CAS 2016/A/4707 Alex Schwazer v. IAAF, NADO Italia, FIDAL & WADA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Dr. Michael Geistlinger, Professor in Salzburg, Austria

Arbitrators: José Juan Pinto, attorney-at-law in Barcelona, Spain

Dr. Ulrich Haas, Professor in Zurich, Switzerland

in the arbitration between

Alex Schwazer, Racines, Italy

Represented by Mr. Gerhard Brandstätter, Karl Pfeifer and Thomas Tiefenbrunner, attorneys-at-law Rechtsanwaltssozietät/Studio Legale Associato in Bozen/Bolzano, Italy, Mr. Tommaso Marchese, attorney-at-law in Pescara, Italy, and Mr. Stefano Malvestio, attorney-at-law with Bichara e Motta Avogados in Rio de Janeiro, Brazil

Appellant

and

International Association of Athletics Federation (IAAF), Monaco

Represented by Mr. Ross Wenzel and Nicolas Zbinden, attorneys-at-law with Kellerhals Carrard, Lausanne, Switzerland

First Respondent

Italian National Anti-Doping Organization (NADO Italia), Rome, Italy

Represented by Mr. Leonardo Gallitelli, Chair, and Mr. Mario Vigna, NADO Italia Anti-Doping Prosecutor Office, Rome, Italy

Second Respondent

Federazione Italiana di Atletica Leggera (FIDAL), Rome, Italy

Represented by Mr. Fabio Pagliara, Secretary General, Rome, Italy

Third Respondent

World Anti-Doping Agency (WADA), Lausanne, Switzerland

Represented by Mr. Julien Sieveking, Director of Legal Affairs, Lausanne, Switzerland

Fourth Respondent

I. PARTIES

1. Alex Schwazer ("Athlete" or "Appellant") is an Italian racewalker. He is affiliated to the Italian Athletics Federation ("Federazione Italiana di Atletica Leggera" or "FIDAL").

2. The International Association of Athletics Federations ("IAAF" or "First Respondent") is the international governing body for track and field athletes recognized by the International Olympic Committee ("IOC"). It has its seat and headquarters in Monaco.

3. The NADO Italia is the Italian National Anti-Doping Agency ("NADO Italia" or "Second Respondent"). It has its seat in Rome, Italy.

4. The Federazione Italiana di Atletica Leggera ("FIDAL" or "Third Respondent") is the national governing body for track and field athletes in Italy. It has its headquarters in Rome, Italy, and is the national member federation of the IAAF for Italy.

5. The World-Anti-Doping Agency ("WADA" or "Fourth Respondent") is a Swiss private law foundation with its seat in Lausanne, Switzerland, and its headquarters in Montréal, Canada. WADA is the anti-doping agency that coordinates the fight against doping on a worldwide scale and which is responsible to implement and revise the World Anti-Doping Code ("WADC").

II. FACTUAL BACKGROUND

6. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the parties' written submissions, pleadings and evidence 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 by the parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

7. The Appellant is an International-Level Athlete within the meaning of the 2016-2017 IAAF Competition Rules ("IAAF Competition Rules"). He has won *inter alia* the gold medal in the 50 km race walking event at the 2008 Beijing Olympic Games.

8. The Appellant has a doping history as he tested positive for EPO on the eve of the 2012 London Olympic Games on 30 July 2012 and was sanctioned with a period of ineligibility from 30 July 2012 to 29 January 2016, and a further period until 29 April 2016 for evading a doping control on 30 July 2012.

9. On or around 15 April 2015, the Appellant retained Prof. Alessandro Donati, a key-figure in the national and international fight against doping, to act as his new coach and moved to Rome to begin training. He was accommodated at modest conditions in a hotel located 200 meters away from the house of his coach and supported in his preparations for resuming competitions by a small staff consisting of chemistry doctor Dario D'Ottavio, haematologist Dr. Benedict Ronci, who designed a private blood monitoring system for

the Appellant, nutritionist Dr. Michelangelo Giampietro, traumatologist Dr. Bernardino Petrucci and posturologist Prof. Renato Marino.

