Arbitration CAS 2018/O/5754 Sergey Fedorovtsev v. Russian Anti-Doping Agency (RUSADA), World Anti-Doping Agency (WADA) & Fédération Internationale des Sociétés d'Avirons (FISA), award of 26 June 2019

Panel: Prof. Luigi Fumagalli (Italy), President; Mr Hamid Gharavi (France/Iran); The Hon. Michael Beloff QC (United Kingdom)

Rowing
Doping (trimetazidine)
Establishment of absence of intent in case of failure to establish source of prohibited substance
Prerequisites to disprove intent
Challenge of a B sample analysis completed in absence of the athlete

1. **The establishment of the source of the prohibited substance in an athlete's sample is not a *sine qua non* of proof of absence of intent. Indeed, the provisions of the Anti-Doping Rules concerning "intent" do not refer to any need to establish source, in direct contrast to Article 10.5 Russian Anti-Doping rules, combined with the definitions of *"No Fault or Negligence"* and *"No Significant Fault or Negligence"*, which expressly and specifically require establishment of source. However, in order to prove, by a balance of probability, that he did not engage in a 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, an athlete cannot simply assert his lack of intent without giving any convincing explanations to justify such assertion. Rather, to prove the same without proof of source is exceptional. An athlete, even though not bound to prove the source of the prohibited substance, has to show, on the basis of the objective circumstances of the anti-doping rule violation and his behaviour that specific circumstances exist disproving his intent to dope.**

2. **In order to disprove intent, an athlete cannot merely speculate as to the possible existence of a number of conceivable explanations for the adverse analytical finding ("AAF") and then further speculate as to which appears the most likely of those possibilities to conclude that such possibility excludes intent: a protestation of innocence, the lack of sporting incentive to dope, or mere speculation by an athlete as to what may have happened does not satisfy the required standard of proof (balance of probability) and the mere allegation of a possible occurrence of a fact cannot amount to a demonstration that that fact did actually occur. Instead, an athlete has a stringent obligation to offer persuasive evidence that the explanation he offers for an AAF is more likely than not to be correct, by providing specific, objective and persuasive evidence of his submissions.**

3. **An athlete who allowed the B sample analysis to proceed in his absence, cannot,**

following completion of the B sample analysis, belatedly challenge the analytical process and claim that his rights have been breached.

I. THE PARTIES

1. Sergey Fedorovtsev (the "Athlete" or the "Claimant") is a former professional rower of Russian nationality, born on 31 January 1980, who took part with success in several international competitions, including the 2004 Olympic Games in Athens, where he won the gold medal as a member of the Russian quadruple sculls team. As a Russian rower, the Athlete was at all times subject to the Russian antidoping rules, including the Anti-Doping rules approved by the order No 947 of the Ministry of Sport of the Russian Federation of 9 August 2016 (the "ADR"), *"in conformity with the provisions of the International Convention against Doping in Sport, adopted at the 33rd UNESCO General Conference, Paris, October 19, 2005 … and ratified by the Federal Law No. 240-FZ dated December 27, 2006 "On Ratification of the International Convention against Doping in Sport" …, the World Anti-Doping Code …, and the WADA International Standards".*

2. The Russian Anti-Doping Agency ("RUSADA" or the "First Respondent") is the Russian national antidoping governing body, with seat in Moscow, Russian Federation.

3. The World Anti-Doping Agency ("WADA" or the "Second Respondent") is a Swiss private law foundation. WADA was created in 1999 to promote, coordinate and monitor the fight against doping in sport in all its forms on the basis of the World Anti-Doping Code (the "WADC"), the core document that harmonizes antidoping policies, rules and regulations around the world. Its seat is in Lausanne, Switzerland, and its headquarters are in Montreal, Canada.

4. The Fédération Internationale des Sociétés d'Avirons ("FISA" or the "Third Respondent") is the world governing body for the sport of rowing and has its seat in Lausanne, Switzerland.

5. The Athlete, RUSADA, WADA and FISA are referred to as the "Parties". RUSADA, WADA and FISA are referred to as the "Respondents".

II. BACKGROUND FACTS

6. Below is a summary of the main relevant facts, as presented in the Parties' written submissions in the course of the present proceedings. Additional facts may be set out, where relevant, in connection with the legal discussion which follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this award only to the submissions and evidence it considers necessary to explain its reasoning.

7. On 17 May 2016, while taking part in a training camp in Caluso, Italy, the Athlete underwent an out-of-competition doping test. In the doping control form (the "DCF"), the Player declared

that, in the 7 days preceding the sample collection, he had used the following products: *"Vitamins, Amino, Mg"*.

8. On 15 June 2016, the Anti-Doping Laboratory of Lausanne, Switzerland (Laboratoire d'analyse du dopage – the "LAD" or the "Laboratory") reported an adverse analytical finding (the "AAF") for the presence in the A sample of the Player of *"Trimetazidine"*, i.e. of a Metabolic Modulator, prohibited as a non-specified substance in- and out-of-competition under S4.5.4 of the list of prohibited substances and methods published by WADA for 2016 (the "Prohibited List"). The Laboratory, while reporting the AAF, indicated that *"No sign of lomerizine or its specific metabolite was detected in this sample"*.

9. On 16 June 2016, the Athlete was notified of the AAF and of his right to request the analysis of the B sample. At the same time, the Athlete was informed that he was provisionally suspended from the participation in the training camps and competitions in accordance with Article 7.9.1 ADR.

10. On the same 16 June 2016, the Athlete requested the opening and analysis of his B sample.

11. On 23 June 2016, the Athlete was informed that the analysis of the B sample would take place at the Laboratory on 7 July 2016.

12. On 28 June 2016, the Athlete was however informed that the Laboratory had decided to perform the analysis of the Athlete's B sample on 30 June 2016.

13. On 30 June 2016, the Athlete's B sample was opened and analysed at the Laboratory. For the purposes of observing the opening and analysis procedure, the Athlete, Dr Ekaterina Ilgisonis and Mr Yuriy Zelikovich attended the Laboratory. Whether they were able to observe the entire procedure is the key issue in dispute in this arbitration.

14. The report relating to the procedures followed, signed by the *"Independent Witness"*, Ms Elisabeth Fulton, reads:

> *"**Opening – Room 225, 9:03***
>
> *Ms Tiia Kuuranne (TK) – LAD Director opened the session and stated that all members had agreed the session would be done in English. The members present were the athlete and 2 representatives. The translator who spoke English was also the scientific expert (SE) and the other member is the Executive Director. TK welcomes everyone and states the purpose of the session was to analyse Sample 379 6098. The sample number is agreed upon from the athlete from the doping control form. TK confirms the 3 members names and introduces myself and NJ and TK's roles are also explained. TK explains the sessions protocol and procedure – collection of the sample, waiting for it to melt and then the opening. TK asks all members to pay attention and witness the test and states that there is security in the room at all times. She also asks members to address questions to either herself or NJ and explains that the most important thing is to see the sample at all times. TK states that the sample will be processed today and if they wish to stay they can. The analysis will start directly after the distribution session. TK explains that the analysis will occur today and overnight and the results will be known tomorrow. The members asked if they would know the results before 12noon as that was when they*

were catching a train from Lausanne to the airport. TK stated that she would do her best to have the results/raw data available by then. TK stated the official results would be sent to RUSADA. The SE asked for the document package of Sample A and how long it would take to get that. TK stated that they were reviewing this and that RUSADA would be given this as well in due course. The SE asked if LAD will only send this to RUSADA, not any one else? TK confirmed that they will forward all documents to RUSADA and then RUSADA will then follow their protocol of sending these to their National Federation etc. The SE states that this is ok. TK asks for all mobile devices to be left in the room and states that no photos or videos are allowed. TK states that the numbers are able to leave during the day, but must sign in and out as per usual protocol. The SE asks when the analysis will occur? TK answers that she will check on this and let them know. SE also questions the timing from the open to the analysis. TK states that it will start immediately.

Mobile phones were placed on the table and members left Room 225 at 9:15.

Present

Sergey Fedorovtsev – Athlete, Yuriy Zelikovich – Executive Director, Ekaterina Ilgisonis – Scientific Expert and Translator, Tiia Kuuranne – LAD Director, Nicolas Jan (NJ) – LAD Certifying Scientist, Liz Fulton – Independent Witness.

Commencement of Testing Procedure – 9:16

At 9:16 all members present proceeded downstairs to collect the sample from Armoire 6B. NJ collected the sample with the athlete and it is correct. All members then proceeded upstairs to Room 138.

Room 138

Members entered room 138 and NJ entered the sample's location (room 138) onto the database. TK explains this to the members. NJ then asked the 'B Sample Opening Procedure – Control before opening' questions to the athlete and SE. The SE answers the questions in English after consulting with the athlete and other member. Answers are all recorded on the form by TK.

Sample was placed in bath to melt at 9:21. Members in room wait for the sample to be ready. NJ completes data on the form and places more water in the bath. NJ checks on sample as it is melting. Sample is removed at 9:29 and is ready for the distribution process.

NJ records opening in the database and the tech prints the barcodes for the 3 analysis tubes and recorded in the database. TK explains this process of internal codes and the reseal procedure to the SE. NJ shows the barcodes to the athlete group and explains this and also the 3 tubes for analysis – father tube, pre analysis and confirmation. NJ explains that these are unique codes. The SE explains this to the athlete and athlete representative.

Father tube is selected by the athlete as well as the other 2 tubes, barcodes are placed on them and the internal numbers are controlled and all agree.

Sample is opened by technician.

The athlete selects a new green lid for the reseal. Sample is placed in the father tube by technician and placed

in tray. B Sample bottle is closed and re-sealed by technician in front of the athlete. Technician passes the resealed Sample to NJ who takes it over to TK to complete the form and record the new cap number. NJ asks the athlete to control the new lid. NJ explains the number is unique and the new seal number is 370 9381. The athlete and the SE control this number as well. Remaining sample is placed on the table next to TK.

9:37 sample is then distributed into the 2 analysis tubes from father tube by technician and the athlete selects new lids. All samples are sealed and technician competes the form. NJ controls the internal barcodes with the athlete and the 2 analysis tubes and completes data on form. NJ asks if there are any remarks from the athlete group to be added onto the document. There was not so NJ asks for the form to be signed. TK explains the position of each person is written on the form and confirms that the SE is a scientific expert. All members agree and sign the form.

NJ calls to say the analysis is ready at 9:42. TK explains samples. NJ discards in front of the athlete the remaining small amount of the father tube as it is not needed and the amount is very small. The tube is placed in the bin. TK explains system of transportation and NJ enters into the database. Analysis scientist then enters the room. NJ explains that one tube will go for analysis and the other will remain in Room 133. Members go with NJ and he places it in Room 133.

At 9:45 the remaining resealed B sample is returned downstairs to Armoire 6B and NJ terminates the session at the Armoire. NJ asks for any remarks, there are none and the SE and the athlete then go with the sample to be analysed. The remaining member, Executive Director, TK, NJ and myself return to Room 225 and the session is closed at 9:45.

Session closed at 9:45
A brief discussion occurs between the athlete rep and TK and NJ. He states he will return to his hotel and come back in 4-5 hours. TK says she will inform the other members of this".

15. On 1 July 2016, RUSADA informed the Athlete that the B sample analysis had confirmed the presence of *"Trimetazidine"* in the Athlete sample.

16. On 7 July 2016, the Laboratory released the documentation package relating to the A sample analysis.

17. On 21 July 2016, the Laboratory issued the documentation package relating to the B sample analysis.

18. On 20 April 2017, RUSADA provided the Athlete, upon his request, with copy of documents regarding the Athlete's doping test history since 2012.

19. On 9 January 2018, the Athlete sent to RUSADA a letter requesting information from the Laboratory *"to (i) clarify some aspects of the Lomerizine excretion study and (ii) provide further information with regard to the right of the Athlete to have attended the opening and analysis of the B Sample"*, as follows:

"1./ Lomerizine excretion study

According to a scientific expert consulted by the Athlete, the following matters shall be addressed by the LAD, regarding the Lomerizine excretion study.

a. The documentation

The documentation provided includes the following with respect to Lomerizine: (i) a single page PDF titled "lomerizine excretion study" that is indicated to be part of the "A" confirmation and (ii) "B" confirmation annex pages 20 and 22. This data appears only to establish the presence of Trimetazidine in an excretion urine from a donor that was administered Lomerizine. The "B" sample documentation package, however, also states that "No sign of lomerizine or its specific metabolite was detected in this Sample".

