CAS 2024/A/10273 X. v. World Athletics

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition

President:	Ms Annett Rombach, Attorney-at-law, Frankfurt am Main, Germany
Arbitrators:	Mr Michele A.R. Bernasconi, Attorney-at-law in Zurich, Switzerland
	Mr Ken E. Lalo, Attorney-at-law in Gan Yoshiyya, Israel

in the arbitration between

X., […]

Represented by Ms Maria Laura Guardamagna and Ms Giulia Re, Attorneys-at-law in Milano, Italy

Appellant

and

World Athletics, Monaco, Monaco

Represented by Mr Nicolas Zbinden and Mr Adam Taylor of Attorneys-at-law in Lausanne, Switzerland, along with Ms Laura Gallo and Mr Tony Jackson of World Athletics, Monaco, Monaco

Respondent

I. THE PARTIES

1. X. (the "**Appellant**" or the "**Athlete**") is a […]-year-old […] of […] nationality.

2. World Athletics (the "**Respondent**" or "**WA**") is the international federation governing the sport of athletics worldwide and a signatory to the World Anti-Doping Code ("**WADA Code**"). WA has its registered seat and headquarters in Monaco.

3. The Athlete and WA are collectively referred to as the "**Parties**".

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced during these proceedings. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, the present Award only refers to the submissions and evidence considered necessary to explain its reasoning.

5. The present dispute concerns an alleged anti-doping rule violation ("**ADRV**") of the Athlete under Rules 2.1 and 2.2 of the Respondent's Anti-Doping Rules (the "**WA ADR**"), which addresses the presence of a Prohibited Substance or its Metabolites or Markers in an athlete's sample and the Use of a Prohibited Substance.

6. On 19 August 2022, the Athlete was subjected to an in-competition doping control (the "**Doping Control**") at the European Athletics Championships in Munich, Germany (the "**Event**"). The analysis of the Athlete's A Sample (together with the B Sample the "**Sample**") revealed the presence of Meldonium, a metabolic modulator classified under the *"S4 Hormone and Metabolic Modulators"* category of the WADA Prohibited List (2022 version). It is stated to be a *"non-Specified Substance"* prohibited at all times.

7. On 7 September 2022, the Athlete was notified by the Athletics Integrity Unit ("**AIU**"), delegated under Rule 1.2.2 of the WA ADR for results management and hearing on behalf of WA, of an adverse analytical finding (the "**AAF**") and was provisionally suspended in accordance with Rule 7.4.1 of the WA ADR.

8. On 11 September 2022, the Athlete informed the AIU that he had never used Meldonium and requested an extension of time in order to have his supplements analysed. The Athlete inquired about the costs associated with the analysis of the B Sample and delivery of the Laboratory Documentation Package (the "**LDP**"). He confirmed that he would not be appealing the provisional suspension.

9. On 12 September 2022, the Athlete inquired about the concentration of Meldonium found in the A Sample.

10. On the same day, the AIU, *inter alia*,

    - provided the Athlete with information on the costs associated with conducting a

B Sample analysis and obtaining the LDP for the A and/or B Samples;

- asked the Athlete to confirm by 14 September 2022 (i) whether he was requesting the B Sample analysis and, if so, to provide the name of the person who would attend the opening and analysis of it, and (ii) whether he was requesting the LDP for the A Sample alone or for both the A and B Samples;
- agreed to suspend the Athlete's deadline to provide an explanation; and
- informed the Athlete that the estimated concentration of Meldonium in the A Sample was 155 ng/mL.

11. On 14 September 2022, the Athlete requested that the time limit for providing an explanation, requesting the analysis of the B Sample, and/or requesting the LDP be suspended while his supplements were being analysed at the Centro Regionale Antidoping "Alessandro Bertinaria" in Turin (the "**Turin Laboratory**").

12. On the same day, the AIU:

- granted an extension until 23 September 2022 for the Athlete to confirm his position regarding the B Sample analysis and the LDP; and
- requested the Athlete (i) to provide, by 19 September 2022, details of each supplement he had used in the weeks prior to the Doping Control and (ii) to confirm by the same date which supplement(s) had been sent to the Turin Laboratory.

13. On 19 September 2022, the Athlete provided the AIU with a list of supplements, along with lot numbers and indications on how he had used them. On 20 September 2022, upon the AIU's request, the Athlete confirmed that the supplements had been sent to the Turin Laboratory for analysis.

14. On 23 September 2022, the Athlete confirmed his request for (i) the analysis of the B Sample, and (ii) a copy of the LDP for both the A and B Samples. The Athlete further informed the AIU that his supplements had not yet been analysed.

15. On 24 November 2022, the Athlete's B Sample was opened in the presence of the Athlete's representative, who also attended the B Sample confirmation procedure.

16. On 25 November 2022, the AIU informed the Athlete that the analysis of the B Sample had confirmed the findings of the A Sample.

17. On 1 December 2022, the Athlete disputed the identification of Meldonium in the B Sample based on the observations of Prof. Simone Cristoni, and requested the *"average MS/MS spectrum, obtained in the elution zone of the chromatographic peak, both in the standard and in sample B"*.

18. On 23 December 2022, the AIU provided the Athlete with the LDP of the B Sample and confirmed that:

- the Cologne Laboratory, which had conducted the analysis of the Athlete's Sample was not obligated to provide any additional data or documents beyond those specifically required by the WADA Technical Document – TD2022LDOC;
- upon review of the LDP for the B Sample by the AIU scientific advisor, the AIU was satisfied that (i) the Cologne Laboratory had conducted the B Sample analysis in accordance with the WADA International Standard for Laboratories ("**ISL**") and the WADA Technical Document – TD2021IDCR, and (ii) Meldonium was present in the B Sample;
- the Athlete had until 16 January 2023 to provide his explanation for the AAF, including the results of the analyses of his supplements.

19. On 16 January 2023, the Athlete provided his explanation for the AAF.

A. The Proceedings Before the Disciplinary Tribunal

20. On 22 March 2023, the AIU charged the Athlete with an ADRV based on (i) the Presence of a Prohibited Substance under Rule 2.1 of the WA ADR, and (ii) the Use of a Prohibited Substance, under Rule 2.2 of the WA ADR before the Disciplinary Tribunal of Sports Resolutions ("**Disciplinary Tribunal**").

