CAS 2023/A/10045 WADA v. RUSADA & Anastasiia Kirienko

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition

Sole Arbitrator: Mr André Brantjes, Attorney-at-Law, Amsterdam, The Netherlands

in the arbitration between

World Anti Doping Agency (WADA), Lausanne, Switzerland

Represented by Mr Ross Wenzel, WADA Legal Director, and Ms Louise Reilly, Attorney-at-Law, Kellerhals Carrard, Lausanne, Switzerland

- Appellant -

and

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

Represented by Mr Graham Arthur, Liverpool, United Kingdom

- First Respondent -

Anastasiia Kirienko, Russia

- Second Respondent -

*** * * * ***

I. PARTIES

1. The World Anti-Doping Agency ("WADA" or the "Appellant") is a private law foundation constituted in 1999 under Swiss law to promote and coordinate at international level the fight against doping in sport. WADA has its registered seat in Lausanne, Switzerland, and its headquarters in Montreal, Canada.

2. The Russian Anti-Doping Agency ("RUSADA" or the "First Respondent") is the National Anti-Doping Organisation in Russia and a signatory to the World Anti-Doping Code ("WADC"). Its registered office is in Moscow, Russia.

3. Ms Anastasiia Kirienko (the "Athlete" or the "Second Respondent") is a Russian boxer and member of the Russian national team.

4. RUSADA and the Athlete are hereinafter jointly referred to as the "Respondents", and together with WADA as the "Parties".

II. INTRODUCTION

5. The present appeal arbitration proceedings concern an appeal lodged by WADA against the decision (the "Appealed Decision") issued by the National Center of Sport Arbitration ("NCSA") on 7 July 2023, confirming the first instance decision (the "First Instance Decision") issued by the RUSADA Disciplinary Anti-Doping Committee (the "DADC") on 2 March 2023, in which the Athlete was held to have breached Article 4.5 (entitled *"Tampering or Attempted Tampering with any part of Doping Control by an Athlete or other Person"*) of the Russian Anti-Doping Rules (the "Russian ADR"), but holding that there were exceptional circumstances justifying a reduction of the period of ineligibility from four to two years.

6. With its appeal before the Court of Arbitration for Sport ("CAS"), WADA is seeking a four-year period of ineligibility to be imposed on the Athlete. The First Respondent, RUSADA, submits that the Athlete violated Article 4.5 of the Russian ADR, but it does not take any position with respect to the period of ineligibility to be imposed. The Athlete seeks to be exonerated from any wrongdoing and sanction.

III. FACTUAL BACKGROUND

7. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the Parties and the evidence examined in the course of the proceedings and at the hearing. This background information is given for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.

8. On 5 October 2022, the Athlete was not available, at the time indicated by the Athlete in the Anti-Doping Administration and Management System (ADAMS), *i.e.* between 5.00 and 6.00 in the morning, for an out of-competition doping test attempted by a RUSADA DCO (Doping Control Officer) who visited the location

the Athlete had indicated for that purpose in the ADAMS system, i.e. her apartment in Moscow, Russia, where she lives together, amongst others, with her grandfather. Her absence was reported as a missed test (the "Missed Test"), which comprised the second missed test of the Athlete), which is not in contention in the present appeal arbitration proceedings.

9. It is undisputed that a fake medical certificate (the "Fake Medical Certificate") as well as a handwritten note (written by the Athlete) (the "Handwritten Note") were presented to RUSADA, trying to justify the Missed Test. However, it is in contention by whom such documents were submitted.

10. The Handwritten Note provides as follows, translated into English:

> *"I, Anastasia Maksimovna Kirienko, was not in the designated time slot, from 5.00 a.m. to 6.00 a.m. on 05.10.2022, due to my health condition. Visiting a relative in Smolensk region, and expecting to return back to the designated time slot, I encountered a sudden acute fever (sudden acute rise in temperature), in connection with which I was taken to the district hospital of Smolensk region in an acute condition. As a result of outpatient care, the acute condition was relieved and only then I was able to get home. It was not possible to give an hour's notice or advance notice due to the sudden sharp deterioration of my health condition. Please consider this case due to illness and do not put it as a violation. I attach an official document to the explanatory note in this letter".*

11. The Fake Medical Certificate provides as follows, translated into English:

> *"OGBUZ "Ugranskaya CRH"*
> *of Smolenskiy region*
> *Polyclinic*
>
> *CERTIFICATE*
>
> *Given to: Kirienko Anastasiya Maksimovna 01.10.2003*
>
> *In the fact that he/she was on outpatient (inpatient) treatment*
> *From 05.10.2022*
> *Diagnosis: acute respiratory viral infection, chronic bronchitis exacerbation.*
> *Has been sick for 3-4 days*
>
> *Head of Department* **2 stamps, signature**
> *Attending physician"*

12. On 26 October 2022, RUSADA requested the hospital to confirm the authenticity of the medical certificate.

13. On 27 October 2022, the hospital responded that the signature on the medical certificate did not belong to the doctor who had allegedly issued the certificate, that the doctor in question explained that *"*[the Athlete] *did not apply to her personally"*, that she *"doubts the authenticity of her personal seal"*, that the Athlete was not in the hospital's database, that an old version of the certificate was used, and that the hospital was of the view that *"this certificate can not be recognized as valid"*.

14. On 20 January 2023, RUSADA notified the Athlete of a potential breach of Article 4.5 of the Russian ADR, i.e. a Tampering violation. The Athlete was not provisionally suspended.

15. On 2 March 2023, the DADC issued the First Instance Decision, with the following operative part (excerpt of the First Instance Decision):

11. Committee decision	*To recognize the ADRV under cl. 4.5 with 2 (two) years of ineligibility from the date of rendering the decision*
12. Date of the commencement of the ineligibility period	*March 2, 2023*
13. Date of the end of the ineligibility period	*March 1, 2025*
14. Disqualification of the individual results	*All the individual results obtained by the Athlete from October 24, 2022 are subject to disqualification*

16. The DADC found that the Athlete had committed a breach of Article 4.5 of the Russian ADR. However, the DADC considered that there were exceptional circumstances which justified a reduction of the sanction down to a period of Ineligibility of two years under Article 12.3.1(b) of the Russian ADR.

17. Specifically, the DADC explained as follows:

> *"Upon review of the case file, having heard the explanations of the Athlete's party and the position of RUSADA, the Disciplinary Anti-Doping Committee concluded that the false scenario of missing test was thought out and implemented by the Athlete's mother.*
>
> *The following evidence is presented to the case file: the testimony of witnesses, a bank account statement, screenshots of correspondence in WhatsApp, which confirm that the mother of the Athlete was the initiator and executor of the*

falsification of the medical certificate. The athlete did not participate in the commission of the violation by her active actions, did not know about the fact of sending a falsified certificate at the time of its sending and could not prevent this fact due to her absence at the mother's location.

The Disciplinary Anti-Doping Committee takes into account the Athlete's age (born October 1, 2003), her financial and other dependence on her family, as well as the lifestyle that has developed in the Athlete's family, according to which her family members play a serious role in the development of the Athlete's sports career.

Under the circumstances, the actions taken by the Athlete, namely the fact that she did not agree to send a falsified certificate to RUSADA on the same day, she tried to postpone the fact of sending the certificate until the current situation was resolved, seem sufficient to draw a conclusion about the reasonable behavior of the Athlete in the circumstances. It would be excessive to require the Athlete to control all the actions of her relatives in order to prevent a violation from being committed.

However, the Disciplinary Anti-Doping Committee takes into account the fact that the Athlete is a member of the Russian Federation boxing team and a prize-winner of all-Russian and international boxing competitions and has the sports title "Master of Sports".

Being not a minor and possessing a high level of skill, as well as having an anti-doping education, the Athlete should have known about the existence of a sanction for falsifying documents, and convey this to her relatives who live with her and actively participate in her sports activities.

Thus, the Disciplinary Anti-Doping Committee considers that in this case there are exceptional circumstances that are the basis for the reduction of the standard period of Ineligibility, as provided for in clause 12.3.1 (b) of the Rules".

18. On 7 July 2023, following appeals filed against the First Instance Decision by RUSADA and the Athlete, the NSCA issued the Appealed Decision, with the following operative part:

"1. To refuse to satisfy the claim of RUSADA.

