility, which aggravating circumstances included the commission of an ADRV as part of doping plan or scheme.

336. For the 2015 WADC, WADA changed this scheme by introducing the notion, in the context of sanctions, of an intentional violation of the anti-doping rules. It was done so, so said WADA at the time, for the following reason:

"*There was a strong consensus among stakeholders, and in particular Athletes, that intentional cheaters should be Ineligible for a period of four years. Under the current [2009] Code, there is the opportunity for a four year period of Ineligibility for an Adverse Analytical Finding if the anti-doping organisation can show "Aggravating Circumstances". However, in the more than four years since that provision has been part of the Code, it has been rarely used.*"

337. WADA thus introduced Article 10.2 and Article 10.3 of the 2015 WADC which provided for a sanction of four years for intentional doping violations. Commensurate with the stated basis for its introduction, in the 2015 WADC the definition of "intentional" was as follows (with added emphasis):

As used in Clause 10.2 and 10.3, ***the term "intentional" is meant to identify those Athletes or other Persons who cheat****. The term, therefore, requires that the Athlete or other Person engaged in conduct which he or she knew constituted a violation of the Rules or knew that there was a significant risk that the conduct might constitute or result in the violation of the Rules and manifestly disregarded that risk.*"

338. The notion of intentional conduct has been carried forward into the 2021 WADC (and the Russian ADR) save that the first sentence of the definition has been deleted, so that the definition now reads (in the Russian ADR):

"The term "intentional" as used in Clause 12.2 hereof is meant to identify those Athletes or other Persons engaged in conduct which he or she knew constituted a violation of

the Rules or knew that there was a significant risk that the conduct might constitute or result in the violation of the Rules and manifestly disregarded that risk."

339. Fourth, it must be borne in mind that the 2021 WADC (and the Russian ADR based on it) has adopted a structure that differentiates between violations committed intentionally and those committed without due care or negligently. As explained by Prof. Haas in The Revision of the World Anti-Doping Code 2021, [2020] I.S.L.R. Issue 3, 25-27, the WADC "*differentiates between the following, mutually exclusive, levels of fault*": (a) intentional (Articles 10.2.1, 10.2.3); (b) simply negligent (Article 10.2.2), (c) No Significant Fault or Negligence (Article 10.6) and (d) No Fault or Negligence (Article 10.5). "*These four categories are distinct and different and must be examined separately. This clearly follows from the structure of the WADC and also from the simple fact that the conditions for these different fault-related concepts differ substantially.*"

340. This draws support from what is said by Rigozzi et al, 'Breaking down the process for determining a basic sanction under the 2015 World Anti-Doping Code', ISLJ (2015) 15:3-48 ("**Rigozzi et al**") that the sanctioning was to be understood as providing for mutually exclusive violations – intentional on the one hand and those committed with fault or negligence on the other. The authors said this:

"*This article suggests that the most coherent interpretation of the sanctioning regime requires viewing intentional violations and those committed with No (Significant) Fault or Negligence as mutually exclusive categories of violations. Consequently, intentional violations would not be subject to Fault-related reductions. This view creates a simple, functional, and comprehensible framework, consistent with WADA's stated revision goal to make the Code clearer and shorter and in line with the stated underlying philosophy of the revised Code. Furthermore, and more importantly, understanding intentional as exclusive of No Significant Fault or Negligence is consistent with a systematic interpretation of the 2015 Code … .*"

341. Fifth, because WADA failed to grapple with the difference between intentional on the one hand and negligence on the other within the provisions of Article 10 of the 2021 WADC, there has been some uncertainty as to the inter-relation and interaction between the rules, which was exacerbated by the examples set forth in the appendix to the 2015 WADC which have now been discarded. In an attempt to address this uncertainty, Rigozzi *et al* proposed a method of ascertaining whether the conduct was intentional by first asking whether the athlete was able to show either No Fault or Negligence or No Significant Fault or Negligence and, if either is demonstrated, proceeding on the basis that the athlete is to be regarded as having proved lack of intent. The authors appear to have adopted this course principally for reasons of efficiency.

342. In the Panel's view, however, that approach is not consistent with the mutual exclusivity of intention on the one hand and fault-based negligence on the other. The better approach, according to the proper construction of the scheme and paying heed to that mutual exclusivity, is that the fault-based reductions set forth in the provisions relating to No (Significant) Fault of Negligence (Articles 10.5 and 10.6 in the 2021 WADC and

Clauses 12.5 and 12.6 in the Russian ADR) are not available to an athlete unless and until the athlete can demonstrate that the ADRV was not intentional. This accords with the approach taken by the panel in CAS 2017/A/5282 at ¶73 which is that "*only in the event that the anti-doping rule violation is held to be not intentional, is there any warrant for an examination of the Player's fault or negligence*". It also accords with the approach taken in a number of cases confronted by this issue: see CAS 2018/A/5768 at ¶¶ 127, 128 and 183; CAS 2016/A/4828 at ¶140ff; CAS 2017/A/5357 at ¶¶79, 80 and 86; CAS 2017/O/5754 at ¶123. It is also corroborated by the comment to Article 10.6.2 of the 2021 WADC which precludes the reduction for No Significant Fault of Negligence to ADRVs "*where intent is an element*" of the violation or sanction. It is true that there is no equivalent comment under Article 10.5 of the 2011 WADC, but it must apply, *a fortiori*, to pleas of No Fault or Negligence (see Lewis & Taylor, Sport: Law and Practice, 4th ed, Bloomsbury 2021 at C.18.2). The Panel refers as well to what was said in CAS 2017/A/5112 at ¶74 (emphasis added):

"*The comment to TADP Article 10.5.2, strictly speaking, applies only to a plea of No Significant Fault or Negligence. Nonetheless, where intent is an element of the ADRV, Article 10.4 cannot be applied to reduce the period of ineligibility on the basis of No Fault or Negligence. Intent, as TADP Article 10.2.3 states, "requires that the Player or other Person engaged in conduct that he/she knew constituted an Anti-Doping Rule Violation or knew that there was a significant risk that the conduct might constitute or result in an Anti-Doping Rule Violation and manifestly disregarded that risk". **In line with this definition, where there is intent there is necessarily Fault or Negligence - though the inverse is not necessarily true (where there is no intent there may or may not be No Fault or Negligence; this will depend on the circumstances of the case)**.*".

Period of Ineligibility

343. The starting point therefore of an analysis of the Athlete's degree of fault is Clause 12.2.1 of the Russian ADR:

12.2. Ineligibility for Presence, Use or Attempted Use of a Prohibited Substance or Prohibited Method or Possession of a Prohibited Substance or Prohibited Method

If there are no grounds for elimination, reduction or suspension pursuant to Clauses 12.5, 12.6, or 12.7 hereof, the period of Ineligibility for a violation of Clauses 4.1, 4.2, or 4.6 of the Rules shall be determined as follows.

12.2.1. Subject to Clause 12.2.4 hereof, the period of Ineligibility shall be four years in the following cases:

12.2.1.1. The violation of the Rules does not involve a Specified Substance or a Specified Method unless the Athlete or other Person can establish that the violation of the Rules was not intentional.

12.2.1.2. The violation of the Rules involves a Specified Substance or a Specified Method and RUSADA can establish that the violation of the Rules was intentional.

344. As can be seen, where, as here, the ADRV relates to the presence of a non-Specified Substance, the period of ineligibility shall be four years, unless the Athlete can establish that the ADRV was not committed intentionally.

345. It is sometimes said that it follows from this wording that, unless and until an athlete is able to prove that the violation was not intentional, it is presumed that the ADRV was committed intentionally. The Panel takes the view, as did the panel in SR/0000120259 at ¶28, that it is unnecessary to go so far, all the more-so where there is no mention within the clause of such a presumption arising should an athlete not be able to show the requisite lack of intention. In the Panel's view, it is enough to say that, should an athlete not carry his or her burden in this respect, then it follows from the wording of the clause that the period of ineligibility is four years. It is unnecessary to go on to say that a presumption therefore arises that the athlete violated the rules intentionally, especially in circumstances where the original version of this rule within the 2015 WADC expressly referred to athletes who cheat. It is perfectly possible for an athlete to fail to meet their burden and, at one and the same time, not be a cheat. If the WADA wanted to go so far as to impose a presumption to this effect, it would have and should have said so. It is difficult enough to prove a negative without branding each and every athlete who fails to do so a presumptive cheat.