The LAD is therefore respectfully requested to provide (or indicate where it exists in the already provided documentation) chromatograms for the samples (or, in the case of a negative result, chromatography windows) and standards establishing the absence of Lomerizine and/or "its specific metabolite".

In the alternative, could the LAD confirm that the above referenced documents represent the entirety of the evidence on this point and provide an explanation as to how these data establish that the Athlete did not administer Lomerizine?

b. The specific metabolite

The "B" documentation package states that "No sign of lomerizine or its specific metabolite was detected in this Sample".

The LAD is respectfully requested to identify this "specific metabolite".

c. Lomerizine and Trimetazidine pharmacokinetics

Lomerizine and Trimetazidine have different pharmacokinetics. There is evidence in the literature that the serum half-life of Trimetazidine is longer than that of Lomerizine. Assuming this to be the case (or, alternatively, the LAD is requested to provide literature or data showing it is not the case), could the LAD indicate the rationale of the laboratory that the absence of Lomerizine in the presence of Trimetazidine conclusively establishes that the source of Trimetazidine was not Lomerizine?

The Athlete respectfully requires the LAD to take position on the above consideration and, in particular, provide the missing documents, if available.

2./ The attendance of the B Sample opening and analysis

According to article 7.3 e) of the RUSADA Anti-Doping Rules and 5.2.4.3.2.6 of the WADA International Standard for Laboratories, the Athlete and/or his representative shall be authorized to attend the B Sample confirmation.

The Athlete's B Sample B3796098 (B2016-05670) was opened and analysed on 30 June 2016 in the LAD. The Athlete considers that he was prevented from exercising his rights according to the above-mentioned rules, in particular as he, and his representative, were forbidden to attend part of the analysis procedure.

In light of the foregoing, the Athlete respectfully requests the LAD to provide a detailed explanation, and provide any relevant documents, on the opening and analysis procedure of the B Sample, in particular

providing (i) the list of all persons who attended each step of the opening and analysis procedure and (ii) the reason why the Athlete and his representative were forbidden to attend part of the analysis procedure, in particular during the mass-spectrometry analysis".

20. On 21 January 2018, the Laboratory answered as follows:

> *"**(i) Lomerizine excretion study***
>
> *a. The documentation*
>
> *Chromatograms for the samples are provided in our earlier communication with RUSADA (… e-mail and indication of the attachments; September l, 2016 from T. Kuuranne to T. Galeta).*
>
> *b. The specific metabolite*
>
> *As indicated in the communication from May 4, 2017, which is a response to the questions from Dr. Kopylov:*
>
> *"Regarding the presentation of the results from the data demonstrating the exclusion of lomerizine in the sample 3796098, this substance is monitored via the parent compound and the most descriptive metabolite" and a reference is made to the earlier publication from Okano et al. The full chemical name of the most descriptive metabolite (M6) is l-bis-(4-fluorophenyl)-methylpiperazine.*
>
> *c. Lomerizine and trimetazidine pharmacokinetics*
>
> *The laboratory operates within the WADA framework that requires compliance with the criteria of the method sensitivity set by WADA and reporting of analytical findings that fulfil the identification criteria and detailed special requirements. Although discussion of method validation is excluded from this summary, I would like to bring to your attention that the detection limits for lomerizine and its MG-metabolite are at significantly lower concentrations (more than 20-times lower) than estimated concentration of trimetazidine in Sample 3796098. These details, however, should be discussed by the result management authority and not by the laboratory.*
>
> ***(ii) The attendance of the B sample opening and analysis***
>
> *The LAD was informed by RUSADA (e-mail, June 28, 2016 from Ms Kristina Coburn …) about the persons participating the B Sample confirmation and all these three persons, including the Athlete and his scientific expert, attended the B Sample confirmation on June 30, 2016.*
>
> *The participants have signed the document "B-sample opening procedure", which is demonstrated in the laboratory documentation provided for the B Sample analysis (p. 6 of the document "B3796098_B2016-05670_LDP-annexes"). No special remarks were made on the protocol during the B Sample confirmation session. … Laboratory staff involved in the B Sample 3796098 management and analyses are indicated in the laboratory documentation package (p. 4 of the core document "B3796098_B2016-05670_LDP").*
>
> *I will respectfully disagree with the allegation that "the Athlete and his representative were forbidden to attend part of the analysis procedure, in particular during the mass-spectrometry analysis". As indicated on p. l in the minutes of Ms Fulton (independent witness report …) the participants were given the possibility to follow the procedure and best efforts were made by the LAD to match the analysis timeline with the travel plans of the Athlete. Additionally, the B Sample confirmation session was closed with presentation of the analytical data to the external participants.*
>
> *"… TK states that the sample will be processed today and if they wish to stay they can. The analysis will start directly after the distribution session. TK explains that the analysis will occur today and overnight*

and the results will be known tomorrow. The members asked if they would know the results before 12noon as that was when they were catching a train from Lausanne to the airport. TK stated that she would do her best to have the results/raw data available by then".

In addition to routine participation to B-sample opening, aliquoting and resealing session, the Athlete and his scientific representative attended also to those steps of the analyses where the original urine aliquot was processed (p. 3 …):

"… NJ asks for any remarks, there are none and the SE and the athlete then go with the sample to be analysed".

Presence of external persons in the laboratory requires additional safety measures to guarantee the non-interfered operations of daily routine and presence of external visitors is naturally limited to routine operation hours. Taking into account the arrangements made to host the B sample analysis within framework of laboratory routine, I am in the opinion that we have operated in compliance with the point 5.2.4.3.2.6 of the International Standard for Laboratories (1SL) and respected the rights of the Athlete".

21. On 9 February 2018, the Athlete, in a letter to RUSADA, noted that *"the LAD considers having transmitted all relevant documents and information with regard to the analysis of Lomerizine and its M6-metabolite"* and requested *"further information and documents"* with regard to the B sample opening and analysis, as follows:

"… Mr. Fedorovtsev confirms that he, and his scientific expert, were in particular prevented from attending part of the mass-spectrometry procedure. Mr. Fedorovtsev therefore respectfully requests that all information and documents with regard to this sequence of the procedure be transmitted to him, in particular the list of persons who attended the procedure, or entered and/or exited the room where the sample was processed. …

Mr. Fedorovtsev respectfully requests the LAD to explain in detail what it means by "[p]resence of external persons … is naturally limited to routine operation hours" and by the "framework of the laboratory routine", and in which circumstances an athlete and/or his representative – who he understands are considered as "external persons" – may be forbidden to be present at any stage of the procedure.

Mr. Fedorovtsev also notes that according to the Independent Witness, had the Athlete and/or his representatives wanted "to leave during the day", they would have had to "sign in and out as per usual protocol". The LAD is also required to explain what is the exact protocol to be followed, and provide any documents attesting that this protocol was actually followed in the case of Mr. Fedorovtsev".

22. On 20 February 2018, in an email to RUSADA, the Athlete clarified that:

"the reason for the questions to the LAD is, in substance, that [the Athlete] and his expert were obliged to leave the laboratory at some point during the analysis, although they requested to stay. [The Athlete] would therefore like to understand if it is standard procedure for the LAD representatives to make such request and would like all related documents to be provide to him".

23. On 21 February 2018, RUSADA replied as follows:

"I appreciate the clarification, but that still begs the question as to the relevance of the information. The burden will be on your client to demonstrate that the information provided is relevant to the integrity of the

AAF".

24. On 22 February 2018, RUSADA added the following:

> *"In relation to the analysis, all relevant information is included in the Laboratory Documentation Packages, copies of which I understand you have (if that is not the case please let me know). The analysis of the B Sample took place in a secure area of the Laboratory, in respect of which there are strict entrance and privacy protection policies. The Laboratory respectfully declines the request for details of persons who entered the secure zone at the time your client's sample was analysed, other than that contained within the Documentation Package".*

25. On 22 February 2018, the Athlete indicated to RUSADA that:

> *"I understand that the LAD is not willing to provide further information with regard to the analysis procedure, in particular the questions included in my letter dated 9 February 2018.*
>
> *For the sake of good order, I would kindly ask you, or the LAD, to formally confirm the later's position in a letter. Furthermore [the Athlete] would be grateful to obtain any document related to the "strict entrance and privacy protection policies" referred to in your email …".*

26. On the same 22 February 2018 RUSADA replied that:

> *"The Laboratory's position is that all relevant information is contained within the Documentation Package. Information that is not in the Documentation Package is not relevant unless a case can be made that it is.*
>
> *Given that, the Laboratory's position is that it has provided the appropriate level of information, and will provide further information subject to it being demonstrably relevant to the analysis. The request for information (other than that within the Documentation Package) does not appear to be relevant, or potentially relevant, to the analysis".*

27. On 18/25 April 2018, the Parties signed an *"Arbitration Agreement"* (the "Arbitration Agreement") providing for the direct submission of the Athlete's case to the Court of Arbitration for Sport (the "CAS"), without a prior hearing before RUSADA. The Arbitration Agreement, so far as relevant in the current arbitration, reads as follows:

> *"1. <u>Application of the Appeal Division Rules</u>*
>
> *The Parties have agreed on the application of the Code of the Sports-related Arbitration and Mediation Rules (the CAS Code). Whereas the case shall proceed before the Ordinary Division of the CAS as a sole instance case, it shall be heard according to the Special Provisions Applicable to the Appeal Arbitration Procedure at R47 et seq. of the CAS Code, such provisions to be applied mutatis mutandis, without reference to any time limit to appeal and as varied by this Arbitration Agreement.*
>
> *2. <u>Parties and composition of the Panel</u>*
>
> *The Parties have agreed that the Athlete would be the Claimant that RUSADA will be the Respondent and that FISA and WADA will be interested Parties with full party rights inter alia to make oral and written submissions, to adduce evidence, to call experts and/or witnesses and to make requests for relief.*

The Panel shall consist of three arbitrators. One arbitrator will be nominated by the Athlete, whereas RUSADA, FISA and WADA shall jointly nominate another arbitrator. The President of the Panel will be nominated by the President of the CAS Appeals Division in accordance with R54 of the CAS Code.

3. Language

The language of the arbitration procedure shall be English.

4. Applicable law to the merits

The Panel will decide the dispute according to applicable regulations (including, without limitation, the RUSADA Anti-Doping Rules and WADA's International Standards and other documents) and, subsidiarily, to Swiss law.

5. Cost of the arbitration

The Athlete will pay the non-refundable CAS Court Office fee of CHF 1,000, in accordance with article R64.1 of the CAS Code. The payment of the advance of costs shall be required in equal shares from the Athlete and RUSADA as Respondent and, not for the avoidance of doubt, from WADA or FISA as interested Parties. For the avoidance of doubt, should RUSADA decide not to pay its share of the advance of costs, the Athlete will have to substitute for its share within the relevant deadline imposed by the CAS.

The Athlete and RUSADA acknowledge and accept that, as the CAS proceedings envisaged by this Arbitration Agreement effectively replace the first instance proceedings to which neither WADA nor FISA would ordinarily have been a party, no costs (whether arbitration costs or a contribution to the other parties' legal and other fees) may be imposed on either WADA or FISA, WADA and FISA in turn acknowledge and accept that no contribution to any legal and/or other fees incurred by WADA and/or FISA may be imposed on either the Athlete or RUSADA.

6. Procedural timeline

The Athlete agrees that he shall file his statement of claim no later than 5 May 2018. The Respondent and Interested Parties shall have thirty (30) days from receipt of the statement of claim by courier from the CAS to file their answers. The Athlete shall then have twenty (20) days from receipt of the answers from the Respondent or the Interested Parties to file his reply. The Respondent and Interested Parties shall then have twenty (20) days from receipt of the reply by courier from the CAS to file their rejoinder".

III. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

28. On 5 May 2018, the Claimant filed with CAS a Request for Arbitration/Statement of Claim under the Arbitration Agreement, pursuant to Article R48 of the Code of Sports-related Arbitration (the "Code"), as made applicable to this arbitration by Article 1 of the Arbitration Agreement.