2. To refuse to satisfy the claim of Anastasia Maksimovna Kirienko.

3. To keep in force Decision of the RUSADA DADC #45/2023 dated March 2, 2023.

4. All costs incurred in connection with this proceeding, including reimbursement of all costs related to NCSA fees, as well as costs of representatives and other expenses related to the consideration of this dispute, shall be borne by the Parties incurring them".

19. With respect to the Athlete's alleged infringement of Article 4.5 of the Russian ADR, the grounds of the Appealed Decision provide, *inter alia*, as follows:

- *"The Athlete confirmed that she had written the explanatory note in her own handwriting, but claimed that she had done so under strong pressure from her mother and had no intention of sending the explanations and certificate to RUSADA. The Athlete and her mother (I.N. Kirienko) claimed during the consideration of the present case that the explanatory note and certificate were sent to RUSADA by the Athlete's mother secretly from the Athlete using a smartphone belonging to the Athlete on a train from Krasnodar to Moscow, while the Athlete was spending time in a neighboring (sic) carriage with her friend. In view of the above, the Athlete believes that her actions do not constitute fault in violation of Clause 4.5 of the Rules, as she did not commit any actions herself neither to obtain a false certificate, nor to subsequently submit the certificate to RUSADA, did not know that her mother was committing such actions, had no real opportunity to prevent their commission, although before that she had expressed to her mother her negative attitude to the possible commission of such actions.*

- *The Panel finds that RUSADA has been able to establish that violation of the anti-doping rules has occurred "to the comfortable satisfaction, bearing in mind the seriousness of the allegation which is made" in accordance with Clause 5.1. This standard of proof is greater than a mere "balance of probability" but less than proof "beyond reasonable doubt".*

- *In the Panel's opinion, the circumstances related to: 1) the existence of an explanatory note written by the Athlete herself; 2) the existence of a forged certificate from the Ugra Central District Hospital; 3) the sending of the explanatory note and certificate from the Athlete's e-mail address are sufficient to conclude that RUSADA has met its burden of proving the Athlete's anti-doping violation.*

- *At the same time, the Panel agrees, on the balance of probabilities, with the Athlete's version that the explanations written by her under pressure from her mother with the attachment of a false certificate were sent to RUSADA by the Athlete's mother using her smartphone. However, the Panel is critical of the Athlete's arguments that she did not want to send these documents to RUSADA and had no real possibility to prevent her mother from sending the documents.*

- *After writing the explanations based on the information provided in the false certificate under pressure from her mother on October 21, 2022, the Athlete, had she not wished to send the documents to RUSADA, could have destroyed them that same evening and on subsequent days up to October 24, 2022, when they were sent by her mother to RUSADA, but did not do so. Moreover, knowing of her mother's intention to send the false certificate and explanations to RUSADA, and knowing that her mother had access to her smartphone, the Athlete took no action to make the device inaccessible to I.N. Kirienko, leaving it in her mother's possession in her compartment, going to another carriage to*

see her friend, and failing to change the code-password for access to her smartphone.

- *In addition, the Panel takes into account the fact that the Athlete did not inform her mother about the conversation held on the afternoon of October 5, 2022 with the anti-doping coordinator of the Russian Boxing Federation, who was informed of the true reasons for missing the test. The Panel also takes into account the fact that, having learned on October 25, 2022 from her mother about the sending of the explanatory letter and the false certificate, the Athlete did not immediately contact RUSADA, and it was not until November 7, 2022 that she sent to the anti-doping agency a refutation of the information previously provided from her e-mail.*

- *In accordance with Clause 12.5 of the Rules, if the Athlete or other Person can establish on a case-by-case basis that his or her actions were without fault or negligence, the otherwise applicable period of Ineligibility shall be eliminated.*

- *Under such circumstances, the Panel concluded that the Athlete, having written false explanations under the influence of her mother about the reasons for missing the test and knowing that her mother had access to her smartphone, did not take measures to destroy the said explanations, nor to ensure that her mother did not have access to her smartphone, nor to explain to her mother all the circumstances that took place on October 5, 2022, including the conversation between the Athlete and her grandfather with the anti-doping coordinator of the Russian Boxing Federation, thus allowing an irresponsible attitude (negligence) with respect to the possibility of her mother sending the false documents to RUSADA on behalf of the Athlete, thus allowing a violation of Clause 4.5 of the All-Russian Anti-Doping Rules. Therefore, the Panel decided to dismiss the claims of the Athlete.*"

20. Having established that the Athlete infringed Article 4.5 of the Russian ADR, the grounds of the Appealed Decision provide, *inter alia*, as follows with respect to the period of Ineligibility to be imposed:

- *"Pursuant to Clause 4.5 of the Rules, Tampering or Attempted Tampering with any part of Doping Control constitutes an anti-doping rule violation. In accordance with the Annex to the Rules, the term "Tampering" includes, without limitation, falsifying documents submitted to an Anti-Doping Organization.*

- *Pursuant to Clause 12.3.1 of the Rules, for violations of Clauses 4.3 or 4.5 of the Rules, the period of Ineligibility shall be four (4) years except for the following cases:*

    a) in case of failing to submit to Sample collection, if the Athlete can establish that the violation of the Rules was not intentional, the period of Ineligibility shall be two years;

b) if the Athlete or other Person can establish exceptional circumstances which are grounds for reducing the period of Ineligibility, the period of Ineligibility shall be in a range from two years to four years, depending on the degree of Fault of the Athlete or other Person;

c) if a violation was committed by a Protected Person or Recreational Athlete, the period of Ineligibility shall be in a range between a maximum of two years of Ineligibility and, at a minimum, a reprimand without assignment of a period of Ineligibility, depending on the degree of Fault of the Protected Person or Recreational Athlete.

- *The Panel, having heard the explanations of the Parties, having examined the evidence available in the case file and having questioned the witnesses at the hearing, agrees with the conclusion of the RUSADA DADC stated in Decision #45/2023 dated March 2, 2023 that it was the mother of the Athlete (I.N. Kirienko) who invented and implemented a false version of the Athlete's missing the test on October 5, 2022.*

- *I.N. Kirienko was the initiator of issuing the false medical certificate. She also exerted moral pressure on the Athlete and got the latter to write explanations about false reasons for missing the test, seized the explanations from the Athlete's backpack and, using her daughter's smartphone, sent the explanations and the certificate to RUSADA on October 24, 2022.*

- *The Panel found that the Athlete lives in the same apartment with her relatives (grandfather, disabled grandmother, mother and her aunt's family), was brought up without her father and is still completely financially dependent on her mother, has no friends except for her only friend Anna Nikitina, and is subject to constant control by her mother, including control of her correspondence and communication. Thus, despite having reached adulthood, the Athlete is in significant material and moral dependence on her family.*

- *In view of the above, the Panel concluded that in the present case there are exceptional circumstances: the active role of the Athlete's mother in the implementation of the false version of the Athlete's missing the test and the existing family lifestyle of the Athlete, which are the basis for reducing the period of Ineligibility under Subclause b) of Clause 12.3.1 of the Rules.*

- *Resolving the issue of the period of Ineligibility, taking into account the existence of the identified exceptional circumstances, and taking into account the age of the Athlete (born on October 1, 2003), the Panel considers that the sanction of Ineligibility for a period of two (2) years is a proportionate punishment for the violation by the Athlete of Clause 4.5 of the Rules.*

- *Under such circumstances the Panel came to the conclusion to refuse to satisfy the claims of RUSADA and to leave in force the Decision of the RUSADA DADC #45/2023 dated March 2, 2023".*

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

21. On 10 October 2023, WADA filed a Statement of Appeal with CAS, challenging the Appealed Decision in accordance with Articles R47 and R48 of the 2023 edition of the CAS Code of Sports-related Arbitration (the "CAS Code"). In this submission, WADA requested that the case be submitted to a Sole Arbitrator.

22. On 18 April 2024, the CAS Court Office notified the Statement of Appeal to the Parties, invited the Appellant to file its Appeal Brief in accordance with Article R51 of the CAS Code and noted the Appellant's choice to proceed with its Appeal in the English language and invited the Respondents to inform the CAS Court Office whether they agree to the appointment of a Sole Arbitrator.

