CAS 2023/A/9515 Russian Anti-Doping Agency (RUSADA) v. Valeria Zhabbarova

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Ms. Annett Rombach, Attorney-at-law, Frankfurt am Main, Germany

in the arbitration between

Russian Anti-Doping Agency (RUSADA), Moscow, Russia

Represented by Mr. Graham Mark Arthur, Liverpool, United Kingdom

Appellant

and

Valeria Zhabbarova, Mytischi, Russia

Represented by Ms. Anna Antseliovich and Mr. Artem Patsev of CleverConsult, Moscow, Russia

Respondent

I. THE PARTIES

1. The Russian Anti-Doping Agency ("**RUSADA**" or the "**Appellant**") is the National Anti-Doping Organisation in Russia and, as a signatory to the World Anti-Doping Code ("**WADC**"), has the responsibility for the implementation of the Anti-Doping Rules of the Russian Federation (the "**ADR**"). Its registered office is in Moscow, Russia.

2. Ms. Valeria Zhabbarova (the "**Athlete**" or the "**Respondent**") is a national-level biathlete of Russian nationality, born on 18 June 2002.

3. The Appellant and the Respondent are collectively referred to as the "**Parties**".

II. FACTUAL BACKGROUND

4. On 1 June 2018, the then 15-year old Athlete – represented by her parents – allegedly signed a "*Declaration against doping in sport*" (the "**2018 Athlete Declaration**"), which reads as follows:

> *"I acknowledge that I undertake to comply with the All-Russian Anti-Doping Rules, and confirm that I will comply with all provisions of the Rules (including amendments to them), as well as other documents adopted by the Russian Ministry of Sports aimed at fighting doping in sports, as well as Prohibited Lists and International Standards, other documents adopted by the World Anti-Doping Agency.*
>
> *I acknowledge the powers of the Federation and/or the Russian Anti-Doping Organization under the Russian Anti-Doping Rules to apply, manage results and impose sanctions in accordance with the Rules.*
>
> *I have read the text of this Declaration and took it into consideration.*
>
> *I put my signature voluntarily at the request of the Federation."*

5. The Respondent challenges the authenticity of the signatures.

6. On 15 March 2021, the Athlete was subjected to an in-competition doping control. A urine sample was taken from the Athlete, the analysis of which revealed the presence of Meldonium, a prohibited substance under the WADA List of Prohibited Substances. The Athlete was charged with an Anti-Doping Rule Violation ("**ADRV**") in accordance with Article 4.1 of the 2015 Russian Anti-Doping Rules (the "**2015 ADR**").

7. On 18 August 2022, a hearing was held before the Appellant's Disciplinary Anti-Doping Committee Panel ("**DADC**").

8. On 29 September 2022, the DADC delivered its decision (the "**DADC Decision**" or "**Appealed Decision**"), pursuant to which the Athlete was reprimanded without the imposition of a period of ineligibility. The DADC Decision contained the following information with respect to the Parties' appeal right:

> *"This decision can be appealed within 21 days pursuant to Chapter XV of the All-Russian Anti-Doping Rules adopted by the order of the Ministry of Sport of the Russian Federation of June 24, 2021 No. 464."*

9. The "*All-Russian Anti-Doping Rules adopted by the order of the Ministry of Sport of the Russian Federation of June 24, 2021 No. 464"* (the "**2021 ADR**") provided, in its Article15.2.2, for the jurisdiction of the "National Appeal Body" for appeals of national-level athletes.

10. On 20 October 2022, RUSADA appealed the DADC Decision to the National Center for Sports Arbitration ("**NCSA**") seated in Moscow, Russia. On 12 January 2023, a hearing was held before the NCSA.

11. On 12 January 2023, the NCSA found that it had no jurisdiction to hear the appeal ("**NCSA Decision**"). The grounds for the NCSA Decision were delivered to the Parties on 1 March 2023. In relevant part, the NCSA Decision reads as follows:

> *"The Declaration on the fight against doping in sport of 01.06.2022 is not signed by the Athlete and, therefore, does not contain any will and create any Athlete's right and duties.*
>
> *The NCSA is a standing appeal body created in accordance with the Arbitration Law and has had the right to fulfil its duty since 25th April 2019.*
>
> *The Declaration on the fight against in sport of 01.06.2016 had been signed before the establishment of the NCSA and cannot confirm the Athlete's will for disputes resolutions by the Center."*

12. RUSADA now appeals the DADC Decision to the CAS, after the NCSA declined its jurisdiction over the Appeal.

III. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

13. On 22 March 2023, the Appellant filed its Statement of Appeal with the Court of Arbitration for Sport ("**CAS**") against the Appealed Decision, pursuant to Articles R47 *et seq.* of the Code of Sports-related Arbitration (the "**CAS Code**") (the "**Appeal**"). The Appellant requested the appointment of a sole arbitrator and English as the language of the proceedings.