21. On 8 November 2023, a hearing was held before the Disciplinary Tribunal via videoconference.

22. On 5 December 2023, the Disciplinary Tribunal found the Athlete guilty of an ADRV and imposed a period of Ineligibility of […] years on him, together with a disqualification of his results achieved as from 19 August 2022 onwards ("**Appealed Decision**"). The operative part of the Appealed Decision reads (in its relevant part) as follows:

> *"a. The Panel has jurisdiction over the present matter.*
>
> *b. The Athlete has committed Anti-Doping Rule Violations pursuant to Rule 2.1 and 2.2 of the World Athletics Anti-Doping Rules.*
>
> *c. The Athlete must serve a period of Ineligibility of […] years for the ADRVs based on Rule 10.2.1 ADR commencing on the date of this award.*
>
> *d. The Athlete is to be given credit for the period of Provisional Suspension served from 7 September 2022 until the date of this award, as set against the period of Ineligibility imposed for the ADRVs, provided that the Provisional Suspension has been effectively served by the Athlete.*
>
> *e. All the Athlete's results obtained at 2022 European Championships and since 19 August 2022 be disqualified pursuant to Rules 9, 10.1 and 10.10 ADR with all resulting consequences including the forfeiture of any titles, awards, medals, points and prize and appearance money.* […]"

23. The pertinent parts of the grounds of the Appealed Decision state the following:

"76. The Panel noted that it is agreed between the Parties that there were ADRVs pursuant to Rule 2.1 and 2.2 ADR.

77. The ADRVs were found pursuant to the presence of Meldonium in the Athlete sample during the Event.

78. According to Rule 10 ADR, the Athlete bears the burden of proof for the hypothesis that would qualify for the elimination or reduction in sanction relating to the biotransformation process.

79. The Panel notes that in the case at hand there is lack of convincing evidence on the theory of biotransformation.

80. Based on all of the above, the Panel is not prepared to draw any conclusions neither from Prof. Salomone's report nor from Prof. Cristoni in favour of the Athlete's claim that the presence of the Prohibited Substance was caused by a biotransformation of unspecified components of the supplement Mythoxan Forte.

81. In such circumstances, we understand that the Athlete did not demonstrate any convincing evidence supporting the biotransformation theory.

82. The Panel also notes that the Athlete was unable to establish that he had no Fault or Negligence for the ADRV."

III. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

24. On 3 January 2024, the Appellant filed his Statement of Appeal with the Court of Arbitration for Sport ("**CAS**") against the Appealed Decision, pursuant to Articles R47 *et seq.* of the CAS Code of Sports-related Arbitration (the "**CAS Code**") (the "**Appeal**"). In the Statement of Appeal, the Appellant nominated Mr Michele Bernasconi, Attorney-at-Law in Zurich, Switzerland, as arbitrator.

25. On 8 January 2024, the CAS Court Office informed the Parties about the Appeal, requested the Appellant to file his Appeal Brief in accordance with Article R51 of the CAS Code and noted the Appellant's choice to proceed with his Appeal in the English language.

26. On 15 January 2024, following the Appellant's respective request and in the absence of any objection from the Respondent, the CAS Court Office informed the Parties that the Appellant's time limit to file his Appeal Brief was extended by sixty (60) days.

27. On 23 January 2024, the Respondent nominated Mr Ken Lalo, Attorney-at-law in Gan-Yoshiyya, Israel, as arbitrator.

28. On 26 February 2024, the Appellant requested that the time limit to file his Appeal Brief be extended by an additional thirty (30) days, to which the Respondent objected.

29. On 4 March 2024, the CAS Court Office informed the Parties that the Deputy President of the Appeals Arbitration Division had decided that the Appellant's time limit to file his Appeal Brief would be further extended by twenty (20) days.

30. On 25 March 2024, following another request by the Appellant (who had, in the meantime, changed legal counsel) and in view of the Respondent's agreement to the request, the CAS Court Office informed the Parties that the Appellant's time limit to file his Appeal Brief was extended by an additional ten (10) days.

31. On 3 April 2024, the Appellant filed his Appeal Brief in accordance with Article R51 of the CAS Code. The CAS Court Office acknowledged receipt of the Appeal Brief and invited the Respondent to submit its Answer within twenty (20) days, pursuant to Article R55 of the CAS Code.

32. On 2 May 2024, the CAS Court Office informed the Parties that, pursuant to Article R54 of the CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the Panel appointed to decide the present case was constituted as follow:

President:	Ms Annett Rombach, Attorney-at-Law in Frankfurt am Main, Germany
Arbitrators:	Mr Michele A.R. Bernasconi, Attorney-at-Law in Zurich, Switzerland
	Mr Ken E. Lalo, Attorney-at-Law in Gan-Yoshiyya, Israel.

33. On 3 May 2024, following the Respondent's request for the time limit to submit its Answer to be extended by ninety (90) days, and the Appellant's objection thereto, the CAS Court Office informed the Parties of the Panel's decision to extend the time limit by sixty (60) days.

34. On 10 May 2024, the Appellant filed a request for document production ("**Document Production Request**"). The Respondent opposed the Appellant's Document Production Request on 21 May 2024, to which the Appellant filed further comments on 23 May 2024.

35. On 10 June 2024, the CAS Court Office informed the Parties that the Panel had decided to provisionally reject the Appellant's Document Production Request. The reasons for the Panel's decision are provided below at Section **IX.A**.

36. On 2 July 2024, the Respondent submitted its Answer.

37. On 8 July 2024, the Appellant reiterated its Document Production Request, maintaining "*the importance of the raw file related to the analysis performed on A and B Samples*". He requested the Panel to reconsider its initial decision on the Document Production Request.

38. On 22 July 2024, following several attempts by the Panel to coordinate a hearing date suitable for all participants, the CAS Court Office informed the Parties that an in-person hearing would be held on 26 September 2024 at the headquarters of the CAS in Lausanne.

39. On the same day, the Appellant requested to add one more expert to his list of expert witnesses, to which the Respondent objected. On 6 August 2024, the CAS Court Office informed the Parties that the Appellant's request was rejected. The reasons for the Panel's decision are provided below at Section **IX.B**.

40. On 25 July 2024, the Panel informed the Parties that it maintained its decision to reject the Appellant's Document Production Request, for the reasons set forth below at Section

IX.A.

41. On 31 July 2024, the Respondent submitted a draft hearing schedule that it had been discussing with the Appellant.

42. On 17 and 18 September 2024, the Appellant and the Respondent, respectively, returned duly signed copies of the Order of Procedure to the CAS Court Office.

43. Following several exchanges of e-mails regarding logistical issues, on 26 September 2024, a hearing was held in Lausanne.

