CAS 2023/A/9916 International Weightlifting Federation (IWF) v. Vicky Schlittig
CAS 2023/A/9966 World Anti-Doping Agency (WADA) v. International Weightlifting Federation (IWF) & Vicky Schlittig

ARBITRAL AWARD

rendered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President:	Ms Carine Dupeyron, Attorney-at-Law in Paris, France
Arbitrators:	Mr Ken E. Lalo, Attorney-at-Law in Tel Aviv, Israel
	Mr Romano F. Subiotto KC, Solicitor-Advocate in London, United Kingdom, and Avocat in Brussels, Belgium

In the arbitration between

International Weightlifting Federation, **Switzerland**
Acting through the the International Testing Agency, Switzerland, Represented by Ms Dominique Leroux-Lacroix, Head of Legal Affairs, and Ms Ayesha Talpade, Senior Legal Counsel at the International Testing Agency, Lausanne, Switzerland

- **Appellant in CAS 2023/A/9916 (First Appellant) / First Respondent in CAS 2023/A/9966 -**

and

World Anti-Doping Agency, **Canada**
Acting through Mr Ross Wenzel, WADA General Counsel, represented by Messrs Nicolas Zbinden and Michael Kottmann, Attorneys-at-law at Kellerhals Carrard, Lausanne, Switzerland

- **Appellant in CAS 2023/A/9966 (Second Appellant) -**

v.

Ms Vicky Annett Schlittig, **Germany**
Represented by Mr Steffen Lask Attorney-at-law, ECOVIS ERP Rechtsanwälte, Berlin, Germany

- **Respondent in CAS 2023/A/9916 / Second Respondent in CAS 2023/A/9966 (the Respondent) –**

I. THE PARTIES

1. International Weightlifting Federation ("IWF" or the "First Appellant") is the world governing body for the sport of weightlifting based in Lausanne, Switzerland. As a Signatory of the WADA Code, the IWF has enacted the IWF Anti-Doping Rules ("IWF ADR"). The IWF is represented in this proceeding by the International Testing Agency ("ITA"), which is the world-leading body for delivering independent and transparent anti-doping programmes and to which the IWF has delegated the implementation of its anti-doping programme.

2. The World Anti-Doping Agency (the "WADA" or the "Second Appellant") is an international independent agency, whose key activities are to conduct scientific research, to develop anti-doping capacities, and to monitor the application of the World Anti-Doping Code (WADA Code). WADA has its registered seat in Lausanne, Switzerland, and its headquarters in Montreal, Canada.

3. Vicky Annett Schlittig (the "Athlete" or the "Respondent") is a weightlifter from Germany born on 10 April 2003. The Athlete is considered as an international level Athlete within the meaning of the IWF ADR and is a member of Bundesverband Deutscher Gewichtheber e.V.

4. The First and Second Appellants are referred to collectively as the "Appellants". The Appellants and the Respondent are referred to individually as a "Party" and collectively as the "Parties".

II. FACTUAL BACKGROUND

5. Below is a summary of the relevant facts and allegations, as established on the basis of the Parties' written submissions and the evidence examined in the course of these arbitration proceedings, which provides a synopsis and overview of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted in the present proceedings, it refers in the present Award only to the submissions and evidence it considers necessary to explain its reasoning.

6. Ms Schlittig is a weightlifting athlete from Germany, who has been competing in elite international weightlifting events since 2019, and who was an international-level athlete at the time of the Anti-Doping Rule Violation ("ADRV"). She was neither a Minor, Protected Person nor a Recreational Athlete within the meaning of the IWF ADR.

7. On 26 September 2021, the Athlete participated in the 2021 IWF European Junior Championships held in Rovaniemi, Finland (the "Competition").

8. During the Competition, the Athlete was subject to a doping control conducted under the authority of the IWF. She provided partial sample n°286811 at 20:59, partial sample n°289155 at 21:28 and sample n°0054019 at 21:51.

9. The Athlete declared on her Doping Control Form ("DCF") associated with sample n°0054019 that she had taken the following medications or supplements in the seven days prior to her doping control: "*Birth control, creatin, Magnesium, Ibuprofen*". She also confirmed on her DCF

that the sample collection was undertaken in accordance with the relevant WADA International Standards for Testing and Investigations ("ISTI").

10. A total of 72 anti-doping tests were conducted during the Competition including 9 In-Competition tests on female athletes (including Ms Schlittig) on 26 September 2021.

11. The A and B samples n°0054019 for the Athlete were transferred for analysis to the WADA-accredited laboratory in Cologne, Germany (the "Cologne Laboratory").

12. On 4 November 2021, the Cologne Laboratory reported an Adverse Analytical Finding ("AAF") for the prohibited steroid dehydrochloromethyl-testosterone ("DHCMT") in A-sample n°0054019. Such substance is prohibited at all times and is classified as a non-specified substance under "S1. Anabolic Androgenic Steroid" ("AAS") of the 2021 WADA Prohibited List.

13. Upon inquiry, the Cologne Laboratory informed the ITA that the roughly estimated concentration of DHCMT in the A-sample n°0054019 was about 0.6 ng/mL.

14. Upon receipt of the AAF, the ITA conducted the Initial Review of the result under Article 7.2 of the IWF ADR and Article 5.1.1 of the International Standards for Results Management ("ISRM") and found that no applicable Therapeutic Use Exemption ("TUE") had been or was in the process of being granted to the Athlete either by the IWF or the National Anti-Doping Agency ("NADA"). The Athlete had also confirmed that she did not have a TUE when she provided the urine sample. Moreover, the ITA found that, based on the review of the documentation, there was no apparent departure from the ISTI or the International Standard for Laboratories ("ISL") that could undermine the validity of the AAF.

15. After that analysis, on 22 November 2021, the ITA notified the Athlete of the AAF and imposed a mandatory Provisional Suspension pursuant to Article 7.4.1 of the IWF ADR with immediate effect ("AAF Notification").

16. The AAF Notification informed the Athlete of: (i) the potential consequences of the AAF, (ii) her procedural rights, including the right to request the B-sample counter analysis, a Provisional Hearing or an expedited final hearing and (iii) the right to admit the ADRV and/or provide Substantial Assistance. Lastly, the Athlete was invited to provide explanations as to the circumstances that led to the presence of the Prohibited Substance in her sample.

17. On 29 November 2021, the Athlete (through her appointed legal representative) responded to the AAF Notification. She stated that (i) she challenged the AAF and (ii) requested the opening and analysis of B-sample n°0054019 as well as (iii) the communication of the Laboratory Documentation Package ("LDP") for A-sample n°0054019.

18. On 10 December 2021, the ITA provided the Athlete with the LDP for the A-sample n°0054019.

19. The ITA also advised the Athlete that, pursuant to her request, the B-sample opening and analysis would be conducted on 14 December 2021 at 10 am at the Cologne Laboratory. The

analysis of the B-sample was conducted on that day in the presence of the Athlete and one of her trainers. It confirmed the presence of DHCMT.

20. On 15 December 2021, the Athlete confirmed that she wanted to proceed with conducting the DNA analysis to confirm that the samples were her samples.

21. On the same date, the Cologne Laboratory reported an AAF for DHCMT in B-sample n°0054019, thereby confirming the A-sample analytical result. Upon inquiry, the Cologne Laboratory informed the ITA that the roughly estimated concentration of DHCMT in B-sample n°0054019 was about 0.6 ng/mL.

22. On 17 December 2021, the ITA acknowledged the Athlete's request for DNA analysis and provided her with the cost for analysis.

23. On 20 December 2021, the ITA informed the Athlete that, based on the confirmed presence of DHCMT in B-sample n°0054019 and as per Article 2.1.2 of the IWF ADR, the Athlete had committed an ADRV under Article 2.1 of the IWF ADR for Presence of a Prohibited Substance (the "Notice of Charge"). The Athlete was made aware of (i) the consequences of the asserted ADRV and (ii) the grounds under the IWF ADR to potentially reduce the period of ineligibility. Lastly, the ITA reiterated that it was the ITA's position that there were no grounds to put in doubt the sample collection's chain of custody and related analysis.

24. On 28 December 2021, the Athlete (i) requested the B-sample LDP, (ii) confirmed that she wanted to proceed with the DNA analysis and (iii) requested the suspension of the deadline to provide explanations until the results of the DNA analysis.

25. On 5 January 2022, the ITA acknowledged receipt of the Athlete's correspondence and suspended the deadline for the Athlete to provide her explanations.

26. On 10 January 2022, the ITA provided the Athlete with the LDP for B-sample n°0054019.

27. On 12 January 2022, blood serum sample n°938279 and urine sample n°7040813 were collected in an unannounced Out-of-Competition ("OOC") test and sent for analysis to the Cologne Laboratory to be compared with the anti-doping sample provided on 26 September 2021.