14. On 3 April 2023, the CAS Court Office acknowledged receipt of the Appellant's Statement of Appeal, and invited the Respondent to indicate whether she agrees to the appointment of a Sole Arbitrator.

15. On 24 April 2023, the CAS Court Office informed the Parties that no answer had been received from the Respondent regarding the number of arbitrators, and that it would be for the President of the CAS Appeals Arbitration Division, or her Deputy, to decide on the number of arbitrators.

16. On 25 April 2023, the Appellant requested an extension of the time limit for filing its Appeal Brief until 19 May 2023. The Respondent was invited by the CAS Court Office

to comment on the extension request.

17. On 26 April 2023, the Respondent filed a "*Motion for bifurcation and to terminate the procedure*", requesting the bifurcation of the proceedings due to the (allegedly) untimely filing of the Appellant's Statement of Appeal, and the suspension of the procedural time limits until the decision on the bifurcation would be made. On the same date, the CAS Court Office informed the Parties that all procedural time limits were suspended until further notice from the CAS Court Office.

18. On 3 May 2023, the Appellant informed the CAS Court Office that it agreed to the bifurcation of the proceedings, with the issues of jurisdiction and admissibility to be decided separately and preliminarily.

19. On 9 May 2023, on behalf of the President of the Appeals Arbitration Division, the CAS Court Office invited the Parties to file comments on the issue of jurisdiction and admissibility ("**Jurisdiction & Admissibility Submission**") by no later than 18 May 2023.

20. On 12 May 2023, pursuant to Article R54 of the CAS Code, and on behalf of the Deputy 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:

    Sole Arbitrator: Ms. Annett Rombach, Attorney-at-law, Frankfurt am Main, Germany.

21. On 31 May 2023, after the granting of respective deadline extensions, the Parties duly filed their respective Jurisdiction & Admissibility Submissions.

22. On 27 June 2023, the CAS Court Office, on behalf of the Sole Arbitrator, requested the Appellant to provide certain documents, including:

    - the notification of the adverse analytical finding and provisional suspension;
    - the notice of charge; and
    - the 2018 Athlete Declaration (cited above at para. 4) (the "**Requested Documents**").

23. On 30 June 2023, the Respondent submitted a challenge of the authenticity of the 2018 Athlete Declaration (referring, however, to a signing date in 2016).

24. On 5 July 2023, the Appellant provided copies of the Requested Documents. On the same day, the Appellant submitted that the 2018 Athlete Declaration had been referred to at various points as being dated 1 June 2016 and that the correct date is, in fact, 1 June 2018, as evidenced in the document.

IV. THE POSITIONS OF THE PARTIES ON JURISDICTION AND ADMISSIBILITY

25. The following outline of the Parties' positions is illustrative only and does not necessarily comprise every submission advanced by the Parties. The Sole Arbitrator

confirms, however, that she 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

26. The Appellant submits the following in substance:

- The WADC requires the parties to a doping dispute to have a right to appeal the decisions of the first instance body. Such appeal right was denied for the Parties when the NCSA (wrongly) declined its jurisdiction. Because the Athlete agreed to be bound by the 2015 ADR, providing for an appeal right to CAS, the CAS has jurisdiction over the present dispute.

- An appeal right is a consistent feature of the underlying principles and rules of the WADC. Each party, including the Athlete herself, should have a right to appeal the decisions of the first instance body. Therefore, the appeal right available to RUSADA with respect to the Appealed Decision must be capable of being exercised.

- The time limit for filing the Statement of Appeal should run from the date of the NCSA Decision, *i.e.* from 1 March 2023. Neither RUSADA nor the Athlete had any indication that an appeal needed to be brought before the CAS, based on the information on appeal rights provided in the Appealed Decision.