44. In addition to the Panel and Ms Andrea Sherpa-Zimmermann, Counsel to the CAS, the following persons attended the hearing:

For the Appellant:	X., Athlete Ms Maria Laura Guardamagna, Counsel Ms Giulia Re, Counsel Ms Alessandra Soldi, Translator
For the Respondent:	Mr Adam Taylor, Counsel Ms Laura Gallo, AIU

45. The Panel heard evidence from the following experts, in order of appearance:

Prof. Simone Cristoni, Milan, Italy (called by the Appellant)

Prof. Riccardo Ghidoni, former Chair of Biochemistry at the University of Milan (called by the Appellant)

Prof. Martial Saugy, Antidoping Scientific Advisor (called by the Respondent)

Prof. Mario Thevis, Director of the Cologne Laboratory (called by the Respondent)

Dr Osquel Barroso (called by the Respondent)

46. The hearing began at 8:08 am and ended at 2:23 pm without any technical interruption or difficulty. At the outset of the hearing, the Parties confirmed that they had no objection to the constitution and composition of the Panel. The Parties were given the opportunity to present their cases, to make their submissions and arguments and to answer questions posed by the Panel. The experts were questioned by the Parties and the Panel. After the Parties' final and closing submissions, the hearing was closed and the Panel reserved its detailed decision for this written Award.

47. At the end of the hearing, the Parties expressly confirmed that they had no objections in relation to their respective rights to be heard and that they had been treated equally in these arbitration proceedings.

48. In reaching the present decision, the Panel has carefully taken into account all the evidence and the arguments presented by the Parties, even if they have not been summarised in the present Award.

IV. THE POSITIONS OF THE PARTIES

49. The following outline of the Parties' positions is illustrative only and does not necessarily comprise every submission advanced by the Parties. 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 Appellant's Position and Request for Relief

50. The Appellant submits the following in substance:

a) The Appellant did not commit an ADRV

- The Athlete has never knowingly ingested Meldonium. He has always acted in accordance with the principles of fairness and clean sport and has complied with the anti-doping regulations. The Athlete underwent multiple doping controls which confirmed that the supplements he was taking were safe. He had undergone a negative doping test only four days before the Doping Control.

- The Athlete contests the scientific validity of the method used for analysing the Sample. Four ions (the precursor ion at m/z 147.1129, and three product ions at m/z 58.0654, m/z 59.0732, and m/z 132.0894) must be identified in a sample to demonstrate the presence of Meldonium. The analysis carried out by the Cologne Laboratory monitored only three ions (the precursor ion and two product ions). The m/z 132.0894 product ion (the "**132 Ion**"), was not found during the analysis and was not detected in the Athlete's Sample. The requirement to identify all four ions is established in the European Commission Decision 202/657/EC of 12 August 2002 (the "**2002 EC Decision**"), implementing EU Council Directive 96/23/EC (the "**96 Council Directive**").

- The identified fragments at m/z 58.0654, m/z 59.0732 and m/z 147.1133 are common to several molecules in nature and could, together with another ion, identify a substance other than Meldonium. It follows that the presence of the fourth peak is essential for the purpose of confirming the presence of Meldonium.

- That the Athlete's urine did not contain Meldonium is demonstrated, *inter alia*, by the following facts:

    - If the Athlete's Sample included Meldonium (as alleged by the Respondent), the samples taken from the Athlete in the weeks before 19 August 2022 (the date of the Doping Control) should have returned positive results for Meldonium in fairly high quantities. These previous samples, however, were all negative. The concentrations of Meldonium in a urine sample are (i) higher than 10 µg/mL in the first elimination phase up to 72 h; (ii) up to approximately 2 µg/mL over the following

three (3) weeks; (iii) below 1 µg/mL down to several hundred ng/mL for several weeks and (iv) in the low tens of ng/mL for a few months.

- Because Meldonium has a long-term excretion period (and is detectable in the urine for months after its use), and because the Athlete's samples preceding the positive test were all negative, there is no scientifical, logical or rational basis to assume that the Athlete had taken one or more very small doses of Meldonium in an amount incapable of any medical or pharmacological effect.
- The Athlete underwent a hair test, which was negative.
- The Athlete ingested *Mythoxan Forte*, a nutrition supplement exhibiting a similar fragmentation pattern as Meldonium.
- The AIU refused to provide the Athlete with the scientific documents needed for the purpose of his defence.

b) In any event, any presumed ADRV was unintentional

- Proof of source is not required by the applicable anti-doping regulations to establish that an athlete acted unintentionally.
- The evidence provided by the Athlete, when considered in its entirety, constitutes concrete, specific, objective, and persuasive evidence sufficient to demonstrate, on a balance of probabilities, the Athlete's lack of intent. Therefore, the Appellant's sanction should be reduced.

51. In his Statement of Appeal, the Appellant initially requested the following relief:

"1. The decision of the World Athletics Disciplinary Tribunal dated 5 December 2023 is set aside.

2. No period of Ineligibility is imposed on the Athlete based on his No Fault or Negligence.

3. The Athlete's results obtained at 2022 European Championships and since 19 August 2022 are reinstated.

4. Alternatively, the minimum period of Ineligibility is imposed on the Athlete based on his No Significant Fault or Negligence.

5. A contribution towards the Appellant's legal fees and other expenses incurred in this arbitration is granted."

52. In his Appeal Brief, the Appellant updated his prayers for relief:

"Based on the foregoing developments, the Appellant respectfully requests the Panel to:

(a) declare that the Athlete's Appeal should be upheld;

(b) declare that the […] years sanction issued by the Disciplinary Tribunal (Sport Resolution) be set aside;

(c) declare X. has not committed any ADRV.

Alternatively:

(d) impose, pursuant the principle of proportionality, the minimum ineligibility period applicable (that should not exceed the period already served);

In any case:

(e) award the Appellant a contribution towards his legal costs in this appeal;

(f) order the WA to bear the full costs of these arbitration proceedings."