346. Intentional is defined in the clause itself as follows:

> *"12.2.3. The term "intentional" as used in Clause 12.2 hereof is meant to identify those Athletes or other Persons engaged in conduct which he or she knew constituted a violation of the Rules or knew that there was a significant risk that the conduct might constitute or result in the violation of the Rules and manifestly disregarded that risk.*"

347. According to the comment to Article 10.2.3 of the 2021 WADC this is "*a special definition*" of which is to be applied "*solely for purposes*" of Article 10.2 of the WADC. As noted, this comment equally applies to the Russian ADR and Clause 12.2 therein.

348. The Panel notes again that the definition has been amended from that which appeared in the 2015 WADC as follows (with added emphasis):

> *As used in Clause 10.2 and 10.3,* ***the term "intentional" is meant to identify those Athletes or other Persons who cheat****. The term, therefore, requires that the Athlete or other Person engaged in conduct which he or she knew constituted a violation of the Rules or knew that there was a significant risk that the conduct might constitute or result in the violation of the Rules and manifestly disregarded that risk.*"

349. Whilst the notion of intentional conduct has been carried forward into the 2021 WADC, it is apparent that, in effect, the first sentence has been deleted. This amendment was effected presumably because the first sentence explained rather than defined the term and because it created a measure of tension between intentional conduct *simpliciter* (direct intent) on the one hand and reckless conduct (indirect intent) on the other. There is no reason, however, to think that the legislative sentiment is any different now than when the 2015 WADC was amended to introduce the change, namely that the regime

established by Articles 10.2 and 10.3 of the 2021 WADC is directed at athletes who cheat, and the Panel will proceed on that basis.

350. Having said that, it is important to understand that the intent to which the definition is directed is *not* the intention to cheat. Rather, the relevant intent in the context of an ADRV for presence of a Prohibited Substance is the intent to ingest the said Prohibited Substance.

351. It is apparent from Clause 12.2.1.1 that the burden is on the Athlete to show that the violation of the rules was not intentional. This is to be contrasted to the situation under Clause 12.2.1.2. relating to a Specified Substance or a Specified Method in which case it is RUSADA who bears the burden of showing that the violation was intentional.

352. Clause 5 of the Russian ADR provides for the burdens and standards of proof.

> ***"5.1. Burdens and Standards of Proof***
>
> *RUSADA shall have the burden of establishing that violation of the Rules has occurred. The standard of proof shall be whether RUSADA has established violation of the Rules 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 the Rules place the burden of proof upon the Athlete or other Person alleged to have committed violation of the Rules to rebut a presumption or establish specified facts or circumstances, except as provided in Clauses 5.2.2 and 5.2.3 hereof, the standard of proof shall be a balance of probability.*

353. Clause 12.2 places the burden of proof on the Athlete. This the Athlete acknowledges: she accepts that she must prove that she did not engage in conduct which she knew constituted an ADRV or knew that there was a significant risk that her conduct might constitute or result in an ADRV and manifestly disregarded that risk.

354. It also follows that the standard of proof is on the balance of probability: the Athlete is required to establish a lack of intent on the balance of probability in order to avoid the four-year period of ineligibility imposed by Article 12.2.1 of the Russian ADR. In this regard, the DADC fell into error by lowering the standard. Indeed, the Athlete has not argued in this case that the standard is anything other than on the balance of probabilities.

355. The test that the Athlete has to meet is whether she has "*proven, by a balance of probabilities, that* [she] *did not engage in conduct which* [she] *knew constituted an anti-doping rule violation or knew that there was a significant risk that said conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk*": CAS 2017/A/5016 & 5036. There is no particular mystery as to what this standard means. Expressed in percentage terms in the context of this appeal, it means that the Panel must be satisfied that there is more than a 50% chance that the Athlete did not engage in conduct which knew constituted an ADRV or knew that there was a

significant risk that such conduct might constitute or result in an ADRV and yet manifestly disregarded that risk.

356. It is open to the Athlete to seek to prove this by reference to any reliable means that she is able muster. This is made clear by Clause 5.2. of the Russian ADR which sets forth "*the methods of establishing facts*", which is equally applicable to all parties, and which provides that "[f]*acts related to violations of the Rules may be established by any reliable means, including admissions"*.

357. Clause 12.2 of the Russian ADR does not require the Athlete to establish the origin of the Prohibited Substance; as was submitted by the Athlete, the establishment of the source of a prohibited substance is not a *sine qua non* of the proof of the absence of intent. This is plain from the wording of the clause itself. As established by CAS jurisprudence, there may be circumstances in which a panel can be satisfied that the AAF was not intentional despite the inability of the athlete to show the origin of the substance. As was stated in CAS 2018/A/5580, where an athlete is unable to prove the origin of the prohibited substance then the panel must evaluate, based on the overall circumstances of the case, whether the athlete acted with or without intent; see also CAS 2016/A/4676; CAS 2017/A/5016; CAS 2019/A/6313.

358. It is in any event supported by what was said in this respect by the seasoned panels in CAS 2020/A/7579 / 7980 and in CAS 2018/A/5768 at ¶¶140ff. In the latter, this was said (where NF means No Fault or Negligence, NSF means No Significant Fault or Negligence, and TADP means the Tennis Anti-Doping Programme):

"140. The Panel notes that unlike the standard for NSF, the TADP does not specifically require the Athlete to show how the Prohibited Substance entered his system in order to prove no intent. Also, the legislative history of the provision speaks against a restrictive approach. Instead, the legislative history clearly evidences that in order to rebut the presumption of intent an athlete need not show how the prohibited substance entered into his or her system.

141. The drafting team of the WADC 2015 had contemplated at the time to introduce such requirement into Art. 10.2 of the WADA Code and had requested a supplementary expert opinion by Judge Jean-Paul Costa on this issue, i.e. the new draft wording. The latter stated in his expert opinion as follows:

> *Une telle preuve est difficile à rapporter. Ce durcissement est-il excessif ? On peut éprouver des doutes à cet égard, car une preuve impossible aboutirait à un renversement de la charge de la preuve ou à l 'institution d 'une presomption quasi-irréfragable de violation des règles antidopage. [...] J'en conclus donc, non sans quelque hésitation je l'admets, que la nouvelle rédaction du projet de révision peut être considérée comme acceptable, étant bien entendu précisé que ce seront les juridictions compétentes en cas de litige qui auront à apprécier les éléments de preuve fournis par les parties, et à les peser. "*

> *free translation: Such proof [how the substance entered the body] is difficult to provide. Is such aggravation excessive? One could have doubts in this respect, because an impossible proof either leads to a reversal of the burden of proof or to the irrefutable assumption of an anti-doping rule violation [...] I conclude, thus, not without some hesitation, that this new text of the draft may be considered acceptable, subject however that it will be for the competent jurisdiction in the individual case to assess the elements of evidence adduced by the parties.*
>
> *142. In view of Judge Jean-Paul Costa's concerns ("I conclude, thus, not without some hesitation"), the redaction group went back to the initial text of the draft (which corresponds to the final text enacted) and acknowledged that whilst proof of the route of the ingestion of the prohibited substance is an important fact in order to establish whether or not an athlete acted intentionally, it should not be elevated to a mandatory condition to prove lack of intent on the part of the athlete. To conclude, therefore, the Panel finds that - unlike in the context of NSF or NF -proof of the source of the prohibited substance is not an absolute (although always an important) pre-condition of establishing lack of intent (see 2016/A/4534, CAS 2016/A/4676 and CAS 2017 / A/5178), and that only extremely rarely will an athlete be able to prove lack of intent without proof of source.*"