- There is no further possibility to review the NCSA Decision on the merits, in case the International Biathlon Union ("**IBU**") or WADA decided to appeal the NCSA Decision in compliance with the applicable ADR, because the NCSA has only ruled on jurisdiction and the only other option for WADA or the IBU would be to ask the NCSA to reconsider its decision, which is, however, rather unlikely. Therefore, the date of notification of the NCSA decision is the first day of the 21-day deadline for the appeal.

- The effect of the NCSA Decision is not to deny either RUSADA or the Athlete their right to appeal. It would be artificial to argue that once the NCSA Decision was adopted, no effective appeal right can be realized anymore before the CAS, due to the fact that the appeal must have been brought within 21 days from the date of the Appealed Decision.

- The fact that the NCSA Decision wrongly declined its jurisdiction based on the analysis of what constitutes an arbitration agreement underscore why it is essential that this appeal be heard by the CAS.

27. The Appellant submits the following request for relief regarding jurisdiction and admissibility of the Appeal:

> *"RUSADA respectfully requests that the Sole Arbitrator:*
>
> *a) Affirms that CAS has jurisdiction to resolve the Appeal made in relation to Decision No. 150/2022 dated 29 September 2022 as per Rule 55(5);*

b) Affirms that CAS that the Appeal made in relation to Decision No. 150/2022 dated 29 September 2022 has been made in time as per Rule 49;

c) Gives directions as to the preparation and service of Appeal and Response Briefs in relation to the Appeal".

B. The Respondent's Position

28. The Respondent submits the following in substance:

- The 2015 ADR is not applicable in this case based on the *tempus regit actum* principle, because at the time the Appealed Decision was challenged, the 2021 ADR was in place. But even if the 2015 ADR were applicable here, the 21-day time limit for appeal to the CAS had expired, because the time limit to challenge the Appealed Decision began to run upon notification of the Appealed Decision. The principle of legal certainty warrants that time limits for an appeal cannot run indefinitely.

- Time limits may be reinstated only in the rare case when the appellant files an appeal before an incompetent state court. However, for the reinstatement, good faith on the part of the appellant is required. Filing an appeal before the NCSA without a valid arbitration agreement is the result of bad legal representation or an obvious mistake by the Respondent and should be taken as *"abusive recourse to the (obviously) not competent … court"*.

- It was RUSADA which drafted both the 2015 and the 2021 ADR. Hence in case of doubt, these legal frameworks must be interpreted against RUSADA, based on the principle of *contra proferentem.*

- The only possibility to challenge the NCSA Decision was lodging an appeal before the Russian state courts, which the Respondent failed to do.

- If the Appellant believed that the CAS is the competent forum for appealing the DADC Decision, it should have filed its appeal to CAS by no later than 20 October 2022.

- Furthermore, the 2021 ADR puts an obligation on the Appellant to send a notice to the parties entitled to appeal, whereas no such notice was received from the Appellant before filing its Statement of Appeal.

29. The Respondent submits the following request for relief regarding jurisdiction and admissibility of the Appeal:

> "*The Respondent hereby maintains her Motion of 26 April 2023 to terminate this proceeding based on the clear non-timely filing of the RUSADA's Statement of Appeal (Art. 15.2.3.3 of the ARADR and Art. R49 of the CAS Code) for the reasons set out therein and also in this Submission.*"

V. JURISDICTION

30. As a preliminary matter and based on the Parties' respective requests, the Sole Arbitrator determined that she would bifurcate the proceedings and consider in the first stage whether the CAS has jurisdiction over the appeal lodged by the Appellant against the DADC Decision, and whether the appeal is admissible. Based upon the written submissions and evidence provided by the Parties, including the Jurisdiction & Admissibility Submissions, the Sole Arbitrator resolved that she was sufficiently well informed to be able to determine these preliminary matters without the necessity of a hearing.

31. 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 the CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body*".