23. On 18 October 2023, RUSADA agreed that the case be submitted to a Sole Arbitrator.

24. On 20 October 2023, the lawyer who had represented the Athlete in the proceedings resulting in the First Instance Decision and the Appealed Decision informed the CAS Court Office that he had not yet been authorised to represent the Athlete in the proceedings before CAS. The lawyer further indicated that he had, *inter alia*, informed the Athlete of the appeal filed by WADA and of "the need to meet the first deadlines set out", also advising her *"to hire asap a sports law professional to represent her before CAS"*.

25. Also on 20 October 2023, the Athlete sent an email to the CAS Court Office, indicating, *inter alia*, as follows:

> *"My email address: […], please send all correspondence to this email address. I also ask you to extend the deadline for answering all questions for 7 days, since I am a full-time student of the University and have an income of only 2000 rubles. per month, I am in search of funding for my defense (sports lawyer)".*

26. On 26 October 2023, after having granted WADA and RUSADA the possibility to comment on the Athlete's request for extension, the CAS Court Office granted the Athlete the requested 7-day extension.

27. On 8 November 2023, WADA filed a document production request, by means of which it requested the Sole Arbitrator to order the Respondents to produce the following documents translated into English:

From the Athlete:

"1. Any and all documents relating to the procuring of the [Fake Medical Certificate], *including but not limited to call logs, WhatsApp messages and/or emails.*

2. Any and all emails, messages or other documents between the Athlete and her mother (or any third party) pertaining to the [Fake Medical Certificate].

3. The full name and contact details for 'Elena', the woman who allegedly procured the [Fake Medical Certificate].

4. Full contact details for 'Marina Kulakova', the Athlete's aunt who allegedly made enquiries regarding procuring a fake medical certificate.

5. The full name and contact details for 'Anechka', the woman who allegedly provided Ms Kulakova with contact details for Elena.

6. Full contact details for 'Irina Ivanovna Peresyp', the mother's friend who provided a witness statement regarding the Athlet''s mother allegedly telling Ms Peresyp about sending the [Fake Medical Certificate]*to RUSADA.*

7. Email or WhatsApp message from the Athlete's mother to Elena on 11 October 2022, sending copies of the Athlete's documents (OMS, SNILS, passport and the name of the educational institution where the Athlete studies).

8. WhatsApp message from the Athlete's mother to Elena on 11 October 2022, to confirm payment of 6,000 rubles.

9. Email or WhatsApp message from Elena to the Athlete's mother on 21 October 2022, sending a copy of the [Fake Medical Certificate].

10. WhatsApp message from the Athlete's mother to the Athlete on 21 October 2022, sending the Athlete a copy of the [Fake Medical Certificate].

11. WhatsApp message from the Athlete's phone to the anti-doping coordinator of the Russian Boxing Federation on 23 or 24 October 2022, notifying the Russian Boxing Federation that the Athlete had sent her explanations and medical certificate to RUSADA.

12. WhatsApp chat, messages and/or emails between the Athlete and the antidoping coordinator, Dina Marselevna and/or Dina Sadykova of the Russian Boxing Federation, between 5 October 2022 and 6 November 2022 (inclusive)".

From RUSADA:

"1. Copy of the materials received by RUSADA during the investigation of the Athlete's possible whereabouts violation, sent to the Athlete with RUSADA's letter dated 27.10,2022 (or confirmation that the materials referred to in RUSADA's letter only comprised of the letter from the hospital dated 27 October 2022).

2. A history of the Athlete's anti-doping education".

28. On 18 November 2023, the Athlete filed a response by means of which she addressed the merits of the allegations raised against her. She also provided the CAS Court Office with several documents, in Russian language only:

- With respect to item 3, the Athlete provided the phone number of *"Elena"*;
- With respect to item 4, the Athlete provided the phone number of her aunt, Ms Kulakova Marina Nikolaevna;
- With respect to item 6, the Athlete provided the phone number of Ms Irina Ivanovna Peresyp;
- The Athlete provided a payment slip of a bank referring to an amount of 6,000;
- The Athlete provided the phone number of a friend of her aunt, Ms Skomoroshchenko Anna Yaroslavovna;
- The Athlete provided a WhatsApp conversation between her and Ms Dina Marseleva.

29. On 23 November 2023, the CAS Court Office informed the Parties that the Athlete had not responded, within the extended deadline granted, with respect to WADA's request to appoint a sole arbitrator and that it would therefore be for the President of the CAS Appeals Arbitration Division, or her Deputy, to decide on the number of arbitrators, in accordance with Article R50 of the CAS Code.

30. Also on 23 November 2023, with reference to Article R29 of the CAS Code, WADA requested the Athlete to provide a translation of the documents filed on 18 November 2023. WADA also indicated that the Athlete did not produce any of the documents requested from her mother (items 7, 8 and 9 cited above) nor the exchange between the Athlete and her mother on 21 October 2021 (item 10 cited above). WADA also indicated that RUSADA had not responded to the document production requests addressed to it. The Appellant further requested that its deadline to file the Appeal Brief be suspended *"pending the decision of the Panel in relation to WADA's document request"*.

31. On 24 November 2023, the CAS Court Office invited the Respondents to file the respective documents as listed in WADA's letter dated 23 November 2023 and/or translation into English by 1 December 2023, or, in the alternative, to provide any reasons for objection/failure to provide such documents. The CAS Court Office further invited the Respondents to comment on WADA's suspension request. The Respondents' silence in this regard would be deemed acceptance of the Appellant's request and, in the event of disagreement, it would be for the President of the CAS Appeals Arbitration Division, or her Deputy, to decide the issue in accordance with Article R32 para. 3 of the CAS Code.

32. On 1 December 2023, RUSADA provided the CAS Court Office with the following information:

- With respect to item 1, RUSADA confirmed that the only enclosure to the letter dated 27 October 2022 was the response provided to RUSADA by the Ugranskaya Hospital;
- With respect to item 2, RUSADA confirmed that the Athlete had participated in a webinar entitled *"The Prohibited List and TUE. Responsibility for anti-doping rule violation"* held on 11 August 2022 and that she had received the Anti-Doping Certificate on the RUSADA online educational platform on 2 May 2022.

33. On 4 December 2023, the CAS Court Office informed the Parties that in the absence of any objections by the Respondents regarding the Appellant's request to suspend the deadline to file the Appeal Brief *"pending the decision of the Panel in relation to WADA's document request"*, the respective deadline remained suspended until further notice from the CAS Court Office.

34. On 7 December 2023, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division had decided to submit the present proceedings to a sole arbitrator.

35. On 14 December 2023, the CAS Court Office informed the Parties that Mr. André Brantjes, Amsterdam, The Netherlands, had been appointed as the Sole Arbitrator for the present proceedings and that Mr Brantjes had accepted his appointment but wished to disclose some information to the Parties, the content of which was transmitted to the Parties. The Parties were further informed that pursuant to Article R34 of the CAS Code, an arbitrator may be challenged if the circumstances give rise to legitimate doubts over his independence. The challenge should be brought within seven days after the grounds for the challenge have become known.

36. On 4 January 2024, the CAS Court Office informed the Parties that no challenge had been filed against the appointment of Mr. Brantjes as Sole Arbitrator.

37. On 9 January 2024, the CAS Court Office informed the Parties that it had not received any additional documents and/or translations from the Athlete, despite the extended deadline granted to her.

38. On 17 January 2024, the CAS Court Office informed the Parties that, pursuant to Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the arbitral tribunal appointed to decide the present case was constituted as follows:

> Sole Arbitrator: Mr André Brantjes, Attorney-at-Law in Amsterdam, The Netherlands.

39. On 25 January 2024, the CAS Court Office, on behalf of the Sole Arbitrator, invited the Athlete to provide, in their original versions and translated into English, items 7, 8, 9 and 10 listed by WADA in its letters dated 8 and 23 November 2023, as well as translations of the documents filed on 18 November 2023, or, in the alternative, provide any reasons for objection/failure to provide, by 6 February 2024.

40. On 6 February 2024, the Athlete filed additional documents in Russian language and indicated that she would file the requested translations by 11 February 2024.

41. On 9 February 2024, the Athlete filed translations into English of the documents she had submitted on 18 November 2023 and 6 February 2024, except for the WhatsApp conversation submitted on 18 November 2023.