29. In his Request for Arbitration/Statement of Claim, the Claimant nominated Mr Philippe Sands, QC as an arbitrator, submitted 33 exhibits (including witness statements of Ms Ekaterina Fedorovtseva, of Mr Yuryi Zilikovich, of Mr Mike Spracklen and of Ms Fiona Gutschlag, as well as an expert opinion of Dr Paul Scott) and specified *inter alia* the following evidentiary requests:

"… that RUSADA provides … all related documents, in particular the "strict entrance and privacy policies" and the documents regarding all entries and exit of the LAD and the room where the LC-MS analysis took place"; and

"RUSADA is further required to provide WADA's letter to all accredited laboratories, in particular the LAD, instructing them not to report cases where trimetazidine and lomerizine, or its M6 metabolite, were found in an athlete's sample".

30. On 25 May 2018, the Claimant indicated to the CAS Court Office that WADA and FISA had to be considered as Respondents to the Request for Arbitration/Statement of Claim.

31. On 28 May 2018, therefore, the CAS Court Office forwarded the Request for Arbitration/Statement of Claim to the Respondents.

32. On 8 June 2018, the Respondents informed the CAS Court Office of their joint nomination of The Hon. Michael J. Beloff M.A. Q.C., as an arbitrator.

33. On 14 June 2018, the Parties were informed that Mr Philippe Sands, QC had declined the appointment as an arbitrator.

34. On 21 June 2018, the Claimant nominated Mr Hamid Gharavi as an arbitrator.

35. On 6 July 2018, the First Respondent filed with CAS its Response Brief, in accordance with Article R55 of the Code and Articles 1 and 6 of the Arbitration Agreement. Together with its Response Brief, the First Respondent lodged with CAS inter alia a written declaration of Dr Tiia Kuuranne, Director of the Laboratory, and a letter from RUSADA dated 21 June 2018 (indicating that *"the drug «Lomerizine» is not included in the State Register of Medicinal Products, therefore it is not officially authorized for retail sale and cannot be recommended for use in the case of seeking medical help on the territory of the Russian Federation"*).

36. On 6 July 2018, also the Second Respondent filed with CAS its Answer, in accordance with Article R55 of the Code and Articles 1 and 6 of the Arbitration Agreement, together with written observations of Prof. Mario Thevis and Prof. Masato Okano on the expert report of Dr Scott filed by the Claimant. The answer of the Second Respondent had also attached a witness statement signed by Mr Aaron Walker.

37. On 11 July 2018, the CAS Court Office noted that the Third Respondent had not filed within the stated deadline an Answer to the Request for arbitration/Statement of claim, and that the arbitration would nevertheless proceed. At the same time, in accordance with Article 6 of the Arbitration Agreement, the Claimant was given a deadline to submit his reply to the Answers filed by the RUSADA and WADA.

38. On 18 July 2018, pursuant to Article R54 of the Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to decide the present matter was constituted as follows:

President: Prof. Luigi Fumagalli, Professor and Attorney-at-law, in Milan, Italy

Arbitrators: Mr Hamid Gharavi, Attorney-at-law in Paris, France

The Hon. Michael J. Beloff M.A. Q.C., Barrister, London, England.

39. On 13 August 2018, the Claimant underlined in a letter to the CAS Court Office that no answer had been given to the requests for production of documents and information contained in his Request for arbitration/Statement of claim, and that the Respondents' Response Briefs raised a number of issues. As a result, the Claimant insisted that:

i. RUSADA be ordered to produce the *"LAD strict entrance and privacy policies"*, the *"entry (and exist) log to the controlled zone"* as well as the *"main entrance entry and exist log"*;

ii. RUSADA and/or WADA be ordered to produce the instructions to accredited laboratories regarding the reporting of Trimetazidine cases;

iii. WADA be ordered to provide some documents referred to in the opinion of Prof. Thevis and Okano (the "Thevis/Okano Report"), and more specifically:

- all documents relating to the doping control analyses summarized in Table 1 of the Thevis/Okano Report, which would show that *"the concentration of M6 were significantly higher than those of trimetazidine"*,
- copy of the *"recent excretion study on lomerizine"* conducted by the Tokyo laboratory, together with any relevant information with regard to the status of its reviewing and publishing procedure,
- copy of the publication called *"Metabolism of Lomerizine hydrochloride in human"*;

iv. WADA withdraws its allegations about the Athlete's use of other prohibited substances, as based on the witness statement of Mr Walker, which is denied and is not the object of the present arbitration.

40. On 17 August 2018, the Panel granted the Respondents a deadline to provide the documents/information requested by the Claimant or to state their reasons of opposition to the Claimant's requests.

41. On 24 August 2018, the Second Respondent filed a WADA's letter dated 7 May 2015 to the accredited laboratories instructions regarding *inter alia* the analysis and reporting of Trimetazidine cases. At the same time, the Second Respondent declined to withdraw any part of the witness statement of Mr Walker, intended to be responsive to the Claimant's declaration that he had not taken any prohibited substance throughout his career, and relevant to assess the Claimant's credibility.

42. On 29 August 2018, the Second Respondent

i. lodged with the CAS Court Office

- copy of the publication *"Metabolism of Lomerizine hydrochloride in human"* by N. Awata

et al. (the "Awata Study");

- the *"excretion study paper"* referred to in the Thevis/Okano Report, as submitted for publication to the journal "Drug Testing and Analysis"; and

ii. requested that the additional request for the production of all documents relating to the four doping control analyses summarized in Table 1 of the Thevis/Okano Report be dismissed.

43. On 31 August 2018, the First Respondent indicated that some of the documents requested by the Claimant, and specifically those relating to the access policies to the LAD, were not in its custody or control, and that RUSADA could not compel the LAD to disclose documentation relevant to the LAD's operations. At the same time, however, the Second Respondent declared that the LAD had cooperated *"to an appropriate extent"* and that it was therefore in a position to file documents consisting in:

i. a schematic presentation of various levels of security within the LAD;

ii. the details of the security rules applied by the LAD to the visitors, as edited to preserve confidentiality;

iii. an indication of the securities protocols adopted by the LAD.

44. On 18 September 2018, the Claimant filed its Reply, with one exhibit. The Claimant's reply contained some additional evidentiary requests concerning the *"LAD internal procedural rules"* and the *"LC-MS/MS analysis procedure"*, and more specifically:

i. evidence that the Athlete and his representatives actually signed the "non-disclosure agreement" mentioned by the LAD security rules;

ii. a *"blacked-out version"* (with unredacted copy to the Panel) of the documents recording the access to the LAD secure area;

iii. evidence demonstrating that (a) the Athlete, Dr Ilgisonis and Mr Zelikovich's details were actually recorded by the LAD security personnel at the LAD and that (b) *"the latter also register before entering the meeting room"*;

iv. copy of the *"Règlement interne de sécurité"* and of the *"Enregistrement des visiteurs"* mentioned by the document *"Accès à l'EPCR"* already submitted by the First Respondent;

v. *"all relevant information and evidence with regard to the [LC-MS/MS analysis procedure] as described by Dr Kuuranne, in particular all computer data, e.g. the sequence files prior to the start of the analysis"*, covering *"at the minimum … the period of time between 12.10am to 12.36am"*.

45. On 26 October 2018, the First Respondent filed its Rejoinder. With respect to the Claimant's evidentiary requests, the First Respondent noted that the Claimant and his representatives were not requested to sign any *"non-disclosure agreement"*, since this would have been *"otiose"* for the persons concerned and that the First Respondent would provide at the hearing a redacted copy

of the documents recording the access to the LAD to the Claimant and an unredacted copy to the Panel.

46. On 26 October 2018, also the Second Respondent filed its Rejoinder, enclosing the published text of the *"excretion study paper"* referred to in the Thevis/Okano Report.

47. On 29 October 2018, the CAS Court Office noted that the Third Respondent had not filed any submission.

48. On 11 November 2018, the Claimant noted that the First Respondent had not provided yet the redacted copy of the documents recording the access to the LAD mentioned in its rejoinder, and reiterated its request to be provided with the *"all relevant information and evidence with regard to the [LC-MS/MS analysis procedure] as described by Dr Kuuranne, in particular all computer data, e.g. the sequence files prior to the start of the analysis"*, covering *"at the minimum … the period of time between 12.10am to 12.36am"*.

49. On 16 November 2018, the CAS Court Office on behalf of the Panel invited the Respondents to comment on the Claimant's letter of 11 November 2018 or to provide the documents requested.

50. On 26 November 2018, the First Respondent noted that the requests contained in the Claimant's letter of 11 November 2018, corresponding to earlier requests, referred to documents not within the custody or control of the First Respondent, which cannot compel the LAD to disclose them: indeed, the LAD had already indicated, and confirmed, that any further disclosure would compromise its *"risk assessment management and security measures"*.

51. On 6 December 2018, the First Respondent provided a redacted copy of the documents recording the access of the Athlete and his representatives to the LAD.

52. On 10 December 2018, the Parties were informed that a hearing would be held on 23 January 2019 in Lausanne, Switzerland.

53. On 11 January 2019, the Claimant reiterated its request that the Panel order the First Respondent to produce the following documents (emphasis in the original):

> *"• The Annexes A2 (Règlement de sécurité interne);*
>
> • *The entry and exit log of the LAD's controlled zone, or any document attesting all entries and exit from the controlled zone, not only for himself and his representative(s), but also for the LAD representatives, in particular Mr. Perrenoud and Dr. Nicoli;*
>
> • *The data, e.g. the relevant sequence files, from the computer operating the relevant LC-MS/MS Instrument, covering the period of time between 12.00pm and 12.36pm on 30 June 2016;*
>
> • *The "Suivi des cartes (personnel LAD)" referred to in the document entitled "P03-02-04 Gestion des accès au LAD" produced by the First Respondent together with his email of 3 September 2018".*

54. On 14 January 2019, the CAS Court Office, writing on behalf of the Panel, indicated that in the absence of a production by the First Respondent within a stated deadline the Panel would decide on the Claimant's request for production of documents.

55. On 17 January 2019, the CAS Court Office issued, on behalf of the President of the Panel, an order of procedure (the "Order of Procedure"), which was signed by the Claimant on 22 January 2019, by the First Respondent on 21 January 2019, by the Second Respondent on 21 January 2019, and by the Third Respondent on 17 January 2109.

56. On 18 January 2019, the First Respondent stated its position on the Claimant's request of 11 January 2019. No additional document was provided.

57. On 21 January 2019, the Claimant requested an adjournment of the hearing. In support of such request, the Claimant indicated that it had been very recently confirmed that there was an error in the calculation of the estimated concentration of the prohibited substance in the *"litigious samples"*, i.e. from 100 ng/mL to approximately 1 ng/mL, and added that *"this very low concentration makes it even more probable that the Adverse Analytical Finding, should it be confirmed … is the result of … consumption of a contaminated food supplement or medication"*. The Claimant declared that he therefore needed additional time to explore further elements and seek the position of the Respondents with regard to this new situation, also in light of recent cases of contamination of food supplements and medication with Trimetazidine. Attached to his letter, the Claimant submitted a "Correction" to the expert report of Mr Paul Scott.

58. On the same 21 January 2019:

    i. the First Respondent indicated that an adjournment of the hearing could be granted only if deemed necessary by the Panel to allow the Claimant to fully exercise his right to be heard, and in any event subject to the refund of the costs caused by the adjournment;

    ii. the Second Respondent stated its opposition to the Claimant's request;

    iii. the Claimant confirmed his agreement to bear the costs generated by the adjournment;

    iv. the CAS Court Office informed the Parties that the Panel had decided to maintain the hearing date, but that the Claimant would be allowed at the hearing to make submissions in support of his request to consider new evidence.

59. On 23 January 2019, a hearing was held in Lausanne, Switzerland. In addition to the Panel and Ms Andrea Sherpa-Zimmermann, Counsel to the CAS, the following persons attended the hearing:

For the Claimant:	the Athlete in person, assisted by Mr Serge Vittoz, counsel;
For the First Respondent:	Mr Graham Arthur, counsel;
For the Second Respondent:	Mr Ross Wenzel and Mr Nicolas Zbinden, counsel;
For the Third Respondent:	no-one.

60. At the opening of the hearing, the Parties confirmed that they had no objections to the composition of the Panel. The Claimant, then, informed the Panel that, based on the evidence collected, he had decided to abandon the *"Lomerizine argument"* (§ 74(i) below) and to revive the *"contamination or non-intentional ingestion"* (§74(iii) below) defence. At the same time, WADA declared that it accepted the calculation of the concentration of the prohibited substance contained in the *"Correction"* to the expert report of Mr Paul Scott filed by the Claimant on 21 January 2019.