359. Having said that, it is readily apparent that the most persuasive and probative evidence that the Athlete can adduce in an effort to discharge the burden is factual evidence as to the origin of the Prohibited Substance. But this is not a rule of law, it is a matter of evidence. It was explained, as WADA submitted, by the highly regarded arbitrator, Mr Yves Fortier, in CCES v Findlay, SDRCC DT 16-0242 at ¶77 the following way:

> "*It appears to me that logically, I cannot fathom nor rule on the intention of an athlete without having initially been provided with evidence as to how she had ingested the product which, she says, contained the* [Prohibited Substance]. *With respect to for the contrary view, I fail to see how I can determine whether or not an athlete intended to cheat if I do not know how the substance entered her body.*"

360. This is now reflected in the comment to Article 10.2.1 of the 2021 WADC:

> "*While it is theoretically possible for an Athlete or other Person to establish that the anti-doping rule violation was not intentional without showing how the Prohibited Substance entered one's system, it is highly unlikely that in a doping case under Article 2.1 an Athlete will be successful in proving that the Athlete acted unintentionally without establishing the source of the Prohibited Substance.*"

361. This has been explained in a raft of cases:

    a. CAS 2016/A/4534: "*where an athlete cannot prove source it leaves the narrowest of corridors through which such athlete must pass to discharge the burden which lies upon him*".

b. CAS 2016/A/4919: "*while this Panel assumes in favour of the Athlete that he does not have to necessarily establish how the* [Prohibited Substance] *entered his system when attempting to prove on the balance of probabilities the absence of intent, in all but the rarest cases the issue is academic"*.

c. CAS 2021/A/7579: "*But unconscious contamination by the spiking of supplements in a manner which is of course not indicated on the label, or as a result of using common facilities at a gym, does not lend itself to such proof. Still, it is not impossible. It is ultimately a question of evidence – what one means by the notion of proof.*"

d. CAS 2016/A/4919: Only in "*the rarest of cases*" will an athlete be able to establish a lack of intent without demonstrating how the substance got into their body; "*it is difficult to conceive how a panel could assess an athlete's conduct under art 10.2.3 of the* [WADC] *without knowing how the substance entered the athlete's body"*.

362. The Panel agrees with all of this. It is very difficult for the Panel to form a view as to the intention of the Athlete without evidence as to how she happened to ingest the TMZ in this case. It is important, however, not to elevate these observations to statements of dogma lest doing so obscures the true nature of the task to be undertaken by the Panel. The task of the Panel is to weigh the evidence adduced by the Athlete and to form a view as to whether that evidence as a whole is sufficient to meet the Athlete's burden of proving that she did not intend (directly or recklessly) to commit the ADRV.

363. In this respect, the Appellants (principally WADA) contended that protestations of innocence, however credible they appear, "*carry no material weight in the analysis of intent*" and that the same applies to a lack of a demonstrable sporting incentive to dope, diligent attempts to discover the source of the Prohibited Substance and/or the Athlete's clean record. The Panel is of the view that these contentions go too far. These matters will carry whatever weight they will carry in the particular circumstances of the particular case. There is no *a priori* reason or basis to dismiss such evidence out of hand. True it is that in the ordinary case such evidence will likely be given little weight, but there may be circumstances where such elements may be an important part of the persuasive mix. As was made clear in CAS 2020/A/7579 and 7980, the quality of the evidence that is required to prove the absence of the intention, without proof of the source, will always be fact sensitive and there are no absolute rules as to what evidence will or will not suffice.

364. Pausing there, it is notable that the test with respect to intention under Clause 12.2 of the Russian ADR (and Article 10.2 of the 2021 WADC) is one and the same whether the athlete is an adult or a Protected Person. The Panel agrees with the rationale for this as submitted by WADA, namely that if a Protected Person is held to have committed an ADRV intentionally there is no reason to treat them any differently from an adult athlete. Accordingly, although the Russian ADR (and the 2021 WADC) provide a certain measure of protection for Protected Persons, the Protected Person enjoys no protection at all, and is treated no differently at all, when it comes to the elements of

Clause 12.2 of the Russian ADR (or Article 10.2 of the 2021 WADC). Neither the adult nor the Protected Person is required to prove the origin of the Prohibited Substance but each is required to prove, on the balance of probabilities, that the ADRV was not committed intentionally.

365. In these appeals, the Athlete seeks to discharge her burden of proving lack of intent on her part by reference to the following matters:

a. The presence of TMZ in her Sample was brought about by contamination via her Grandfather.

b. Contamination via her Grandfather is corroborated by the scientific evidence.

c. The Athlete's own testimony.

Contamination via the Grandfather

366. The Athlete has put forward three possible explanations for the presence of the TMZ in her body: (a) the Grandfather Explanation; (b) contamination of medication/ supplements; and (c) sabotage. The Athlete has however nailed her colours to the mast of the Grandfather Explanation and has submitted that this explanation is more likely than not. (Indeed, the other explanations were not advanced at the hearing and no evidence was adduced in support of them.) The Athlete contends that, even though she is under no obligation to establish how the TMZ entered her system, "*the grandfather contamination route is the most probable one and that it has most likely happened than not*".

367. The evidence supporting the Grandfather Explanation is as follows:

a. The Athlete lives with her mother in Moscow. Ms Alsu Valieva leaves early in the morning for work (as an accountant) and she works until 15:30. The Athlete has on-line schooling in the morning.

b. The Athlete trains at the Ice Palace. The morning session is from 10:30 to 13:30. The afternoon session is from 15:30 until 19:30.

c. The Athlete has a warm relationship with Mr Solovyov, whom she regards as her grandfather (he is not her blood grandfather). He was a "*stable presence*" in her life in the three months leading up to the Russian Championships in December 2021.

d. Mr Solovyov has had heart problems since 2000. He suffers from ischemic heart disease and angina pectoris. He has had four heart attacks and has had two surgeries. As a result he was "*systematically taking medications to maintain proper cardiac activity*". This is confirmed by: (i) his 22 December 2008 discharge summary which confirms that he suffered from ischemic heart disease and angina pectoris; (ii) an extract form his medical record of 10 March 2022 which confirms that he was recommended to take 35mg TMZ twice a day,

courses two times a year for three months; and (iii) an extract form his medical record of 2 December 2022 which confirms that he suffers from ischemic heart disease and angina pectoris and that he "*constantly takes Trimetazidine 35mg twice a day (course one in 3 months)*".

e. Mr Solovyov started using TMZ "*approximately since 2018*". TMZ is "*freely sold in Russian cities, in the form of 20mg or 35mg tablets, and its purchase does not require a prescription*". He started another three-month course in October 2021 "*and he was using this medication at the moment when this substance entered the Athlete's system, i.e. in December 2021*".

f. Because she works, Ms Alsu Valieva asked Mr Solovyov to escort the Athlete to the Ice Palace and to attend the training sessions. Mr Solovyov drove from his house in Lukashenko village to the Athlete's house and then drove the Athlete to the Ice Palace for the morning session. He did so in order to ensure her safety ("*so that no one knows her home address*") and to be there in case of an emergency (such as an injury). Mr Solovyov then escorted the Athlete home where they had lunch, often prepared by him; they then returned to the Ice Palace for the afternoon session. Ms Alsu Valieva went to the Ice Palace at 16:30 in order to take the Athlete home after training.

g. On 20 December 2021, Mr Solovyov accompanied the Athlete to training and after the morning session they had lunch together at the Athlete's home. Mr Solovyov then drove the Athlete back to the Ice Palace for the afternoon session. He left when Ms Alsu Valieva arrived at around 16:30.

h. According to the Athlete's witness declaration, on 21 December 2021, Mr Solovyov drove the Athlete to the Ice Palace in the morning and drove her home again at lunch time. They had lunch together. Mr Solovyov gave the Athlete a strawberry dessert, which he left in the refrigerator. Mr Solovyov then drove the Athlete back to the Ice Palace for the afternoon session. Ms Alsu Valieva also came for the afternoon session. Mr Solovyov left at the end of the session, taking with him the Valievas' dog, which he was looking after while they were in St Petersburg.