42. On 16 February 2024, upon being invited by the CAS Court Office to confirm whether the documents produced corresponded to its requests of 8 and 23 November 2023, WADA responded, *inter alia*, as follows:

> *"We refer to our email dated 23 November 2023, in which WADA noted that the Athlete did not produce any of the documents requested from her mother (items 7, 8 and 9 of WADA's letter dated 8 November 2023) nor the exchange between the Athlete and her mother on 21 October 2022 (item 10 of WADA's letter dated 8 November 2023; referred to at para 87 of the NCSA Decision, 'On October 21, 2022, she [the Athlete's mother] sent to her daughter on Whatsapp a copy of the certificate issued in the Ugra Central District Hospital, the Smolensk region, to RUSADA, and told her daughter to write an explanation'), specifically:*
>
> […]
>
> *We refer to the Athlete's emails dated 6 and 9 February 2024, with attachments. We note that rather than address WADA's document request, the Athlete simply sets out seven points in her defence and attaches documents, some of which are already in the case file.*
>
> *The Athlete has failed or refused to produce any of the emails or WhatsApp messages listed at items 7—10 above. Furthermore, the Athlete has not provided any explanation as to why she has failed or refused to produce the requested documents (which are referred to in the case file and therefore, are known to exist or have existed).*
>
> *In light of the foregoing, WADA respectfully requests that the Sole Arbitrator order the Athlete to produce the WhatsApp messages and emails specified at items 7-10 above. In the absence of such production, WADA may invite the Sole Arbitrator to draw an adverse inference from the Athlete's refusal or failure to produce the requested documents.*
>
> *Finally, WADA requests that its deadline to file its appeal brief remain suspended pending resolution of its document request".*

43. On 20 February 2024, the CAS Court Office, on behalf of the Sole Arbitrator, ordered the Athlete to *"submit the documents and information requested and specified in the Appellant's email of 16 February 2024, by 5 March 2024, or otherwise explain any reasons for not submitting the/some of the documents. Should the Second Respondent fail to do so as requested above, the Sole Arbitrator will then decide whether or not to draw an adverse inference"*.

44. On 5 March 2024, the Athlete informed the CAS Court Office as follows:

> *"Hello Dear ladies and gentlemen. In response to your last request for screenshots of Whatsapp chats, I am writing you an explanation.*
>
> *A year ago and for several months, during the so-called investigation of the RAA RUSADA, in this case, I and other witnesses in this case testified that while in Krasnodar, we went to the Galitsky Park, which is unusually clear in its beauty and not standard, similar to which does not exist in the world. To take a lot of photos on phones, I had to delete everything that didn't need to be deleted from them, including Whatsapp chats, which also take up memory. At that time, no one could have expected that they would be needed. Upon arrival in Moscow, only the fights from the Russian Boxing Championship, to which we arrived in Krasnodar, and photos and videos from Galitsky Park remained in memory on our phones.*
>
> *In the future, every effort was made to restore these chats, everything that was possible was sent to the RAA RUSADA, and should be in the case. We cannot restore more than it turned out, if someone tells us how to do this, we will be very grateful and we will be happy to restore them.*
>
> *Numerous documents, factual evidence, witness statements, explanations, etc. were provided to the RAA RUSADA, which they simply did not want to consider. Even the police called NOT me, but my mother, because based on all the evidence, it is obvious that I have NOTHING to do with the certificate and its sending".*

45. On 14 March 2024, WADA argued why it did not consider the Athlete's explanation credible, requesting the Sole Arbitrator to *"... order the Athlete to produce the requested emails or WhatsApp messages, whether in the Athlete's possession, the possession of the Athlete's mother or the possession of Elena, ..."*, specifically corresponding to items 7 to 10 of WADA's document production request of 8 November 2023.

46. On 15 March 2024, the CAS Court Office informed the Parties that the Sole Arbitrator, having duly taken into consideration the Parties' respective positions, had decided to grant WADA's request. Accordingly, the Athlete was ordered to provide, in their original versions and translated into English, the documents corresponding to items 7, 8, 9 and 10 (whether in her possession, her mother or Elena) listed by WADA in its letters of 8 and 23 November 2023, as well as translations of the documents filed on 18 November 2023, by no later than 22 March 2024. Furthermore, WADA was invited – in case of absence of production, if and to the extent applicable – to specify its request for any adverse inference to be drawn in its Appeal Brief.

47. On 9 April 2024, further to two granted requests for extension of the Athlete, the Athlete informed the CAS Court Office (with a picture of a WhatsApp conversation in Russian enclosed thereto) as follows:

> *"Unfortunately, so far I have not been able to find an opportunity to restore deleted Whatsapp messages.*

Let me remind you once again that there are explanations in the case that all messages were deleted so that there was enough memory to shoot and take photos in Krasnodar of the national championship and walks in Galitsky Park. There are only screenshots that confirm the correspondence with this woman Elena, but the text itself, unfortunately, has not yet been restored (screenshot in the attachment).

I'm still hoping that someone will help me recover, and if that happens, I'll send it to you right away".

48. Also on 9 April 2024, the CAS Court Office, on behalf of the Sole Arbitrator, invited WADA to file its Appeal Brief *"under the assumption that no further documentation will be provided by the Second Respondent", while also indicating that "the Second Respondent remains ordered to provide the documentation requested as per CAS Court Office letter dated 15 March 2024"*.

49. On 8 May 2024, WADA filed its Appeal Brief in accordance with Article R51 CAS Code.

50. On 14 June 2024, RUSADA filed its Answer in accordance with Article R55 CAS Code.

51. On 18 June 2024, the CAS Court Office informed the Parties that the Athlete had not filed an Answer within the time limit granted.

52. On 25 and 26 June 2024 respectively, the Athlete indicated her preference for a hearing to be held virtually, WADA indicated its preference for the matter to be decided based on the written submissions, and RUSADA considered an in-person hearing desirable. More specifically, the Athlete stated as follows:

"[U]*nfortunately, I could not give an answer either within the originally set or extended period, due to the fact that I could not read the appeal, I do not know how to go to where it is posted. I don't have money for lawyers to help me read the appeal. And my state abandoned me and refused to help me ….*

Due to the fact that I am without protection and am not even familiar with the appeal against me, I ask you to hold a hearing so that at least I can present my arguments and position at it. I ask you to hold the hearing via video link (since I do not have the finances for personal presence)".

53. On 17 July 2024, following consultation of the Parties, the CAS Court Office informed the Parties on behalf of the Sole Arbitrator that a hearing would be held on 30 August 2024, by videoconference.

54. On 30 July 2024, the Athlete requested assistance with translation during the hearing. She also requested the following four witnesses to be heard:

i) Mr Nikolai Vladimirovich Kulakov, the Athlete's grandfather;

ii) Ms Irina Nikolaevna Kirienko,

iii) Ms Irina Ivanovna Persyp; and

iv) Ms Anna Nikitina.

55. On 6 August 2024, WADA and RUSADA agreed that the witnesses as indicated by the Athlete could be heard. WADA further noted that, pursuant to Article 5(b)3 of the CAS Guidelines on Legal Aid, legal aid may be granted for the costs of interpreters.

56. On 8 August 2024, the CAS Court Office, *inter alia*, informed the Parties as follows:

> *"1. As no objections have been raised by either the Appellant or the First Respondent, the three witnesses mentioned by the Second Respondent in her communication of 30 July 2024 are accepted and will be permitted to provide testimony during the hearing scheduled to take place on 30 August 2024. It is noted WADA that requests for a fourth witness, Mr. Kulakov, to testify and such request is granted. To the extent not yet provided the Parties are kindly requested to provide email addresses for the witnesses.*
>
> *2. The witnesses can testify based on the witness summaries and explanations contained in Exhibit A-14 and A-17, filed by the Appellant together with its Appeal Brief.*
>
> *3. The Sole Arbitrator takes note of exhibit A-18 provided by the Appellant. It appears however that that exhibit is already in the file (A-17), so unless the Appellant directs otherwise, by 13 August 2024, the Sole Arbitrators proposes to disregard A-18.*
>
> *4. As regards the interpreter, the Sole Arbitrator takes note of the Parties' comments regarding the necessity and the question of the costs. In this context, the Sole Arbitrator draws the Parties' attention to Articles R29 and R64.5 of the CAS Code of Sports-related Arbitration and reserves his decision on the costs related to the interpreter for the final award".*

57. On 8 August 2024, WADA provided the CAS Court Office with a draft hearing schedule that had been agreed upon with RUSADA. WADA also confirmed that exhibit A-18 could indeed be disregarded.

58. On 14 August 2024, the Athlete confirmed that the witnesses would be available to join the video conference at the time indicated in the indicative hearing schedule.