10. As part of his training and preparations, the Athlete submitted to a private blood monitoring system based on the measurement of standard parameters recognised by WADA and additional parameters derived from 35 unannounced blood tests collected in the period of 15 April 2015 until today. The tests were organized and performed by the Hospital San Giovanni in Rome. In principle, the Athlete provided a blood sample every two weeks. The results of the blood analysis were sent to WADA in order to be added to their database and allow for additional research.

11. On 3 December 2015, the Appellant declared vis-à-vis WADA's Director General that he was available for doping tests 24 hours every day.

12. During the Athlete's period of ineligibility, the IAAF and NADO Italia carried out a number of doping tests on the Appellant, including an unannounced out-of-competition doping test for urine in Racines on 1 January 2016 (the "1 January Sample"). This 1 January Sample (code 3959325) was analysed by the WADA-accredited Laboratory in Cologne ("Cologne Laboratory"). The initial screening did not reveal the presence of any prohibited substance.

13. However, as a result of the analysis of other samples provided by the Appellant, the Appellant's urinary steroid profile was flagged as abnormal on 5 March 2016 by the ADAMS Adaptive Model ("Steroid Module"). Consequently, the IAAF's Athlete Passport Management Unit ("APMU"), represented by Prof. Christiane Ayotte, requested on 28 March 2016 the re-analysis of the 1 January Sample (code 3959325) by way of GC-C-IRMS. The re-analysis was performed by the Cologne Laboratory on 19 April 2016 and revealed that it was consistent with the administration of exogenous androgenic anabolic steroids. This is a prohibited substance under the WADA Prohibited List (class S1.1b) and a non-specified substance.

14. Shortly after resuming competition and after the expiry of his period of ineligibility, the Appellant won the 50 km event at the IAAF Race Walking Team Championships in Rome on 8 May 2016. He did so by more than three and a half minutes from his closest competitor.

15. The findings of the re-testing by the Cologne Laboratory were communicated to the IAAF on 13 May 2016.

16. On 15 June 2016, the IAAF requested the Cologne Laboratory to provide two possible dates for the opening of the B Sample in case the Athlete would submit any such request after notification.

17. On 21 June 2016, the IAAF Anti-Doping Administrator notified the Appellant of the Adverse Analytical Finding ("AAF") for the 1 January Sample.

18. Immediately after receipt of the notification, the Appellant requested from the IAAF an early date for opening the B Sample.

19. The Cologne Laboratory informed the IAAF that the B Sample analysis could be performed on 28 June 2016. However, the Cologne Laboratory also informed the IAAF that on that date neither the Appellant nor any representative could attend the opening of the B sample. The IAAF, without mentioning the details of the communication received from the Cologne Laboratory, informed the Appellant that no earlier date for the opening the B Sample was available.

20. The Appellant was granted a deadline until 28 June 2016 to provide his explanations for his AAF. This deadline was ultimately extended until 1 July 2016.

21. On 1 July 2016, the Appellant provided his submissions to the IAAF together with a report of Dr. Giuseppe Pieraccini and a report of Dr. Benedetto Ronci.

22. The B Sample analysis took place in the Cologne Laboratory on 5 July 2016. The results of this analysis confirmed the results of the A Sample.

23. On 8 July 2016, the IAAF notified the Appellant of the results of the analysis of the B Sample. Furthermore, the IAAF informed the Appellant that after a careful review of the documents submitted by the Appellant it decided to impose a provisional suspension on him with immediate effect. As to the further disciplinary procedure, the Appellant was advised that he could request a hearing before the competent national bodies, i.e. FIDAL or NADO Italia. Any national decision would then be subject to an appeal to CAS. In view of the proximity of the Olympic Games in Rio de Janeiro, the IAAF recommended to the Appellant to have the case directly heard by CAS based on Rule 38.19 IAAF Competition Rules.