i. The Athlete has stated that Mr Solovyov gave the Athlete the strawberry dessert "*to take with me to St Petersburg the next day. Grandfather was making this dessert at his home and it is likely, as he later informed my mother and me, that he used the same board on which he had previously crushed a tablet of trimetazidine to make the dessert and cut bananas and strawberries. I put the strawberry dessert in the fridge in the [train] during the journey and then in the fridge when I arrived at the hotel*".

j. In the morning of 22 December 2022, the Athlete and her mother took the train to St Petersburg, arriving in the afternoon. The Athlete had breakfast on the train. Upon arrival in St Petersburg, the Athlete and her mother checked into the River

Palace Hotel, staying in different rooms. On that day, "*instead of lunch, the Athlete ate her grandfather's strawberry dessert*".

k. On 23 December 2023, the Athlete "*ate again some of her grandfather's dessert*" instead of dinner.

l. On 24 December 2021, the Athlete ate breakfast at the hotel (at the hotel buffet). The same day, the Athlete ate a cooked meal which her mother had bought from a delicatessen. She completed her short programme at around 18:20; at 21:00 she took part in a press conference; and at 23:00 returned to the hotel by taxi.

m. On 25 December 2021, the Athlete ate breakfast alone in the hotel and did not have lunch. She made two round trips to the skating rink for training sessions. She began her event at 20:40. She was met by the DCO immediately after the event.

368. On the basis of this evidence the Athlete asks the Panel to conclude, on the balance of probabilities, that she ingested the TMZ that was detected in her Sample as a result of eating the strawberry dessert contaminated with residues of TMZ and that, accordingly, she did not commit the ADRV intentionally, whether directly or indirectly (or recklessly).

369. The Athlete must show three things: (a) that Mr Solovyov was taking TMZ medication in late December 2021; (b) that his TMZ found its way into the strawberry dessert in some way; and (c) that the Athlete took the strawberry dessert with her to St Petersburg and ate it in her days there.

370. There are, in the Panel's view, a number of evidential difficulties with the Grandfather Explanation with respect to each of these elements.

a. There is no independent or documentary evidence relating to Mr Solovyov's use of TMZ prior to 25 December 2021 – this despite the suggestion that he said that he had been taking TMZ since 2018. The only corroborative evidence in relation to his use of TMZ are two medical records dated March 2022 and December 2022, after the ISU's notification of the AAF to the Athlete on 8 February 2022. There is no medical record prior to this time.

b. There is no corroborative evidence of TMZ being prescribed to Mr Solovyov at any stage prior to 25 December 2021 or a statement of any sort from his medical practitioners. Nor is there any corroborative evidence of his purchasing TMZ in that time (or indeed at all); no receipt or credit card statement, and no witness statement from a pharmacy or other outlet. There are two photographs of TMZ medication but no particulars have been provided as to when or where they were purchased. Nor has Mr Solovyov provided the name of any pharmacy or other outlet from which he purchased TMZ at the relevant time.

c. Nor is there any evidence from Mr Solovyov's partner about the events in question, not least Mr Solovyov's health and medications, and no explanation as to why not.

d. In his recorded video statement for the purposes of the DADC hearing on 9 February 2022 Mr Solovyov said that he had been (with emphasis added) "*in constant, close contact with Kamila for about ten years, especially in the last three months. ... And for the last three months I was very actively involved in Kamila's training process, that is, from morning till late evening I picked her up and brought her home, and was present at Kamila's training sessions at the "Crystal" Ice Palace. Between the first and second training sessions, we spent time resting and eating at home. It was also where I took my medications. I can assume that while taking my medications, and* ***I always take them by chewing and masticating, drinking water repeatedly, and it is quite possible that there may have even been residues of these medications which may have remained on the surface of the glass****. Other options are possible, they cannot be ruled out and need to be considered, but the fact is that the last time I bought this medication was in September-October and it has been used for these three months. Thus, I confirm the fact that this medicine is in my constant use, with me constantly. My contact with Kamila has been on the most close domestic level for a long time*", It is clear therefore that the account at that stage was that, because the Grandfather always took his medication by chewing them, there was a possibility that some residue found its way onto a glass from which the Athlete may have drunk. There was no mention of a strawberry dessert.

e. On 9 February 2022, before the DADC, the submission was that there was the possibility of contamination by means of "*domestic interaction*" with the Grandfather -- but there was no mention of the strawberry dessert one way or the other.

f. In his witness statement on 17 May 2022, Mr Solovyov gave a different account. On this occasion he said that "*I crush the pills with the kitchen knife on the chopping board*" and that it was possible that, while making a dessert for the Athlete he "*could have missed the pill remains on the chopping board and/or knife*" but that because of the "*sufficient amount of time went from December I cannot remember exactly*". This was the first mention of a strawberry dessert. He also said that, on the evening before she travelled to St Petersburg, he gave the Athlete the strawberry dessert for her journey.

g. In her submissions to the DADC dated 18 May 2022, there is mention of a strawberry dessert made by the Grandfather for the Athlete and that there was a possibility of contamination from the chopping board. There is, however, no mention of the Grandfather giving a strawberry dessert to the Athlete for her to take with her to St Petersburg.

h. The Athlete was interviewed on 1 June 2022. She does mention that the Grandfather "*sometimes makes fruit desserts with mashed apples or*

strawberries" and that he "*may have cut the fruit for the dessert in the kitchen on the same board that he used to grind or chop his pills. Perhaps the substance from the pills got on the fruit and inside the dessert*". However, she says nothing at all about taking one such dessert with her to St Petersburg.

i. In December 2022 before the DADC, the Athlete said for the very first time that she took the strawberry dessert with her to St Petersburg. And, on this occasion, the Athlete was able to recall in some detail how she took the dessert with her on the train and at what particular times she ate the dessert.

j. There is no independent evidence as to how the TMZ made its way into the strawberry dessert and Mr Solovyov's evidence on this is not consistent. In his video statement of 8 February 2022, he said that he "*always*" takes the tablets by chewing them; in his explanation of 17 May 2022 he stated that he crushes the tablets on a chopping board and that the TMZ in the strawberry dessert could have been picked up from using the same chopping board.

k. There is no independent evidence to support the Athlete's submission that she took the strawberry dessert with her on the train from Moscow to St Petersburg or as to how and when she ate the strawberry dessert in the days prior to 25 December 2021. While the Athlete in earlier statements appeared to suggest that she herself had put the strawberry dessert in a refrigerator on the train, her testimony at the hearing was that she gave the dessert to a train attendant who put it in the staff refrigerator and later returned it to her several hours later as she left the train. There is nothing from the train attendant who the Athlete says was asked to store the dessert in the train refrigerator. There is nothing from any of the teammates who travelled on the same train (and in the same carriage) to corroborate that she brought a strawberry dessert with her on the train (and asked the train attendant to store it for her). Ms Tarasova (a teammate) provided a witness statement and appeared before the Panel but said nothing at all about the strawberry dessert on the train.

l. There is, in the Panel's view, an air of unreality surrounding the idea that the Athlete, an elite athlete educated on and aware of her obligations with respect to food security, would ask a train attendant to refrigerate her strawberry dessert on the train from Moscow to St Petersburg.

m. The principal character in the explanation is Mr Solovyov and yet he was not called by the Athlete and did not give evidence before the Panel. Moreover, his evidence before the DADC was comprised of a pre-recorded video and a written statement. It is apparent therefore that none of his evidence has been tested, and the Panel has been afforded no opportunity to assess the witness or his evidence.

n. Mr Solovyov has declined to testify before the Panel on account of health issues. There is no specific medical evidence supporting his unfitness to give evidence. In circumstances where he was fit and well enough in December 2021 to drive two hours every day to escort the Athlete to her training sessions, it is difficult

to be believe that he was not able to manage giving evidence in some fashion to the Panel. Likewise, in circumstances where he was fit and well enough to provide a recorded video of his account to the DADC in early 2022, it is difficult to be believe that he was not able to manage giving remote evidence to the Panel.

o. In the end, the evidence provided by Mr Solovyov, such as it was, was untested and the Panel takes the view that it is not in any position but to afford it very little weight.