32. The "decision of a federation" at issue in the present case is the DADC Decision. This is the decision appealed by RUSADA. RUSADA argues that the CAS has jurisdiction over the Appeal under Article 13.2.2.1. of the 2015 ADR, pursuant to which appeals against decisions involving "Other Athletes", *i.e.* those who are not International-Level Athletes (like the Respondent), must be brought exclusively to the CAS:

> *"13.2.1 Appeals Involving International-Level Athletes or International Events*
>
> *In cases arising from participation in an International Event or in cases involving International-Level Athletes, the decision may be appealed exclusively to CAS.*
>
> *13.2.2. Appeals Involving Other Athletes or Other Persons*
>
> *13.2.2.1. In cases where Article 13.2.1 is not applicable, the decision may be appealed exclusively to CAS."*

33. RUSADA is of the opinion that the 2015 ADR applies in the present case, because the 2015 ADR was the contemporaneous edition of the All-Russian Anti-Doping Rules when the Athlete signed (through her parents) the 2018 Athlete Declaration. In that document, she acknowledged, *inter alia*, to "*undertake to comply with the All-Russian Anti-Doping Rules"* and all its provisions, "*including any amendments to them*". The Sole Arbitrator notes that this undertaking contains a dynamic reference incorporating future versions ("*any amendments*") of the ADR, including, principally, the 2021 ADR. The 2021 ADR replaced the Athlete's appeal right to the CAS with an appeal right exclusively to the NCSA.

34. The Respondent alleges that neither her nor her parents signed the 2018 Athlete Declaration, which means that – absent consent – the Athlete is not bound by that document. However, the document submitted into evidence by RUSADA not only contains – in handwriting – the Athlete's name, but also a signature, allegedly belonging

to one of her parents.

35. Allegations of forgery or falsification require cogent evidence. Principally, it is for the party alleging that the signature is a forgery to request an expert opinion to verify authenticity, or initiate proceedings before competent penal authorities, or analyze a copy of the challenged document on its face, including by offering testimony provided by witnesses having attended the circumstances of its signature (see CAS 2021/A/8292; see also CAS 2015/A/408). In the absence of such evidence, the authenticity of the signature must be presumed.

36. In the present case, the Respondent has not submitted any (documentary, expert or witness) evidence to corroborate the alleged forgery of the signature. The respective section of the declaration providing for the signature of the Athlete's guardian includes a signature which RUSADA alleges belongs to one of the Athlete's parents. There is no indication that this signature was forged, or that it is otherwise invalid (e.g. because it stems from another person). Therefore, the Sole Arbitrator finds that the authenticity of the 2018 Athlete Declaration can be presumed for the purposes of these proceedings.

37. The next question is which version of the ADR governs the issue of jurisdiction. Pursuant to the legal principle of *tempus regit actum*, procedural matters of a case are governed by the regulations in force at the time of the procedural act in question. Conversely, the substantive aspects of an alleged anti-doping rule violation shall be governed by the version of the applicable rules that have been in force at the time of the alleged violation (e.g. CAS 2016/O/4469). The issue of jurisdiction for the Appeal is a procedural issue for which the applicable legal framework at the time of rendering the Appealed Decision applies. In the present case, this is the 2021 ADR.

38. The 2021 ADR refers to the NCSA as the applicable appeal forum for national-level athletes. However, at the time the Athlete signed the 2018 Athlete Declaration, the NCSA had not even been in operation. In fact, as per the uncontested findings in the NCSA Decision (para. 73), the NCSA is a standing appeal body created in accordance with the Russian Arbitration Law, and has been in duty only since 25 April 2019 (whereas the Athlete signed the 2018 Athlete Declaration already on 1 June 2018).

39. The crucial question is whether the consent given by the Athlete on 1 June 2018 to the appellate jurisdiction of the CAS in doping matters includes the later replacement of the CAS by another arbitration court, in this case the NCSA. The NCSA Decision denied a respective extension of the Athlete's consent, and the Sole Arbitrator agrees with this finding, for the following reasons:

40. The NCSA is a true arbitration court, and an agreement to arbitrate principally requires the Parties' clear and unequivocal consent to the *essentialia negotii* of the chosen arbitration. When the Respondent signed the 2018 Athlete Declaration, she consented to the appellate jurisdiction of the CAS, not to any other arbitration. The NCSA is an institution that is fundamentally different from the CAS. It is seated in Moscow, Russia, and it has its own arbitration rules different from those applied by the CAS. Importantly, the NCSA does not have a legal aid system similar to CAS's. Legal aid is, however, a crucial protective mechanism benefitting athletes who (have to) consent to CAS

arbitration as a precondition for the professional exercise of their sport within the regulatory framework of sports federations.