24. On 11 July 2016, the Appellant appealed the provisional suspension to the National Anti-Doping Tribunal (Tribunale Nazionale Antidoping, i.e. "TNA"). The TNA on 11/12 July 2016 rejected the appeal for lack of jurisdiction under the IAAF Competition Rules.

25. The IAAF confirmed the decision taken by the TNA in a letter to the Appellant on 13 July 2016. In this letter the Appellant was advised that the competent instance to deal with an appeal against the provisional measure was CAS. The IAAF reiterated its suggestion to the Appellant to have an expedited hearing on the merits of the case before CAS.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

26. On 14 July 2016, the Appellant filed a Statement of Appeal and a Request for Provisional Measures with CAS.

27. On 18 July 2016, the IAAF filed its Observations on Provisional Measures.

28. On 18 July 2016, the President of the CAS Appeals Arbitration Division dismissed the Request for Provisional Measures.

29. On the same day, the International Olympic Committee ("IOC") which had been identified as an Interested Party, informed the CAS that it would not participate in the

proceedings before the CAS. The IOC, however, informed the CAS that in any event it supported the measures taken by the IAAF and that a provisional suspension should only be lifted in truly exceptional circumstances.

30. On 19 July 2016, FIDAL and WADA informed the CAS that they agreed to an expedited procedure, but that they would not participate in the proceedings. FIDAL referred in this context to the fact that NADO Italia (CONI) was the only organization in Italy authorized to intervene in doping-related procedures.

31. On 20 July 2016, the Appellant submitted his Appeal Brief and informed the CAS Court Office of the agreement of all parties concerned to a first-instance expedited procedure under Article R52 of the Code of Sports-relates Arbitration ("CAS Code").

32. On 21 July 2016, the IAAF noted that the Appellant had amended his prayers for relief in the Appeal Brief. The Athlete was now seeking a declaration that he did not commit an Anti-Doping Rule Violation ("ADRV") or, in the alternative, that no period of ineligibility should be imposed on him. The IAAF declared that "*in view of the unusual course of action of continuing an appeal against a provisional suspension as a sole instance proceeding on the merits of an anti-doping rule violation*", it was only prepared to consent to an expedited procedure before the CAS subject that "*all the other parties explicitly accept that its primary requests for relief would be admissible (without the need to file a separate cross appeal) and could not be challenged as an invalid counterclaim.*"

33. The IAAF reiterated its position in its letters to CAS on 22, 26 and 28 July 2016. Further to that, the IAAF proposed a procedural calendar as a condition for its agreement to an expedited procedure.

34. On 27 July 2016, the Appellant, and on 28 July 2016, NADO Italia, accepted both of the IAAF's conditions. At the hearing, the IAAF informed the Panel that WADA had no objections to this course of action.

35. On 2 August 2016, NADO Italia submitted its Answer.

36. On 2 August 2016, IAAF submitted its Answer.

37. On 4 August 2016, the parties were informed that the Panel appointed by the President of the CAS Appeals Arbitration Division to decide this dispute was as follows:

    - Prof. Dr. Michael Geistlinger, as President

    - Mr José Juan Pinto and Prof. Dr. Ulrich Haas, as arbitrators.

38. On 8 August 2016, a hearing took place in Rio de Janeiro, Brazil. In addition to Mr Brent J. Nowicki, Counsel to the CAS, the following persons were present in person:

    <u>For the Appellant</u>:

    Mr Gerhard Brandstätter, attorney-at-law;

Mr Thomas Tiefenbrunner, attorney-at-law;

Mr Stefano Malvestio, attorney-at-law;

Prof. Alessandro Donati, Sport Master, coach of the Appellant, expert on training program and monitoring of data collection;

Ms Mariarosa Relli-Dobrilla, interpreter; and

Ms Andrea Hofmann-Miller, interpreter.

For the First Respondent:

Mr Ross Wenzel, attorney-at-law;

Mr Nicolas Zbinden, attorney-at-law;

Mr Huw Roberts, attorney-at-law;

Prof. Christiane Ayotte, APMU;

Mr Thomas Capdevielle, IAAF Anti-Doping Officer.