B. The Respondent's Position and Request for Relief

53. The Respondent submits the following in substance:

a) The Appellant committed an ADRV

- The Cologne Laboratory properly identified Meldonium in the Sample. While it was not required under the applicable rules to monitor the 132 Ion for identifying Meldonium, the 132 Ion was in fact found in the Athlete's Sample.
- The 2002 EC Decision, which – in the Athlete's view – requires identification of four ions (including the 132 Ion) for a positive finding of Meldonium does not apply to anti-doping laboratories, which are specifically governed by the detailed provisions of the ISL. Identifying more than the minimum number of ions is not a requirement but a recommendation of the WADA Technical Document – TD2021IDCR. The Athlete's own experts accept that the Cologne Laboratory satisfied the criteria of WADA Technical Document – TD2021IDCR.
- The signal at m/z 101.079 monitored in the Sample is merely a background noise product ion, which is common in urine. It does not put the detection of Meldonium in the Sample into doubt.
- The oral evidence provided by the Athlete's experts (including Prof. Cristoni) at the first instance hearing significantly weakened their written expert reports as to the theory of biotransformation. It showed a worrying lack of concern for transparency, accuracy and the ethical obligations of court experts.

b) The ADRV was intentional

- The Athlete did not prove that the ADRV was committed without intent.
- The Athlete has not provided any argument or evidence as to the origin of the Meldonium present in his system. He has abandoned his biotransformation

theory, and all of his supplements tested negative for Meldonium.

- Although it is theoretically possible for an athlete to establish that an ADRV was not intentional without proving the source of the Prohibited Substance that entered his system, this may only occur in exceptional cases. The present case is not a difficult, unusual or exceptional case on the facts.
- The Athlete has provided evidence that is supportive of the performance-enhancing properties and widespread misuse of Meldonium.
- The Athlete wrongly suggests that his prior negative doping tests rule out the intentional nature of the ADRV.

54. The Respondent requests the following relief:

> *"World Athletics requests that the CAS Panel grants the following relief:*
>
> *(i) The appeal of X. is dismissed.*
>
> *(ii) The decision of the World Athletics Disciplinary Tribunal dated 5 September 2023 in case […] is upheld in its entirety.*
>
> *(iii) X. is to bear the arbitration costs of these proceedings, if any.*
>
> *(iv) World Athletics is granted a significant contribution to its legal costs and expenses incurred in relation to these proceedings."*

V. JURISDICTION

55. Article R47 para. 1 of the CAS Code provides as follows:

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

56. The WA ADR, which is applicable to the procedural aspects of the present appeal, provides for the jurisdiction of the CAS on the challenge of the Appealed Decision. In its relevant parts, Rule 13 of the WA ADR provides as follows:

> *"**13.2 Appeals against decisions regarding Anti-Doping Rule Violations, Consequences, Provisional Suspensions, Implementation of Decisions and Authority***
>
> *The following decisions may be appealed exclusively as provided in Rules 13.2 to 13.7: a decision that an anti-doping rule violation was committed; a decision imposing Consequences or not imposing Consequences for an anti-doping rule violation; […].*
>
> *13.2.1 Appeals involving International-Level Athletes or International Competitions*

In cases involving International-Level Athletes or arising from Persons participating in an International Competition, the decision may be appealed exclusively to CAS.

13.2.3 Persons entitled to appeal

(a) In cases under Rule 13.2.1, the following parties will have the right to appeal to CAS:

(i) the Athlete or other Person who is the subject of the decision being appealed;"

57. The Athlete is undisputedly an international-level athlete within the meaning of Rule 13.2.1 of the WA ADR. The Appealed Decision is a decision finding that the Athlete committed ADRVs (including the imposition of Consequences), against which a CAS appeal is admissible. The Panel, consequently, has jurisdiction to decide on the Appeal filed against the Appealed Decision.

58. The Parties further confirmed that CAS has jurisdiction by execution of the Order of Procedure.

VI. ADMISSIBILITY

59. Article R49 of the CAS Code provides – in its pertinent parts – as follows:

> *"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document."*

60. Rule 13.6 of the WA ADR provides as follows:

> *"**13.6 Time for filing appeals:***
>
> ***13.6.1 Appeals to CAS***
>
> *(a) The time to file an appeal to the CAS will be thirty (30) days from the date of receipt of the reasoned decision by the appealing party. Where the appellant is a party other than World Athletics or WADA, to be a valid filing under this Rule 13.6.1, a copy of the appeal must be filed on the same day with World Athletics."*

61. The Athlete's Statement of Appeal, submitted on 3 January 2024, against the Appealed Decision dated 5 December 2023, was, therefore, filed within the thirty-day time limit.

62. The Statement of Appeal also complied with the requirements of Article R48 of the CAS Code. In addition, the admissibility of the Appeal is not challenged by any party.

63. The Appeal is therefore admissible.

VII. APPLICABLE LAW

64. For appeal proceedings, Article R58 of the CAS Code provides the following:

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

65. The "*applicable regulations*" for the purposes of Article R58 of the CAS Code are those contained in the WA ADR because the Appeal is directed against a decision which was passed applying the WA ADR.

66. The Panel notes that Rules 13.7.4 and 13.7.5 of the WA ADR state the following:

> *"13.7.4 In all CAS appeals involving World Athletics, the CAS Panel shall be bound by the World Athletics Constitution, Rules and Regulations (including these Anti-Doping Rules). In the case of conflict between the CAS rules currently in force and the World Athletics Constitution, Rules and Regulations, the Constitution, Rules and Regulations shall take precedence.*
>
> *13.7.5 In all CAS appeals involving World Athletics, the governing law shall be Monegasque law and the appeal shall be conducted in English, unless the parties agree otherwise."*

67. The Panel, therefore, applies the WA ADR, as in force at the relevant time of the dispute. Furthermore, the Panel will apply Monegasque law as an interpretative tool should the need arise to interpret the WA ADR.

VIII. SCOPE OF REVIEW

68. According to Article R57 para. 1 of the CAS Code,

> "*The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. […]*".

69. The unlimited scope of review is also confirmed by Rule 13.1.1 of the WA ADR which provides – in its pertinent parts – as follows:

> "*The scope of review on appeal includes all issues relevant to the matter and is expressly not limited to the issues or scope of review before the initial decision maker.*"

70. Against this background, the Panel finds that its power to review the facts and the law of the present case is not limited.