61. The Panel, then, heard declarations of Ms Fiona Gutschlag, the Athlete, Ms Ekaterina Fedorovtseva, Dr Fiona Ilgisonis, Mr Laurent Perrenoud, Dr Tiia Kuuranne, Dr Raul Nicoli, Mr Yuryi Zilikovich and Dr Arthur Kopylov[1]. The Claimant waived the deposition of Mr Mike Spracklen, but filed, with the consent of the Respondents and of the Panel, a printout of a Wikipedia entry describing his profile in support of the reliability of his written declaration on file. Those witnesses who had signed a written statement confirmed its content.

62. At the conclusion of the hearing, the Panel informed the Parties that instruction would be given to allow the Parties to make closing submissions in writing and state their position on specific point, identified by the Panel.

63. On 25 January 2019, the CAS Court Office, informed the Parties on behalf of the Panel of the following:

> *"**A. As to the "Lomerizine/Trimetazidine issue"***
>
> *The Claimant is requested to confirm in writing that he withdraws his submission that the LAD should have never reported the Athlete's case as an AAF on the basis of the Lomerizine/Trimetazidine issue (Request for Arbitration, § 41-49; Reply, § 12-20).*
>
> *The Respondents are invited to comment on any consequences of the Claimant's withdrawal of the submission.*
>
> ***B. With regard to his "fundamental breach" argument***
>
> *The Claimant and the Respondents are invited to*
>
> - *indicate, on the basis of the documents on file and the witness declarations heard at the hearing, their respective description of the sequence of events from 12.00 noon to the evening (exit from the Laboratory building of the Athlete and Dr Ilgisonis) of 30 June 2016, by referring to, inter alia, Swiss timing and content of discussion, and therefore (i) the findings each Party invites the Panel to make, (ii) the evidence relied upon, and (iii) in so far as that evidence is discrepant with other evidence received by the Panel, why it should be preferred. The Parties are invited to consider for such description the use of an Excel spreadsheet with at least the following columns (start time; end time; location; people in attendance; brief description of the event and/or content of discussion; any additional comment);*
> - *indicate (i) what did happen or (ii) could have happened with respect to the analytical process in the period Dr Ilgisonis and the Athlete were not present in the room in which the mass-spectrometer is located (the "Absence"); with, again, (i) the findings each invites the Panel to make, (ii) the*

[1] The Panel emphasises that it considered the entirety of the declarations made at the hearing, as recorded and transcribed *verbatim*, even though no summary of such declarations is set out in this award.

evidence relied upon, and (iii) in so far as that evidence is discrepant with other evidence received by the Panel why it should be preferred.

The Claimant is invited to

- *to confirm whether according to his "fundamental breach submission", even if nothing casting doubt on the reliability of the B sample (i) could or (ii) did happen, nonetheless because of the Absence during part of the analytical process, the results of the B sample analysis are ipso facto invalidated and the Claimant can no longer be found to have committed an anti-doping rule violation;*
- *if so, indicate the legal basis for such contention, whether by reference to the WADC, the RUSADA ADR, the FISA ADR, the ISL or CAS jurisprudence ("the relevant legal materials").*

The Respondents are invited to indicate the basis for their disagreement with the "fundamental breach" submission, by reference to the relevant legal materials, including as to whether in all the circumstances the Claimant waived his right to be present with his expert during the period when they were absent, and, if so, the evidence relied upon to constitute such waiver.

The Claimant is invited to

- *indicate the basis for his argument that there was no such waiver and the evidence relied on;*
- *to confirm that it is no part of his case that, apart from the Absence, he pursues no other argument to cast doubt upon the B sample analysis.*

C. As to the "contamination/unintentional use" argument

The Claimant is requested to

- *confirm in writing that he insists on such argument (Request for Arbitration, §§ 59-73), notwithstanding the declaration contained in his Reply (§§ 4-6);*
- *describe, on the basis of the documents and information filed together with his Request for Arbitration and his Reply, what are the factual and scientific elements advanced in support of his contamination/unintentional use case; and, in particular, what he claims to have been the source of any such contamination/ingestion and the evidence relied on in support of such claim;*
- *specify, in light of the Respondents' opposition expressed at the hearing, what are the "exceptional circumstances" under Article R56 of the Code, applicable to this arbitration, allowing the Panel to authorize the filing of the amendment to Mr Scott's declaration, and, in addition, the basis upon which such amendment is said to further support any argument as to contamination/unintentional use;*
- *specify what are the other additional investigation he would wish to conduct with respect to its "contamination/unintentional use" case, and what are the exceptional circumstances that prevented him from conducting such investigation before the filing of his reply.*

The Respondents are invited to comment on (i) the case as to "contamination/unintentional use" on the basis of the documents and information presently before the Panel, (ii) the application (a) to file Mr Scott's amended declaration, and (ii) to conduct additional investigation.

D. In general

The Parties are invited, in the light of the above directions, and in addition to the foregoing, to set out in writing, if possible not exceeding 10 pages, the submissions they would have made if closing arguments were presented at the end of the hearing.

The Parties are directed not to file any new document or present new argument or raise any new issues not covered by the written submissions filed or discussed at the hearing".

64. On 4 February 2019, the CAS Court Office noted the Parties' agreement to postpone the dates for the filing of the submissions mentioned in the letter sent on behalf of the Panel on 25 January 2019.

65. On 1 March 2019, the Claimant, the First Respondent and the Second Respondent filed their respective Post-Hearing Briefs, in accordance with the letter sent on behalf of the Panel on 25 January 2019.

66. On 5 March 2019, the Second Respondent in a letter to the Panel indicated that it had noted that the Claimant had included, within an exhibit filed together with his Post-Hearing Brief, the screenshot of two messages of 30 June 2016 at 13:54 and 13:55 (*"presumably Moscow time"*) between the Claimant and his wife. The Second Respondent therefore requested that the Claimant produce all messages with his wife from midday onwards.

67. On 6 March 2019, the CAS Court Office noted the Parties' agreement to postpone the date for the filing of the Reply Post-Hearing Briefs submissions. Such deadline was further extended on 22 March 2019.

68. On 25 March 2019, the Claimant, the First Respondent and the Second Respondent filed their respective Reply Post-Hearing Briefs.

IV. THE POSITION OF THE PARTIES

69. The following outline of the Parties' positions is illustrative only and does not necessarily comprise every submission advanced orally on in writing. The Panel confirms, however, that it has carefully considered all the submissions made by the Parties, whether or not there is specific reference to them in the following summary.

A. The Position of the Claimant

70. In his Request for Arbitration/Statement of Claim of 5 May 2018 the Claimant requested the CAS to:

> *"1. Declare that Mr. Sergey Fedorovtsev did not commit any anti-doping rule violation.*
>
> *2. Lift the provisional suspension imposed on Mr. Sergey Fedorovtsev by the Russian Anti-Doping Agency on 16 June 2016.*

Subsidiarily

3. Declare that Mr. Sergey Fedorovtsev committed an unintentional anti-doping rule violation in accordance with Article 10.5.1.2 of the All-Russian Anti-Doping Rules.

4. Impose on Mr. Sergey Fedorovtsev a period of ineligibility of no more than two years, starting from the date of the award, and from which shall be deducted any period of provisional suspension.

In any circumstances,

5. Order the Russian Anti-Doping Agency to pay the full amount of the CAS arbitration costs.

6. Order the Russian Anti-Doping Agency to pay a significant contribution towards the legal costs and other related expenses of Mr. Sergey Fedorovtsev in connection with these proceedings".

71. In his Reply of 18 September 2018, then, the Claimant amended his prayers for reliefs as follows:

"… Sergey Fedorovtsev hereby respectfully requests the Panel of the Court of Arbitration for Sport to:

1. Declare that Mr. Sergey Fedorovtsev did not commit any anti-doping rule violation.

2. Lift the provisional suspension imposed on Mr. Sergey Fedorovtsev by the Russian Anti-Doping Agency on 16 June 2016.

3. Order the Russian Anti-Doping Agency to pay the full amount of the CAS arbitration costs.

4. Order the Russian Anti-Doping Agency to pay a significant contribution towards the legal costs and other related expenses of Mr. Sergey Fedorovtsev in connection with these proceedings".

72. In his Post-Hearing Brief of 1 March 2019, then, the Claimant eventually requested the CAS Panel to:

"1. Declare that Mr. Sergey Fedorovtsev did not commit any anti-doping rule violation.

2. Lift the provisional suspension imposed on Mr. Sergey Fedorovtsev by the Russian Anti-Doping Agency on 16 June 2016.

Subsidiarily

3. Declare that Mr. Sergey Fedorovtsev committed an unintentional anti-doping rule violation.

4. Impose on Mr. Sergey Fedorovtsev a period of ineligibility of no more than two years, starting from the date of the award, and from which shall be deducted any period of provisional suspension.

In any circumstances,

5. Order the Russian Anti-Doping Agency to pay the full amount of the CAS arbitration costs.

6. Order the Russian Anti-Doping Agency to pay a significant contribution towards the legal costs and other related expenses of Mr. Sergey Fedorovtsev in connection with these proceedings".

73. As the modifications to the requests for relief show, the position of the Claimant evolved in the course of the arbitration. However, the Claimant's basic position remained the same: he maintains that he never deliberately or knowingly took any prohibited substance throughout his whole career, and in particular that he never deliberately or knowingly ingested, or was administered, Trimetazidine.

74. More specifically the Claimant contended that:

    i. the A sample should have never been reported as an AAF, considering that it could not be excluded that the presence of Trimetazidine resulted from the administration of Lomerizine, a non-prohibited substance of which Trimetazidine is a metabolite. The Claimant based such contention on the opinion of Dr Scott. This line of argument was however abandoned at the hearing;

    ii. he was deprived of his fundamental right to attend the whole B sample opening and analysis procedure, and such circumstance invalidates the results of the B sample analysis, which therefore cannot be the basis for a finding under Article 2.1 ADR;

    iii. if the AAF is confirmed, it should be concluded that the most probable source for the presence of Trimetazidine was the ingestion of a contaminated food supplement, if so leading to a milder sanction under Article 10.5.1.2 ADR. This argument, withdrawn in the Reply of 18 September 2018, was revived at the hearing.

75. The Claimant submitted in more detail that there was a *"violation of the Athlete's fundamental right to attend the opening and analysis procedure"*, as provided by Articles 7.3.1 and 7.3.2 ADR and elaborated in Article 5.2.4.3.2.6 of the WADA International Standard for Laboratories (the "ISL"). In the Claimant's submission, the CAS jurisprudence (CAS 2008/A/1607, CAS 2010/A/2161, CAS 2015/A/3977) indicated that such a fundamental breach must mean that of the results of the B sample analysis, are disregarded irrespective of whether that violation may affect or not those results. In the case of the Athlete, it is submitted that his rights were *"blatantly"* breached.

76. In point of fact:

    i. it is undisputed that (a) the Claimant and his representative (Dr Ilgisonis) attended the opening procedure of the B sample, and confirmed, by signing the pertinent form, that the procedure was respected, and (b) the Claimant and his representative also attended the preparation of the B sample;

    ii. however, shortly after the transfer of the B sample to another room (the "LC-MS/MS Room") for the LC-MS/MS procedure and after the B sample had been inserted in the instrument, a representative of the LAD entered the LC-MS/MS Room and requested the Athlete and Dr Ilgisonis to leave, arguing that it was impossible for them to stay, as the analysis scientist was going out for his lunch break. Dr Ilgisonis insisted on remaining in the LC-MS/MS Room and attending the remainder of the analysis procedure. However, the LAD representative refused and restated that it was

impossible for them to remain, alone, in the LC-MS/MS Room. Dr Ilgisonis insisted again, but the LAD representative remained inflexible, sticking to his previous position. The Athlete and Dr Ilgisonis, therefore, did not have any other option but to leave the LAD. Upon return to the LAD, Dr Ilgisonis found that the analysis scientist had already returned from his lunch break and was alone in the LC-MS/MS Room, busy with the analytical instrument. The Athlete and Dr Ilgisonis, then, followed the remainder of the analysis procedure, until the results were provided to them;

iii. it is the Athlete's position that neither him, nor Dr Ilgisonis waived the Athlete's rights to attend the B sample opening and analysis procedure, as neither of them freely accepted to leave the laboratory: they were requested to leave several times and they ultimately did not have the choice but to obey. The Athlete relied on his own testimony at the hearing, as well the one of Dr Ilgisonis. Both were present at the relevant time and have a clear recollection of these specific facts. Furthermore, it appears from the testimony of Ms Fedorovtseva and Dr Kopylov, as well as from the Athlete and Dr Ilgisonis, that the latter had been clearly instructed about what to do during the B sample analysis process, *i.e.* remain at the Laboratory at all times and never lose sight of the Athlete's sample. According to Ms Fedorovtseva, the decision to go to Lausanne to attend the opening and analysis of the B sample was also made because it was felt that Russians were not treated equitably at that time. She also confirmed that all their savings were used for the defence of the Athlete, in particular for travel expenses to Lausanne. In the Athlete's submission, this is additional, indirect evidence that he and Dr Ilgisonis could not have accepted voluntarily to leave the Laboratory and leave the sample unattended. The events which took place in the period in which the Athlete and Dr Ilgisonis were absent from the Laboratory, in particular the exchange of text messages and phone calls between the various protagonists on the Athlete's side, also tends to demonstrate that they did not leave the Laboratory of their own free will.