The following persons were present / by video- and teleconference:

For the Appellant:

Dr. Giuseppe Pieraccini, Technical Director of Mass Spectometry Centre CISM University of Florence (expert on chemical and biochemical matters);

Dr. Benedetto Ronci, Chief of Hematology Dept. at San Giovanni Addolorata Hospital in Rome (expert on haematological matters);

Dr. Douwe de Boer, Head of Cluster "Protein Chemistry", Central Diagnostic Laboratory, Maastricht University Medical Centre (expert on chemical and biochemical matters); and

Dr. Maurizio Coletti, psychologist of the Appellant, expert on the Appellant's general state of mind (was available at NADO Italia, but finally not heard).

For the First Respondent:

Mr. Dennis Jenkel, DCO (witness with regard to the collection, transportation and storage of the 1 January Sample).

Mr. Wolfram Jablonski, sample courier (witness regarding the transportation and delivery of the 1 January Sample).

Dr. York Olaf Schumacher (expert in sports medicine and, in particular, blood doping);

Prof. Dr. Wilhelm Schaenzer, Head of the Cologne Laboratory;

Dr. Hans Geyer, Deputy Head of the Cologne Laboratory;

Dr. Guenter Gmeiner, Director of the Seibersdorf Laboratory, Austria, (expert on steroid profile issues).

For the Second Respondent:

Mr. Mario Vigna, Deputy Chief Prosecutor of the NADO Italia Anti-Doping Prosecution Office.

39. With the agreement of the parties, the Panel decided not to hear Dr. Coletti, but to accept all written submissions made to him on file. At the closing of the hearing, all parties expressly confirmed that there right to be heard had been respected and that they had a full and fair opportunity to present their case.

40. On 10 August 2016, the operative part of the award was notified to the parties.

IV. SUBMISSIONS OF THE PARTIES

41. The Appellant's submissions, in essence, may be summarized as follows:

(1) Irregularities / inconsistencies in the documentation of the chain of custody for the 1 January Sample:

(i) While the "*Extended Analytical Report* [does not indicate] *the place the urine sample was taken …, the external Chain of Custody Form in the Documentation Package indicates that the place where it was taken is 'Racines, ITA', the town where Alex Schwazer resides*."

(ii) The 1 January Sample was "*kept in custody from 8.35 am until 3 pm on the 1th January 2016 in a car, which presumably belonging to the DCO* [Doping Control Official], *but neither the car type nor the license plate is identified. From 15.00 pm to 06.00 am on the same day the samples were kept in the office of the DCO, but even in this case there is no reference to the actual Place of custody, such as the address etc., or the exact modalities of custody*." Furthermore, it is unknown what other persons had access to the storage room.

(iii) A further irregularity lies in the fact that "*only on January 2nd at 06:00 am it was started (starting place, transport vehicle and the exactly carrier's functions were and are still unknown) the kit transport, containing the urine samples … to the laboratory in Koln ….*"

(iv) According to the Appellant the "*receipt formalities as well as the transport itself exhibits irregularities*." In particular, "*the specific side* [of the external chain of custody form] *related to the transport through the aforementioned laboratory misses the signature of Mr Wolfram Jablonski.*"

(v) Furthermore, the Appellant criticizes that with "*reference to the transport terms, there is the mere indication of a carrier 'by hand' which, indeed, results totally inconceivable and inexact taking into consideration the supposed distances between the unknown place of custody (Stuttgart-Germany?) and the laboratory based in Koln (Germany).*"

(vi) According to the Appellant, the above facts constitute "*an egregious failure in the traceability and security of the kit path from Racines, Italy, to the laboratory Cologne, Germany*".