IX. THE APPELLANT'S EVIDENTIARY REQUESTS

A. The Appellant's Document Production Requests

71. Pursuant to Article R44.3 of the CAS Code,

> *"A party may request the Panel to order the other party to produce documents in its custody or under its control. The party seeking such production shall demonstrate that such documents are likely to exist and to be relevant."*

72. On 10 May 2024, the Appellant lodged the following Document Production Request:

> *"Furthermore, to comply with the principle of fair trial and with Rule 8.1 WA and WADA ADR and art. 12 of the Athletes' Rights and Responsibilities Declaration according to which each athlete has a right to a timely hearing, to grant the timely hearing we request the Panel to order* ***since now****:*
>
> 1. *WADA's laboratory of Cologne, through World Athletics, to* ***immediately*** *provide the file row* [sic] *of the analyses of sample A […] and of sample B […] and*
>
> 2. *WADA's laboratory of Rome, through World Athletics, to provide from now the A Sample Laboratory Documentation Package of the analysis performed on X. on 30 July 2022."*

73. The Appellant argued that without the raw data, he would be unable to effectively defend against WA's accusations, because only these documents "*allow to clarify the anomalies found by the Appellant's experts*". WA opposed the request, arguing (a) that it was unclear whether the documents existed, were necessary or relevant, (b) that it was unclear what the requested documents were and (c) that WA doping laboratories are not under the control of WA.

74. On 8 July 2024, after the Panel's provisional dismissal of the Document Production Request (see above at para. 35), the Appellant reiterated its original request, emphasizing "*the importance of the raw file related to the analysis performed on A and B Samples*". The Appellant claimed that his Document Production Request must be granted in accordance with Articles 3, 12 and 15 of Regulation (EU) 2016/679 on General Data Protection ("**GDPR**"), because the requested information contained the Athlete's personal data. The Panel dismissed both the original and the updated Document Production Request for the reasons detailed below.

75. It is undisputed that the Appellant had received from WA the test reports and related LDPs for both the A and the B Sample. The Appellant does not contest that the LDPs comply with the requirements of the WADA Technical Document TD2022LDOC. Upon a respective document production request lodged before the Disciplinary Tribunal at first instance, the Appellant had also received further documents, namely a report containing the full scan spectrum and product ion spectrum of the analysis of the Athlete's B Sample

(Appealed Decision, para 39). The Appellant does not contest that the B Sample analysis was conducted in accordance with the ISL and the WADA Technical Document TD 2021IDCR.

76. It is unclear to the Panel, and the Appellant has failed to provide a plausible explanation, why and to what extent the additional "raw files" are relevant to the Athlete's case and how they benefit his challenge of the positive doping test. In the Appeal Brief, the Athlete makes arguments on his behalf on the basis of the available documentation, in particular the documents produced during the first instance proceedings. The Appeal Brief does not explain what exactly the requested documents (initially identified as "file row", later corrected to "raw files") are and what they are expected to show, beyond the detailed information available to the Athlete already. In particular, it is unclear what information the Appellant is missing, and why the available documentation is insufficient to evidence the presence of Meldonium in the Sample. The Athlete's request remains vague, and does not provide the Panel with a sufficient basis to understand how the requested "raw files" are relevant and material to the analysis of this case.

77. The additional argument that the release of the documents is warranted by EU data protection law (specifically, the GDPR) does not change anything. If the Appellant believes that EU data protection law gives him a claim for document production, it is not for this Panel, under a CAS arbitration agreement, to enforce any such purported claims (against an entity – the Cologne Laboratory – which is not even a party in these proceedings).

78. For all of these reasons, the Document Production Requests were dismissed by the Panel.

B. The Appellant's Request to add an additional expert to his roster of experts

79. By letter of 22 July 2024, the Appellant requested to add to his expert team an expert who had assisted Prof. Cristoni in publishing an article on which the Athlete's defense relies.

80. Pursuant to Article R56 (1) of the CAS Code,

> *"Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer."*

81. WA objected the Appellant's request, and the Appellant failed to establish "exceptional circumstances" which would have allowed to add an expert to his list of witnesses at a late stage in the proceedings. Dr. Conti neither submitted an expert report in these CAS proceedings, nor did he (co-)author the expert report submitted by Prof. Cristoni. His co-authorship of an article mentioned in the Appellant's Appeal Brief does not constitute "exceptional circumstances" requiring his (belated) addition to the Appellant's roster of experts. As a result, the Panel dismissed the Appellant's respective request.

X. MERITS

82. It is undisputed between the Parties that the Prohibited Substance at issue in this case is Meldonium, which is a metabolic modulator classified under the *"S4 Hormone and Metabolic Modulators"* category of the WADA Prohibited List (2022 version). It is stated to be a *"non-Specified Substance"* and prohibited at all times.

83. Meldonium was included into the WADA Prohibited List on 1 January 2016.

A. The Applicable Legal Framework

84. With respect to the Athlete's alleged ADRV, the WA ADR provides – in its pertinent parts – as follows:

> *"2.1.1 It is each Athlete's personal duty to ensure that no Prohibited Substance enters their body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary to demonstrate intent, Fault, Negligence or knowing Use on the Athlete's part in order to establish a Rule 2.1 anti-doping rule violation.*
>
> *2.1.2. Sufficient proof of an anti-doping rule violation under Rule 2.1 is established by any of the following: (i) the presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analysed; (ii) where the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample; or (iii) where the Athlete's A or B Sample is split into two parts and the analysis of the confirmation part of the split Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first part of the split Sample or the Athlete waives analysis of the confirmation part of the split Sample.*
>
> *[…]*
>
> *2.2.1 It is the Athlete's personal duty to ensure that no Prohibited Substance enters their body and that no Prohibited Method is Used. Accordingly, it is not necessary to demonstrate intent, Fault, Negligence or knowing Use on the Athlete's part in order to establish an anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method."*

85. Regarding the periods of ineligibility in cases involving the presence of a prohibited substance (Rule 2.1 of the WA ADR) and/or use of a prohibited substance (Rule 2.2 of the WA ADR), and possible elimination or reduction of ineligibility periods, the WA ADR provides as follows:

> *"**10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a***

Prohibited Substance or Prohibited Method

The period of Ineligibility for a violation of Rule 2.1, Rule 2.2 or Rule 2.6 will be as follows, subject to potential elimination, reduction or suspension pursuant to Rules 10.5, 10.6 and/or 10.7:

10.2.1 Save where Rule 10.2.4 applies, the period of Ineligibility will be four years where:

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

(b) The anti-doping rule violation involves a Specified Substance or a Specified Method and the Integrity Unit can establish that the anti-doping rule violation was intentional.

[…]

10.2.3 As used in Rule 10.2, the term 'intentional' is meant to identify those Athletes or other Persons who engage in conduct that they knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance that is only prohibited In-Competition will 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 that is only prohibited In-Competition will 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."