77. With regard to the foregoing, the Athlete invited the Panel to conclude that, contrary to WADA's and RUSADA's assertions, the launch of the relevant analytical process on the computer took place in the absence of the Athlete and Dr Ilgisonis, and not while they were still present in the LC-MS/MS Room. Indeed:

i. the Athlete and Dr Ilgisonis left the LAD at 12.15 pm and 12.18 pm respectively. It can be assumed that both left the LC-MS/MS Room at approximately 12.13 pm, as they had in particular to go to the another room to recover their mobile phones and then proceed down to the entrance. The three minutes difference between the exit of the Athlete and Dr Ilgisonis is explained by the fact that Dr Ilgisonis went to the toilet. Dr Ilgisonis and the Athlete returned to the LAD respectively at 13.26 pm and 13.35 pm;

ii. during their absence, somebody launched the analytical process on the computer (pressed the start button); and Mr Perrenoud remained in the LC-MS/MS Room or came back before the return of Dr Ilgisonis and retook his place in front of the computer, as he was typing on it when Dr Ilgisonis returned to the LC-MS/MS Room;

iii. the assertions of Dr Nicoli and Mr Perrenoud (heard at the hearing) that the analytical process was launched in the presence of the Athlete and Dr Ilgisonis are not tenable, as it was confirmed by several witnesses that the analytical process could only have been launched between l and 7 minutes before the actual analytical run started (at 12.36 pm), *i.e.* between 12.29 pm and 12.35 pm. During this period of time, the Athlete and Dr Ilgisonis had already left the LC-MS/MS Room, and the LAD, for approximately 16 to 22 minutes.

78. The Athlete contended, at the same time, that the absence of contemporary evidence to support his case is not relevant:

i. the text messages exchanged on the day in question do not indicate that the Athlete and Dr Ilgisonis were excluded against their will, because all the relevant conversations were held by phone and not through messages;

ii. they did not record any objection in writing at the time of the events or immediately thereafter since they were confused, and they felt they had no option but to obey;

iii. they did not contact Dr Kuuranne, because she had said that any query could also be addressed also to the scientific staff members;

iv. the Athlete, after receiving the B sample analysis results, thought only that a mistake might have occurred and therefore focused on the scientific aspects of the test. In addition, he did not have the financial means to consult a lawyer: Dr Kopylov is not a lawyer and was not requested to comment on procedural matters.

79. It was submitted that during the absence of the Athlete and Dr Ilgisonis any staff member of the LAD could have been present in the LC-MS/MS Room and could have manipulated in any way the vials, in particular the one containing the Athlete's B sample. In particular, anybody could have remained in the LC-MS/MS Room, entered and/or exited the latter; the tray with the vials could have been removed from and replaced in the LC-MS/MS machine; each vial could have been removed and replaced, changed position, spiked, etc., in particular before the launch of the analytical process on the computer; and the process, if launched before the Athlete left could have been stopped shortly after, the above manipulations could have taken place, and then the process re-launched for the analytical run to start at 12.36 pm.

80. In summary, the Athlete and his representative were prevented from attending part of the analysis procedure, in violation of his fundamental right to attend all stages of the B sample opening and analysis under Article 7.3 ADR, which cannot, even partially, be removed from him. As a result, the entire B sample analysis should be disregarded, no matter what happened or what could have happened during his absence, and for this reason alone the Athlete should be exonerated of all accusations of violation of the ADR.

81. In the alternative, the Claimant contended that *"the alleged AAF may be the result of the intake of contaminated supplements"*, since this is the only plausible explanation of the presence of Trimetazidine in his samples. More precisely, the Athlete submitted that the "competing

scenarios" test, as elaborated by a CAS panel in the case CAS 2011/A/2384&2386, should be applied to his case. Under such test, an athlete has to prove that this scenario is possible and that competing scenarios do not exist or are less likely; however, since this represents a negative fact, the antidoping organization has the duty to cooperate and submit and substantiate alternative routes through which the substance may have entered the athlete's body. In the Athlete's case, he is unable to provide any kind of explanation for the presence of the prohibited substance in his system. The only logical explanation is "supplement contamination", a recurring source for the presence of prohibited substances in athletes' systems. In addition, according to the opinion of Dr Scott, the concentration levels of Trimetazidine detected are compatible with supplement contamination. This renders the "supplement contamination scenario" extremely likely. Any other scenario is highly unlikely, as this would mean that the Athlete would have risked jeopardizing his spotless doping record at the very end of his career, while evidence has been given to prove the Athlete's integrity, sportsmanship and leadership. In light of the foregoing, and given that the contaminated supplements scenario is the most likely to explain the origin of the prohibited substance, a period of ineligibility of no more than 2 years should be imposed upon him under Article 10.5.1.2 ADR, for having established that he bears *"No Significant Fault or Negligence"* in ingesting a contaminated product.

B. The Position of the Respondents

B.1 The Position of RUSADA

82. In its response brief, RUSADA submitted the following requests for relief:

> *"… Mr Fedorovtsev has committed an Anti-Doping Rule Violation contrary to ADR Article 2.1; The Consequences to be applied in respect of the Anti-Doping Rule Violation are that a period of Ineligibility of four years be imposed;*
>
> *… The period of Ineligibility should commence on the date the Provisional Suspension was imposed;*
>
> *… RUSADA respectfully requests that costs be awarded to RUSADA in accordance with Rule 64.4 and Rule 64.5 of the Code of Sports-related Arbitration (in force from 1 January 2017)".*

83. RUSADA contended that the Athlete has committed an antidoping rule violation under Article 2.1 ADR. In fact, the AAF is conclusive proof of the presence of a prohibited substance in the Athlete's urine sample A3796098 as confirmed by the analysis of sample B3796098. An Article 2.1 ADR antidoping rule violation arises as a result of the presence of a prohibited substance in an athlete's sample. There is no requirement on RUSADA's part to establish intent, fault, negligence of knowing use on the Athlete's part. RUSADA therefore asked CAS to uphold the charge and find that the Athlete has committed an antidoping rule violation.

84. RUSADA addressed the issues raised by the Athlete affecting the establishment of an antidoping rule violation which are still before the Panel (after the withdrawal of the *"Trimetazidine/Lomerizine Issue"*) as follows:

i. the *"B Sample Issue"* pivots on the absence of the Athlete and Dr Ilgisonis (his chosen

expert) from a stage of the analytical process on 30 June 2016, between approximately 12:25 and 13:35. The Athlete said that he and Dr Ilgisonis were "excluded" from this part of the process, and that this "exclusion" constituted a fundamental breach of his rights. RUSADA does not accept either contention:

- regarding the *"Exclusion"*, the RUSADA's position is as described in the evidence provided by Dr Kuuranne, corroborated in turn by the declarations of Mr Perrenoud and Dr Nicoli: neither the Athlete nor Dr Ilgisonis were excluded from the LC-MS/MS stage of the analysis. The reason for their being asked to leave the LC-MS/MS Room was that, for security reasons, third parties were not permitted to remain in the LC-MS/MS Room unsupervised. Had either Mr Fedorovtsev or Dr Ilgisonis insisted on being present for the LC-MS/MS stage of the analysis, the matter would have been referred to Dr Kuuranne for resolution. That did not happen. Dr Kuuranne explained in her deposition that, had such a request been made, all efforts would have been made to accommodate it. RUSADA believes that Dr Ilgisonis' familiarity with the LC-MS/MS stage of the analysis would have resulted in her being aware that to remain present would have offered no benefit. Once the vials were in the LC-MS/MS equipment, there was nothing left to observe. As explained in Dr Kuuranne's statement, the vials were analysed individually between approximately 12:35 and 14:00. This process was entirely automated. Whilst there would have been no objection to the Athlete and Dr Ilgisonis remaining in the LC-MS/MS Room to witness, all they would have seen was a machine quietly fulfilling its programmed functions. In addition:
  - the statement of the Athlete and Dr Ilgisonis that the LC-MS/MS analysis had not started when they left the LC-MS/MS Room is correctly disputed by Mr Perrenoud and Dr Nicoli;
  - there is an apparent disparity in the documents between the time at which the Athlete and Dr Ilgisonis left the Laboratory and the time at which LC-MS/MS analysis was launched. On this, the evidence is somewhat inconclusive. In any case, it is clear from the evidence that the Athlete and Dr Ilgisonis witnessed the vials being put into the LC-MS/MS equipment so that the analytical run could commence;
  - the Athlete and Dr Ilgisonis agreed to leave once it became clear that there was nothing left to observe;
  - Dr Ilgisonis is not a credible witness, given the numerous inconsistencies and contradictions in her evidence. In more detail, it is not credible that Dr Ilgisonis "insisted" on staying in the LC-MS/MS Room, but was summarily refused. It cannot be accepted that Dr Ilgisonis was in any meaningful way discomforted or concerned at what transpired in the LC-MS/MS Room. Dr Ilgisonis was advised by Dr Kuuranne that she could raise any issues of concern with her at any time regarding the B sample analysis, and it is not credible that Dr Ilgisonis would not have raised the LC-MS/MS Room events with Dr Kuuranne, either when they occurred, or at all, had they actually taken place;
  - Dr Ilgisonis did not make any effort at all to ascertain when the analysis

would be finished or when she might be readmitted to the LC- MS/MS Room. This is not compatible with any level of concern at being "excluded". The true position is somewhat more prosaic: Dr Ilgisonis was perfectly aware that once the vials entered the LC-MS/MS equipment, then the analysis process would run in an automated fashion for some time. She knew, as she was told by the Laboratory staff, that there was nothing left to see, and that there was no need for her to remain in the LC-MS/MS Room. The fact that the Laboratory staff were leaving for their lunch, and asked her to leave also, is irrelevant. The evidence is that had Dr Ilgisonis wanted to stay, she could have done so. She underestimated the stress that her leaving would cause to Mr Fedorovtsev and his wife, but despite that still made no mention of the issue on her return to the Laboratory;

- the verbal evidence of Mr Perrenoud and Dr Nicoli is to be preferred over that of the Athlete and Dr Ilgisonis. Both Mr Perrenoud and Dr Nicoli are credible witnesses of fact. Their account makes sense. The vials went into the LC-MS/MS equipment. They and Dr Ilgisonis knew what would happen next: the equipment would quietly go about its business with no need for any further intervention. There was no particular need to observe anything. It was lunchtime, and so the ideal time for a break. Mr Perrenoud and Dr Nicoli took that opportunity and explained matters to Dr Ilgisonis. She did not object. Had she objected, a security guard could have stayed and act as a chaperone, had they wished to stay in the LC-MS/MS Room. Even if the guard had not been there, a request could have been escalated to Dr Kuuranne;
- further, Dr Ilgisonis' subsequent conduct is not consistent with a narrative that encompasses a refusal on the Laboratory's part to meet what would otherwise have been a reasonable request: she waited some time before calling anyone; she made no enquiries as to when the analysis would be completed; she did not ask either Mr Perrenoud or Dr Nicoli when they would return from lunch; she did not raise the issue with Dr Kuuranne; in fact, she did not react in any way that could conceivably be said to be consistent with her account of there being some obstructive behaviour on the part of the Laboratory;

• regarding the alleged *"Breach of Rights"*, RUSADA says that it is clear that there has been no fundamental breach of the Athlete's rights, and that the CAS precedents (chiefly CAS 2017/A/5016) support this conclusion: Dr Kuuranne's evidence attests to the fact that the process was conducted according to all the relevant standards. The fact that the Athlete and Dr Ilgisonis were not present for the LC-MS/MS stage of the analysis in no way constitutes a fundamental breach of the Athlete's rights. However, should the Athlete be able to demonstrate that the fact that he and Dr Ilgisonis were not present for the LC-MS/MS stage of the analysis was a departure from the B sample analysis procedures, it would be incumbent upon him to prove that the alleged departure could reasonably account for the presence of Trimetazidine in his urine sample. This he cannot do. Indeed such counter-factual, or "what might have been" arguments, if entertained, would permit

> a license to speculate without needing to produce any evidence to support the speculation. The propositions made by the Athlete in this respect have absolutely no basis in the reality

85. As a result of such antidoping rule violation, a sanction of a period of ineligibility of 4 years, with all related consequences, has to be imposed on the Athlete. In fact, in order to benefit from a reduction, and rebut the presumption that the violation was intentional, the Athlete must provide evidence sufficient to show how Trimetazidine entered his system, or that his case is one of the "exceptional cases" referred to in the CAS jurisprudence (which would mean that he could discharge the burden of proof without providing evidence as to means of ingestion). RUSADA says that he has not done so. The Athlete cannot explain how the substance entered his system, but asserts forcibly that he did not use the substance intentionally. Assertion is not enough. The Athlete admitted that he does not know how Trimetazidine entered his system. He said that the only logical explanation is supplement contamination. But he has provided no evidence at all in this regard. He has pointed to evidence that supplements can be contaminated, but he has provided no evidence that he used any sort of supplement, nor that any such supplement was contaminated with Trimetazidine. Therefore, the Athlete has not rebutted the presumption and is not in a position to demonstrate that the AAF was caused by the use of a contaminated product. As a result, a period of ineligibility of 4 years is the sanction for the Athlete.