28. On 18 January 2022, the Athlete requested the ITA to confirm that DNA analysis would be conducted on the samples collected from her OOC test on 12 January 2022 and compared with the sample provided on 26 September 2021 and also inquired as to the name of the laboratory that would conduct the DNA analysis.

29. On 21 January 2022, the ITA confirmed to the Athlete that the samples (blood and urine) collected from her on 12 January 2022 would be compared with the sample she provided on 26 September 2021 at the Competition. The ITA also informed the Athlete that the samples had been sent to the Cologne Laboratory and it was the ITA's understanding that the DNA extraction and analysis would be conducted by a separate laboratory, the Institut für Blutgruppenforschung, and the results of the DNA analysis and conclusions would be provided by the Cologne Laboratory.

30. On 3 February 2022, the Cologne Laboratory issued a DNA report (the "DNA Report"). The DNA Report concluded that the results of the analyses were consistent and that the urine sample n°7040813 and the serum sample n°938279 came from an identical originator, indicating that the probability of the evidence is 123 trillion times more likely that the DNA profile on sample 0054019 came from the identical originator of samples n°7040813 and n°938279 than if it came from an unknown unrelated individual.

31. On 4 March 2022, the Athlete inquired whether the A- and B- sample LDPs were "complete". The Athlete noted that the LDPs did not include the presence of any metabolites and asked the ITA to provide this information if available.

32. On the same date, the ITA informed the Athlete that the LDPs contained all the information that WADA-accredited laboratories were required to provide as per WADA Technical Document for Laboratory Documentation Packages ("TD2022LDOC").

33. On 21 March 2022, the Athlete provided her explanations on the circumstances that led to the Presence of the Prohibited Substance in her sample. The Athlete admitted that there was "*no doubt that the urine of the A- and B-samples originates from [her]*". Further, she stated that a possible explanation for the presence of DHCMT in her sample was "[a] *doping attack on Ms Schlittig"* or *"a third party may have subsequently infected both the A- and B-samples with DHCMT from the outside or already manipulated the experimental setup on the day of the doping test on 26 September 2021*." The Athlete's suggestion was based on the lack of any short-term and long-term metabolites of DHCMT ("LTM") in the ITA's laboratory documentation, dated 9 December 2021 (A-sample n°0054019) and 6 January 2022 (B-sample n°0054019). Since DHCMT was present in pure form that had not been processed by her body, she argued that the presence of the parent compound ("PC") DHCMT in non-glucoronidated form could not be explained by toxicology other than through the manipulation of the doping samples. The Athlete also provided an expert report of Dr. Douwe de Boer in support of her explanations (the "First de Boer Report").

34. On 12 July 2022, further to the Athlete's explanations, the ITA requested the Cologne Laboratory to confirm whether any metabolite of DHCMT was discovered during the analytical processing of the samples. On the same date, the Cologne Laboratory confirmed that the roughly estimated concentration of approximately 0.6 ng/mL, was exclusively detected after enzymatic hydrolysis with ß-glucuronidase, and that DHCMT was not present in detectable amounts in the "*free fraction*".

35. On 13 July 2022, ITA informed the Athlete that after review of the entire case file, the ITA considered that the Athlete had not been able to establish the source of the Prohibited Substance in her sample on a balance of probabilities. Therefore, the ITA considered that there were no grounds to reduce the applicable period of ineligibility and offered the Athlete an Agreement on Consequences comprising a period of ineligibility of 4 years.

36. On 8 August 2022, the Athlete responded to the ITA's communication of 13 July 2022. She argued that the absence of the usual metabolites of DHCMT (such as LTM - M1, M2 and M3), proved that DHCMT was not administered orally, but that transdermal application was the

"*likely scenario*." She argued that physical skin contacts with other athletes, coaches and support staff likely resulted in her AAF and that this "*contact*" may have occurred (i) on the flight to the Competition on 23 September 2021, and/or (ii) on the bus to the hotel, and/or (iii) during mealtime, training, or weigh-ins, and/or (iv) on the day of the Competition. She also argued that the 0.6 ng/mL low concentration of the DHCMT PC, in addition to the negative anti-doping tests on 6 September 2021 (twenty days before the AAF) and on 4 October 2021 (eight days after the AAF), proved "*unconscious transdermal application*" establishing a lack of intent. In support of her explanations, the Athlete submitted a second expert report by Dr Douwe de Boer (the "Second de Boer Report") as well as a scientific research article on the detection of steroids in urine after transdermal application.

37. On 11 October 2022, the ITA informed the Athlete that it had reviewed her case file, including her latest explanations and supporting documents but that it had concluded that there were no grounds to lift the mandatory Provisional Suspension imposed, and that the ITA would forthwith refer the entire matter for adjudication to the Anti-Doping Division of the Court of Arbitration for Sport ("CAS ADD").

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT ("CAS")

A. The proceedings before the CAS ADD

38. On 15 November 2022, the ITA, on behalf of the IWF, referred the matter to CAS ADD for adjudication.

39. On 29 November 2022, the matter was entrusted to Mr David Benck, Attorney-at-Law in Alabama, USA, as sole arbitrator, by the President of the CAS ADD.

40. On 7 December 2022, the Athlete filed her Answer to the IWF's Request.

41. On 8 February 2023, a hearing was held via videoconference before the sole arbitrator.

42. By decision dated 2 August 2023 (the "Appealed Decision"), the CAS ADD found that the Athlete had committed a violation of Article 2.1 of the IWF ADR but concluded that she had established that she bore No Fault or Negligence for the ADRV. As a result, no period of ineligibility was imposed on the Athlete, and the consequences of the ADRV were limited to the disqualification of the competitive results obtained by the Athlete at the Competition.

B. The current proceedings before the CAS

43. On 22 August 2023, pursuant to Articles R47 and R48 of the CAS Code of Sports-related Arbitration ("CAS Code"), the IWF filed a Statement of Appeal against the Appealed Decision. It appointed Mr Ken Lalo as arbitrator, thereby triggering case CAS 2023/A/9916.

44. On 7 September 2023, WADA submitted its Statement of Appeal to CAS, requested the consolidation of its appeal with the proceeding initiated by the IWF in accordance with Article R52 of the CAS Code, and for the purpose of the consolidation, WADA agreed to the

appointment of Mr Lalo as arbitrator. The case CAS 2023/A/9966 was opened upon receipt of the Statement of Appeal.

45. On 11 September 2023, the Athlete appointed Mr Romano Subiotto, KC, as arbitrator.

46. On 12 September 2023, the Athlete agreed to the consolidation of the two proceedings, and on 13 September 2023, the IWF also expressed its agreement to the consolidation.

47. On 15 September 2023, the CAS consolidated the IWF and the WADA appeals, respectively CAS 2023/A/9916 and CAS 2023/A/9966.

48. On 5 December 2023, the CAS Court Office informed the Parties about the constitution of the Panel as follows:

President:	Ms Carine Dupeyron, Attorney-at-law in Paris, France
Arbitrators:	Mr Ken E. Lalo, Attorney-at-law in Tel Aviv, Israel
	Mr Romano F. Subiotto KC, Attorney-at-law in Brussels, Belgium

49. On 1 October 2023, the IWF filed its Appeal Brief.

50. On 23 October 2023, WADA filed its Appeal Brief.

51. On10 November 2023 and 26 November 2023, the IWF and the Athlete filed their respective Answer.

52. On 17 and respectively 21 May 2024, the Order of Procedure, issued by the CAS Court Office on behalf of the Panel, was signed by the Parties.

53. On 28 May 2024, a virtual hearing was held. In addition to the Panel and the CAS Counsel, Ms Andrea Sherpa-Zimmermann, the following persons attended:

- For the IWF:
    - Ms Dominique Leroux-Lacroix, ITA
    - Ms Ayesha Talpade, ITA
    - Prof. Martial Saugy

- For WADA
    - Mr Cyril Troussard
    - Mr Ross Wenzel
    - Ms Marissa Sunio
    - Mr Xavier Dupuis
    - Mr Nicolas Zbinden
    - Prof. Christiane Ayotte

- For the Athlete:
    - Ms Vicky Annet Schlittig

- Prof. Dr. Steffen Lask
- Mr Severin Lask
- Dr. Douwe de Boer

54. At the close of the hearing, the Parties confirmed that they had no comment over the way the procedure had been conducted and that their right to be heard had been respected.

IV. SUMMARY OF THE PARTIES' POSITIONS

55. This section of the Award does not contain an exhaustive list of the Parties' contentions. Its aim is to provide a summary of the substance of the Parties' main arguments. In considering and deciding upon the Parties' claims in this Award, the Panel has accounted for and carefully considered all of the submissions made and evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the Award or in the discussion of the claims below.