(vii) A further irregularity lies in the "*failure to fill out, always on the External Chain of Custody Form, the part regarding the receipt of the kit with the samples at the laboratory … In essence the spaces that have to be filled out are completely empty. Among other things, the form lacks the name of the representative of the laboratory that actually took the kit in custody and the time and date of receipt of the kit with the samples (3959325) is missing. Finally the signature of the representative of the laboratory that physically took the aforementioned kit in custody is lacking*." This failure – according to the Appellant – "*does not allow right until the end full traceability of the whereabouts of the urine samples … taken on 1 January 2016. This failure is not rectified by the so called 'Empfangsbestätigung' on the next page of the Documentation Package, because this document is not part of the external Chain of Custody Form, does not indicate the status of the person who received the kit and above all, it does not contain any direct reference to the kit with the I.D. code 3959325.*" The Confirmation of Receipt (Empfangsbestätigung) is merely evidence of the fact that two IAAF packages containing a blood and a urine sample have arrived at the Cologne Laboratory.

(viii) A further irregularity "*can be found on the subsequent pages 9 and 10* [of the Documentation Package] *concerning the integrity test of the urine. Also, on this test there is no traceability to the aforementioned kit no. 3959325 … In the same way, for the purpose of tracking the 'Sequenzdeckblatt' (see page 11) has no significance for the traceability since it does not constitute a legal certification, having only a summarizing character and being without signature*."

(ix) "*Another irregularity can be seen in the fact that at the bottom of the Chain of Custody Form there is an invitation, to immediately send the filled in form by fax to '33793508395'. Since there is no record of a fax transmission, it seems that the provision has not been observed.*"

(x) A further "*serious inconsistency can be deducted from the fact that … the A and B samples were delivered to the laboratory in Cologne on 1 January 2016, registered on 4 January 2016 and then both frozen and filed on 5 January 2016. Apparently, the LDP* [Laboratory Documentation package] *does not indicate that any analyses were made from 5th January up until 14th April and therefore the analysis of the A sample commenced only on 14 April 2016, hence more than three months after the receipt of the two samples by the Cologne laboratory*.

This is an apparent violation of the principle according to which, once the test tubes A and B have arrived at the laboratory, the A sample has to be analysed, while in the meantime the second B sample has to be frozen." This – according to the Appellant constitutes a "*clear violation of the format and substantial prerequisites imposed by WADA TD2009LDOC*" and "*rises the strong doubt that someone might have had more information about the blood drawing performed on January 1st, 2016, which has been judged as negative from the laboratory in Koln (Germany), but … was succeeded by a second targeted and more in-depth analysis of the "sample A" which took place on April 2016*".

(xi) All of the above constitutes a clear violation of the formal and substantial prerequisites imposed by the WADA International Standard for Testing and Investigation ("ISTI"), the WADA International Standard for Laboratory ("ISL"), the WADA Technical Document TD2009LDOC and the IAAF's rules and regulations.

(xii) According to the Appellant, the "*significant issues with the external chain of custody are sufficient, in and of themselves, to invalidate the results of the doping control test. Indeed, it is clear that in circumstances where it is impossible to verify how the samples were transported … as well as which precise samples arrived at the laboratory, it is also impossible to rule out any tampering with the sample or, theoretically, that the sample in fact belongs to someone else …*".

(2) The "*absolute absence of any element of a doping behavior of the athlete*" is confirmed by the experts Dr. Guiseppe Pieraccini (two reports), Dr. Benedetto Ronci (two reports), and Dr. Douwe de Boer and is based on the following facts:

(i) The "*athlete and his staff were extremely careful (proved by the countless controls* [of the Appellant] *since he restarted training in 2015. The results of the aforementioned tests are proof of the said assumption, and give a perfect physiologic picture, free from any suspicion concerning use, even in small amounts, of doping substances*."

(ii) The "*results of the voluntary, WADA, and NADO tests highlight absolutely regular steroid profiles and haemetic parameters, contradicting ab origine any hypothesis of willingness and intention to dope*." Instead, the Appellant and his staff implemented a unique anti-doping project and strategy.