86. Finally, RUSADA submitted that the withdrawal of the *"Trimetazidine/Lomerizine Issue"* should be taken into account by the Panel while assessing the costs of the proceedings.

B.2 The Position of WADA

87. In its Answer, WADA requested the CAS to rule as follows:

> *"(i) The presence of trimetazidine in the Sample constitutes an anti-doping rule violation under article 2.1 of the RUSADA ADR.*
>
> *(ii) A period of ineligibility of four years is imposed upon the Athlete, commencing on the date of the CAS Award. Any period of provisional suspension imposed on, or voluntarily accepted, by the Athlete until the date of the CAS Award shall be credited against the total period of ineligibility to be served.*
>
> *(iii) All competitive results obtained by the Athlete from 17 May 2016 through to his Provisional Suspension on 16 June 2016 are disqualified, with all resulting consequences (including forfeiture of any titles, awards, medals, profits, prizes and appearance money).*
>
> *(iv) The arbitration costs are borne entirely by the Athlete.*
>
> *(v) The Athlete is ordered to make a significant to contribution to WADA's legal and other costs in connection with these proceedings.*
>
> *(vi) All requests for relief set out in the Request for Arbitration/Statement of Claim are dismissed entirely".*

88. According to WADA, in essence, the presence in the Athlete's samples of Trimetazidine, a non-

specified substance prohibited at all times, constitutes an antidoping rule violation, for which the Athlete, having failed to meet his burden to establish the origin of such substance, must be sanctioned with a 4 year period of ineligibility.

89. In order to avoid such conclusion, the Athlete submitted (i) that the B sample results must be discarded because his fundamental right to attend the B sample opening and analysis was breached, or in the alternative (ii) that the reason of the AAF would be the ingestion of a contaminated product. According to WADA, those two elements of the Athlete's defence, however, are contradictory, in the sense that one seeks to undermine the analytical result, the other to explain it. In the WADA's opinion, both elements are opportunistic attempts made by the Athlete to invalidate the AAF or to mitigate its consequences.

90. According to WADA, the "fundamental breach" concept, developed under rules in force before the most recent edition of the WADC was adopted, should not be applied at all, as WADA legislated in the opposite direction and did not integrate that concept in the version of the WADC now in force. As a result, where departures occur, they should be governed by the mechanism set out at Articles 3.2.2 and 3.2.3 of the ADR (and of the WADC).

91. However, if (quod non) still available, that concept must be applied with particular reserve and prudence, since it has no basis in the applicable rules. Indeed, the concept of fundamental breach has to date only been applied where athletes have been wholly deprived of the right to attend and/or be represented at the B sample opening.

92. Therefore, even assuming the continued applicability of the "fundamental breach" concept, there is no fundamental breach in the Athlete's case: the Athlete was invited to, and did in fact, attend together with his representative the opening and analysis of the B sample on 30 June 2016. On that occasion, he and his representative were able to verify, *inter alia*, that the sample was his, and that the seal was intact; in addition, they attended all material parts of the analytical procedure. In fact, there were no interventions or operations during the period in which the Athlete and his representative were absent: rather, the Athlete and his representative left the Laboratory after the vials had already been loaded into the machine and the LC-MS/MS analysis was underway, and when they returned such analysis was still underway. Any interruption or error in the analytical process would have been recorded in the machine's log. In summary, even accepting the Athlete's version of events (that he and Dr Ilgisonis were forced to leave), this breach would not be so serious or fundamental as to require the automatic invalidation of the B sample analysis regardless of the absence of any causative effect. The fact that the Athlete and his representative were not present for part of the time when the analysis was in process (where no interruption or issue occurred) cannot reasonably have caused the antidoping rule violation.

93. In other words, the Athlete's version of events would take the fundamental breach concept to an entirely new level, and would risk placing entirely unrealistic obligations on laboratories (and chiefly so when analyses continue for days and/or overnight) and encourage opportunistic, after-the-event attempts to invalidate antidoping rule violations. This sort of challenge should not be allowed to succeed, especially in a case such as the present since there is little or no contemporaneous evidence to support it:

i. none of the SMS messages that have been provided from the day in question (30 June 2016) say or even suggest that the Athlete and Dr Ilgisonis were excluded from the Laboratory against their will, rather than leaving entirely voluntarily;

ii. neither the Athlete nor Dr Ilgisonis recorded any objection in writing with the Laboratory on the day;

iii. neither the Athlete nor Dr Ilgisonis saw fit to speak to the Laboratory Director (Dr Kuuranne), either before they were allegedly excluded or after their return;

iv. neither the Athlete nor his representatives wrote to RUSADA or to the Laboratory in the subsequent days and weeks to record their complaint;

v. Dr Kopylov, whilst corresponding at length with the Laboratory regarding technical matters in 2016 and 2017, never once mentioned that the Athlete was deprived of his right to attend the B sample opening/analysis;

vi. this issue, not raised (in writing or otherwise) for some 18 months, was eventually introduced only by the Athlete's Swiss counsel in contemplation of the CAS proceedings.

94. In support of its position, WADA referred to the deposition (*"permeated by inconsistency and implausibility"*) at the hearing of Dr Ilgisonis, who (WADA contended) put forward an entirely new version of events. The Athlete's fundamental breach allegation had been built on an exclusion due to the analysts' lunch break, However, Dr Ilgisonis ultimately conceded that she (and the Athlete) had left the Laboratory without any intention to return until the results were ready. When cross-examined, in fact, she revealed that she had not even asked the analysts when she and the Athlete should return after the lunch break. In WADA's opinion, this is difficult to understand for someone who was apparently eager not to miss a minute of the mass-spectrometric run. Confronted with the sheer implausibility of the position she had advanced, it was at this stage of her examination that Dr Ilgisonis put forward the new version of events that departed from everything that the Athlete and his witnesses had previously contended for, both in writing and orally: Dr Ilgisonis conceded that, when she left the Laboratory, she did not intend to return until the results were ready. In particular, Dr Ilgisonis conceded that she did not in fact intend to return to the Laboratory after the break at all.

95. In summary, according to WADA, the evidence indicates that the Athlete and Dr Ilgisonis left voluntarily (and most certainly not in the circumstances that they have put forward). If Dr Ilgisonis was really told, after much insistence on her part, that it was *"impossible"* for her to remain in the Laboratory over lunch, it simply does not make sense that she would not have asked when she could return or sought assurances that either the analysis would be suspended or alternatively the run started (which she concedes she did not do) or insisted on speaking to Dr Kuuranne. It does not make sense that neither she nor the Athlete contacted anyone when they recovered their phones on leaving the protected zone to report what had happened or to seek advice. It does not make sense that the Athlete would prefer to finish his lunch break rather than rush back to the Laboratory after speaking with his wife; it does not make sense that, 45 minutes after leaving the protected zone, Dr Ilgisonis was somehow still in the process of travelling back to the hotel, which was so nearby. It does not make sense that, when she got

back to the Laboratory, she asked no questions of the analysts about what had happened and what stage the analysis was at. Finally and crucially, it is simply inconceivable that if the Athlete and Dr Ilgisonis had really felt that their rights were not just breached, but fundamentally breached, that they would not have raised this matter in any way for 18 months.

96. With regard to the ingestion of a contaminated product theory, WADA underlined that in order to obtain a reduction of the period of ineligibility, abundant case law shows that it is not sufficient for an athlete merely to make protestations of innocence and suggest that the prohibited substance must have entered his/her body inadvertently. Rather, an athlete must adduce concrete evidence to demonstrate that a particular supplement, medication or other product that the athlete took contained the substance in question.

97. In the present case, the Athlete offered no substantiated explanation as to how a substance, which was prevalent in Russia, entered his system. As he has failed to establish the origin of the non-specified prohibited substance and in the absence of exceptional circumstances, the Athlete must be sanctioned with a period of ineligibility of four years, with all other consequences as to the disqualification of results obtained in the period between the doping control and the entry into force of the provisional suspension.

B.3 The Position of FISA

98. FISA did not advance any requests for relief, and did not file any submission in respect of the case.

V. JURISDICTION

99. The jurisdiction of CAS to hear the claim filed by the Claimant against the Respondents is not disputed and is expressly contemplated by the Arbitration Agreement (§ 27 above).

100. It follows, therefore, that CAS has jurisdiction to decide on the present dispute.

VI. ADMISSIBILITY

101. Article 6 of Arbitration Agreement in that connection indicates that:

> *"The Athlete … shall file his statement of claim no later than 5 May 2018. …".*

102. The Claimant filed his Request for Arbitration/Statement of Claim on 5 May 2018. The deadline contemplated by the Arbitration Agreement was thus met. In addition, the statement of claim complied with the formal requirements indicated for a request for arbitration by Article R38 of the Code.

103. It follows therefore that the Request for Arbitration/Statement of Claim, is admissible.

VII. APPLICABLE LAW

104. Article R45 of the Code provides as follows:

> *"The Panel shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to Swiss law. The parties may authorize the Panel to decide ex aequo et bono".*

105. Article 4 the Arbitration Agreement provides the following:

> *"The Panel will decide the dispute according to applicable regulations (including, without limitation, the RUSADA Anti-Doping Rules and WADA's International Standards and other documents) and, subsidiary, to Swiss law".*

106. Therefore, this Panel shall apply the ADR, the International Standards and other applicable documents and, subsidiarily, Swiss law.

107. The provisions of the ADR which are relevant in this case (and are based on the WADC) are the following:

> **Article 2** *"Anti-doping rule violations"*
>
> *2. The following constitute anti-doping rule violations:*
>
> *2.1 Presence of a Prohibited Substance or its Metabolites or Markers in a Athlete's sample […]*
>
> **Article 3** *"Proof of Doping"*
>
> *3.1 Burdens and Standards of Proof*
>
> *The RUSADA shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether RUSADA has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules place the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.*
>
> *3.2 Methods of Establishing Facts and Presumptions*
>
> *Facts related to anti-doping rule violations may be established by any reliable means, including admissions. The following rules of proof shall be applicable in doping cases:*
>
> *3.2.1 Analytical methods or decision limits approved by WADA after consultation within the relevant scientific community and which have been the subject of peer review are presumed to be scientifically valid. Any Athlete or other Person seeking to rebut this presumption of scientific validity shall, as a condition precedent to any such challenge, first notify WADA of the challenge and the basis of the challenge. CAS on its own initiative may also inform WADA of any such challenge. At WADA's request, the CAS panel shall appoint an appropriate scientific expert to assist the panel in its evaluation of the challenge. Within 10 days of WADA's receipt of such notice, and WADA's receipt of the CAS file, WADA shall also*

have the right to intervene as a party, appear amicus curiae, or otherwise provide evidence in such proceeding.

3.2.2 WADA-accredited laboratories, and other laboratories approved by WADA, are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for Laboratories. The Athlete or other Person may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding.