A. IWF's Position and Request for Relief

1. The IWF's Position

- Burden and standard of proof of the ADRV

56. The IWF accepts that it has the burden of proving that the Athlete committed an ADRV. In that respect, for the IWF, it is undoubted that the Athlete has committed an ADRV under Article 2.1 of the IWF ADR for the Presence of a Prohibited Substance or its Metabolites or Markers. The Appealed Decision confirms this is the case, on the basis of the following elements:

- The analysis of the Athlete's B-sample conducted on 14 December 2021 confirmed the presence of DHCMT

57. The IWF argues that, in the present matter, the analysis of the Athlete's B-sample conducted on 14 December 2021 confirmed the presence of DHCMT found in the Athlete's A-sample. As set forth in Article 2.1.1 of the IWF ADR, the IWF does not have to show "*intent, fault, negligence or knowing Use on the Athletes' part*" to establish an ADRV for Presence under Article 2.1 of the IWF ADR. This principle of strict liability, according to which an ADRV occurs whenever a Prohibited Substance is detected in an athlete's bodily specimen, has been consistently upheld in CAS case law.

58. The IWF also recalls that it has discharged its burden of proof to establish the ADRV for the Presence of a Prohibited Substance in accordance with Article 2.1 of the IWF ADR to the comfortable satisfaction of the Panel. It is reminded that, neither at the time of sample collection nor afterwards, a TUE justifying use of the Prohibited Substance DHCMT has been granted or even requested by the Athlete.

- The DNA analysis establishes that sample n°0054019 was provided by the Athlete

59. The Athlete tried to raise doubts as to whether sample n°0054019 originated from her, alleging a typographical error by the ITA and what she called "*faulty management*" on the part of the ITA during the results management process.

60. The IWF explains that the Athlete chose to conveniently ignore several contemporaneous documents pertaining to the sample collection including the DCF, and the Laboratory Test Report which established that sample n°0054019 was clearly provided by her.

61. The Second Appellant further contends that such tactics only speak to the *bona fides* of the Athlete (or lack thereof) and was an attempt by the Athlete to divert the Panel from the main issue in this case – the Athlete's inability (or unwillingness) to explain how a potent steroid entered her body.

- The absence of DHCMT metabolites does not shift the burden of proof of "intent" to the IWF

62. The IWF contends that, in another flawed attempt to have her case quashed, the Athlete argued that the fact that only the PC of DHCMT had been detected showed that "*unconscious transdermal application*" was the most likely cause of the AAF. This, according to the Athlete, proved that there was no intentional intake of DHCMT. On this basis, it would now be for the ITA to prove that the Athlete "*knowingly, wilfully and purposefully ingested the Prohibited Substance*" to enhance her performance.

63. For the IWF, this attempt to shift the burden of proof is not correct.

64. The IWF further explains that, when it comes to laboratory analysis, Article 3.2.2 of the IWF ADR provides that WADA-accredited laboratories are presumed to have conducted sample analysis in accordance with the ISL. If an athlete intends to challenge this presumption, he/she must demonstrate, on a balance of probabilities, first, the exact provisions of the ISL that have been allegedly violated, and, second, a reasonable causal link between the alleged violation and the AAF. It is only if the athlete can successfully demonstrate the two prongs of Article 3.2.2 that the burden of proof then shifts to the IWF to establish, to the comfortable satisfaction of the relevant Panel, that the departure did not cause the AAF.

65. In the present case, the IWF states that the Athlete has not even attempted to identify which provisions of the ISTI/ISL were allegedly violated and has not demonstrated any correlation between a "*departure*" from the ISTI/ISL and her ADRV. On this basis alone, the arguments of the Athlete should not be considered any further.

66. Moreover, the IWF argues that there has been no indication, let alone evidence, of any issue with the integrity of the sample or the analytical procedure. As confirmed by the Athlete herself, the sample collection process, including the sealing of the samples A and B, was carried out seamlessly and as per WADA requirements. The DNA analysis, commissioned by the Athlete, provides irrefutable evidence that the sample belongs to the Athlete. The LDPs for the A and B sample analyses clearly show that the chain of custody of the samples was intact.

67. The IWF concludes that the Athlete has not been able to establish any violation of the ISTI/ISL much less establish how the alleged breach reasonably caused the AAF. There has been no violation of the ISTI/ ISL and or any other provision of the IWF regulations in the present case. The Athlete has failed to provide any evidence undermining the validity and integrity of the sample collection process or analytical work performed by the Cologne Laboratory.

68. The IWF further submits it has proved far beyond a comfortable satisfaction standard the occurrence of the ADRV for the Presence of DHCMT.

- The consequences of the Athlete's ADRV

69. The IWF recalls that it has satisfied its evidentiary threshold that the Athlete has committed an ADRV for Presence of a Prohibited Substance in her sample. It shall now deal with the consequences of said ADRV.

- The period of ineligibility applicable to the Athlete and potential mitigation based on intent and/or or no fault/no negligence

70. As per Article 10.2.1 of the IWF ADR, the standard period of ineligibility imposed for the violation of Article 2.1 for a Non-Specified Substance, like DHCMT, is four years. This four-year period can be reduced if an athlete establishes that the ADRV was non-intentional. In that respect, establishing the origin of the Prohibited Substance is a critical step for any exculpation of intent, as stated in the comment to Article 10.2.1 of the IWF ADR.

71. The sanction may be further mitigated if an athlete succeeds in establishing "No Fault or Negligence" as per Articles 10.5 or "No Significant Fault or Negligence" as per Article 10.6 of the IWF ADR.

72. In this present matter, the IWF considers that the Athlete has failed to establish that her ADRV was not intentional. Therefore, there are no grounds to reduce the applicable period of ineligibility. Therefore, the IWF considers that the applicable period of ineligibility for the present matter is four years.

73. The IWF states that regardless of whether the Athlete proceeds with her sabotage theory or her transdermal theory, the bottom line is that she has been unable to establish on a balance of probability standard how DHCMT entered her body and resulted in an AAF. In other words, the circumstances of the ADRV remain unknown and the Athlete has been unable to establish that her ADRV was non-intentional. Consequently, the period of ineligibility can only be the default sanction set forth in Article 10.2.1 IWF ADR, that is four years.

74. Analysing the Appealed Decision, the IWF submits that the sole arbitrator completely disregarded the IWF ADR and long-standing established jurisprudence and allowed the Athlete to discharge her burden of proof by simply speculating that DHCMT entered her system at some point prior to her doping control through transdermal contact with an unknown quantity of a cream containing DHCMT by an unknown person. This conclusion however relies exclusively on one single element: the presence of the PC for DHCMT.

As mentioned above, the comment to Article 10.2.1.1. of the IWF ADR makes it clear that in all but the most exceptional of cases, the demonstration of lack of intent requires proof of source, and this strict requirement falls on the Athlete. Similarly, when it comes to establishing the origin of a Prohibited Substance, CAS case law has made it abundantly clear that speculation as to the source of the Prohibited Substance is insufficient and that, conversely, an athlete must adduce concrete evidence to conclusively demonstrate that a particular supplement, medication, or other product that he/she has taken had in fact contained the substance in question.

75. The IWF submits that the Athlete has been unable to conclusively establish how DHCMT entered her system. The Athlete has merely offered possibilities that she can think of but no evidence upon which it can be concluded, on the balance of probabilities, that any of these speculative possibilities was in fact the reason for the Presence of the Prohibited Substance in her system.

76. The ITA addresses the two theories of sources raised by the Athlete and argues that neither holds water and neither conclusively establishes source of DCHMT in the Athlete's urine.

- The sabotage theory: the Athlete has not provided any documents or supporting evidence, which goes to show that she was "*sabotaged*". In fact, the Athlete's entire case to show that she was a victim of *"[a] doping attack*" or that "*a third party may have subsequently infected both the A- and B-samples with DHCMT from the outside or already manipulated the experimental setup*" rests on the absence of certain metabolites of DHCMT (such as the LTM) in her urine sample. This, according to the Athlete, indicates that she did not biologically metabolize DHCMT through her body, insinuating that DHCMT was added to the sample after she provided it. The Athlete's fanciful theory can be rebutted simply on the basis that the phase-II metabolite DHCMT-glucuronide was indeed present in the urine sample n°0054019. This leaves no room for doubt: the DHCMT has indeed passed through the body of the Athlete. This has also been confirmed by Prof. Saugy in his expert report.

Moreover, the DNA Report conducted as per the Athlete's request has debunked any farfetched allegation that the sample was not hers. The Athlete herself confirmed that the sample collection process, including the sealing of the samples A and B, was carried out seamlessly and as per the WADA requirements. The LDPs for the A and B sample analyses clearly show that the chain of custody of the samples was intact.

In any event, the Athlete appears to have abandoned these explanations.