371. The Panel also bears in mind the following:

a. As Prof. Rabin explained, if the Athlete was exposed to TMZ residues and thus to a low dose (i.e. between 0.5 mg and 7.5 mg and not between 7.5 mg and 35 mg) then she would have a urine concentration of 1-1.7 ng/mL three days after the last intake – which meant that her reported urine concentration of 2.1 ng/mL on 25 December 2021 was not consistent with a scenario whereby she was exposed to TMZ contamination on or before 21 December 2021 in Moscow. If she did ingest the substance in Moscow it could only be explained on the basis that she ingested not residues but an entire pill. (When asked about this Prof. Kintz agreed that there were "serious doubts" that contamination could have occurred in Moscow.)

b. It thus became important for the Athlete to be able to say that her exposure to the TMZ continued after 21 December 2021, which she has now done by reference to the strawberry dessert, which she says she carried with her and ate over the days she spent in St Petersburg, with her last in time eating of the dessert some 50 hours prior to the test.

c. There is therefore a coherent basis to say, as the Appellants have done, that the account now advanced by which the contamination did not take place in Moscow but in St Petersburg by dint of the Athlete taking with her a strawberry dessert and eating it in the days leading up to her competition has been crafted in order to fit the science.

372. WADA and ISU argued that, when one took account of the contextual evidence, it was more likely than not that the Athlete's ingestion of the TMZ was intentional. This is an unnecessary step for the Panel to take; it is not at all necessary for the Appellants to prove or the Panel to find that the ingestion was intentional. Having said that, the Panel notes that it was unpersuaded by the matters invoked in this respect. By way of example:

a. It was said that the Russian medical literature indicates that TMZ is prescribed to young athletes. But that over-eggs what was said in those papers and, in any event, the papers relied upon were dated 2010 and 2013, respectively, and therefore ought not to be taken as an indication of current practices in Russia.

b. It was said that there was a synergistic relationship among Hypoxen, L-carnitine and TMZ. The paper relied upon for that submission was not a scientific study

but an editorial contribution to the British Journal of Pharmacy in 2022 in which it was said that "*during intense physical exercise, there is a likely synergistic relationship of trimetazidine along with hypoxen and carnitine*". But that statement was wholly unsupported by any reference to any study in that respect and, accordingly, should be treated with caution.

c. It was said that Ms Tutberidze had said publicly that when meldonium was banned in 2016 "*we had to look for something new*". That could mean anything and certainly does not provide any sound basis for an inference that the Athlete's ingestion of TMZ in this case was intentional.

d. Dr Shvetskiy was sanctioned in 2007 for the use of substances by a prohibited method and in 2016 a sample of one of his skaters was found to contain meldonium. Once again, this provides no sound basis for the inference that the Athlete's ingestion of TMZ in this case was intentional.

e. It was said that TMZ is recommended for use in Russian sport. The principal basis for this was the 2013 Russian National Guidelines on Sports Medicine and it is certainly true that it was recommended in those guidelines at that time. But the picture since the WADA ban of TMZ in 2014 is much less clear on the evidence (for example, the 2020 Russian National Guidelines on Sports Medicine do not so recommend) and the Panel is not persuaded to go so far as to accept that TMZ is recommended in Russian sport at the time of the events in question in these appeals.

373. In any event, the Panel is not persuaded by the Grandfather Explanation. There are too many shortcomings in the evidence, and too many unanswered questions, for the Panel to decide that her account is more likely than not. It is certainly possible that the Athlete ingested the TMZ in this way, but possible is not probable and the Athlete fails to discharge her burden in this respect. In the view of the Panel, the Athlete has not established, on the balance of probabilities, that the origin of the TMZ in her Sample was the strawberry dessert provided by Mr Solovyov.

374. That being so, the question is: is the other evidence adduced by the Athlete in this respect sufficient to discharge her burden?

375. The Athlete relies upon: (a) the scientific evidence; and (b) her own evidence that she did not ingest the TMZ intentionally.

The Scientific Evidence

376. The Athlete submits that contamination is corroborated by the scientific evidence. In particular:

a. TMZ has no proven efficacy and, in any event, according to the recommendations it should be taken as a course and not by way of a single dose.

b. TMZ has numerous side effects, dizziness included, and is contraindicated for people under 18 years of age.

c. TMZ is not recommended for use in Russian sport.

d. The interpretation of the concentration in the Athlete's Sample supports contamination rather than intentional use.

377. TMZ has no proven efficacy effect:

378. The Athlete submitted that the efficacy of TMZ "*has never been demonstrated*". According to Dr Zholinsky and Prof Kintz, a "*systematic review*" was conducted in 2022 in order to identify studies on the efficacy of TMZ. The study concluded that there had been no trials on the efficacy of TMZ on athletes and that, with respect to healthy non-professional athletes, no studies have shown a positive effect of TMZ on any aspect of physical performance and post-exercise recovery. It follows that "*no one can claim that the use of trimetazidine improve athletic performance*".

379. In relation to the use of TMZ in people with cardiac pathology and healthy people, "*the only option is a course of varying durations*" and the effect of taking TMZ should be evaluated after three months' use. There are no studies in relation to the effect of taking a single dose of TMZ. The 2013 book, Sports Medicine: A National Guide, notes that a single dose of TMZ is not enough.

380. The immediate difficulty with this submission is that it is accepted by the Athlete that TMZ is a Prohibited Substance belonging to the S.4 hormone and metabolic modulators class and that its use in sport is banned at all times as it could potentially help the heart to function better. There may be some measure of scientific uncertainty about this but it is of little assistance to the Athlete in showing that she took the drug unintentionally.

381. This may be true for a number of the substances on the WADA Prohibited List (Jules A. A. C. Heuberger, J., and Cohen, A. 2019. Review of WADA Prohibited Substances: Limited Evidence for Performance-Enhancing Effects. Sports Medicine 49:525–539.

"*This review shows that only 5 of 23 substance classes on the World Anti-Doping Agency Prohibited List show robust evidence of having the ability to enhance actual sports performance in athletes.*"

382. There is, however, a good deal of scientific evidence to the effect that TMZ is a widely used anti-ischemic agent deployed in the treatment of coronary artery disease and that it results in the improvement of mitochondrial metabolism stimulation of glucose oxidation. The Athlete's expert, Prof. Kintz, said this about the pharmacology of TMZ:

"*TMZ is a drug used to treat heart diseases such as angina (lack of oxygen due to decrease of blood supply), heart failure and peripheral artery troubles, including vertigo, tinnitus (noise sensation in the ears) and visual field disturbances. The drug belongs to the class of medications called fatty acid oxidation inhibitors. TMZ decreases*

the body's oxygen requirement by switching metabolism from fats to glucose, increasing the rate of which glucose is broken down. However, the exact mechanism of action of TMZ is still controversial (Dezsi, Am J Ther, 2016)."

383. The paper by Deszi to which Prof. Kintz referred says as follows in relation to TMZ:

"*Trimetazidine is an anti-ischemic agent widely used in the treatment of coronary artery disease. It inhibits the long-chain mitochondrial 3-ketoacyl coenzyme A thiolase enzyme in the mitochondria, resulting in the improvement of mitochondrial metabolism through inhibition of myocardial fatty acid uptake and oxidation and consequent stimulation of glucose oxidation. Unlike conventional drugs, trimetazidine exerts no effect on coronary flow, contractility, blood pressure, or heart rate. It has no significant negative inotropic or vasodilatory properties at rest or during exercise; therefore, it can be excellently combined with conventional pharmacotherapy of coronary artery disease, as add-on therapy, as well as substitution therapy when conventional drugs are not tolerated (class IIb; level B).*"

384. It has also been said that "*TMZ is used as a well-known cardiologic drug with confirmed biochemical and clinical activity. According to knowledge of the pharmacology and mechanism of TMZ action, TMZ can be used by athletes to improve physical efficiency, especially in the case of endurance sports*": Jarek.