If the Athlete or other Person rebuts the preceding presumption by showing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding, then the RUSADA shall have the burden to establish that such departure did not cause the Adverse Analytical Finding. […]

Article 7 *"Results Management"*

7.3 Notification After Review Regarding Adverse Analytical Findings

7.3.1 If the review of an Adverse Analytical Finding […] does not reveal an applicable TUE or entitlement to a TUE as provided in the International Standard for Therapeutic Use Exemptions, or departure from the International Standard for Testing and Investigations or the International Standard for Laboratories that caused the Adverse Analytical Finding, the RUSADA shall promptly notify the Athlete, and simultaneously the Athlete's International Federation, the Athlete's National Federation and WADA in the manner set out in Article 14.1, of: […] (e) the opportunity for the Athlete and/or the Athlete's representative to attend the B Sample opening and analysis in accordance with the International Standard for Laboratories […].

7.3.3 The Athlete/or and his representative shall be allowed to be present at the analysis of the B Sample. Also, a representative the RUSADA as well as a representative of the Athlete's National Federation shall be allowed to be present. […].

Article 10 *"Sanctions on Individuals"* […]

10.2 Ineligibility for Presence, Use or Attempted Use, or possession of a Prohibited Substance or a Prohibited Method

The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6:

10.2.1 The period of Ineligibility shall be four years where:

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

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

10.2.2If Article 10.2.1 does not apply, the period of Ineligibility shall be two years.

10.2.3As used in Articles 10.2 and 10.3, the term "intentional" is meant to identify those Athletes

who cheat. The term, therefore, requires that the Athlete or other person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. An anti-doping rule violation resulting from an adverse analytical finding for a substance which is only prohibited in-competition shall be rebuttably presumed to be not "intentional" if the substance is a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of- Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered "intentional" if the substance is not a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance. […].

10.4 Elimination of the Period of Ineligibility where there is No Fault or Negligence

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

10.5 Reduction of the Period of Ineligibility based on no Significant Fault or Negligence

10.5.1 Reduction of Sanctions for … Contaminated Products for Violations of Articles 2.1, 2.2 or 2.6 […]

10.5.1.2 Contaminated Products

In cases where the Athlete or other Person can establish No Significant Fault or Negligence and that the detected Prohibited Substance came from a Contaminated Product, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years Ineligibility, depending on the Athlete's or other Person's degree of Fault.

10.5.2 Application of No Significant Fault or Negligence beyond the Application of Article 10.5.1

If an Athlete or other Person establishes in an individual case where Article 10.5.1 is not applicable, that he or she bears No Significant Fault or Negligence, then, subject to further reduction or elimination as provided in Article 10.6, 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. […]

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

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

Appendix 1 *"Definitions"*:

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 Minor, 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 or her career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.5.1 or 10.5.2"*

[Comment: *"The criteria for assessing an Athlete's degree of Fault is the same under all Articles where Fault is to be considered. However, under Article 10.5.2, no reduction of sanction is appropriate unless, when the degree of Fault is assessed, the conclusion is that No Significant Fault or Negligence on the part of the Athlete or other Person was involved"*]

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

No Significant Fault or Negligence: *"The Athlete or other Person's establishing 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 relationship to the anti-doping rule violation. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system".*

108. In respect of these rules, and more in general of the ADR, the Panel notes that, pursuant to its Article 20.6, the ADR provisions *"shall be interpreted in a manner that is consistent with applicable provisions"* of the WADC.

109. Reference was made in these proceedings also to the following provisions of the ISL:

5.2.4.3.2.6 The Athlete and/or his/her representative, a representative of the entity responsible for Sample collection or results management, a representative of the National Olympic Committee, National Sport Federation, International Federation, and a translator shall be authorized to attend the "B" confirmation.

If the Athlete declines to be present or the Athlete's representative does not respond to the invitation or if the Athlete or the Athlete's representative continuously claims not to be available on the date of the opening, despite reasonable attempts by the Laboratory to accommodate their dates, the Testing Authority or the Laboratory shall proceed regardless and appoint an independent witness to verify that the "B" Sample container shows no signs of Tampering and that the identifying numbers match that on the collection documentation. At a minimum, the Laboratory Director or representative and the Athlete or his/her representative or the independent witness shall sign Laboratory documentation attesting to the above.

The Laboratory Director may limit the number of individuals in Controlled Zones of the Laboratory based on safety or security considerations.

The Laboratory Director may remove, or have removed by proper authority, any Athlete or representative(s) interfering with the testing process. Any behavior resulting in removal shall be reported to the Testing Authority and may be considered an anti-doping rule violation in accordance with Article 2.5 of the Code, "Tampering, or Attempted Tampering with any part of Doping Control"".

VIII. MERITS

110. The object of the present dispute is the alleged commission by the Athlete of an antidoping rule violation following the out-of-competition antidoping test he underwent on 17 May 2016. The Claimant contended that the AAF reported by the Laboratory cannot be taken as a basis to establish that he committed the antidoping rule violation contemplated by Article 2.1 ADR. In any case, according to the Claimant, should the existence of an antidoping rule violation be established, this should be considered "not intentional" and the sanction should not exceed a period of ineligibility of two years. The Respondents, on the other hand, requested this Panel to find that the Athlete committed antidoping rule violation and that such violation was "intentional", and therefore to impose on the Athlete a sanction of 4 years of ineligibility and to disqualify all the Athlete's results following the doping test of 17 May 2016.

111. As a result of the Parties' requests and submissions, there are two main issues that need to be addressed by this Panel:

    i. is the Athlete responsible for an antidoping rule violation?

    ii. what are the consequences to be drawn from such finding?

112. The Panel will consider each of those issues separately and in sequence.

i. Is the Athlete responsible for an antidoping rule violation?

113. The first issue to be addressed concerns the commission by the Athlete of the antidoping rule violation contemplated by Article 2.1 of the ADR [*"Presence of a Prohibited Substance or its Metabolites or Markers in a Athlete's sample"*].

114. In that regard, the Panel notes that it is established that the analysis of both the A and B samples provided by the Athlete returned an AAF for the presence of Trimetazidine, a metabolic modulator, prohibited as a non-specified substance in- and out-of-competition under S4.5.4 of the Prohibited List, and that the Laboratory, while reporting the AAF, indicated that *"No sign of lomerizine or its specific metabolite was detected in this sample"*. The initial challenge to such conclusion, advanced by the Athlete and based on the possibility that the presence of Trimetazidine resulted from the administration of Lomerizine, a non-prohibited substance of which Trimetazidine is a metabolite, was later withdrawn in the course of the arbitration.

115. The Athlete, however, disputed that the AAF constitutes an antidoping rule violation. In the Athlete's view, the procedure relating to the B sample analysis was so flawed that its results should be entirely disregarded: therefore, since the findings of the A sample analysis would not be confirmed by the analysis of the B sample, the presence of a prohibited substance in the

Athlete's samples would not be established. Specific reference was made in that regard to an alleged violation of the *"Athlete's fundamental right to attend the opening and analysis procedure"*, as provided by Articles 7.3.1 and 7.3.2 ADR and detailed by Article 5.2.4.3.2.6 of ISL: the Athlete and his representative were not allowed to attend part of the analytical process, when they had to leave the LC-MS/MS Room upon the Laboratory's staff insistence before that process had been launched, and actually left because they had no other choice. In the Appellant's submission, the CAS jurisprudence indicates that such a fundamental breach leads to the disregard of the results of the B sample analysis, irrespective of whether that violation may or may not have affected those results.

116. Ample discussion took place between the Parties, several witnesses were heard and extensive submissions were received by the Panel with regard to the events that occurred on 30 June 2016, when the B sample analysis was conducted. The Parties agree as to the sequence of actions up to the moment when the vials containing an aliquot of the Athlete's sample were inserted, together with other "control" vials, in the LC-MS/MS equipment. Disputed, on the other hand, are the events that occurred thereafter, with regard, for instance, whether the computer programme governing the analytical process was launched before the Athlete and his representative left the LC-MS/MS Room, whether and in which terms they were invited to leave, whether they insisted to remain, what were the actions taken by the Athlete and Dr Ilgisonis, and the content (and timing) of the conversations they had with Ms Fedorovtseva and Dr Kopylov, after leaving the Laboratory.

117. Some points however appear to Panel to be established on the basis of the evidence on file or heard at the hearing:

i. at around 12.15 the Athlete and Dr Ilgisonis left the Laboratory;

ii. the computer sequence starting the analytical process was launched after the Athlete and his representative left the LC-MS/MS Room. In fact, the LC-MS/MS equipment recorded 12.36 as the moment in which the analysis started, and the evidence shows that only a few minutes, not exceeding 10, are necessary for the LC-MS/MS equipment internal processing to take place between the moment the programme is launched and the actual analysis starts;

iii. Dr Ilgisonis returned to the Laboratory at 13.26 (followed by the Athlete some minutes later);

iv. when Dr Ilgisonis entered the LC-MS/MS Room, an analyst was working at the computer with respect to the analytical process at that moment still underway.

118. On the basis of the same evidence, however, the Panel finds that there is no indication that the Athlete and Dr Ilgisonis left the Laboratory under the assumption that nothing would happen in their absence. On the contrary, the deposition of Dr Ilgisonis at the hearing, however confused, gives the indication that she (and the Athlete) left the Laboratory with no plan to return until after the final results of the analysis were ready, and therefore that the analytical process could (and would) be started also in her absence and in the absence of the Athlete. The key relevant passages of her deposition (pp. 73-77 of the transcript) are the following:

"Ilgisonis: *[…] we went to the analytical room and the analyst was sitting near the mass spectrometer. He was sitting at the table looking at the computer and somebody, I'm not sure who, they told us that we can stay in the analytical room but we can't talk to him. We can't give him some questions. We can just stay and watch.*

Fumagalli: *Okay, so you didn't ask anybody to explain what, at first why the process was ongoing, at what stage the process was or you didn't ask anything?*

Ilgisonis: *No. No. Because we couldn't talk to the mass spectrometrist and they said ….*

Fumagalli: *But you didn't talk not only to the analyst. There were other people with you that took you to the room. There were other people too that you could talk to.*

Ilgisonis: *Yes. No, I didn't ask them and I think it is my mistake, sure.*

[…].

Unknown: *You were asked to go. You didn't want to go. Did anyone from the laboratory say to you something to this effect? There's no point in your staying. The mass spectrometer won't be operating. The analyst won't be doing anything. Words to that effect? Do you understand the question?*

Ilgisonis: *Repeat please.*

Unknown: *Right. Did anyone before you left say to you, there is no point you're staying now because the mass spectrometer won't be in operation, the analysts won't be doing anything, so you might as well go? Something to that effect.*

Ilgisonis: *They told me before we leaved, the last argument, they told us that nothing important will happen and nothing interesting will happen.*

Unknown: *Nothing important. Nothing interesting. I'm trying to find out whether they said nothing at all will happen.*

Ilgisonis: *I think that formulation was something like nothing important, that's what they said to me.*

[…].

Unknown: *Was your understanding when you left, was it that the analyst could be back and resume the process before you and the athlete ….*

Ilgisonis: *Will return.*

Unknown: *… return?*

Ilgisonis: *Yes, because we didn't know how long will take his lunch and so we were trying to move so fast to come there before he has his lunch but when we returned he was already in his room.*

Fumagall: *Did you enquire, I appreciate your testimony saying you were told nothing interesting or important would happen. Did you enquire what will happen during this lunch break?*

Ilgisonis: *Anything can happen, so ….*

Fumagalli: *Did you enquire? Did you ask any questions about what was going to happen while you were away?*

[…].

Ilgisonis: *Yes, I ask if, so when I asked to call someone who can be with us in this room while he will have his lunch they told me that there will, no one in this room that it will be closed, so nothing will happen.*

Unknown: *Would be closed until what time or what event? You were told that the room would be closed until what time?*

Ilgisonis: *Until he returned from his lunch.*

Unknown: *And were you given a time by which he would return from his lunch?*

Ilgisonis: *No.*

Unknown: *When did you know when you should return because I think that it is a relevant question if the reason of your absence is because the analyst went out for the lunch then a relevant question is when will he return from lunch and the process…*

Ilgisonis: *Yes but ….*

Unknown: *… resume.*

Ilgisonis: *… they didn't give us any information about that because they told that they had to analyse another probes. They have to process some probes and so on and when we asked when we can get the results, they told us, well, maybe, tomorrow, today evening or maybe even in tomorrow, so it was very, not exact answer, so that's why we were nervous.*

[…].