- The transdermal contamination theory: it is now the Athlete's case that the most "*likely scenario*" for her positive result is transdermal physical skin contact with other athletes, coaches and/or support staff around the Competition. In support of her theory, the Athlete has provided the Second de Boer Report and an opinion prepared by Dr Thieme to the German courts (as part of the criminal proceedings against the Athlete in Germany).

The Athlete's expert Dr de Boer inter alia concludes that the absence of the short and/or long-term metabolite of DHCMT, along with the presence of glucuronide of DHCMT PC in "*low concentration*" makes transdermal application of DHCMT PC a "*very likely scenario*" to "*explain the specific situation of the athlete*".

However, the IWF emphasizes that identifying the route of ingestion (e.g. oral, transdermal, injection, infusion etc.) of a Prohibited Substance does not equate to explaining the origin of the AAF and discharging the onus of establishing the source of the Prohibited Substance, or that the ADRV was otherwise unintentional. The burden of proof still rests with the Athlete to provide concrete and persuasive evidence to conclusively establish exactly which particular product, supplement, or person that she was in contact with, resulted in the transdermal application of DHCMT which, in turn led to the AAF. Any other interpretation would render meaningless the strict requirement for source to be proven and even that the ADRV was unintentional.

In other words, accepting transdermal intake as the route of administration of the DHCMT does not assist the Athlete in discharging her burden of proof as to how 0.6ng/mL of DHCMT was detected in her sample on 26 September 2021.

The IWF states that it has no evidence on (i) who was/were the person or persons who applied cream containing DHCMT on the Athlete, (ii) when did this "*inadvertent transdermal intake*" take place, (iii) what was the product in question that contained DHCMT, (iv) what was the quantity of the product that was applied on the Athlete, (v) how is it possible that cream was applied on her skin without her knowledge and without her realizing it?

The IWF submits that in a situation where there are so many open questions and a complete lack of information, the only conclusion is that the Athlete has not met her onus and cannot mitigate the sanction. The theory put forward by the Athlete, which relies exclusively on the absence of the usual metabolites detected when reporting an AAF for DHCMT (such as 6-β-OH-DHCMT, LTM - M1, M2 and M3), clearly does not pass muster of explaining the origin of the Prohibited Substance.

The IWF explains that the sole arbitrator in the CAS ADD proceedings manifestly erred in his appreciation of the (lack) of evidence produced by the Athlete. The only conclusion that could have been made was that the Athlete had and still has been unable to establish, on a balance of probabilities standard, how DHCMT entered her body and resulted in an AAF.

As to the criminal proceedings in Germany, the ITA anticipates that the Athlete will give undue importance to the fact that she was found not guilty for an intentional violation under the German Anti-Doping Law and use this to argue that her ADRV should also be considered as "*nonintentional*" under the IWF ADR. However, the IWF emphasizes that the criminal proceedings took place in Germany, they apply different standards, and they do not have bearing on the ongoing CAS proceedings.

77. After denying that the transdermal theory could be helpful to establish lack of intent on behalf of the Athlete, the IWF concludes, at odds with the Athlete's arguments, that all other circumstances point to the fact that the ADRV was purposeful within the meaning of the IWF ADR, in particular:

- The prevalence of DHCMT as a performance enhancing steroid in weightlifting. DHCMT is a strong anabolic steroid. It causes rapid growth of the muscles, which leads to a high increase in strength performance. Weightlifting is a sport based on strength of the muscles. Therefore, the use of DHCMT is extremely relevant in weightlifting. In this respect, the ITA points out that the performance enhancing effects of DHCMT are well-known especially for weightlifting athletes and that numerous ADRV in that sport are related to the ingestion of DHCMT.

- Transdermal intake of steroids is a beneficial means of doping. The ITA puts forth that administration of steroids through a transdermal route is an efficient and advantageous method of deriving the benefits of steroids without suffering from the negative side-effects of intake through oral routes.

- The Athlete's testing history does not assist the Athlete in establishing non-intentionality. Considering that the most recent test prior to the AAF of 26 September 2021 dates back to 6 September 2021, the 20-day window leaves open the possibility of an intentional transdermal intake of DHCMT. More precisely, as confirmed by Prof. Saugy, the estimated concentration of DHCMT found in the Athlete's sample (i.e., 0.6 ng/ml) is analytically compatible with a deliberate transdermal application of 10 mg of DHCMT several days before the date of the AAF.

78. The IWF considers, in light of the foregoing, that the Athlete failed to establish the source of the Prohibited Substance, and that there are no subjective or objective factors otherwise showing that the ADRV was not intentional. The provisions of Article 10.2.1.1/10.2.2 (unintentional ADRV), Article 10.5 and Article 10.6 of the IWF ADR are thus inapplicable to the present proceedings and there are no grounds to reduce the applicable period of ineligibility. In this regard, the ITA adds that since the Athlete has failed to satisfy her burden of proof, the circumstances of her ADRV are left unknown, which prevents the Panel from making a finding as to whether the Athlete bears no (significant) fault or negligence. The four-year sanction is therefore the only applicable period of ineligibility to the Athlete's case.

- The commencement of the period of ineligibility

79. As per Article 10.13 of the IWF ADR, the period of ineligibility should start on the date of the decision providing for ineligibility. However, considering that the Athlete has served a period of Provisional Suspension from 22 November 2021 until the Appealed Decision dated 2 August 2023, she should receive a credit for such period against the period of ineligibility imposed.

- The disqualification of results

80. In accordance with Article 9 of the IWF ADR, the IWF submits that the Athlete's competitive results at the 2021 European Junior Championships in Finland should be automatically disqualified including the forfeiture of any medals, prizes, and points. The IWF notes that the Athlete does not have any competitive results after the date of her AAF (26 September 2021). Therefore, there are no further results to be disqualified. However, should there be any

competitive results from 26 September 2021 until the date of Provisional Suspension (22 November 2021) that the IWF may be unaware of, the IWF submits that those results are to be disqualified with all resulting consequences as per Article 10.10 of the IWF ADR. For the same reasons provided by the IWF with regard to the circumstances of the ADRV, the IWF submits that the Athlete has not established that it would be unfair for her to lose her results.

- The financial consequences

81. The IWF requests, pursuant to Article 10.12 of the IWF ADR and Articles A24 and A25 of the CAS ADD Rules, to impose upon the Athlete the costs associated with these proceedings, which the ITA will specify in the scope of the hearing or at the end of the written submissions phase, if no hearing takes place.

2. IWF's Request for Relief

82. In its request for relief, the First Appellant requests CAS to decide the following:
"

1. *The IWF's appeal is admissible.*

2. *The decision dated 2 August 2023 rendered by the Sole Arbitrator of the CAS Anti- Doping Division in 2022/ADD/53 - International Weightlifting Federation v. Ms Vicky Annet Schlittig is set aside.*

3. *Ms Vicky Schlittig is found to have committed an Anti-Doping Rule Violation under Article 2.1 of the IWF Anti-Doping Rules.*

4. *Ms Vicky Schlittig is sanctioned with a period of Ineligibility of 4 years.*

5. *The period of Ineligibility commences on the date CAS Appeals Division award enters into force. Any period of Provisional Suspension effectively served by Ms Vicky Schlittig before the entry into force of the CAS Appeals Division Award (i.e., from 22 November 2021 until 2 August 2023) shall be credited against the total period of Ineligibility to be served.*

6. *The competitive results of Ms Vicky Schlittig at the 2021 IWF European Junior Championships, Finland is disqualified with all resulting Consequences, including forfeiture of any medals, points, and prizes.*

7. *All other competitive results of Ms Schlittig from 26 September 2021 (if any) until the date of commencement of the CAS Appeals Division Award are also Disqualified with all resulting consequences.*

8. *The costs of the proceedings, if any, shall be borne by Ms Vicky Schlittig.*

9. *A substantial contribution to IWF's legal and other costs associated with these proceedings shall be borne by Ms Vicky Schlittig.*

10. *Any other prayer for relief that the Panel deems fit in the facts and circumstances of the present case.*"

B. WADA's Position and Request for Relief

1. WADA's Position

83. In its Appeal Brief, WADA challenges the Appealed Decision whereby the sole arbitrator found that the Athlete had committed a violation of Article 2.1 of the IWF ADR but concluded that she had established that she bore No Fault or Negligence for the ADRV.

84. WADA asserts that the Athlete has not put forward any evidence proving this scenario on a balance of probabilities.

85. The Applicable test: according to WADA, pursuant to Article 10.2.1.1 of the IWF ADR, the period of ineligibility must be four years when the ADRV does not involve a Specified Substance, unless the athlete can establish that the ADRV was not intentional.