(iii) The Appellant refers to Dr. Pieraccini's report according to which "*there are no rational reasons to take small doses of testosterone one time, occasionally, without a well studied doping plan. There are no improvements on the athletic performances; if the potential action of testosterone on the physical and mental recovery of an athlete … has to be considered, there are again no reasons to use it in the time period around the end of the year, when Schwazer's training program was not so heavy … It has to be also considered that he is absolutely aware of the fact that he would be checked very often by the official anti-doping organizations ... without forgetting that he was and is still*

undergoing a series of vigorous blood tests on a voluntary basis." Reference is also made to Dr. Pieraccini's statement according to which "*all the anti-doping tests …, one excluded …, where out-of-competition, not announced* [and that] *I can conclude that it is possible to rule out the ingestion of testosterone and/or its precursors with a doping purposes in the Mr. Schwazer case.*"

(iv) With respect to Dr. Schumacher's haematological analysis the Appellant submits that "*Dr. Schumacher has acknowledged that he has not taken the athlete's steroidal profile into account and has limited his expertise to the haematological system of the Appellant and the adverse analytical finding*." Furthermore, Dr. Schumacher conceded that the Appellant's blood profile is absolutely normal. Dr. Schumacher is not right in objecting to Dr. Ronci's concluding statement. It is scientifically possible to rule out any ingestion of anabolic steroids. The Appellant's experts have more detailed information confirming the absolute absence of any element of a doping behavior at the Appellant.

(v) Dr. Ronci submits that, if the Appellant was pursuing a doping strategy with anabolic steroids albeit with low doses, this had to be sufficiently extended through time over several months in order to be effective not only under the haematoic profile. He concludes, therefore, that an unintentional intake or fraudulent manipulation are the likely cause of the AAF.

(3) Significant departures form the International Standards and the IAAF's Regulations have occurred:

(i) According to "*Rule 22 IAAF Competition Rules … the IAAF has the burden of proving – to the comfortable satisfaction – that an anti-doping rule violation has occurred. Rule 33(b) and (c) … provided that if an athlete establishes a departure from an International standard the IAAF must prove that it did not. It is also important that CAS jurisprudence shows that some departures are so fundamental to the validity of the anti-doping control that fairness demands that they automatically invalidate the AAF*."

(ii) The information contained in the Chain of Custody Form enabled the Cologne Laboratory to attribute the sample to the Appellant. Consequently, there was a breach of the "anonymity rule." The Documentation Package showed the place of the taking of the sample (Racines, Italy). This is a small town of just over 4,000 inhabitants. The Athlete is the only athlete being part of the Registered Testing Pool who is living there. Identification of the Appellant was made even easier by the fact that the doping control form indicated that the athlete, from whom the sample was taken, was engaged in long distance athletics. Since the date of sample collection – as evidenced on the control form – was 1 January 2016 and since the control was an out-of-competition test, it was obvious for the Cologne Laboratory that the athlete must have been a resident of Racines. Since Racines is such a small town, it was easy to trace back the Appellant from the information available. Consequently, the fundamental rule of anonymity has been violated, which means that the activities carried out

by the Cologne Laboratory are in breach of Section 9.3.3 ISTI and Section 4.34 IAAF Anti-Doping Regulations. This is – according to the Appellant – "*a clear departure in terms of chain of custody of the samples that could have led to the AAF but at a minimum is a fundamental breach which leads the Appellant's test to be disregarded."*

(iii) Furthermore, the Appellant submits that in the course of the transportation of the samples, their storage and handover to the Cologne Laboratory certain ISTI and IAAF Regulations as to the External Chain of Custody were breached. Appellant refers to Sections 8.2, 8.3.1, 9.2.1, 9.3.1 and 9.3.2 ISTI and Sections 4.25 – 4.27, 4.30 – 4.32, 4.34 – 4.39, 4.43 – 4.45 IAAF Anti-Doping Regulations, in particular, however, to Sections 8.3.1 last two sentences and 9.3.1 ISTI, as well as Sections 4.26 second sentence, 4.30, 4.35, 4.36, 4.38 and 4.43 IAAF Anti-Doping Regulations. According to the Appellant, these violations are fundamental to the just and effective operation of the doping control system that fairness demands that the results obtained in the analysis should automatically be invalidated.