41. The Respondent could not expect, when she signed the 2018 Athlete Declaration providing for an appeal right against decisions of the DADC to the CAS, that she would be placed retroactively under a new adjudication system not even existing when she signed the form. The extension of an Athlete's consent to arbitrate to new and unknown *fora* must also fail in light of the fact that sports arbitration – in the relationship between athletes and federations, where the latter exercises disciplinary power over the former – usually qualifies as "forced" arbitration. While the Swiss Federal Tribunal principally accepted the legitimacy of "forced" arbitration agreements in the sports sector (SFT, 4A_600/2020, para. 5), any interpretation of such arbitration agreements must consider that the Athlete usually has no, or only a rather limited, say in the content of the arbitration agreement.

42. As a result, the Athlete's consent to the applicability of the ADR, including any future amendments, is not a consent to replace the CAS with a different arbitration institution that has not even been in place when the consent was given. A new arbitration agreement is required to establish the jurisdiction of a new appeal forum. RUSDA has failed to prove that the Athlete accepted the NCSA's jurisdiction through a new declaration. Therefore, the NCSA Decision correctly denied its jurisdiction.

43. As a result, while the 2021 ADR is principally applicable *rationae temporis* to procedural issues, the jurisdiction of the CAS for appeals in doping matters established in the 2015 ADR remained in place. Therefore, the CAS has jurisdiction to decide the present dispute.

VI. ADMISSIBILITY

44. The question of whether RUSADA's Statement of Appeal was filed in time is a matter of the admissibility of the appeal, not a matter of jurisdiction (see, e.g., CAS 2019/A/6294, para. 82).

45. Article R49 of the CAS Code reads 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. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties."*

46. Article 13.6 of the 2015 ADR provides that:

"13.6. Time for Filing Appeals to CAS

The time to file an appeal to CAS shall be twenty-one days from the date of receipt of the decision by the appealing party."

47. Hence, the time limit for appealing the DADC Decision to the CAS is 21 days.

48. The DADC Decision was notified to the Parties on 29 September 2022. RUSADA filed its Statement of Appeal to the CAS on 22 March 2023, *i.e.* outside the 21-day time window if it is assumed that the date of notification of the DADC Decision is the relevant starting date. However, RUSADA argues that the time limit for the Appeal shall run only as from the notification of the NCSA Decision, which took place on 1 March 2023. The Respondent opposes RUSADA's interpretation and argues that the time limit for the Appeal began on 29 September 2022, as this is the date on which the Appealed Decision was notified. In the Respondent's view, the Appellant cannot benefit from its erroneous choice of a wrong forum for lodging its Appeal.

49. The issue behind the Parties' dispute on when the time limit for the Appeal began to run is whether a (timely) appeal before a wrong forum may suspend the time limit, with the effect that a new time limit begins to run upon the incompetent forum's decision of lack of jurisdiction.

50. The CAS Code does not contain any rules related to the reinstatement or suspension of the time limit for the appeal. However, Swiss law, as the *lex arbitri* applicable in this case, contains a respective rule for civil proceedings. Article 63 of the Swiss Code of Civil Procedure ("**SCCP**") reads as follows:

"Art. 63 Pendency where the court has no jurisdiction or the procedure is incorrect

If a submission that has been withdrawn or rejected due to lack of jurisdiction is filed again with the competent conciliation authority or court within one month of withdrawal or the declaration of non-admissibility, the date of the first filing is deemed to be the date of pendency."

51. Article 63 of the SCCP replaced three rules with a similar content, *viz.* Article 139 of the Swiss Code of Obligations ("**SCO**")[1], Article 34 (2) GestG (*Bundesgesetz über den Gerichtsstand*)[2], and Article 32 (3) SchKG (*Bundesgesetz über Schuldbeitreibung und Konkurs*)[3]. Before the inception of Article 63 SCCP, two CAS panels have applied Article 139 SCO analogously to the time limit for an appeal in CAS proceedings (see

[1] Convenience translation: "*If the action or the objection has been dismissed because the judge … before whom the matter has been brought lacks jurisdiction, then a new time limit of 60 days to assert the claim shall begin if the limitation period has in the meantime expired*."

[2] Convenience translation: "*If an action withdrawn or dismissed for lack of local jurisdiction is resubmitted to the competent court within 30 days, the date of the first submission shall be deemed to be the date on which the action was filed.*"

[3] Convenience translation: "*If an action under this Act has been withdrawn by the claimant due to lack of jurisdiction of the court or dismissed by judgment, a new period for bringing an action of the same duration shall commence*."