86. With respect to the standard and burden of proof, Rule 3.1 of the WA ADR provides the following:

*"**3.1 Burdens and Standards of Proof***

The Integrity Unit or other Anti-Doping Organisation will have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof will be whether the Integrity Unit or other Anti-Doping Organisation has established an anti-doping rule violation to the comfortable satisfaction of the

hearing panel, bearing in mind the seriousness of the allegation that has been made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules place the burden of proof upon the Athlete or other Person alleged to have committed an anti doping rule violation to rebut a presumption or establish specified facts or circumstances, except as provided in Rules 3.2.3 and 3.2.4, the standard of proof will be by a balance of probability."

B. The Questions at Stake in these Proceedings

87. Considering the Parties' submissions in light of the applicable rules quoted above, the main issues to be resolved by the Panel are the following:

1. Was Meldonium correctly identified in the Athlete's Sample by the Cologne Laboratory?

2. In case question (1) is answered affirmatively, has the Athlete established that his ADRV was not intentional?

3. What is the appropriate sanction to be imposed on the Athlete?

1. Was Meldonium correctly identified in the Athlete's Sample?

88. The Athlete contests the scientific validity of the testing of the Sample by the Cologne Laboratory. He argues that proof of the presence of Meldonium requires identification of the 132 Ion, which was not detected in the Sample. The Athlete argues that identification of only three ions (the precursor ion at m/z 147.1129, and two product ions at m/z 58.0654, m/z 59.0732) by the Cologne Laboratory was not sufficient to prove the presence of Meldonium when the quantity is as low as in the Sample (155 ng/mL).

89. The Panel dismisses the Appellant's argument. It is comfortably satisfied that the Cologne Laboratory correctly established the presence of Meldonium in the Sample, for the reasons detailed below.

90. First, the Panel is comfortably satisfied that the 132 Ion was indeed monitored and shown in the analysis of both the Athlete's A and B Sample, conducted by the Cologne Laboratory. As explained by Prof. Thevis in his expert report, confirmed by him during the oral hearing, the image of the product ion mass spectrum of the Athlete's B Sample illustrates that the 132 Ion was visible, albeit at a rather low abundance. The Panel has examined the relevant (zoom-in) image showing the 132 Ion, and is comfortably satisfied by Prof. Thevis's explanations, which remained unchallenged during the hearing. The data on which Prof. Thevis relied stem from a WADA-accredited laboratory, and there is no indication for any irregularity in the sample analysis, respective data collection or data processing. During his oral examination, Dr. Barroso of the WADA Science Department confirmed that at least four other WADA-accredited laboratories apply the same testing procedure for detecting Meldonium as the Cologne Laboratory. While the Athlete has requested the "raw data" underlying the Cologne Laboratory's analysis (including

chromatograms), he has failed to explain if and how such raw data could be suitable to disprove the evidence given by Prof. Thevis (including mass spectrum images, which the Appellant was provided with).

91. Second, the Panel finds that a showing of the 132 Ion was not even mandatory for a valid demonstration of the presence of Meldonium in the Athlete's Sample. The Panel is not convinced by the Athlete's argument that without the presence of the 132 Ion, there is a risk of confusion, because the other three ions appear in other substances, such as *Mythoxan Forte* (a nutrition supplement used by the Athlete). As explained by Prof. Thevis, based on his in-depth experience, the 132 Ion does not offer any advantage in identifying Meldonium over other, more abundant product ions.

92. Third, the Panel rejects the Athlete's further argument that detection of all four ions (including the 132 Ion) is required by law, more specifically the 2002 EC Decision, implementing the 96 Council Directive. The minimum identification criteria to be fulfilled in the anti-doping analysis are listed in the WADA Technical Document – TD2021IDCR. According to the WADA TD2021IDCR, at least two diagnostic ions shall be identified when using multiple-stage mass spectrometry. These minimum criteria were fulfilled in the Athlete's case. European (case) law has no further bearing for anti-doping testing requirements. The 96 Council Directive relates to testing of animal meat, and it requires the testing of four identification points (IPs) and not four ions. It sets no additional requirements beyond those implemented in the WADA TD2021IDCR for a sample testing in doping laboratories, because it does not apply to anti-doping.

93. In conclusion, the Panel finds that WA has sufficiently established the presence of Meldonium in the Sample. Hence, the Athlete committed an ADRV under Rules 2.1 and 2.2 of the WA ADR.

2. Has the Athlete established that his ADRV was not intentional?

94. The central question in this case is whether the Athlete has established that the ADRV was not intentional.

95. Meldonium is a non-Specified Substance. An ADRV involving a non-Specified Substance is presumed to be intentional, with a basic period of ineligibility of four years, unless the Athlete establishes that the violation was not intentional, in which case the basic period of ineligibility reduces to two years (Rule 10.2.1 (a) of the WA ADR, quoted above at para. 85). The burden of proof to demonstrate lack of intent rests on the Athlete, and the standard of proof is that of balance of probability pursuant to Rule 3.1 of the WA ADR. In other words, for the Athlete to benefit from a reduction of the standard sanction of four years, the Panel must find it more likely than not that the ADRV was not intentional, based on the record before it.

96. A definition of what constitutes an *"intentional"* violation is contained in Rule 10.2.3 of the WA ADR. That definition includes two limbs of intent. The first one is "direct" intent, which is attributed to athletes who have positive knowledge of committing an ADRV. The second one is "indirect" intent, which is attributed to athletes who knew that there

was a significant risk that the conduct might constitute or result in an ADRV and manifestly disregarded that risk.

97. An abundance of CAS jurisprudence exists on the question of how an athlete can prove lack of intent. Before addressing this jurisprudence, which shall guide the Panel in its analysis of the present case, the Panel finds it useful to summarize the facts relevant for the analysis of intent in the present case:

a. The undisputed facts

- It is undisputed that the Athlete was unable to identify the source of Meldonium, *i.e.* that he failed to demonstrate how Meldonium entered his body.
- It is undisputed that the Athlete undertook certain efforts to identify the source of Meldonium. The testing of his supplements at the Turin Laboratory did not trigger any result so that the presence of Meldonium in his system could not be traced back to any of the supplements used by him.
- It is not disputed by WA that the Athlete underwent a hair test, and that such hair test was negative.
- In the weeks before the positive doping test, the Athlete had undergone numerous doping tests, all of which returned negative results, including the following:
    - 4 June 2022 (urine sample)
    - 13 July 2022 (blood sample)
    - 18 July 2022 (urine sample)
    - 30 July 2022 (urine sample)
    - 15 August 2022 (blood sample)
- Blood samples are not tested for Meldonium. Relevantly, no Meldonium was found in the urine samples collected from the Athlete on 4 June 2022, 18 July 2022 and 30 July 2022.
- Regarding excretion periods for Meldonium, WADA issued its last official statement on 11 April 2006 (the "**2016 WADA Statement**"). At that time, limited data existed on the urinary excretion of Meldonium. While the 2016 WADA Statement explained that several studies were underway (at the time) to obtain more data on excretion periods, and while WADA assured that it "*will share these results with its stakeholders when available",* no official update has been provided by WADA since.

b. The Parties' positions

98. The Athlete submits that he did not act with intent. He argues that the concentration of Meldonium found in the Sample was very low (155 ng/ml) and did not have any performance-enhancing effect. He further argues that the low concentration is incompatible with intentional doping, also in light of the negative test results for samples

collected in the weeks before the Doping Control. Considering excretion periods, these samples (including the urine sample collected on 30 July 2022) should have shown high concentrations of Meldonium had the Athlete intentionally doped.