(iv) The DCO Dennis Jenkel took the urine sample from the Appellant on 1 January 2016 (sample number 3959325) at 8h35. The samples were then stored in the car (Storage location #1). According to the Appellant "*there are no details of the manner in which the transport was stored nor, vitally, the security, location, make or model of the car throughout this 'storage'. Furthermore, there is no confirmation that the sample was in the control and sight of the DCO for the entire 6.5 hours that it was stored in the car or whether it was left unattended or unlocked*."

(v) Thereafter, the kit containing the 1 January Sample was stored in the DCO Office (Storage location #2) for the period between 1 January 2016, 15h00, until 2 January 2016 6h00. Appellant submits that "*again there are no details on the security or location and in what manner the sample was securely stores during the 15 hours that it was stored in the 'DCO Office'*."

(vi) At 6h00, the urine sample was packaged by the DCO in order to commence transportation to the Cologne Laboratory. The Appellant submits that "*despite the IAAF Regulations providing that the sealing of the samples and documentation should be performed in front of a witness, there is no indication that this took place*". The Appellant notes that no "*certified courier company experienced in the transportation of anti-doping samples*" was chosen to deliver the samples to Cologne. Instead, the DCO decided that the samples be delivered by "*Wolfram Jablonski by hand*". The Appellant submits that "*again, there are no details whatsoever in terms of the manner, the security measures taken, ... nor whether the sample was in the control and sight of Mr Jablonski during the entire time that it was stored in the car. There is, furthermore, no indication whatsoever of Mr Jablonski's competence to handle the transportation of anti-doping samples.*" The Appellant refers to CAS 2010/A/2110 (paras. 89 – 94). According thereto Section 3.94 IAAF Anti-Doping Regulations does not allow the handing over of a sample for transportation to simply any person. In that case

the person was a trained and authorized doping control assistant, a chaperone, who "*was aware of the importance of all steps related to the maintenance of the integrity, identity and the security of the samples, especially with regard to their storage and transportation.*" The CAS Panel found that no evidence was presented which would enable the Panel to be comfortably satisfied that a departure occurred. The IAAF, in the opinion of the Appellant, did not address any of these issues and did not give any useful explanations in its Observations on Provisional Measures.

(vii) As to the handover of the sample to the laboratory, the Chain of Custody form "*is entirely blank in section 5 'Receipt by the Laboratory'*." The Appellant objects to the submission of the IAAF that the laboratory according to Section 6.2.1.3 ISL "*need only record certain details in its internal chain of custody records upon receipt of the sample*." Instead, the Appellant submits that in the case at hand "*the essential information identifying the precise sample received by the laboratory is missing*." In particular, there is no information concerning the date, time of receipt and the name and signature of the laboratory representative receiving the sample. In essence, "*there is no credible record that the sample received by the laboratory was in fact verified to be sample #3959325*."

(viii) The IAAF's argument, that departures have not been proven and, even if they had, they could not have reasonably caused the AAF, is wrong. The WADA McLaren Report on Doping in Russia has confirmed "*without any doubt whatsoever, that the caps of urine sample bottles can be removed without any evidence visible to the untrained eye.*" Also according to the manufacturer of the bottles the information contained in the WADA McLaren Report "*affects the entire chain of custody and the related operations*". It follows from this that "*tampering can occur … This conclusion is only strengthened in this case where it is clear from, inter alia, the level of testosterone allegedly found in the Appellant's sample … that the Appellant has not utilized a testosterone based doping regime*." Consequently, "*it is clear that such departures are a reasonable explanation for the AAF as it cannot be ruled out that manipulation of the sample occurred*."