59. On 15 August 2024, the CAS Court Office, on behalf of the Sole Arbitrator, invited WADA to arrange an interpreter.

60. On 22 August 2024, WADA informed the CAS Court Office that Ms Alexandra Volkova Jurema would act as interpreter during the hearing.

61. On 16 August and 28 August 2024 respectively, WADA, the Athlete and RUSADA returned duly signed Orders of Procedure to the CAS Court Office.

62. On 29 August 2024, the Athlete informed the CAS Court Office that Ms Anna Nikitina would not be available to be heard as a witness during the hearing.

63. On 30 August 2024, a hearing was held by video-conference At the outset of the hearing, the Parties confirmed that they had no objection to the constitution and composition of the arbitral tribunal.

64. In addition to the Sole Arbitrator and Ms Carolin Fischer, CAS Counsel, the following persons attended the hearing:

a) For WADA:

1) Mr Ross Wenzel, WADA Legal Director;
2) Mr Cyril Troussard, WADA Associate Director;
3) Ms Louise Reilly, Counsel;
4) Ms Alexandra Vokova Jurema, Interpreter.

b) For RUSADA:

1) Ms Valeriya German, RUSADA representative;
2) Mr Graham Arthur, Counsel.

c) For the Athlete:

1) Ms Anastasiia Kirienko, the Athlete;
2) Mr Nikolai Kulakov, the Athlete's grandfather.

65. The following persons were heard, in order of appearance:

1) The Athlete;
2) Mr Nikolai Kulakov, the Athlete's grandfather;
3) Ms Irina Kiriyenko, the Athlete's mother;
4) Ms Irina Ivanovna Peresyp, friend of the Athlete's mother.

66. All witnesses were invited by the Sole Arbitrator to tell the truth subject to the sanctions of perjury under Swiss law. The Parties had full opportunity to examine and cross-examine the witnesses.

67. The Parties were given full opportunity to present their cases, submit their arguments and answer the questions posed by the Sole Arbitrator.

68. Before the hearing was concluded, the Parties expressly stated that they had no objection to the procedure adopted by the Sole Arbitrator and that their right to be heard had been respected.

69. Further on 30 August 2024, WADA provided the CAS Court Office with two decisions it had referred to during the hearing.

70. On 9 September 2024, as agreed during the hearing, RUSADA filed a submission on costs.

71. On 10 September 2024, WADA provided the CAS Court Office with a copy of a CAS Award that had recently been published, alleging that the facts of such case were strikingly similar to the facts in the matter at hand.

72. On 17 September 2024, WADA filed its submission on costs with the CAS Court Office.

73. On 7 October 2024, the CAS Court Office informed the Parties that the Athlete had not filed any submission on costs within the deadline granted.

V. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

74. The following summaries of the Parties' positions are illustrative only and do not necessarily comprise every submission advanced by the Parties. The Sole Arbitrator confirms, however, that he has carefully considered all the submissions made by the Parties, both written and oral, regardless of whether specific reference is made to them in the following summaries.

A. The Appellant

75. WADA's Appeal, may be summarised as follows:

- The fact that a Tampering violation was committed was established by the DADC at first instance. It was subsequently confirmed by the NSCA on appeal. The decision on this point is final.

- WADA's appeal is aimed solely at the DADC and NCSA's respective decision to reduce the Athlete's sanction to a period of Ineligibility of two years based on exceptional circumstances. The explanations provided by the Athlete are wholly unsatisfactory and, even taken at face value, do not reach the threshold of "exceptional" per the case law. There was no reason to reduce the Athlete's sanction, and the standard period of Ineligibility of four years should have been imposed.

- The period of Ineligibility for a Tampering violation shall be four years unless the Athlete can establish "exceptional circumstances", as set out in Article 12.3.1(b) of the Russian ADR. The term "exceptional circumstances" is not defined in the Russian ADR nor the WADA Code. However, in accordance with CAS case law, exceptional circumstances *"must be interpreted with the greatest possible care, so as only to include very unusual or abnormal situations. The interpretation of this provision must therefore be restrictive".*

- In the present case, there are no "exceptional circumstances" justifying any reduction from the standard period of ineligibility of four years, still less a full reduction down to two years. Article 5.1 of the Russian ADR provides that

where the rules place the burden of proof upon the Athlete to establish specified facts or circumstances, the standard of proof shall be a balance of probability. Therefore, it is for the Athlete to establish exceptional circumstances to justify reducing the period of ineligibility down from four years.

- The Athlete was asked to provide her explanation to RUSADA and a hand-written note, as well as a medical certificate, were sent within the deadline. It is undisputed that the explanation was sent from the Athlete's email address, that the hand-written note was signed by the Athlete, that the explanation was false, and that the supporting medical certificate was a forged document.

- The circumstances around the Missed Test are contradictory and unclear. The Athlete and her grandfather claim that the Athlete was asleep when the doping control officers came to test her: however, according to the email Ms Sadykova sent to RUSADA, the Athlete appears to have been beside her grandfather at the door but could not persuade him to open it.

- The Athlete allegedly found out for the first time on 25 October 2022 that her mother had sent the Fake Medical Certificate to RUSADA. However, the Athlete has failed to explain why she waited until RUSADA carried out an investigation into the medical certificate and sent the Athlete the results of that investigation before the Athlete told the truth and admitted that the certificate was fake. If the Athlete were truly shocked by her mother sending the certificate to RUSADA, she should have immediately denounced it and told the truth, rather than waiting until 7 November 2022, when faced with incontrovertible evidence from the hospital that the certificate was fake. Indeed, there is no indication that, had RUSADA not conducted its investigation and discovered that the medical certificate and explanation were fake, the Athlete would ever have denounced the conspiracy and refused to benefit from it.

- In the course of the CAS proceedings, on 6 February 2024, the Athlete sent an explanation and stated that *"The phone from which this incomprehensible certificate was sent to RUSADA does NOT belong to me (I attach a document from the communication salon as confirmation)"*. This is materially different from the evidence given by the Athlete and her mother to the DADC and NCSA, that the Athlete's mother sent the explanation and medical certificate to RUSADA using the Athlete's email and sent the Russian Boxing Federation a WhatsApp message from Athlete's phone notifying them that documents had been sent.

- In relation to the evidentiary gaps, WADA requested the Sole Arbitrator to order the Athlete to produce specific documents to substantiate her story regarding her mother's role in procuring the Fake Medical Certificate, namely items 7-10. However, the Athlete failed or refused to produce such documents, arguing instead that, *"To take a lot of photos on phones, I had to delete everything that didn't need to be deleted from them, including Whatsapp chats,*

which also take up memory". Leaving aside the remarkable coincidence that the Athlete apparently deleted all relevant WhatsApp messages from her and her mother's phones, the Athlete never explained why she could not produce the relevant emails.

- As a result of the Athlete's refusal or failure to produce the requested documents, the Athlete has failed to establish:

  i) That it was the Athlete's mother (rather than the Athlete herself) who sent Elena copies of the Athlete's documents on 11 October 2022;

  ii) That it was the Athlete's mother (rather than the Athlete herself) who confirmed payment of 6,000 rubles to Elena; and

  iii) That Elena sent the Fake Medical Certificate to the Athlete's mother (rather than to the Athlete herself).

- In view of the above, the explanation of the Athlete cannot be accepted. Remarkably, the Athlete has produced evidence to support her general explanation, but there is simply nothing whatsoever supporting her claim that she was not involved in the procurement or submission of the Fake Medical Certificate (except for her mother's obviously biased and unevidenced testimony). In short, nothing excludes the possibility that the Athlete procured and submitted the certificate herself, and fabricated *ex post facto* a story, in which she was an innocent victim, to seek to defeat the charge against her. This simply cannot be enough for the Athlete to meet her burden.

- Even if it was the Athlete's mother who, unbeknownst to the Athlete, procured and decided to send the Fake Medical Certificate to RUSADA, the fact remains that the Athlete went along with the story for at least 17 days (i.e., from 21 October 2022 when the Athlete allegedly first learned of the Fake Medical Certificate, until 7 November 2022, when the Athlete admitted to RUSADA that the explanations and medical certificate submitted on 24 October 2022 contained false information).