86. WADA further states that the correct test in relation to "intent", in the words of the panel in CAS 2017/A/5016 & 5036, is whether the athlete has "*proven, by a balance of probabilities, that he did not engage in a conduct which he knew constituted an anti-doping rule violation or knew that there was a significant risk that said conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk*".

87. For the purpose of this test, consistent CAS case law has held that the athlete must necessarily establish how the substance entered his/her body.

88. This has even been codified in the 2021 version of the World Anti-Doping Code and replicated in the comment to Article 10.2.1 of the IWF ADR: " *[…] it is highly unlikely that in a doping case under Article 2.1 an Athlete will be successful in proving that the Athlete acted unintentionally without establishing the source of the Prohibited Substance*."

89. The First Appellant emphasizes that CAS case law has defined only a very narrow scope of exceptions to this principle: only in the rarest of cases will athletes be able to establish a lack of intent *without* having demonstrated how the substance got into their body.

90. According to WADA, protestations of innocence, however credible they might appear, therefore carry no material weight in the analysis of intent. The same applies to a "*lack of a demonstrable sporting incentive to dope, diligent attempts to discover the origin of the prohibited substance or the athlete's clean record*", which have also been consistently rejected as justifications for a plea of lack of intent. WADA argues that an athlete must do more and provide actual evidence to support his or her protestations of innocence and that the burden of establishing lack of intent lies solely on the athlete.

91. As to the standard of proof, WADA argues that the balance of probabilities standard entails that the athlete has the burden of convincing the concerned panel that the occurrence of the circumstances on which the athlete relies is more probable than their non-occurrence. In this respect, to show that an explanation is possible is not enough. WADA refers to two decisions:

- CAS 2020/A/6978: *"'possible' is not the same as probable. All things which do not defy the law of science are in one sense possible. However, it was for* [the athlete] *to prove that his meat contamination scenario is more likely than not. And in the Panel's view, he has failed to do so at every critical stage of his submission*."
- CAS OG 16/025: the panel similarly found that the athlete had not met the requisite standard of proof, finding the "*sabotage(s) theory possible, but not probable and certainly not grounded in any real evidence*".

92. As to the establishment of origin, WADA contends that the Athlete is required to adduce concrete and specific evidence to demonstrate the origin of the Prohibited Substance, i.e. that a particular supplement, medication or other product that the athlete took contained the substance in question. The athlete must also demonstrate that the source could have caused the actual adverse finding.

93. WADA explains that, in the present case, the Athlete initially claimed that she had been sabotaged, based on the absence of certain metabolites of DHCMT in her samples, which showed that the substance had not gone through her system. Upon further enquiries, it was clarified that the phase-II metabolite DHCMT-glucuronide was present in the Athlete's samples, which means that the substance had gone through her system. When she was informed that the DHCMT had gone through her system (and therefore that her first scenario did not work), the scenario evolved to that of a transdermal contamination by a third party.

94. However, according to WADA, this claim rests fully on analytical results and lacks any specific factual evidence.

95. In the eyes of the First Appellant, there is still no indication as to by whom or how the DHCMT could have been transferred transdermally. The Athlete only claims that she was "*in direct contact with athletes, coaches, and support staff*" on 23 September 2021 during the flight and bus to the Competition, (ii) on 24 and 25 September 2021 during the weigh-in, training, lunch, or dinner and/or (iii) on 26 September 2021 during the weigh-in or doping control.

96. WADA emphasizes that the fact that transdermal application is a *possible* source for the DHCMT positive is not challenged. This was accepted by Prof. Saugy at first instance and in his report dated 29 September 2023, which states that "*transdermal administration of DHCMT is considered as a possible route of administration*". However, the fact that transdermal application is a possible route of ingestion does not make it more likely than not to have occurred.

97. Following the Appealed Decision, WADA consulted with Prof. Christiane Ayotte, who reviewed the analytical material. She was informed that the short-term metabolites of DHCMT (eg. 6ß-OH-DHCMT) had not been tested for in the Athlete's sample, which in her view meant that a recent oral intake of DHCMT could not be excluded.

98. WADA recalls that the burden to establish the source or alternative sources lies strictly on the Athlete. The positive result could have come from many different sources, including a number of intentional ones (eg. intentional intake of a DHCMT pill, or application of a DHCMT cream). WADA submits that, in these circumstances, the Athlete's evidence of contamination must be all the more compelling, which it clearly is not.

99. WADA asserts that not only is the Athlete's scenario unsupported by any evidence, but it is also factually implausible: as noted by the IWF, no other athlete tested positive for DHCMT at the Competition where the Athlete tested positive out of 72 samples collected. There is therefore no evidence, beyond the Athlete's samples, of any DHCMT in the Athlete's environment at the time of the anti-doping test.

100. In addition, Prof. Saugy noted that the concentration detected in the Athlete's sample was significant (0.6 ng/mL), and that therefore "*the dose applied must have also been significant*". It means that an inadvertent exposure by contact with a third party can be ruled out, leaving only (as far as the transdermal route is concerned) a deliberate sabotage with a significant amount of cream/gel. But there is no evidence of this or any motive for this.

101. WADA explains that the Athlete testified to have been in contact with other athletes or coaches cannot lend any support to her contamination scenario. Any athlete could make such an unspecific claim. The fact that the Athlete was in contact with athletes cannot make a contamination scenario more likely than an application by herself of a cream on her body. WADA emphasizes that this claim is nothing more than a mere protestation of innocence with no evidentiary value whatsoever.

102. In addition, even if it were accepted that transdermal application was the source, this does not necessarily mean that it was the result of contamination (as opposed to a transdermal application by the Athlete herself).

103. According to WADA, the Athlete has not established the source of the Prohibited Substance in her system. Her scenario rests on pure speculation and is not even plausible on the facts. This cannot be enough per the consistent CAS case law, which requires concrete and objective evidence in support of such plea.

104. WADA concludes that the Athlete has not established the source of the DHCMT found in her system and has not otherwise rebutted the presumed intent. She must therefore be imposed the mandatory period of ineligibility of four years.

2. The Second Appellant's Request for Relief

"*1. The Appeal of WADA is admissible.*

2. The decision dated 2 August 2023 rendered by the CAS Anti-Doping Division in the matter of Vicky Annett Schlittig (ref. no. 2022/ADD/53) is set aside.

3. *Vicky Annett Schlittig is found to have committed an anti-doping rule violation under article 2.1 and/or 2.2 of the IWF ADR.*

4. *Vicky Annett Schlittig is sanctioned with a period of ineligibility of four years starting on the date on which the CAS award enters into force. Any period of provisional suspension and/or ineligibility effectively served by Vicky Annett Schlittig before the entry into force of the CAS award shall be credited against the total period of ineligibility to be served.*

5. *All competitive results obtained by Vicky Annett Schlittig from and including 26 September 2021 (i.e. the date of the anti-doping rule violation) until 22 November 2021 (the date on which the IWF imposed a provisional suspension) are disqualified, with all resulting consequences (including forfeiture of medals, points and prizes).*

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

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

C. The Athlete's Position and Request for Relief

1. The Athlete's Position

105. The Athlete first claims that there has been no ADRV. In the alternative, and in reality as the core of her arguments, she argues that there has been no intentional, purposeful use of DHCMT to enhance her performance. According to her, the two positive doping samples obtained on 26 September 2021 in Rovaniemi during the European championship of juniors and under-23s in weightlifting do not provide sufficient evidence to justify the IWF's and WADA's claim that she deserves a four-year ban for intentionally using the performance-enhancing and prohibited drug DHCMT.

106. The Respondent emphasizes that she has instead established that there are considerable doubts as to whether she culpably, intentionally, and knowingly violated the WADA Code and the IWF ADR. These doubts require the burden of proof to be shifted back to the ITA, taking into account the balance of probabilities standard. No period of ineligibility is to be imposed on the Athlete, since the IWF and WADA have not provided this evidence.

- The Appealed Decision

107. The Respondent emphasizes that the Appealed Decision must be upheld.

108. She submits that she was 18 years old at the time of the doping test on 26 September 2021. By then, she had already undergone 28 doping tests, some of which had been commissioned by the NADA and others carried out by the ITA. The Athlete was therefore aware that it was her responsibility as an athlete to pay attention to what substances she ingests. ~~She~~ adds that she has always adhered to the rules for supplements, as accurately stated in the Appealed Decision, and

that she ensured that the products she used were on the National Cologne List, to ensure that they were free from contamination. She notes that this was acknowledged in the Appealed Decision.

109. The Respondent explained that, at first, she wrongly assumed a possible mix-up of the doping samples and requested a DNA analysis because of the naming of another athlete on certain forms, and generally due to the mishandling of the doping control by the ITA, as accurately recorded by the sole arbitrator in the Appealed Decision. She therefore cannot be held accountable for developing such theories that were based on ITA's inadequate management of the doping control process.