Fumagalli: *Yes but absent a call, when would you have returned if the wife or other people who are calling?*

Ilgisonis: *Ah, they told us that they could inform us about when it would be, the analysis will be completed but they haven't my phone ….*

Fumagalli: *After the lunch break. So, at what time would you have returned to the lab normally absent a call from Russia that you had to go back immediately?*

[…].

Ilgisonis: *Okay, the point is that they told us that the result they can tell us maybe in the evening or tomorrow morning. So, they told us that they will inform us when they, but they didn't get my phone number and I suppose they had maybe a phone number of Sergey or another man, his surname ….*

[…].

Gharavi: *Madam, that entails many other issues. That's means that it is not a question of break. They told you there is nothing to see. We will get back to you. So, it's not a question, leave because there is a lunch break. There is a question of them telling you, don't call us, we'll call you when something happens. Whereas I understand it that there is a lunch break, go out. But you're telling me now ….*

Ilgisonis: *No, no, no. They don't tell us that there is a lunch break, go out. They told us that the analyst has to go, is going to have lunch and that we cannot stay in the laboratory and not that we can return when he will be done. They don't told the time window. They told us that they have to analyse this probe, analyse another probes and so on and then we can return only when they*

will be able to give us the result.

Gharavi: *Okay, maybe then a last question is then when you left. What was your understanding of where the testing process was of the B sample? When you left you must have known what stage was the B testing sample at?*

Ilgisonis: *The sample was put in the mass spectrometer, so this is last stage but I'm not sure that the analyst was started.*

Gharavi: *You're not sure but did you ask?*

Ilgisonis: *I couldn't ask him by then because they were trying to, they told me that I should leave.*

Wenzel: *I'd like to follow up on that. The reality is, isn't it, Dr Ilgisonis, that you weren't going to go back to the laboratory at all if you hadn't have spoken to Ms Fedorovtseva and Dr Kopylov. You weren't going to go back at all, were you?*

Ilgisonis: *I even didn't want to leave the laboratory.*

Wenzel: *But you didn't ask what time you could go back to the laboratory. You didn't ask when their lunch break would be over. You didn't know what time you could go back.*

Ilgisonis: *Because they told me that I cannot be in the laboratory. Just cannot ….*

Fumagalli: *[…] say that the results would be given tomorrow morning? You return only the next morning.*

Ilgisonis: *They told us that we can't be in the laboratory until they're going to tell us the results so, what could I do?*

[…].

Ilgisonis: *No. They told that the analyst is going to have lunch and we have no opportunities to stay in the laboratory.*

Wenzel: *But surely at that point you have to ask why can't, when is your lunch break over? When can I come back? You have these strong instructions. You're told an analyst is going for lunch. Surely any reasonable person would then say, "At what time can I come back?" "When is your lunch break over because I want to be here for as much of this as I can see?"*

[…].

Ilgisonis: *Because as I understood that I should go back to the laboratory when they will be able to tell us the results.*

Fumagalli: *Okay. So, when you left before the phone calls, you had no plan as to return to the lab?*

Ilgisonis: *Of course I had a plan ….*

Fumagalli: *Yes, but not a time, so I have to be back at this time.*

Ilgisonis: *Yes.*

Fumagalli: *So, and you didn't see the process started? Okay. When you left, you left under the assumption that the people would have waited for you to return to start the process or you had the idea that the process could have started before your return?*

Ilgisonis: *I was, well ….*

Fumagalli: *Because if you say, I return at five, did you expect then to wait until five to start the process?*

Ilgisonis: *No. I think that, well, I understood that they're going to start the process, but I was sure that they should start the process while I was in the laboratory. So, when we leave it, I had no idea what will happen after that".*

119. Even if there was a measure of ambiguity in the answers given by Dr Ilsigonis the Panel finds a confirmation of its preferred view (to repeat, that she and the Athlete left the Laboratory with no plan to return until after the final results of the analysis were ready, and therefore that the analytical process could, and would, be started also in her absence and in the absence of the Athlete) in Dr Ilgisonis' and the Athlete's behaviour:

i. while they were allegedly "resisting" the "expulsion" from the Laboratory, neither witness indicated that they sought any information as to the duration of the lunch break, or sought assurances that no step be taken before their return;

ii. after they left had left the Laboratory (and before their return), no contemporary evidence shows, and chiefly the text messages exchanged show that they sought such confirmation or indication. Furthermore and significantly, no confirmation exists in such communications that, before and absent a phone call from the Athlete's wife, they were planning to return to the Laboratory at all;

iii. when they did return to the Laboratory, they showed no surprise, or made any objection to the fact the Laboratory staff was working on the Athlete's sample.

120. In light of the foregoing, the Panel finds that the Athlete, having actually allowed the analysis to proceed in his absence, cannot be now, belatedly challenging the analytical process, and claim that his right have been breached. The Panel therefore need not resolve the important issues debated before it as to whether the concept of fundamental breach in relation to B sample analysis (requiring no proof of causative effect) has survived the coming into force of WADA 2017, whether if it does it requires a refusal to permit the athlete or his or her representative to attend the B sample analysis at all or a total exclusion therefrom, or whether the kind of partial exclusion to which the Athlete and Dr Ilgisonis were subjected could amount to such breach and accordingly takes no collective position on these issues.

121. As a result, the Athlete's contentions must be rejected: the Panel confirms that the A and B sample analyses show the presence of a prohibited substance and that there is no basis to disregard such analytical results. The Athlete has therefore committed the antidoping rule violation contemplated by Article 2.1 (*"Presence of a prohibited substance or its metabolites or markers in a Athlete's sample"*) of the ADR.

ii. What are the consequences to be drawn from such finding?

122. In light of the foregoing, the second issue to be addressed in this arbitration relates to the consequences to be drawn from the finding of the commission by the Athlete of the antidoping rule violation contemplated by Article 2.1 of the ADR. More specifically, on the basis of the Parties submissions and requests, the Panel has to determine:

a. the measure of the sanction (if any) to be imposed on the Athlete for such violation; and

b. whether the results achieved by the Athlete following the date of the antidoping test and before the entry into force of his provisional suspension have to be disqualified.

a. What is the proper sanction to be applied?

123. According to Article 10.2.1 of the ADR, the sanction provided for the violation committed by the Athlete is a suspension for 4 years. Such sanction, however, can be replaced with a suspension of 2 years, if it is proven by the Athlete that the violation was not intentional (Article 10.2.2 of the ADR). Then, it can be eliminated or reduced if the Athlete proves that he bears "no fault or negligence" or "no significant fault or negligence" (Article 10.5 of the ADR).

124. The Athlete contended that the alleged AAF may be the result of the intake of contaminated supplements, or in any case of the unintentional ingestion of a prohibited substance which would justify a sanction of less than 4 years' suspension. On the other hand, RUSADA and WADA submitted that the Athlete has not proved that the antidoping rule violation was not intentional or the result of intake of contaminated supplements so that the sanction should be a suspension for 4 years.

125. In light of the foregoing, the Panel has to examine first whether the violation can be considered to be intentional for the purposes of Article 10.2.1 of the ADR. In fact, only in the event that the antidoping rule violation is held to be not intentional, is an examination relating to the Athlete's fault or negligence warranted at all; the same applies in the context of the rule on contaminated products (Article 10.5.1.2 of the ADR).

126. As mentioned, pursuant to Articles 10.2.3 of the ADR, *"the term 'intentional' is meant to identify those Athletes who cheat"*. It requires, therefore *"that the Athlete … engaged in conduct which he … 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 the Athlete's case, as a result of the burden of proof placed on him by Article 10.2.1.1, it is thus for the Athlete to prove by a balance of probability, pursuant to Article 3.1 of the ADR, that he did not engage in a conduct which he knew constituted an antidoping rule violation, or knew that there was a significant risk that the conduct might constitute or result in an antidoping rule violation and manifestly disregarded that risk.

127. The Panel endorses in respect of this provision the line of CAS jurisprudence (CAS 2016/A/4534; CAS 2016/A/4676; CAS 2016/A/4919), which found that the establishment of the source of the prohibited substance in an athlete's sample is not a *sine qua non* of proof of an absence of intent. Indeed, the provisions of the ADR concerning *"intent"* do not refer to any need to establish source, in direct contrast to Article 10.5, combined with the definitions of *"No Fault or Negligence"* and *"No Significant Fault or Negligence"*, which expressly and specifically require establishment of source.

128. The foregoing, however, does not mean that the Athlete can simply assert his lack of intent to prove, by a balance of probability, that he did not engage in a conduct which he knew

constituted an antidoping rule violation or knew that there was a significant risk that said conduct might constitute or result in an antidoping rule violation and manifestly disregarded that risk, without giving any convincing explanations to justify such assertion. To prove the same without proof of source is exceptional (see the same CAS jurisprudence mentioned above). The Athlete, even though he is not bound to prove the source of the prohibited substance, has to show, on the basis of the objective circumstances of the antidoping rule violation and his behaviour that specific circumstances exist disproving his intent to dope.

129. In this context, it is this Panel's opinion that, in order to disprove intent, an athlete cannot merely speculate as to the possible existence of a number of conceivable explanations for the AAF and then further speculate as to which appears the most likely of those possibilities to conclude that such possibility excludes intent: a protestation of innocence, the lack of sporting incentive to dope, or mere speculation by an athlete as to what may have happened does not satisfy the required standard of proof (balance of probability) and the mere allegation of a possible occurrence of a fact cannot amount to a demonstration that that fact did actually occur (CAS 2010/A/2268; CAS 2014/A/3820). Instead, the CAS has been clear that an athlete has a stringent obligation to offer persuasive evidence that the explanation he offers for an AAF is more likely than not to be correct, by providing specific, objective and persuasive evidence of his submissions. In short, the Panel cannot base its decision on some speculative guess uncorroborated in any manner.

130. In this connection, the Panel notes that the Athlete has not provided any evidence whatsoever of how *"Trimetazidine"* came to be present in his urines. The Athlete denied having taken intentionally any product containing such substance, and expressly declared that he has no idea of how it entered into his system. The reference to "supplement contamination" as the only (or most probable) logical explanation for the presence of the prohibited substance in the Athlete's system is, in the opinion of the Panel, no more than a theoretical possibility, not even linked to specific circumstances, still less verified by evidence as to, for example, the supplements the Athlete was taking, and as to when, where, how and why they were contaminated.

131. Accordingly, the Panel finds that the Athlete has not discharged the burden which lies upon him to establish by a balance of probability non-intentional use of a prohibited substance.

132. As a result, for the above reasons, the sanction of the suspension for 4 years is therefore necessarily to be imposed on the Athlete. The suspension shall start on 16 June 2016, which is the start date of his provisional suspension.

b. Are any of the Athlete's results to be disqualified?

133. Pursuant to Article 10.8 of the ADR, *"all … competitive results of the Athlete obtained from the date a positive Sample was collected …, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes"*.

134. The sample was collected on 17 May 2016. The Athlete was provisionally suspended on 16 June 2016. As a result, Article 10.8 of the ADR mandates the disqualification of all the Athlete's

results between 17 May 2016 and 16 June 2016.

135. No indications have been given as to any reasons of *"fairness"* to depart from the strict application of the rule. Therefore, the Panel finds that all the Athlete's results between 17 May 2016 and 16 June 2016 are to be disqualified, with all of the resulting consequences, including forfeiture of any medals, points and prizes.

IX. CONCLUSION

136. Based on the foregoing, the Panel holds that the Claimant must be declared ineligible for a period of four years from 16 June 2016, the date of his provisional suspension.

137. Furthermore all competitive results obtained by the Claimant between 17 May 2016 and 16 June 2016 must be disqualified, with all of the resulting consequences, including forfeiture of any medals, points and prizes.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. Mr Sergey Fedorovtsev is responsible for the antidoping rule violation contemplated by Article 2.1(c) [*"Presence of a Prohibited Substance or its Metabolites or Markers in a Athlete's sample"*] of the Russian antidoping rules, including the Anti-Doping rules approved by the order No 947 of the Ministry of Sport of the Russian Federation of 9 August 2016.

2. Mr Sergey Fedorovtsev is declared ineligible for a period of four (4) years from 16 June 2016, the date of his provisional suspension. All competitive results obtained by Mr Sergey Fedorovtsev between 17 May 2016 and 16 June 2016 are disqualified, with all of the resulting consequences, including forfeiture of any medals, points and prizes.

(…)

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