- More generally, the Athlete has produced no evidence to rebut the case that she procured a fake document and sent it to RUSADA herself. To accept the Athlete's story without further evidence would make it far too easy for any athlete charged with a tampering violation to circumvent the anti-doping rules by adopting the Athlete's excuse.

- In view of all the above, WADA submits that the Athlete has failed to establish exceptional circumstances and therefore the period of ineligibility shall be four years, as specified in Article 12.3.1 of the Russian ADR.

76. On this basis, WADA filed the following prayers for relief:

"1. The appeal of WADA is admissible.

2. *The decision dated 7 July 2023 rendered by the National Center of Sport Arbitration in the matter of Anastasiia Kirienko is set aside.*

3. *Anastasiia Kirienko is found to have committed an anti-doping rule violation under art. 4.5 of the RUSADA ADR.*

4. *Anastasiia Kirienko 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 or ineligibility effectively served by Anastasiia Kirienko 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 Anastasiia Kirienko from and including 24 October 2022 are disqualified, with all resulting consequences (including forfeiture of medals, points and prizes).*

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

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

B. The First Respondent

77. RUSADA's Answer may be summarised as follows:

- Although the Sole Arbitrator has jurisdiction to resolve the appeal on a *de novo* basis, the primary issue in this appeal is the sanction that should properly be imposed in relation to the anti-doping rule violation committed by the Athlete.

- The mandatory sanction for a Tampering violation is a period of Ineligibility of four years, unless the Athlete can establish that there are exceptional circumstances, in which case the period of Ineligibility may be reduced to two years. The burden of proof rests with the Athlete to establish that there were exceptional circumstances.

- The standard of proof that applies to the Athlete in relation to her explanation is the 'balance of probabilities'.

- There is little, if any, dispute as to the fact that the Athlete incurred a Missed Test in October 2022 and that a fake medical certificate was obtained to try and explain away the Missed Test.

- As noted by WADA in its Appeal Brief, the Athlete has somewhat modified her explanation in the course of this appeal. This was by way of an email sent by the Athlete dated 6 February 2024. This modification related in essence to the means by which the false medical documentation was provided to WADA. The Athlete has also provided further information as to the absence of any contemporaneous correspondence from October 2022 concerning the Fake Medical Certificate.

- RUSADA submits that whilst the precise circumstances surrounding the procurement of the Fake Medical Certificate may remain unclear, significant doubts remain that it was proffered to RUSADA as a means of explaining away the 5 October 2022 Missed Test in the way that the Athlete claims.

- Even if the Athlete's evidence and account was accepted, that still involves her being aware that a fake medical certificate had been obtained in an effort to provide an untruthful explanation as to the Missed Test; providing an untruthful explanation but then asking that it not be used; and then being unaware that the explanation was provided to RUSADA surreptitiously by her mother without her consent. RUSADA does not agree or accept that the circumstances as advanced by the Athlete are more likely than not to have occurred.

- If the Athlete's evidence were to be accepted, the question as to whether they constitute 'exceptional circumstances' arises. This term is not defined in the Russian ADR (or the WADA Code). It must therefore be given its natural meaning. The circumstances must be unusual and out of the ordinary to be considered 'exceptional' – the term itself refers to the need for the circumstances to be an 'exception' to what would normally be anticipated. This is a subjective view. The DADC and the National Centre for Sport Arbitration did consider the circumstances to be exceptional. It will be for the Sole Arbitrator to determine whether they were correct to do so.

78. On this basis, RUSADA submits the following prayers for relief:

"25.1 The Sole Arbitrator affirms that Ms Kirienko has committed an Anti-Doping Rule Violation contrary to ADR Article 4.5.

25.2 The Sole Arbitrator imposes the appropriate Consequences in respect of the Anti-Doping Rule Violation pursuant to the ADR.

25.3 Costs including the costs of the consolidated (sic) arbitration and a contribution towards legal costs to be awarded to RUSADA in accordance with Rule 64.4 and Rule 64.5".

C. The Second Respondent

79. The Athlete did not file an Answer within the deadline granted, or submitted any specific requests for relief. However, the Athlete did address the merits of the case by means of two separate emails that she sent to the CAS Court Office throughout the proceedings. Based on these emails, the Athlete's position is as follows:

- Email of 18 November 2023:

  "Dear ladies and gentlemen. In response to your request, I want to inform you that I did not look for a medical certificate, did not buy it and did not send it to anyone. Firstly, because there is no common sense and logic in this: 05.10.2022, I missed the doping test due to the fact that my grandfather Kulakov Nikolay Vladimirovich closed all the doors in the house and made it impossible for me to hear the doorbell at 5 in the morning when I was sleeping, because he was scared and was sure that they came from the military enlistment office, for my nephew Konstantin, a few days ago there was already this parish. In the afternoon, my grandfather told me about the call at 5 a.m. at the door, I immediately called RUSADA coordinator Sadykova Dina Merselevna and through her informed RUSADA about this case, and asked to report this case to RUSADA! Dina Marselevna, at my request, wrote an email to RUSADA (I enclose a copy of this letter in this message). How could I report a completely different version to RUSADA a few weeks later? I am a normal and adequate person, every six months I undergo an in-depth medical examination, which confirms that I am healthy both mentally and physically. Secondly, this pass was the second for me, not the third, it did not entail anything terrible for me, so I just immediately reported through the coordinator to RUSADA and did nothing else.

  As I found out later, my mother (from the phone registered to her (I put a document confirming this fact in this message), sent a certificate (which I have never seen in my life) to RUSADA. My mother did it without knowing that I had already informed RUSADA on 05.10.2022 that my grandfather had not opened the door! As it turned out, my mother did it because the senior coach of the Moscow national team Konikov Ivan Sergeevich called her and said that this test pass was very bad, my mother was scared and did this not logical and not correct manipulation with the certificate!

  Please pay attention: 1) I am a doping-clean athlete (which is confirmed by all my samples) 2) I did NOT hide from taking samples 3) the certificate (which I have never seen and do not want to see) has nothing to do with the missed testing".

- Email of 6 February 2024:

  "[D]*ue to the fact that RUSADA disqualified me, I was deprived of all financial payments and means of livelihood. I have been playing sports for 8 years (this is almost half of my life) and lived on the salary of an athlete, I was deprived*

of this money. I asked my State to help me with my defense and provide lawyers, but no one helped me, my State abandoned me. I was left without a livelihood and without protection in court.

My only hope is that, despite the political conflicts, you, dear court, will not turn a blind eye to the factual and uncontroversial circumstances in this case:

I had no motive to send help, since this checkbox could be the second for me, not the third.

As soon as I found out that I did not hear the doorbell, I called RUSADA Coordinator Dina Marselevna (I enclose a document with details in which the call to the Coordinator is recorded on this date) and reported this incident, grandfather snatched the phone from me and explained everything: that I closed all the doors deafly and made it impossible to hear the doorbell (in confirmation I enclose a letter written by the Coordinator from RUSADA to RAA RUSADA). That is, the Coordinator from RUSADA immediately conveyed my and grandfather's request to inform me that I was at home, but my grandfather did not open, as suspicious individuals had already come a few days before and called themselves employees of the military enlistment office, and my cousin was registered in our apartment, who could have been mobilized for the war.

If I immediately, on the day of the missed test, informed the RUSADA RAA what really happened, how could I (being in my right mind) send a completely different version to RUSADA two weeks later!?

Please pay attention! At all training lectures and seminars, we were strictly told to resolve any issues with RUSADA ONLY through the Coordinator (strictly, as they taught, so I did).

There is a payment receipt, which shows that I did NOT buy it (I attach this receipt to confirm)

There is evidence from an outside witness who shows that I did NOT buy and send the certificate to RUSADA (I attach these statements in confirmation)

The phone from which this incomprehensible certificate was sent to RUSADA does NOT belong to me (I attach a document from the communication salon as confirmation)

There are many other factual circumstances and facts, having considered and investigated which the RUSADA Disciplinary Anti-Doping Committee recognized that I did NOT search, DID NOT buy, did NOT send and had no intention of deceiving me. DAK RUSADA admitted this fact, even being on the side of the prosecution, they conducted an extensive investigation, with consideration of all documents and verification of testimony (including online video verification). DAK has been installed: I did not buy, did not send, and

did not intend to do this, and I do not have the opportunity to control all the unreasonable actions of my relatives (in confirmation, I attach an excerpt with the results of the investigation and the decision of the DAK RUSADA).