385. Finally in this context, it is notable that the Russian national Sports Medicine Guidelines, 2013 edition, described TMZ as an antihypoxant in the following terms:

"***Antihypoxants***

The problem of hypoxia in elite sport is acute. Clinical data and theoretical studies show convincingly that the problem of hypoxia in sports of the highest performance is acute. Clinical data and theoretical studies convincingly show that the most promising in the fight against hypoxia is the use of pharmacological agents that improve oxygen utilization, reduce the oxygen demand of organs and tissues and thus help to reduce hypoxia and increase resistance to oxygen deficiency. These agents are referred to as antihypoxants.

[...]

A large part of the antihypoxants has a stimulatory effect on the actoxidant system.

[...]

TRIMETAZIDIN

Normalizes energy metabolism of cells exposed to hypoxia and ischemia, prevents reduction of intracellular ATP content. The product ensures normal functioning of membrane ion channels, transmembrane transport of potassium and sodium ions and preservation of cellular homeostasis. Optimizes metabolism and function of cardiomyocytes and neurons. Increases resistance to physical workload. Bioavailability

of 90%. It is rapidly excreted from the body, mainly via the kidneys. The elimination half-life is about 6 hours. ..."

386. TMZ has numerous side effects and is contraindicated for people under 18 years of age:

387. It was argued by the Athlete that TMZ has numerous side effects – including dizziness, headache, vomiting, fast or irregular palpitations, and other cardiovascular, nervous and digestive reactions – such that it would make no sense at all for her to take TMZ intentionally.

388. This is a point well made, as far as it goes, in that it would make little sense for a figure skater to take a substance that induced dizziness. But it is enough to say that not all side effects manifest in all people.

389. It was also said that TMZ is also contraindicated for persons under 18, rendering it unlikely that the Athlete would (a) be prescribed the drug and/or (b) take the drug. That rather begs the question, however. The fact that it is pharmacologically contraindicated for minors does not mean that it is not prescribed to minors and/or taken by minors.

390. TMZ is not recommended for use in Russian sport:

391. It was said that TMZ has not been recommended for use in Russian sport since its ban in 2014. This may well be the case but, as is clear from what is said above, it was, along with Hypoxen and L-carnitine, recommended for use in Russian sport by the 2013 National Sports Guidelines. And whether TMZ has been formally recommended in this way in Russian sports since its ban in 2014 is no indication of whether or not it was prescribed to and/or taken by the Athlete.

392. Interpretation of the concentration in the Athlete's Sample:

393. The last but foremost submission made by the Athlete in this respect was that the concentration level detected in the Athlete's A Sample (2.1 ng/mL) supports her theory of contamination.

394. In this context, the Athlete argued that the concentration of TMZ found in her A Sample (2.1 ng/mL) was "*an extremely low concentration*" and, according to Prof. Kintz, "*far below the concentrations in cheating athletes*". It was said, as is detailed above, that the Jarek study supports the contamination scenario put forward by the Athlete. Taking into account the excretion data for a single dose of 35 mg TMZ "*it follows that the Athlete's contamination could have occurred from December 19 onwards. The Athlete saw her grandfather on 20 and 21 December, he was present at her training sessions, and they had lunch together. The Athlete could also have been contaminated with* [TMZ] *by eating her dessert (via drug residues on the knife, board), which she consumed in the days preceding the positive doping test on 22 and 23 December. The grandfather gave the dessert to the Athlete on 21 December. As the Athlete explained, she did not eat the dessert in one goal* [sic]*, she ate it by bits. This likely explains the extremely low quantity of* [TMZ] *in her urine.*"

395. The Panel notes that there is scant information available in relation to the excretion or elimination of TMZ from the body. There were two studies before the Panel as well as pharmacokinetic information provided by the manufacturer of TMZ, Servier, to questions posed by WADA, all of which was interpreted by the experts, Prof. Kintz included. Doing the best that it can with this limited material, the Panel proceeds as follows:

a. The Athlete left for the Russian National Championships on the morning of 22 December 2021.

b. Her last contact with her grandfather was at the Ice Palace on the afternoon of 21 December 2021.

c. The doping control took place at approximately 23:00 on 25 December 2021.

d. At that time, the concentration of TMZ in the Athlete's urine was 2.1 ng/mL.

e. For doses of TMZ of between 7.5 mg and 35 mg of TMZ a urinary concentration of 1-1.7 ng/mL would be reached 4-5 days after the last intake.

f. For lower doses between 0.5 mg and 7.5 mg, a urinary concentration of 1-1.7 ng/mL would be reached 3 days after the last intake.

g. As was noted above, Prof. Rabin said that if the Athlete were exposed to TMZ residues and thus to a low dose (i.e. between 0.5 mg and 7.5 mg and not between 7.5 mg and 35 mg) then she would have a urine concentration of 1-1.7 ng/mL three days after the last intake. This means that her reported urine concentration of 2.1 ng/mL on 25 December 2021 is inconsistent with contamination in Moscow.

h. Prof. Kintz agreed.

i. The Athlete addressed this difficulty by contending that her exposure to the TMZ continued after 21 December 2021 by means of the strawberry dessert, which she carried with her and ate at lunchtime on 22 December 2021 and at 19:00 hrs on 23 December 2021, some 52 hours prior to the doping test.

a. The urine concentration of 2.1 ng/mL is, according to Prof. Kintz, consistent with contamination. As Prof. Kintz says, "*there is nothing in the scientific literature that prevents the scenario of contamination"*.

j. It is, however, as was also noted by Prof. Kintz, also consistent "*with the tail end of a drug used to enhance performance*". Prof. Kintz very fairly confirmed this in his testimony before the Panel.

396. That being so, the scientific evidence, including in particular the evidence relating to the elimination profile of TMZ and the evidence of the Athlete's expert, Prof. Kintz, is entirely equivocal. It equally supports the thesis that the TMZ was taken intentionally

as it does that it was brought about by contamination and it does not assist the Athlete in the discharge of her burden.

The Athlete's Evidence

397. The Athlete provided a witness statement and appeared before the Panel. It has to be said that the Panel found her to be an honest, straightforward and credible witness and her protestations of innocence believable. She is plainly an intelligent and articulate young woman.

398. Nevertheless, standing alone, these protestations are manifestly insufficient to discharge her burden of showing that she did not commit the ADRV intentionally. This is one of those cases where the statements on the part of the Athlete that she did not intentionally ingest the Prohibited Substance are simply too slender a basis to conclude that the ADRV was committed unintentionally.

The Consequences

399. In light of the fact that the Athlete has not established, on the balance of probabilities, that she did not commit the ADRV intentionally, it must follow that the period of ineligibility is four years.

No (Significant) Fault or Negligence

400. Clauses 12.5 and 12.6 of the Russian ADR provide for the elimination and reduction (respectively) of that period of ineligibility as follows:

> ***12.5. 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, the otherwise applicable period of Ineligibility shall be eliminated.*
>
> ***12.6. Reduction of the Period of Ineligibility Based on Insignificant Fault or Negligence***
>
> *12.6.1. Reductions of sanctions in particular circumstances for violations of Clauses 4.1, 4.2, or 4.6 of the Rules.*
>
> *All reductions of sanctions under Clause 12.6.1 hereof shall be mutually exclusive and not cumulative.*
>
> *12.6.1.1. Specified substances or Specified Methods*
>
> *Where a violation of the Rules involves a Specified Substance (other than a Substance of Abuse) or a Specified Method and an Athlete or other Person can establish No Significant Fault or Negligence, then the period of Ineligibility shall be at a maximum*

two years of Ineligibility and at a minimum of a reprimand without assignment of a period of Ineligibility, depending on the degree of Fault of the Athlete or other Person.