99. Furthermore, the Athlete submits that proof of source is not required to establish that an athlete acted unintentionally under guiding CAS jurisprudence. In his view, the evidence provided by him, when considered in its entirety, constitutes concrete, specific, objective, and persuasive evidence sufficient to demonstrate, on a balance of probabilities, the Athlete's lack of intent.

100. WA submits that although it is theoretically possible for an athlete to establish that an ADRV was not intentional without proving the source of the Prohibited Substance that entered his system, this may only occur in exceptional cases. The Respondent is of the view that the present case is not a difficult, unusual or exceptional case on the facts.

c. The Panel's Findings

101. In theory, unlike for "no fault" or "no significant fault" (Articles 10.5 and 10.6 of the WA ADR and in view of the express wording and requirement within the definitions of such terms), the Athlete does not necessarily need to establish how the substance entered his system in order to claim that the ADRV was not intentional. However, CAS jurisprudence commonly finds that it is very difficult to rebut the presumption of intent without showing how the prohibited substance entered the Athlete's system (see, e.g., CAS 2023/A/9451 & 9455 & 9456; CAS 2023/A/9377; CAS 2021/O/7977). This is confirmed by the official comment to Art. 10.2.1.1 of the 2021 WADA Code, which sets forth that "*it is highly unlikely that […] an Athlete will be successful in proving that the Athlete acted unintentionally without establishing the source of the Prohibited Substance*".

102. To establish the origin of the prohibited substance, it is not sufficient for an athlete to merely protest his or her innocence and suggest that the substance must have entered his or her body inadvertently from a supplement, medicine, or other product (e.g. *Jonathan Taylor*, Assessing Contamination And Thresholds Under The World Anti-Doping Code: An Advocate's View On Lawson v IAAF, 2020). Rather, an athlete must adduce concrete evidence to demonstrate that a particular supplement, medication, or other product that the athlete has taken contained the substance in question (e.g. CAS 2017/A/5248).

103. However, the Panel notes that other CAS awards - notably CAS 2019/A/6313, but also CAS 2016/A/4534, CAS 2016/A/4676, CAS 2016/A/4919 and CAS 2020/A/7579 & 7580 - have found that in *"extremely rare"* cases, an athlete might be able to demonstrate a lack of intent even where he/she cannot establish the origin of the prohibited substance. The CAS 2016/A/4534 award refers to the *"narrowest of corridors"* through which an athlete must pass, and the CAS 2016/A/4676 award states that *"in all but the rarest cases the issue is academic".* In the CAS 2019/A/6313 award, the Panel found "*that the so-called "corridor" must be sufficiently narrow to prevent intentionally doped athletes with a means of evading due sanctions, yet still wide enough to allow unintentionally doped athletes an opportunity to exculpate themselves by means of relevant and convincing evidence."* On the basis of a "*rare set of facts*", the CAS 2019/A/6313 panel dealing with

a food contamination defence found that, although the likelihood that the portion of beef consumed by the Athlete contained any Trenbolone was – in the abstract – small, this was not "*the end of the story*", because the other elements of the Athlete's demonstration of a lack of intent were in fact so overwhelming that the panel concluded that contaminated meat was more likely than not the origin of the Epitrenbolone found in the athlete's body in that specific case (CAS 2019/A/6313). More recent CAS jurisprudence followed a stricter approach, describing the required proof of the origin of the Prohibited Substance to be a "*crucial, almost indispensable element for an athlete to disprove intent*" (CAS 2023/A/9377).

104. Another CAS panel described the need to present compelling evidence in cases where the source of the prohibited substance cannot be established as follows (CAS 2017/A/5248):

> *"*[…] *According to CAS praxis, an athlete should then establish lack of intention with other robust evidence, such as the possibility that the prohibited substance came from a specific product, the athlete's credible testimony, evidence by the athlete's doctors that the athlete had no intent to use a prohibited substance, and the implausibility of a scenario that the athlete intentionally used prohibited substances."*

105. In other words, "[a]*n athlete must provide actual evidence to support his protestations of innocence; he or she must provide "concrete and persuasive evidence establishing such lack of intent on the balance of probabilities"; protestations of innocence, however credible they appear, "carry no material weight in the analysis of intent*" (CAS 2023/A/9451, 9455 & 9456 para. 191.).

106. In the present case, the Athlete has not submitted any direct evidence suggesting the possibility of a contamination scenario. The analysis of his food supplements remained inconclusive. No other potential contamination source has been identified by him. Rather, the Athlete's (indirect) referral to a potential contamination of his urine primarily rests on the argument of an allegedly low concentration of Meldonium in the Sample, and the fact that his samples collected four days and 19 days before the positive test were negative. The Athlete argues that intentional doping would have entailed the intake of a normal dosage of Meldonium, which is one capsule (sold under the name "mildronate") containing 500mg of Meldonium. The Athlete further argues that his testing history renders such scenario of the (intentional) intake of a full dosage of Meldonium, triggering the result found in the 19 August 2022-sample, impossible: considering the relevant excretion periods for Meldonium, to find a concentration of 155 ng/ml in a urine sample means (in the Athlete's view) that a normal dosage of Meldonium would require to have been consumed much earlier than 30 July 2022. In that case, the 30 July 2022-sample would have shown high levels of Meldonium (which it did not, because it was negative). On the other hand, the Athlete considers a scenario in which he took a capsule of mildronate after the (negative) 30 July 2022-sample just as inexplicable: because of the slow excretion periods for Meldonium, the Athlete argues that the concentration of Meldonium in the 19 August 2022-sample would have been much higher had he taken a normal dosage of 500mg (contained in one capsule) after 30 July 2022.