110. Overall, the Athlete praises the sole arbitrator for reaching his decision based on the thorough investigation by Dr de Boer, Prof. Saugy's testimony and extensive research, that, based on the metabolite profile available, DHCMT was transferred transdermally. Specifically, the low quantity of 0.6 ng/ml DHGMT, which could not enhance performance as confirmed by Dr de Boer and Dr Thieme, and the rigorous doping control tests that she underwent before and after the ADRV, confirm the conclusion that an unintentional and unconscious skin contact with DHCMT resulted in the positive doping sample.

111. According to the Athlete the above elements establish that she did not act intentionally or negligently. Accordingly, as decided in the Appealed Decision, not only should she not be banned for four years, but that she should not be banned at all.

- Response to the ITA's [IWF's] Appeal

112. As a preliminary point, the Respondent states that, in its Appeal Brief, the IWF criticizes the CAS ADD sole arbitrator which is inappropriate for an anti-doping agency.

113. Turning to the collection of her samples, the Respondent highlights the various difficulties during the sample collection, and, thereafter, her delayed access to the information on the estimated DHCMT concentration, all of them being caused by the ITA's "*inept management.*" In particular, there are inconsistencies in the number of doping tests reported by ITA at the Competition (72, and 9 for female athletes) and the number of participants (91 women and 108 men), and whether the ITA refers to doping tests or doping samples.

114. The Respondent emphasizes that this criticism is not about meeting WADA standards, but rather about providing information that is essential for a fair and adequate defense. The current process is already challenging for athletes, so it is reasonable to expect that an independent and objective antidoping authority such as the ITA would provide the athlete with all relevant information and evidence to mount a defense. Here, for the Athlete, the ITA failed to act diligently, and this was the root cause of both her assertion that the doping samples may have been mishandled, as well as her request to have the DNA analysis. For instance, the ITA was informed of the DHCMT concentration in the sample in November 2021, but only shared that information with the Athlete at the end of February 2022, four months later. Similarly, the ITA's documentation indicated the presence of DHCMT only, i.e. in pure form, and on that basis, the Athlete and her expert assumed that the only explanation was a manipulation of samples. This was however

misleading and further scientific evidence established that the DHCMLT had been metabolized by the Athlete's body.

115. On the burden of proof, the Athlete notes that the ITA acknowledges that Article 3.1 IWF ADR requires of the IWF to persuade the panel of an ADRV's existence. It must be noted that such an accusation can have a significant impact on the athlete. However, the Athlete notes that the sole arbitrator and the ITA made errors when assessing the urine sample as an anti-doping rule violation. An ADRV under Article 2.1.2 of the WADA Anti-Doping Rules cannot be established on the basis of the result of the A-sample alone, as the B-sample must confirm that result. Here, the information available to the defence must be interpreted in such a way that the results of the B-sample are inconsistent with those of the A-sample.

116. The Athlete concludes that these inconsistencies mean that the burden of proof remains on the IWF to prove to the satisfaction of the panel that an ADRV has taken place.

117. Moreover, according to Article 10.2.3 of the IWF ADR, the "*intentional*" criterion is intended to identify those athletes or other persons, who engage in conduct that they knew constituted an anti-doping rule violation or knew there was a substantial risk that the conduct might constitute or result in an anti-doping rule violation, and who manifestly disregarded that risk.

118. In the present circumstances, the Athlete explains that she has come into contact with DHCMT through transdermal contacts, which has resulted in the positive finding. She considers it probable that she was the victim of sabotage or inadvertent contact since, during her journey to the European U-23 Championships, she had multiple opportunities for physical contact with other athletes, coaches, and support staff, which could potentially have resulted in a transdermal transfer of DHCMT.

119. This cannot be considered a risky behavior, or otherwise any athlete would be engaging in risky behavior in the sense of the rule simply by participating in competitions or coming into contact with other people. The IWF ADR definition of "No Fault or Negligence" confirms that an athlete must show that she acted with extreme care and had no reason to know that she might be taking a prohibited substance. Here, the Athlete argues that there is therefore no fault and no blameworthy negligence: she simply was unable to prevent herself from absorbing DHCMT through her skin.

120. Furthermore, in accordance with Article 2.1 of the IWF ADR, an athlete must establish how the substance entered her body. The Athlete has done this by proving that the substance entered her body through her skin.

121. Therefore, since there is no intent under Article 10.2.1.1 IWF ADR and there is also no fault or negligence under Article 10.5 IWF ADR, no ineligibility period should be imposed.

122. Turning to the existence of parallel proceedings before the AG Chemnitz, the Athlete concurs with the ITA that the current proceeding before the CAS and these criminal proceedings cannot be compared in any way.

123. There are however scientific findings before the German court that could be referred to in the current case, particularly the findings of Dr Mortsiefer and Dr Thieme's expert report. The latter, for instance, is of the opinion that the DHCMT found in the urine sample is not present in a performance enhancing amount and he notes that the presence of DHCMT in free, non-glucuronidated form would hardly be explicable toxicologically. Dr Thieme concludes that the detection of the PC of the DHCMT is due to an early phase of use and its low concentration speaks in favor of subtherapeutic dosages. All 29 comparable DHCMT doping cases showed long-term metabolites, and from this, he concludes that this case is factually different from all others.

- Response to the expert opinion by Prof. Saugy

124. The Athlete discussed here the new points raised by Prof. Saugy in his second report. In particular, the Athlete argues that, contrary to Prof. Saugy's assumption, the ingestion of DHCMT must have occurred immediately before the sample collection, otherwise the analysis would have shown M3 metabolites. Moreover, Prof. Saugy's assumption is inconsistent with the negative results of the tests conducted on the Athlete on 6 September 2021, and on 4 October 2021, that is right before and right after the alleged ADRV of 26 September 2021.

- Response to WADA's appeal

125. The Athlete argues that WADA fails to recognize the distinction between contaminated products or dietary supplements and the present case of transdermal transfer of a substance. The principle of strict liability is applicable in the case of food supplements and other contaminated preparations because athletes should regulate the substances that enter their bodies and, in theory, they are able to demonstrate how these substances entered their bodies. In contrast, athletes cannot clearly identify a situation where they may have touched a surface, another person or liquids with their skin. It is thus unconvincing to hold athletes accountable in such situations without further elaboration and it is wrong to apply irrelevant CAS case law to that specific situation, as WADA does.

126. The Athlete also acknowledges that WADA could be concerned that some athletes may make such a defense; however, not all doping offenders could do so, since in instances involving DHCMT, metabolites would be present, which is not the case here.

127. The Athlete recollects that the CAS ADD was convinced that the possibility of unintentional, innocent, non-negligent dermal exposure to DHCMT was more likely than the intentional use of DHCMT to enhance performance based on the presentation of scientific evidence.

128. Finally, the Athlete discusses the various cases cited by WADA to differentiate their factual background with the facts of the present case, either because the athlete had failed to establish that the contamination of the food supplement, or because the scientific evidence did not support the athlete's case, as is the case here.

129. On the basis of this analysis, the Athlete reiterates her concern that WADA's focus is not justice, but rather to safeguard WADA's allegedly flawed and inconsistent regulations.

- The Response to Prof. Ayotte's opinion

130. After criticizing Prof. Ayotte's methodology, the Athlete notes that Prof. Ayotte's first agrees that no persistent long-term metabolites were found and that unintentional absorption by the skin could have taken place.

131. The Athlete also claims that Prof. Ayotte's findings appear to ignore that anti-doping tests conducted a few days after the potential ADRV excluded oral ingestion of DHCMT.

132. Overall, the Athlete considers that Prof. Ayotte's opinion rather comforts the hypothesis of a transdermal absorption of DHCMT.

- The Athlete's defence

133. The Respondent argues that the presence or absence of 6ß-0H-DHCMT in the urine of the Athlete was not documented correctly and that the Athlete's lawyer and external expert were misinformed at the outset by the ITA. Moreover, some documentation was selectively provided by ITA to others and not provided to the lawyer and external expert of the Athlete at all.

134. The Athlete further states that the presence or absence of other metabolites of DHCMT was also not documented correctly. The discovery of DHCMT in the urine sample is insufficient to establish whether the Athlete has metabolized it. This is not an assertion, but a fact that cannot be disputed. Also, the A-sample was not properly authenticated, and as such, the burden of proof was not shifted to the Athlete.

135. The Respondent concludes that a lack of correctly documented information regarding the presence or absence of metabolites of DHCMT or in which form the DHCMT PC was present in the Athlete's urine sample (non-glucuronidated or de-glucuronidated) means that no transparent and adequate verification of the analytical information was possible regarding the exact nature of DHCMT PC in the Athlete's urine of the A-sample.