12.6.1.2. Contaminated Products

Where an Athlete or other Person can establish that there is 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 maximum, two years Ineligibility and, at a minimum, a reprimand without assignment of a period of Ineligibility, depending on the degree of Fault of the Athlete or other Person.

12.6.1.3. Protected Persons and Recreational Athletes

Where the Rules` violation not involving a Substance of Abuse Use is committed by a Protected Person or Recreational Athlete who can establish that there is No Significant Fault or Negligence, the period of Ineligibility shall be, at a maximum, of two years of Ineligibility and, at a minimum, a reprimand without assignment of a period of Ineligibility, depending on the degree of Fault of Protected Person or Recreational Athlete.

12.6.2. Application of No Significant Fault or Negligence beyond the application of Clause 12.6.1 hereof

If an Athlete or other Person establishes, in an individual case where Clause 12.6.1 is not applicable, that he or she bears No Significant Fault or Negligence, then, subject to further reduction or elimination as provided in Clause 12.7 hereof, the otherwise applicable period of Ineligibility may be reduced based on the Athlete or other Person's degree of Fault, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this Clause may be no less than eight years. ..."

401. However, as has been noted above, in circumstances where the Athlete has failed to discharge her burden of showing that the ADRV was not committed intentionally, it is not open to the Panel to consider whether the applicable period of ineligibility should be reduced according to Clauses 12.5 and 12.6 of the Russian ADR providing for, respectively, No Fault or Negligence or No Significant Fault or Negligence.

402. For all the reasons set forth above, these reductions are not available where the Athlete has not discharged her burden with respect to intentional conduct: see e.g. CAS 2018/A/5768 at ¶183.

403. In the result, the Period of Ineligibility remains at four years.

Start of the Period of Ineligibility

404. The relevant provisions of the Russian ADR are as follows:

12.13. Commencement of the Period of Ineligibility

Where an Athlete is already serving a period of Ineligibility for the Rules` violation, any new period of Ineligibility shall commence on the next day after the expiry of the current period of Ineligibility. In addition to the situations described below, the period of Ineligibility shall commence on the date on which a final decision is made at the hearing pursuant to which the period of Ineligibility was assigned, or, if the right to hearings has not been exercised or hearings were not held, from the date on which the Athlete or other Person accepted Ineligibility or from the date of its imposition by RUSADA.

12.13.1. Delays not attributable to the Athlete or other Person

Where there have been substantial delays in the hearing process or at other phases of Doping Control and an Athlete or other Person can prove that such delays are caused by circumstances not attributable to the Athlete or other Person, RUSADA or the Disciplinary Anti-Doping Committee, depending on who is assigning the sanctions, may start the period of Ineligibility at an earlier date, i.e., the date of Sample collection or the date on which the latest violation of the Rules occurred. All competitive results achieved during the period of Ineligibility, including retroactive Ineligibility, shall be disqualified.

405. The submissions of the Parties in this respect are summarised above but are essentially as follows:

a. RUSADA left it to the Panel's discretion.

b. The ISU submitted that the Period of Ineligibility should commence on 25 December 2021. It is implicit in this submission that the ISU accepts that there have been delays "*in the hearing process or at other phases of the doping control*" under Clause 12.13.1 of the Russian ADR and that the Period of Ineligibility should therefore be backdated to the date of the positive doping test.

c. WADA submitted that the Period of Ineligibility of four years should start on the date of the award issued by the Panel and that there was no basis to backdate the commencement of the period.

d. The Athlete submitted that the period should start on the date of the positive doping control, 25 December 2021.

406. It is a matter for the Athlete to establish that there have been delays not attributable to her: that is made clear in Clause 12.13.1 itself. In these appeals, however, it is self-evident that the period of time from the doping control to the date of this award has been in excess of two years and that the Athlete has contributed to that elongated period of

time by reason only of her application to adjourn the DADC hearing from 26 October 2022 to 14 December 2022, a matter of 49 days.

407. It is obvious that there was a significant delay in the analytical process conducted by the Stockholm Laboratory, for which the Athlete is entirely blameless. It is also obvious that there was a significant delay in the results management conducted by RUSADA, no doubt in order to conduct its investigations but that delay is not for the Athlete either. And there is no explanation (save for the short adjournment from October to December 2022 granted on the Athlete's request) as to why the DADC did not hear the matter sooner.

408. It is a cornerstone of the doping control scheme that doping control cases be conducted efficiently and as swiftly as circumstances allow. This was expressed by the Ad Hoc Panel in this case in the following way: "*athletes should not be subject to the serious harm occasioned by anti-doping authorities' failure to function effectively at a high level of performance*": CAS OG 22/08-CAS OG 22/09-CAS OG 22/10 at ¶220. Indeed, the International Standard Results Management provides, in terms, that the results management process (including the first instance hearing) should be concluded within six months of notification.

409. There are a number of occasions where a CAS panel has seen fit to backdate the Period of Ineligibility by reason of a delay in the results management: see, by way of example only, CAS 2011/A/2615 (where there was a delay of 10 months) and CAS 2011/A/2671. The Panel notes as well that the Athlete's IF, the ISU, took the position that:

    a. A back-dated Period of Ineligibility would ensure that the Athlete's ineligibility "*remains connected to the facts*" and would be a solution that is fair to the Athlete "*given the fact that the testing took place*" some time ago.

    b. An ineligible period imposed now "*would have an even greater impact on her career*".

410. In the Panel's view, in all the circumstances of this case, the Period of Ineligibility should be backdated in order to take into account the delays for which the Athlete bears no responsibility and, bearing in mind in particular the position taken by the ISU in this respect, should be backdated to the date of the doping control test – 25 December 2021. The Period of Ineligibility shall therefore run from 25 December 2021 until 24 December 2025.

Disqualification under Clause 11.1 of the Russian ADR.

411. Clause 11.1 of the Russian ADR provides as follows:

XI. Automatic Disqualification of Individual Results

11.1. A violation of the Rules in Individual Sports in connection with an In-Competition test automatically leads to Disqualification of the result obtained in that Competition with all resulting Consequences, including forfeiture of any medals, points and prizes.

412. It relates to individual sporting events and provides that, where an athlete has tested positive in an in-competition doping test then all individual results achieved by the athlete in that competition are automatically disqualified.

413. In these appeals, it is accepted by the Athlete that, accordingly, the result achieved by her in the women's free skating event on 25 December 2021 at the Russian National Championships is to be disqualified, together with the forfeiture of any medals, points and prizes.

Disqualification under Clause 12.1 of the Russian ADR

414. Clause 12.1 of the Russian ADR is set forth below:

XII. Sanctions on Individuals

12.1. Disqualification of Results in the Event During Which a Violation of the Rules Occurs

12.1.1. A violation of the Rules occurring during or in connection with an Event may, upon the decision of the ruling body of the Event, lead to Disqualification of all of the Athlete's individual results obtained in that Event with all resulting Consequences, including forfeiture of all medals, points and prizes, except as provided in Clause 12.1.2 hereof.

Factors to be included in considering whether to disqualify other results in an Event might include, for example, the seriousness of the Athlete's violation of the Rules and whether the Athlete tested negative in other Competitions.

12.1.2. If the Athlete establishes that he or she bears no Fault or Negligence in his/her actions, the Athlete`s individual results in other Competitions shall not be disqualified. If a violation of the Rules could have affected the Athlete's results in other Competitions, such results shall be disqualified.

415. It too relates to individual sporting events and provides that, where an athlete has tested positive in an in-competition doping test then all other individual results achieved by the athlete in the event are to be disqualified.

416. In these appeals, there is no indication that the Athlete competed in any competitions in the Russian National Championships other than the women's free skating event on 25 December 2021. That being so, the question of any additional disqualifications does not arise.