107. In support of his reliance on his testing history, allegedly excluding an intentional doping

scenario, the Athlete refers to the 2016 WADA Statement, which declared (at the time) that only limited knowledge exists on the excretion periods for Meldonium. The Athlete concludes that, based on the 2016 WADA Statement, the Panel shall assume – for his benefit – slow excretion periods supportive of his testing history-argument.

108. The starting point for the Panel's analysis on whether the Athlete passed through the "*narrowest of corridors*" is that it has not been presented with any potential contamination source. Based on the CAS jurisprudence summarized above, this fact alone sets a high hurdle for the Athlete to demonstrate, on the balance of probabilities, and based on cogent and compelling evidence, that he did not act with (indirect) intent.

109. Therefore, the Panel has to assess whether the Appellant's argument that the assumed intentional administration of Meldonium is incompatible with his testing history (including the positive test) suggests, on the balance of probabilities, that the ADRV was not intentional. While the Athlete's explanation does not appear implausible *per se*, the majority of the Panel is not convinced that the Athlete's explanation renders an unintentional ADRV more likely than an intentional doping scenario, for the reasons detailed below.

110. The consumption of customary dosages of medications sold in pharmacies is not a mandatory premise for intentional doping, as suggested by the Appellant. To the contrary: intentional cheaters may try to avoid positive doping tests by dividing the intake of a prohibited substance into multiple, smaller dosages to stay below the applicable reporting levels during testing. Taking full dosages entails a high risk of detection, given that athletes do not know when and how often they are tested, particularly at the verge of important competitions such as the Event in this case. The Athlete's central premise that a full dosage (of 500 mg Meldonium) must be the reference point for analysing his testing history is, therefore, without avail. As a result, the majority of the Panel is satisfied that the Panel can leave the question as to whether the intake of a full dosage of Meldonium after 30 July 2022 can trigger the concentration found in the 19 August 2022-sample (confirmed by Prof. Saugy, rejected by Prof. Ghidoni) undecided.

111. Rather, the Panel must look into the hypothetical scenario of multiple smaller doses, which would be more realistic to assume for a true cheater and would thus corroborate intention. Based on the (expert) evidence before it, the majority of the Panel finds that in that scenario, the Athlete's explanation for unintentional doping (through contamination) is not more likely than an intentional doping scenario, in which an athlete deliberately consumes multiple small portions of a prohibited substance shortly before a major event in an attempt to enhance his or her performance:

112. First, both Prof. Thevis and Prof. Saugy disagreed with the Athlete's argument that the concentration of Meldonium found in the Sample was particularly low. Prof. Saugy explained that the value of 155 ng/ml, which is an estimation (with a potential 20% variation), is wide above the reporting limit for Meldonium (100 ng/ml) and even wider above the detection limit.

113. Second, the Appellant has not provided scientifically robust evidence that the detected

concentration levels are not performance-enhancing. To the contrary, a study lead by Prof. Thevis in 2015, which was referred to by the Appellant himself, suggests that small doses of Meldonium ingested daily for a period of 10-14 days before a competition, have a performance-enhancing effect. The "small doses" Prof Thevis referred to were 2g per day, which amounts to 0.4% of one capsule of mildronate.

114. Third, the positive sample was collected on the day of the Athlete's participation in the finals of the steeplechase race at the Event (where he won the silver medal). As a result, it is not excluded that Meldonium gave him an advantage, and that the substance was administered for precisely that purpose.

115. Fourth, the Athlete's reliance on the 2016 WADA Statement is of no avail either. While this Statement demonstrates that scientific knowledge on excretion periods for Meldonium was very limited at the time, it is incomprehensible how this fact should benefit the Athlete's case. The 2016 WADA Statement does not discredit the assumption that multiple small doses of Meldonium can plausibly explain the Athlete's positive test.

116. In conclusion, the majority of the Panel finds that the Athlete's contamination scenario, which lacks reference to any possible contamination source, is not superior over plausible scenarios of intentional doping, potentially carried out precisely around the time of one of the most important competitions of the year. Furthermore, the Athlete carries the burden to prove that his argued contamination scenario is more likely than not to be the cause of the positive test, even in the absence of any "competing" or alternative scenario, and WA is not required to put forward and demonstrate the likelihood or supremacy of any alternative scenario. The Athlete has not demonstrated, on the balance of probabilities, lack of intent and is, therefore, presumed to have acted intentionally.

3. What Is the Appropriate Sanction to be Imposed on the Athlete?

117. The third question that the Panel has to answer concerns the consequences of the ADRV committed by the Athlete. Pursuant to Article 10.2.1 of the WA ADR, the standard sanction for an intentional ADRV is four years.

118. A four-year period of ineligibility could potentially have a career-ending effect on an athlete in the Appellant's position. Nevertheless, the applicable rules, as interpreted and concretized by CAS jurisprudence, do not permit another outcome. The Athlete is not a minor and an athlete's career perspectives do not constitute a criterion for the determination of the appropriate sanction. In addition, the comment to Article 10.6.2 of the WA ADR clearly sets out that the benefit of a reduction of the sanction due to "no significant fault" or "negligence" is not available to ADRVs involving intent. This is all the more true for the exception of "no fault or negligence" enshrined in Article 10.5 of the WA ADR, which is not applicable to intentional ADRVs either (see also CAS 2023/A/9525, para. 96).

119. Pursuant to Article 10.2.1 of the WA ADR, the period of Ineligibility started on the date of the Appealed Decision. The Athlete is to receive credit for the period of the Provisional Suspension served from 7 September 2022 onwards.

120. All the Athlete's results obtained at the Event and since 19 August 2022 must be disqualified pursuant to Rules 9, 10.1 and 10.10 of the WA ADR with all resulting consequences including the forfeiture of any titles, awards, medals, points and prize and appearance money.

XI. COSTS

(…).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by X. on 3 January 2024 against World Athletics with respect to the decision rendered on 5 December 2023 by the Disciplinary Tribunal of World Athletics is dismissed.

2. The decision rendered on 5 December 2023 by the Disciplinary Tribunal of World Athletics is confirmed.

3. (…).

4. (…).

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

Seat of arbitration: Lausanne, Switzerland
Date: 24 March 2025

THE COURT OF ARBITRATION FOR SPORT

Annett Rombach
President of the Panel

Michele A.R. Bernasconi
Arbitrator

Ken E. Lalo
Arbitrator