136. The Respondent further states that, on that basis, Dr de Boer was unable to adequately defend the Athlete's position. The results of the B-sample analysis in the LDP-B do not support the non-documented conclusion of the A-sample analysis. Therefore, any manipulation of the urine sample by adding DHCMT PC to her urine sample by an unidentified person cannot be excluded either.

137. It is therefore appropriate to conclude that (i) the Athlete's explanations are consistent with the scientific expert opinions, (ii) considering all the inconsistencies of the case discussed earlier, and (iii) taking into account the Athlete's character, the only appropriate course of action (iv) through the prism of common sense is to acquit the Athlete of the charge of knowingly, intentionally, and culpably using DHCMT to enhance her performance.

2. The Athlete's Request for Relief

138. In her request for relief, the Respondent requests CAS to decide the following:

1. *"It is established that there was no ADRV on the part of Ms Schlittig.*

2. *the costs of the proceedings be borne by the IWF/ITA and the costs of the appeal by WADA.*

3. *Ms Schlittigs's extrajudicial costs be borne by the IWF/ITA and WADA*

In the alternative, it is requested that

1. *The decision (2022/ADD/53) of the Sole Arbitrator of the CAS ADD, Mr. David Benck, dated 02.08.2023 must be upheld.*

2. *The appeals from the IWF/ITA and WADA are to be dismissed as unfounded*."

V. JURISDICTION

139. The jurisdiction of CAS derives from Article R47 of the CAS Code, which reads:

"*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*."

140. Further, the jurisdiction of CAS derives from Article 13.2.1 IWF ADR, which states that:

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

141. Article 13.2.3.1 IWF ADR states that:

"*In cases under Article 13.2.1, the following parties shall have the right to appeal to CAS: […] (c) IWF […] (f) WADA*."

142. The Panel notes that the present proceedings result from appeals lodged by IWF and WADA against the Appealed Decision.

143. The Panel further notes that the jurisdiction of the CAS has been confirmed by all Parties in the Order of Procedure and has not been challenged by any of the Parties in the present proceedings.

144. In light of the above, the Panel is satisfied that the jurisdiction of CAS is established to adjudicate the present matter.

VI. ADMISSIBILITY

145. Article R49 of the CAS Code provides 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.* […]"

146. Furthermore, Article 13.6.1 of the IWF ADR provides that:

"*The time to file an appeal to CAS shall be twenty-one (21) days from the date of receipt of the decision by the appealing party. The above notwithstanding, the following shall apply in connection with appeals filed by a party entitled to appeal but which was not a party to the proceedings that led to the decision being appealed:*

(a) Within fifteen (15) days from the notice of the decision, such party/ies shall have the right to request a copy of the full case file pertaining to the decision from the Anti-Doping Organization that had Results Management authority;

(b) If such a request is made within the fifteen (15) day period, then the party making such request shall have twenty-one (21) days from receipt of the file to file an appeal to CAS.

The above notwithstanding, the filing deadline for an appeal filed by WADA shall be the later of:

(a) Twenty-one (21) days after the last day on which any other party having a right to appeal could have appealed, or

(b) Twenty-one (21) days after WADA's receipt of the complete file relating to the decision. [sic]"

147. The IWF's deadline to appeal is twenty-one days from receipt of the decision per Article 13.6.1. above.

148. The IWF received the Appealed Decision on 2 August 2023. It follows that IWF's deadline to appeal within twenty-one days from receipt of the decision was at the latest on 23 August 2023, and WADA's deadline to appeal could not be any later than 13 September 2023 (i.e. twenty-one days from the expiry of IWF's appeal deadline as per Article 13.6.1 para. 2 lit. a).

On 22 August 2023, the IWF filed its Statement of Appeal against the Appealed Decision in compliance with the aforementioned articles.

149. The appeals complied with all other requirements of Articles R48 and R51 of the CAS Code.

150. It follows that the Panel is satisfied that those Appeals are admissible.

VII. APPLICABLE LAW

151. Pursuant to Article R58 of the CAS Code:

"*Law applicable to the merits*

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."

152. The facts occurred in 2021 during the Competition under the auspices of the IWF. Therefore, the 2021 IWF ADR govern this case.

153. The IWF is located in Lausanne, Switzerland, and therefore, Swiss law applies subsidiarily.

154. The Panel notes that the regulations and the law applicable to the present case are not in dispute between the Parties.

VIII. THE MERITS

A. Scope of review (*de novo*)

155. According to Article R57 CAS Code, *"[t]he 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*" (emphasis added).

156. The Panel will thus conduct a *de novo* review of the present dispute within the scope set out below of the IWF and WADA's appeals, which are directed against the Appealed Decision.

B. Applicable standards

157. As stated above, the IWF ADR are applicable to the present matter and are recalled hereinafter.

158. Article 2 of the IWF ADR specifies the circumstances and conduct which constitute an ADRV. In particular, Article 2.1 of the IWF ADR defines what constitutes an ADRV for Presence of a Prohibited Substance in an athlete's sample:

> "*2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample:*
>
> *2.1.1 It is the Athlete's personal duty to ensure that no Prohibited Substance enters his or her 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 that intent, Fault, Negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.*

2.1.2 Sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analyzed; or, where the Athlete's B Sample is analyzed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample; or, where the Athlete's A or B Sample is split into two (2) 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.

2.1.3 Excepting those substances for which a Decision Limit is specifically identified in the Prohibited List or a Technical Document, the presence of any reported quantity of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample shall constitute an anti-doping rule violation."

159. Pursuant to Article 3.1 of the IWF ADR, the burden of proof is on the IWF to establish an ADRV, to the comfortable satisfaction of the Panel.

"*3.1. Burdens and Standards of Proof*

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

[Comment to Article 3.1: This standard of proof required to be met by IWF is comparable to the standard which is applied in most countries to cases involving professional misconduct.]"

160. Once the IWF has established an ADRV, the burden of proof then shifts to the athlete to prove either that the ADRV should not be considered as such, or that the ADRV was unintentional or that the applicable period of Ineligibility should be reduced, suspended, or eliminated on the grounds provided for in the IWF ADR. The athletes' burden of proof is on a balance of probability.

161. As per Article 10.2.1 of the IWF ADR, the standard period of ineligibility imposed for a violation of Article 2.1 of the IWF ADR for a Non- Specified Substance, like DHCMT, is four years. This four-year period can be mitigated or increased as explained below:

The four-year period of Ineligibility can firstly be reduced if an athlete can successfully establish that the ADRV was not intentional within the meaning of Article 10.2.3 of the IWF ADR. The requirement of establishing proof of source of a Prohibited Substance (i.e., how the Prohibited Substance entered her body and resulted in an AAF), which falls on an athlete, is a critical first step in any exculpation of intent.

162. If an athlete succeeds in proving a lack of intent, the start-off point for calculating the period of Ineligibility will be reduced to 2 years.

163. Thereafter, the sanction may be further mitigated if an athlete succeeds in establishing "No Fault or Negligence" as per Articles 10.5 or "No Significant Fault or Negligence" as per Article 10.6 of the IWF ADR, and the definitions of those terms in the IWF ADR. The requirement to establish the origin of the Prohibited Substance here is a strict condition precedent for the Athlete since she is not a Protected Person nor a Recreational Athlete.

C. Analysis of the Panel

1. The existence of an ADRV

164. As referred to above, Article 2.1.2 of the IWF ADR provides that there is sufficient proof of an ADRV when the B-sample confirms the presence of the Prohibited Substance (or its metabolites) in the A-sample. This is a strict liability standard, and the question of intent is irrelevant.

165. In the present case, the results of the A- and B-samples both confirmed the presence of DHCMT, a fact that is also supported by Prof. Saugy's report and, at the end, not seriously challenged by the Respondent.

166. Indeed, the Panel notes that the Respondent does not develop any serious argument to support her principal request for the Panel to decide that there was no ADRV. Quite to the contrary, the Athlete admits that her previous theories referring to a potential "*mix up of samples*", a "*doping attack*", or a "*sabotage*" which would have explained the presence of DHCMT "*in pure form*" in her sample, must be abandoned in light of the further evidence communicated by the ITA. She considers in that respect that she was misled by the ITA's inept management of the doping collection and analysis but she acknowledges that, in light of the evidence communicated, these hypotheses no longer hold water. Her defense then evolved and now focuses on the hypothesis that she was the victim of an intentional or inadvertent contact with a contaminated person/surface.

167. Hence, having reviewed the pleadings and the evidence of the Parties, the Panel confirms that the IWF has established, to the Panel's comfortable satisfaction, that the Athlete committed a violation of Article 2.1 of the IWF ADR, as established by the analysis of the A- and B-samples of the Athlete, which both confirmed the presence of a Prohibited Substance, a steroid called DHCMT.

168. Once the ADRV has been established, the Panel recalls that the sanction of the presence of DHCMT is 4 years of ineligibility, unless the Athlete can establish that the ADRV was non-intentional (Article 10.2 of the IWF ADR).