CAS 2004/A/953, para. 52 *et seq.*; CAS 2008/A/1528 & 1546, para. 7.12), emphasizing that the time limit for filing an appeal to CAS is a preclusion period, for which Swiss jurisprudence has considered it justified to apply the rule in order to avoid excessive formalism.

52. In CAS 2008/A/1528 & 1546 (para 7.12), the reasons for the analogous application have been explained as follows:

> *"The intent and purpose of Article R49 of the Code and of Art. 284 of the ADR is so that the question of whether a measure by an association is legally effective or ineffective can be clarified quickly in the interests of legal certainty. After expiry of the time limit the parties are supposed to be able to have faith that the lawfulness of the measure taken by the association will no longer be called into question. However, there is - in principle - no room for any such faith meriting protection where a party has clearly indicated that it does not accept the measure taken by the association - even if it submitted this before the wrong forum. This, at any rate, applies if the course taken by the party challenging the measure is not obviously wrong or was not taken for reasons which must obviously be disallowed."*

53. While the CAS has introduced compelling arguments speaking in favor of the (analogous) applicability of Article 63 Swiss CCP in disciplinary proceedings involving an appeal to a wrong arbitration institution, the issue can ultimately be left undecided here, because under the circumstances of the present case, RUSADA *per se* cannot benefit from the effects of Article 63SCCP, even if the provision was deemed applicable, for the following reasons:

54. RUSADA itself incepted the appellate track which it wrongly applied in the present case. It was RUSADA which enacted the 2015 ADR (with an appeal track to the CAS), and it was RUSADA which replaced the CAS with the NCSA in the 2021 ADR. As the national anti-doping organization in Russia, it is also RUSADA's responsibility to ensure that athletes submit to the anti-doping code, including its procedural rules for disciplinary proceedings, and that such submission to the rules is regularly updated. As a result, RUSADA is in possession of all relevant information for determining which version of the ADR applies in doping proceedings, and which is the correct appellate track in each case. RUSADA knew that the Athlete had not signed any declaration submitting to an appeal instance other than CAS. It must have been clear to RUSADA that a general catch-all clause referring only generically to future editions of the ADR is no consent to submit to an entirely new arbitration system before a different arbitral tribunal in a different country. In the present case, RUSADA misapplied its own rules. In other words, it mismanaged its own internal association affairs. This is not the sort of protection Article 63 SSCP aims to provide. The purpose of Article 63 SSCP is to grant parties acting in good faith extraordinarily a legal benefit ("*Rechtswohltat*") to avoid unequitable consequences ("*unbillige Konsequenzen*") arising out of a party's wrongful application of procedural statutes (*Droese* in: Oberhammer/Domej/Haas, Schweizerische Zivilprozessordnung [3rd ed. 2021], Art. 63 para. 1). A party who fails to control and correctly apply its own internal rules cannot rely on such extraordinary benefit, given that other parties can legitimately trust in the fact that an association

knows its own rules and applies them correctly.

55. The fact that the DADC Decision contained wrong information about the appellate track is no excuse for RUSADA. The DADC is an internal disciplinary body established by RUSADA. Therefore, RUSADA is responsible for the DADC's acts and mistakes. RUSADA's further argument that the dismissal of its Appeal in these proceedings would deprive it of its right to challenge the DADC's decision is misconceived. RUSADA had any right to appeal this decision – to the CAS – but it had to do so within the applicable time limit.

56. In CAS 2008/A/1528 & 1546, where the Appellant benefited from an analogous application of Article 139 SCO, the situation was different, because the Appellant – the Italian Olympic Committee – appealed under the regulatory framework of a different association, the Italian Cycling Federation ("**FCI**"), and was not responsible for FCI's Rules. That case resembled situations which the Swiss legislator has in mind under Article 63 SCCP.

57. As a result of all of the above, RUSADA's Appeal was filed belatedly. It is, therefore, inadmissible.

VII. COSTS

(…).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 22 March 2023 by Russian Anti-Doping Agency against the decision of the Disciplinary Anti-Doping Committee of the Russian Anti-Doping Agency dated 29 September 2022 is inadmissible.

2. (…).

3. (…).

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

Seat of arbitration: Lausanne, Switzerland
Date: 16 January 2025

THE COURT OF ARBITRATION FOR SPORT

Annett Rombach
Sole Arbitrator