I managed to find a little money to send the documents to the translation agency".

VI. JURISDICTION

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

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

81. The Appealed Decision was rendered by the NSCA under the Russian ADR. It follows that the Russian ADR are applicable to the present proceedings.

82. It was held in the Appealed Decision that the Athlete is not an International-Level Athlete in the sense of the definition provided in the Russian ADR, which remained undisputed in the present appeal arbitration proceedings. As a consequence thereof, Article 15.2.1 of the Russian ADR is not applicable, but Article 15.2.2 applies.

83. Article 15.2.3.1 of the Russian ADR provides as follows:

> *"*[…] *For cases under Article 15.2.2, WADA* […] *shall also have the right to appeal to CAS with respect to the decision of the National Appeal Body".*

84. The jurisdiction of the CAS remained undisputed and is confirmed by the signature of the Order of Procedure by all Parties.

85. It follows that CAS has exclusive jurisdiction to adjudicate and decide on WADA's appeal against the Appealed Decision.

VII. ADMISSIBILITY

86. 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".*

87. Article 15.2.3.4 of the Russian ADR provides as follows:

"The time to file an appeal by WADA shall be the later of:

a) Twenty-one (21) days from the expiry of the time for filing an appeal by other parties

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

88. WADA received elements of the case file on 19 September 2023. It follows that WADA's appeal deadline cannot be considered to have expired any earlier than on 10 October 2023. Because the present appeal was lodged on 10 October 2023, it was filed timely.

89. It follows that WADA's appeal is admissible.

VIII. APPLICABLE LAW

90. Article R58 CAS Code provides as follows:

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

91. The Respondents did not make any specific submissions on the applicable law.

92. As argued by WADA, the Appealed Decision (as well as the First Instance Decision) was rendered by the NSCA under the Russian ADR. It follows that the Russian ADR are applicable to the present proceedings.

93. This also follows from Article 1.3.3. of the Russian ADR, which provides as follows:

"The Rules apply to the following individuals: a) All Athletes, including Athletes falling within the category of Protected Persons and Recreational Athletes, who are citizens or residents of the Russian Federation, holders of a license or members of physical culture and sports organizations registered in the territory of the Russian Federation, including Athletes who are not citizens or residents of the Russian Federation but are located in the territory of the Russian Federation, as well as Athletes taking part in Competitions organized by a physical culture and sports organization registered in the territory of the Russian Federation".

94. Article 21.3 of the Russian ADR provides as follows:

"The Code shall be interpreted as an independent and autonomous text and not by reference to the existing law or statutes of the Signatories or governments".

95. The Sole Arbitrator finds that the Russian ADR are applicable to the present proceedings.

IX. MERITS

A. Legal Discussion

96. Article 4.5 of the Russian ADR, under the title

> *"IV. Definition of Doping and Violation of the Rules"*
>
> *Doping is defined as the occurrence of one or more violations of the Rules specified in ClauseUses (sic) 4.1-4.11 of the Rules.*
>
> *[…]".*

provides as follows:

> *"4.5 Tampering or Attempted Tampering with any part of Doping Control by an Athlete or other Person".*

97. "Tampering" is defined in the Russian ADR as follows:

> *"Intentional conduct which subverts the Doping Control process but which would not otherwise be included in the definition of a Prohibited Methods. Tampering shall include, without limitation, offering or accepting a bribe to perform or fail to perform an act, preventing the collection of a Sample, affecting or making impossible the analysis of a Sample, falsifying documents submitted to an Anti-Doping Organization or TUE committee or hearing panel, procuring false testimony from witnesses, committing any other fraudulent act upon the Anti-Doping Organization or hearing body to affect Results Management or the imposition of Consequences, and any other similar intentional interference or Attempted interference with any aspect of Doping Control".*

98. Article 5.1. of the Russian ADR provides as follows:

> *"5.1. Burdens and Standards of Proof*
>
> *RUSADA shall have the burden of establishing that violation of the Rules has occurred. The standard of proof shall be whether RUSADA has established violation of the Rules to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability, but less than proof beyond a reasonable doubt. Where the Rules place the burden of proof upon the Athlete or other Person alleged to have committed violation of the Rules to rebut a presumption or establish specified facts or circumstances, except as provided in Clauses 5.2.2 and 5.2.3 hereof, the standard of proof shall be a balance of probability".*

99. Article 12.3.1(b) of the Russian ADR provides as follows:

> *"For violations of Clauses 4.3 or 4.5 of the Rules, the period of Ineligibility shall be four years except for the following cases:*
>
> […]
>
> *b) if the Athlete or other Person can establish exceptional circumstances which are grounds for reducing the period of Ineligibility, the period of Ineligibility shall be in a range from two years to four years, depending on the degree of Fault of the Athlete or other Person;*
>
> […]*"*.

100. It is against this regulatory background that the Sole Arbitrator is required to assess the following issues:

i) Did the Athlete violate Article 4.5 of the Russian ADR?

ii) What are the consequences thereof?

101. The legal discussion below addresses these points, and numerous other requisite legal and regulatory considerations, in sequence.

i) Did the Athlete violate Article 4.5 of the Russian ADR?

102. It was held by the DADC in the First Instance Decision that the Athlete violated Article 4.5 of the Russian ADR, which conclusion was confirmed by the NCSA in the Appealed Decision.

103. The Athlete did not challenge the Appealed Decision. The only issues challenged by means of the present appeal arbitration proceedings is whether the period of ineligibility imposed on the Athlete was correctly reduced from four to two years, or whether it should be four years, as requested by WADA.

104. The scope of the present appeal arbitration proceedings is limited to such question and request for relief. A finding that no period of ineligibility is to be imposed because Article 4.5 of the Russian ADR is not violated is not possible, as this would constitute a ruling *extra petita*.

105. Be this as it may, the Sole Arbitrator agrees with the reasoning of the NCSA in the Appealed Decision and the DADC in the First Instance Decision insofar as they conclude that the Athlete violated Article 4.5 of the Russian ADR.

106. Consequently, the Athlete violated Article 4.5 of the Russian ADR.

ii) What are the consequences thereof?

107. Having established the infringement, the Sole Arbitrator will now turn his attention to the consequences deriving from such infringement, in particular as to the period of ineligibility to be imposed.

108. As set forth by Article 12.3.1 of the Russian ADR, in case of a violation of Article 4.5 of the Russian ADR, the period of ineligibility to be imposed shall in principle be four years. This is only different if the Athlete can establish the presence of *"exceptional circumstances"*, in which case the period of ineligibility shall be in a range from two years to four years.

109. Accordingly, the burden of proof to establish the presence of *"exceptional circumstances which are grounds for reducing the period of Ineligibility"* lies with the Athlete. As outlined above, the applicable standard of proof for the Athlete in this respect is one of *"balance of probability"*, in accordance with Article 5.1 of the Russian ADR.

110. The Athlete argues that she had not solicited or produced the Fake Medical Certificate and that her mother had forced her to write the Handwritten Note. The Athlete contends that she did not send these two documents to RUSADA herself, but that on 24 October 2022, unbeknownst to her, her mother sent the email with the Fake Medical Certificate and the Handwritten Note to RUSADA, using the Athlete's email address.

111. At the outset, the Sole Arbitrator finds that the theory advanced by the Athlete contains several elements that appear unlikely. It is considered unlikely that the mother of the Athlete had free access to her daughter's email account. It is further considered unlikely that the Athlete first went along with the scheme allegedly concocted by her mother to provide RUSADA with the Fake Medical Certificate and the Handwritten Note, but then later on decided against it. The Sole Arbitrator also finds it incredible that, even though being informed on 25 October 2022 that the Fake Medical Certificate and the Handwritten Note were sent to RUSADA, the Athlete did not take any initiative to contact RUSADA to clarify what had allegedly happened until after RUSADA informed her that it considered the Fake Medical Certificate to be false. Finally, the Sole Arbitrator considers it unlikely that the Athlete approved the defence prepared by her lawyers in the proceedings before the DADC that the mobile phone from which the documents were sent to RUSADA on 24 October 2022 was hers, but that she did not consider it appropriate to correct such factual allegation, and only now in the proceedings before CAS presents the theory that the mobile phone belonged to her mother.

112. Even though considered unlikely for the afore-mentioned reasons, the Sole Arbitrator finds that it cannot be ruled out from the outset that the theory advanced by the Athlete is true. The Athlete must therefore be permitted to provide evidence of her allegations.