169. The notion of intent, which is crucial here, is defined in Article 10.2.3 of the IWF ADR and in numerous CAS cases that will be considered below.

170. It must be underscored that, while the IWF must demonstrate the ADRV to the comfortable satisfaction of the Panel, the burden of proof then shifts to the Athlete to establish that the ADRV was not intentional, as per Article 3.1 of the IWF ADR. The standard of proof is the balance of probabilities.

171. In light of these applicable standards, the Panel will now examine whether the Respondent has established that the ADRV was not intentional.

2. Was the ADRV non-intentional?

- <u>The necessary demonstration of the lack of intent of the Athlete and applicable standard of proof</u>

172. The Panel refers to the IWF ADR and the long-standing established jurisprudence of the CAS, which provides that the Athlete is required to prove her allegations of lack of intent on the "*balance of probabilities*". As mentioned by the IWF, this standard requires the Athlete to convince the Panel that the occurrence of the circumstances on which the Athlete relies is "*more probable than their non-occurrence*."

173. In terms of proving the Athlete's lack of intent, the comment to Article 10.2.1.1. of the IWF ADR makes clear that: "*While it is theoretically possible for an Athlete or other Person to establish that the anti-doping rule violation was not intentional without showing how the Prohibited Substance entered one's system, it is highly unlikely that in a doping case under Article 2.1 an Athlete will be successful in proving that the Athlete acted unintentionally without establishing the source of the Prohibited Substance*."

174. Numerous CAS cases confirm the same approach (CAS 2016/A/4627, also CAS 2010/A/2230, and CAS 2014/A/3820, CAS 2017/A/5016 & 503 5036, CAS 2014/A/3820). As the analysis of these cases reveal, protestations of innocence and speculations do not suffice and the IWF ADR and case law are aligned to require specific, concrete evidence from the concerned athlete about the origin of the Prohibited Substance detected in his/her body.

- <u>The circumstances of the present case</u>

175. In the present case, the Athlete argues that she was the victim of a "*sabotage*", or alternatively - and in reality, her key theory – that DHCMT entered her body through inadvertent transdermal contact during the days preceding the Competition.

176. The Panel confirms that the sabotage theory must be discarded. Indeed, this theory has at its root the fact that the DHCMT found in the A- and B-samples allegedly had none of the metabolites, which would prove that the Prohibited Substance was added to the sample collected from the Respondent. However, this reasoning is defeated by the presence of a phase-II metabolite DHCMT-glucuronide in the Athlete's urine sample 0054019, which, as confirmed by Prof. Saugy, establishes that DHCMT was metabolized, i.e. that it passed through the Athlete's body.

177. Moreover, since the DNA analysis confirmed that the sample belongs to the Athlete, the Panel believe it unnecessary to discuss the latter's arguments on the integrity of the collection of said sample, i.e. whether the Athlete established that the ITA departed from the applicable ISL/ISTI and whether such deviation could have cause the AAF.

178. Turning to the transdermal contamination put forward by the Athlete, the Panel has examined the scientific evidence provided, and in particular (but not only) the Second and Third de Boer Reports, an opinion prepared by Dr Thieme before the German courts (as part of the criminal proceedings against the Athlete in Germany), the expert testimonies of Prof. Saugy and Prof. Ayotte, and the Gessner study.

179. The Panel also notes that the IWF agrees with certain key findings of the Respondent, at least as a matter of principle. In particular, the Respondent and the First Appellant appear to agree that steroids can be administered through a transdermal preparation, and~~,~~ that given that the usual metabolites of DHCMT were not present in the Athlete's sample, a transdermal application is a "*scientifically possible theory*" in the present case.

180. While the Panel agrees that the transdermal application of DHCMT is a hypothesis that is to be studied carefully, the following question is whether it is sufficient to establish the lack of intent, and whether it passes the balance of probability test. In other words, whether it is more likely than not that the DHCMT found in the Athlete's sample originated from inadvertent contact with contaminated surfaces/persons in the days preceding the Competition.

181. What the Respondent has produced in terms of evidence for the source of the DHCMT is essentially the schedule of the Athlete in the days preceding the doping test: listing her travel plans and her likely close contacts with other athletes and trainers during the flight, the bus transportation and the preparation of the Competition (weigh-in sessions, lunches, hotels).

182. However, these elements are not, in the Panel's view, sufficient to establish the source of the ADRV for the purpose of demonstrating non-intentional ingestion or contact, in particular in consideration of the following facts:

- According to Prof. Saugy, even if the dosage of DHCMT in the cream that was applied is unknown, the necessary quantity of cream containing DHCMT for a transdermal transfer to reach of concentration level of 0,6ng/ml has to be significant.
- The Athlete provides no indication as to exactly with whom or when she had such close contact and her simple indications of her travel and whereabouts in the days

preceding the Competition do not suffice and could apply to any athlete, participating in any competition.
- None of the other 72 doping tests conducted during the Competition revealed the use of DHCMT by other participants.
- The prevalent use of DHCMT is oral, and accordingly, the probability that someone present at the Competition used a cream containing DHCMT is minimal.
- Prof. Ayotte notes that oral ingestion could not be excluded immediately prior to the sample collection.

183. The Panel could still be persuaded by the Athlete's assertion of lack of intent if it were sufficiently supported by all the circumstances and context of her case and proven on a balance of probabilities. The classic reference in such case is CAS A1/2020.

184. However, the Panel agrees with the IWF that the circumstances of that case and of the line of CAS cases establishing the "*narrowest of corridors*" to admit lack of intent, despite the absence of sufficient evidence on the origin of the Prohibited Substance, if at all possible, are not met here. Furthermore, there is no evidence that the transdermal application could not be voluntary, in particular since it has been established by Prof. Saugy that transdermal use of DHCMT is an efficient and advantageous method of deriving the benefits of steroids without suffering from the negative side-effects of intake through oral routes and is widely used in weightlifting.

185. The Panel turns to the fact that the Athlete was found not guilty of an intentional violation under the German Anti-Doping Law, and whether this finding would be relevant to argue that her ADRV should also be considered as "*non-intentional*" under the IWF ADR. The Panel notes that the standards applied in these two jurisdictions are different, which is confirmed by the testimony of Dr Lars Mortsiefer, the CEO of the German NADA. Therefore, the fact that the Athlete was found not to have intentionally violated German criminal law is irrelevant for the Athlete to prove her non-intention under the IWF ADR.

186. On the basis of the above, the Panel concludes that the Athlete failed to establish the source of the Prohibited Substance, and that the Athlete failed to demonstrate that the ADRV was not intentional. The provisions of Article 10.2.1.1/10.2.2 (unintentional ADRV), Article 10.5 and Article 10.6 of the IWF ADR are thus inapplicable to the present proceedings and there are no grounds to reduce the applicable period of ineligibility.

187. Consequently, four years of ineligibility is the only applicable period to the Athlete's case.

- The sanction of the ADRV

188. In terms of computation of the period of ineligibility, in accordance with Article 10.13.2 of the IWF ADR and since the Athlete has served a period of Provisional Suspension from 22 November 2021 until the Appealed Decision on 2 August 2023, this period of provisional suspension will be credited towards the 4-year period of Ineligibility imposed as of the date of this Award.

189. With respect to the disqualification of results, the Panel agrees that, in accordance with Articles 9 and 10.10, of the IWF ADR, the Athlete's competitive results at the 2021 European Junior Championships, Finland shall be automatically disqualified including the forfeiture of any medals, prizes, and points, together with any competitive results from 26 September 2021 until the date of the present Award.

IX. COSTS

(…).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeals filed by WADA and the IWF against Ms Vicky Annett Schlittig are upheld.

2. The decision rendered on 2 August 2023 by the sole arbitrator in the CAS Anti-Doping Division procedure *CAS 2022/ADD/53 International Weightlifting Federation v. Ms Vicky Annett Schlittig*is set aside.

3. Ms Vicky Annett Schlittig has committed an antidoping rule violation and is sanctioned with a period of four (4) years of ineligibility starting from the date of the present Award. The period of provisional suspension already served by Ms Vicky Annett Schlittig between 22 November 2021 and 2 August 2023 shall be credited against the ineligibility period mentioned above.

4. Ms Vicky Annett Schlittig's competitive results at the 2021 European Junior Championships, Finland are automatically disqualified including the forfeiture of any medals, prizes, and points, together with any and all competitive results from 26 September 2021.

5. (…).

6. (…).

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

Seat of arbitration: Lausanne, Switzerland

Date: 26 February 2025

THE COURT OF ARBITRATION FOR SPORT

Carine Dupeyron
President of the Panel

Ken E. Lalo
Arbitrator

Romano F. Subiotto KC
Arbitrator