Disqualification under Clause 12.10 of the Russian ADR

417. Clause 12.10 of the Russian ADR is set out above but for ease of reference is repeated here.

"***12.10. Disqualification of Competition Results Subsequent to Sample Collection or Commission of an Anti-Doping Rule Violation***

In addition to an automatic Disqualification of results achieved at a Competition during which a positive test was collected, pursuant to Chapter XI of the Rules (In-Competition or Out-of-Competition), all other results achieved by the Athlete at Competitions, starting from the date on which the Athlete tested positive or the date on which the other violation of the Rules was committed (including the period of Provisional Suspension or Ineligibility), shall be disqualified with all resulting Consequences, including forfeiture of all medals, points and prizes, unless otherwise required by the principle of fairness."

418. The principal submission on the part of the Athlete in this respect was that the principle of fairness set forth in the rule required the Panel to impose no further disqualification on the Athlete save that in respect of the particular event in which she competed on 25 December 2021 or, alternatively, that if her subsequent results were to be disqualified then those results achieved between 25 December 2021 and 8 February 2022 (that being the date that RUSADA notified the Athlete of the presumptive AAF) should not be disqualified. As to this, it was said by the Appellants (principally WADA) that the burden is on the Athlete to establish that the fairness exception applies and that if she does not meet that burden then "*all her results from 25 December 2021 … must be disqualified*".

419. In these appeals, the Panel has decided that, for the reasons set forth above, the period of ineligibility imposed on the Athlete is to be backdated to the date of the positive sample. This reflects the fact that there was a delay in the results management process unattributable to the Athlete such that it would be unfair to impose a prospective ban on the Athlete from the date of this Award. Had the Panel taken that course then there would have been room for consideration of the extent to which the Athlete's competitive results were disqualified in the period between the doping sample and the ban. But, having backdated the ban to the date of the doping test, it follows from the application of Clause 12.13.1 of the Russian ADR (see above) that "*All competitive results achieved during the period of Ineligibility, including retroactive Ineligibility, shall be disqualified"* and fairness requires no other outcome.

420. Accordingly, the results achieved by the Athlete at Competitions, starting from the date on which the Athlete tested positive, 25 December 2021, including the period of

ineligibility, are disqualified with all resulting consequences, including forfeiture of all medals, points and prizes.

XIV. CLOSING REMARKS

421. It is important to understand what the Panel has and has not decided.

422. The Panel has decided that the Athlete did not discharge her burden of proving, pursuant to Clause 12.2.1 of the Russian ADR, that her ADRV was not intentional on the balance of probabilities. It is, as the Panel has said, difficult to prove a negative and so it has been the case here. It does not follow, and the Panel most certainly has not concluded, that Ms Valieva is a cheat or that she cheated on 25 December 2021 at the Russian National Championships or that she cheated when she won gold at the Beijing Olympics (or at any other time).

423. The Appellants have not established that the Athlete committed the ADRV intentionally, and nor do they have any obligation to do so. It must be recognised, however, that the conclusion of the investigation conducted by RUSADA (and to a lesser extent by WADA) was that there was no evidence that she had acted intentionally.

424. The Panel is aware that some may think that a four-year ban imposed on a 15-year old Athlete in circumstances where it has not been established that she committed the ADRV intentionally is harsh and disproportionate. The Panel carefully considered whether there was scope for the exercise of its discretion to reduce the period of ineligibility according the principles of proportionality adumbrated in CAS 2006/A/1025 and CAS 2007/A/1252. In the result, however, on the principal basis that this sanction is entirely in accord with (the strictures of) the Russian ADR (and the 2021 WADC), a majority of the Panel decided against such a course and in this respect adopts what was said by the panel in CAS 2018/A/5546 at ¶¶86-90:

"*86. Additionally, the CAS jurisprudence since the coming into effect of WADC 2015 is clearly hostile to the introduction of proportionality as a means of reducing yet further the period of ineligibility provided for by the WADC (and there is only one example of its being applied under the previous version of the WADC). In CAS 2016/A/4534, when addressing the issue of proportionality, the Panel stated: "The WADC 2015 was the product of wide consultation and represented the best consensus of sporting authorities as to what was needed to achieve as far as possible the desired end. It sought itself to fashion in a detailed and sophisticated way a proportionate response in pursuit of a legitimate aim" (para. 51).*

87. In CAS 2017/A/5015 & CAS 2017/A/5110, the CAS Panel, with a further reference to CAS 2016/A/4643, confirmed the well-established perception that the WADC "has been found repeatedly to be proportional in its approach to sanctions, and the question of fault has already been built into its assessment of length of sanction" (emphasis added, para. 227) as was vouched for by an opinion of a previous President of the

European Court of Human Rights there referred to see https://www.wada-ama.org/en/resources/legal/legal-opinion-on-the-draft-2015-worldanti-doping-code.

88. Contrary to FIFA's argument, the WADC 2015 does provide for the way to deal with a case such as Mr Guerrero's from the perspective of the Code; the present case is no casus omissus. The WADC 2015 was designed not only to punish cheating, but to protect athletes' health and, above all, to ensure fair competition and the level playing field, and has thus set up a CAS 2018/A/5546 José Paolo Guerrero v. FIFA CAS 2018/A/5571 WADA v. FIFA & José Paolo Guerrero, award of 30 July 2018 (operative part of 14 May 2018) 21 detailed framework which balances the interest of those athletes who commit ADRVs with that of those who do not.

89. The Panel is conscious of the much quoted legal adage "Hard cases make bad law", and the Panel cannot be tempted to breach the boundaries of the WADC (or FIFA ADR) because their application in a particular case may bear harshly on a particular individual. Legal certainty is an important principle to depart from the WADC would be destructive of it and involve endless debate as to when in future such departure would be warranted. A trickle could thus become a torrent; and the exceptional mutate into the norm.

90. It is in the Panel's view better, indeed necessary, for it to adhere to the WADC. If change is required, that is for a legislative body in the iterative process of review of the WADC, not an adjudicative body which has to apply the lex lata, and not some version of the lex ferenda."

425. A majority of the Panel agrees that so it is in this case. A majority of the Panel agrees that, in this case, it is better, indeed necessary, for the Panel to adhere to the Russian ADR (and the underlying WADC) and that, if change is required with respect to the protections afforded to young athletes, then any such change is a matter for a legislative body in the iterative process of consultation and review of the WADC and not for this adjudicative body.

XV. COSTS

(…).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Appeal filed on 14 February 2023 by the Russian Anti-Doping Agency against the decision of the Disciplinary Anti-Doping Committee of the Russian Anti-Doping Agency No. 9/2023 rendered on 24 January 2023 is upheld.

2. The Appeal filed on 20 February 2023 by the International Skating Union against the decision of the Disciplinary Anti-Doping Committee of the Russian Anti-Doping Agency No. 9/2023 rendered on 24 January 2023 is upheld.

3. The Appeal filed on 21 February 2023 by the World Anti-Doping Agency against the decision of the Disciplinary Anti-Doping Committee of the Russian Anti-Doping Agency No. 9/2023 rendered on 24 January 2023 is partially upheld.

4. The decision of the Disciplinary Anti-Doping Committee of the Russian Anti-Doping Agency No. 9/2023 rendered on 24 January 2023 is set aside.

5. Ms Kamila Valieva is found to have committed an anti-doping rule violation under Clause 4.1 of the All-Russian Anti-Doping Rules of 24 June 2021.

6. A period of four (4) years ineligibility is imposed on Ms Kamila Valieva, starting on 25 December 2021. Any period of provisional suspension served by Ms Kamila Valieva shall be credited against the period of ineligibility imposed.

7. All competitive results of Ms Kamila Valieva from 25 December 2021 are disqualified, with all the resulting consequences (including forfeiture of any titles, awards, medals, profits, prizes, and appearance money).

8. (…).

9. (…).

10. (…).

11. (…).

12. (…).

13. (…).

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

Seat of arbitration: Lausanne, Switzerland
Arbitral Award dated: 29 January 2024

THE COURT OF ARBITRATION FOR SPORT

James Drake KC
President of the Panel

Jeffrey Mishkin
Arbitrator

Mathieu Maisonneuve
Arbitrator