113. However, despite WADA's request and the Sole Arbitrator's order, the evidence produced by the Athlete to corroborate some of her factual contentions is scarce.

114. The Athlete's mother stated that she had masterminded the tampering scheme, falsified the Fake Medical Certificate and pushed the Athlete to draft the Handwritten Note.

115. It is not denied by the Athlete that she indeed drafted the Handwritten Note. Regardless of whether the note was ultimately sent, the Sole Arbitrator finds that the mere fact that the Athlete drafted the Handwritten Note, knowing the content to be false, demonstrates that the Athlete was at least seriously considering relying on the Fake Medical Certificate and committing fraud.

116. The Sole Arbitrator finds that this element undermines the Athlete's argument that it was nonsensical for her to rely on a factual scenario (that she was not at home because of a medical emergency) after she had already relied on a contradicting factual scenario, *i.e.* that she had called the anti-doping coordinator of the Russian Boxing Federation, Ms Sadykova Dina Merselevna and had informed the latter that she had been at home in the morning of 5 October 2024, but that the Athlete's grandfather refused to open the door. And that Ms Sadykova, on the Athlete's behalf, had informed RUSADA accordingly after having spoken to the Athlete by telephone.

117. The Sole Arbitrator finds that the Handwritten Note also undermines the Athlete's factual contention that she has never seen and does not want to see the Fake Medical Certificate. Based on the content of the Handwritten Note (*"I attach an official document to the explanatory note in this letter"*), the Athlete was very likely aware of the existence of the Fake Medical Certificate and was at least considering sending it to RUSADA, so she must reasonably have reviewed the content of the Fake Medical Certificate before mentioning it in the Handwritten Note.

118. The Sole Arbitrator finds the Athlete's bare contention that her mother dictated the content of the Handwritten Note is not credible.

119. The Sole Arbitrator finds that it also weighs in that, on 10 October 2022, the Athlete was provided with a deadline until 24 October 2022 to provide a written explanation for the Missed Test. If it were true that the Athlete was not involved at all in the sending of the Fake Medical Certificate and the Handwritten Note, this would mean that the Athlete did not file any written explanation for the Missed Test. The Sole Arbitrator considers it to be counterintuitive that the Athlete had prepared and signed the Handwritten Note, but that she ultimately decided not to submit an explanation for the Missed Test at all.

120. Turning to the question of the ownership of the mobile phone from which the Fake Medical Certificate and the Handwritten Note were sent to RUSADA, the Sole Arbitrator finds that this is not particularly relevant. The Athlete may have sent the email from her own or her mother's mobile phone, or the mother may have sent the email from her own or the Athlete's phone. What is relevant is that the email was sent from the Athlete's email account and that the documents are therefore to be presumed to have been sent by the Athlete.

121. The evidence relied upon by the Athlete is mainly comprised of oral testimonies by the Athlete herself, her mother and Ms Irina Ivanovna Peresyp, a friend of the Athlete's mother (the testimony of the Athlete's grandfather is not relevant for issues related to the Fake Medical Certificate and the Handwritten Note). The Sole Arbitrator notes that there is basically no evidence underpinning their testimonies.

122. Even if the Sole Arbitrator would accept that the Athlete's mother masterminded the tampering scheme, arranged for the Fake Medical Certificate (a payment receipt is in evidence), pushed the Athlete to draft the Handwritten Note and sent the documents to RUSADA on 24 October 2022, it remains a fact that the Athlete found out about this the next morning but did not undertake any action, from which it is to be presumed that the Athlete consented thereto. Should the Athlete not have consented, she should have made this known to RUSADA as soon as possible.

123. As recorded in the First Instance Decision and in the Appealed Decision, the Athlete found out in the morning of 25 October 2022 that her mother had sent the Fake Medical Certificate and the Handwritten Note the day before, because she was contacted in this respect by the Russian Boxing Federation. This remained uncontested by the Athlete in the present appeal arbitration proceedings. The Athlete did not undertake any action until after she was informed by RUSADA on 27 October 2022 that the hospital denied the validity of the Fake Medical Certificate.

124. The Sole Arbitrator notes that, besides the testimonies of the Athlete, the Athlete's mother and the friend of the Athlete's mother, there is no meaningful evidence on filing corroborating the contention that the Athlete did not consent with the tampering scheme masterminded by her mother.

125. Overall, the Sole Arbitrator finds that the Athlete cannot hide behind the actions of her mother, but that she must assume responsibility for her mother's conduct, as well as for her own failure to rectify that conduct one way or the other.

126. Consequently, for all the reasons set forth above, the Sole Arbitrator, unlike the conclusions reached in the Appealed Decision and in the First Instance Decision, finds that the Athlete did not meet her burden to establish, on a balance of probability, that there are *"exceptional circumstances which are grounds for reducing the period of Ineligibility"*. Therefore, the period of ineligibility to be imposed on the Athlete is four years.

127. Article 12.13.2.1 of the Russian ADR provides, *inter alia*, as follows:

> *"If Provisional Suspension is imposed and is respected by the Athlete or other Person, the Athlete or other Person shall receive credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed. If an Athlete or other Person does not respect the terms of Provisional Suspension, the period of Provisional Suspension shall not be taken into account when sanction is imposed. If a period of Ineligibility is served pursuant to a decision that is subsequently appealed, the Athlete or*

> *other Person shall receive a credit for such period of Ineligibility served against any period of Ineligibility which may ultimately be imposed on appeal".*

128. The DADC imposed a two-year period of ineligibility on the Athlete by means of the First Instance Decision, which was confirmed on appeal by means of the Appealed Decision. Based on the First Instance Decision and the Appealed Decision, the Athlete is ineligible to compete since 2 March 2023.

129. There is no evidence that the Athlete has not respected the above mentioned period of ineligibility. The Athlete shall thus receive a credit for the period of ineligibility served since 2 March 2023, which, in other words, means that the four-year period of ineligibility imposed in the present award commenced on 2 March 2023.

130. Article 12.10 of the Russian ADR provides as follows:

> *"In addition to an automatic Disqualification of results achieved at a Competition during which a positive test was collected, pursuant to Chapter XI of the Rules (In-Competition or Out-of-Competition), all other results achieved by the Athlete at Competitions, starting from the date on which the Athlete tested positive or the date on which the other violation of the Rules was committed (including the period of Provisional Suspension or Ineligibility), shall be disqualified with all resulting Consequences, including forfeiture of all medals, points and prizes, unless otherwise required by the principle of fairness".*

131. Since the Fake Medical Certificate and the Handwritten Note were sent to RUSADA on 24 October 2022, this was the date Article 4.5 of the Russian ADR was violated. Accordingly, unless fairness requires otherwise, all competitive results obtained by the Athlete from and including 24 October 2022 are disqualified, with all resulting consequences, including forfeiture of any medals, points and prizes. The Sole Arbitrator finds that fairness does not require otherwise, because the Athlete did not advance any argument as to why this would be the case and because the period over which the Consequences apply is relatively short, *i.e.* from 24 October 2022 until 2 March 2023.

B. Conclusion

132. Based on the foregoing, the Sole Arbitrator holds that:

i) The Athlete violated Article 4.5 of the Russian ADR.

ii) A period of ineligibility of four years is imposed on the Athlete, applicable as from 2 March 2023.

iii) All competitive results obtained by the Athlete since 24 October 2022 are disqualified, with all resulting consequences, including forfeiture of any medals, points and prizes.

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

X. COSTS

(…).

* * * * * * * * *

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 10 October 2023 by the World Anti-Doping Agency against the decision issued on 7 July 2023 by the National Center of Sport Arbitration is upheld.

2. The decision issued on 7 July 2023 by the National Center of Sport Arbitration is set aside.

3. Anastasiia Kirienko is found to have committed an anti-doping rule violation under Article 4.5 of the Russian Anti-Doping Rules.

4. Anastasiia Kirienko is sanctioned with a period of ineligibility of four years starting as from 2 March 2023.

5. All competitive results obtained by Anastasiia Kirienko as from 24 October 2022 are disqualified, with all resulting consequences (including forfeiture of medals, points and prizes).

6. (…).

7. (…).

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

Seat of arbitration: Lausanne, Switzerland
Date : 27 January 2025

THE COURT OF ARBITRATION FOR SPORT

André Brantjes
Sole Arbitrator