(ix) The Appellant also refers to the decision of the Swiss Federal Tribunal ("SFT") 4A_576/20121 of 28 February 2013 according to which the external chain of custody is there to ensure that "*the Samples and the results generated by the laboratory can be unequivocally linked to the Athlete.*" In the case before the SFT, the athlete failed to provide an explanation "*which could make plausible a mistaken manipulation of the samples or a wrongful intervention by a third party who would have been able to contaminate his samples or substitute them with others with the same identification number without traces.*" In the present case, however, the Appellant has proven that he has not utilized a testosterone based doping regime and that there were departures, which, therefore, are a reasonable explanation for the AAF as it cannot be ruled out that manipulation of the sample occurred. Thus, the sample testing cannot be accepted as valid.

(x) In CAS 2014/A/3487 (paras. 142 – 152) the Panel made important remarks in relation to "*fundamental departures from the standards and regulations*". According thereto, a "*strict liability regime which underpins the anti-doping system requires strict compliance with the anti-doping rules by everyone involved in the administration of the anti-doping system in order to preserve the integrity of fair and competitive sport.*" This is – according to the Appellant – consistent CAS jurisprudence (CAS 2009/A/1752 and 1753 (para. 146) and CAS 2002/A/385 (paras. 148 – 150). The CAS has followed from the above that "*certain IST departures will be treated as so serious that, by their very nature, they will be considered to undermine the fairness of the testing process to such an extent that it is impossible for a reviewing body to be comfortably satisfied that a doping violation has occurred*." One such example is a federation's failure to invite the athlete to attend the opening of her B Sample (CAS 2002/A/385). In the case at hand the Appellant submits that the violation of the anonymity principle paired with the failures to properly record the storage and transport of his sample amount to fundamental and serious breaches. This is all the more true in view of the decision in CAS 2001/A/337 (paras 68 f.), where analysis results were discarded because the panel found "*that there may well be instances where the number of irregularities (even if insignificant on a stand-alone basis) reaches a level which may call into question the entire doping control process.*"

(4) If – contrary to the view held here – the Panel holds that the analysis results can be relied upon, then the Appellant submits that the provisions on elimination or reduction of any potential sanction must be applied. In this regard, the Appellant refers to the following factors:

(i) The "*IAAF's delays in testing and notification of the positive results have irreparably harmed his ability to properly defend himself. … the IAAF has compromised the Appellant's ability to bring all relevant materials and jurisprudence to the Panel's attention and to reconstruct the events immediately prior to the test*."

(ii) It is – according to the Appellant – "*clearly established through expert evidence … that the present case does not concern an intentional anti-doping rule violation*."

(iii) The Appellant submits that "*this is one of the rare cases in which No Fault or Negligence* [Rule 40.5 IAAF Competition Rules] *can be established. The experts in this case have made it clear that the source of the prohibited substance in this case could not have been a doping-related regime, but must be either sabotage or contamination*."

(iv) As for the sabotage scenario, the Appellant submits that "*the Appellant is a vulnerable target for such abhorrent behavior … in particular in light of the threats he received before the races in Rome and La Coruna. These threats establish a clear motive for sabotage, and the abovementioned departures and the issue with lack of security of anti-doping bottles provide the opportunity*." The McLaren report showed that manipulating the (sealed) bottles was possible

and "*that corruption in anti-doping and interference with samples can occur at every level, including even high ranking IAAF officials and anti-doping personnel.*" Following the jurisprudence in CAS 2011/A/2384 the Appellant submits that the "*IAAF must substantiate and explain in detail why it deems the facts submitted by the Appellant to be wrong … and the IAAF must fulfill its 'obligations of cooperation' in establishing the source of the substance*." This is all the more true in a case where "*the only other possible explanation of the Prohibited Substance in the Appellant's sample is not just contamination, but contamination from something other than a supplement*," since Mr Schwazer does not use supplements.

(v) In the event the Panel does not accept No Fault or Negligence, the Appellant submits that "*the very same considerations apply to a consideration of No Significant Fault or Negligence in Rule 40.6 IAAF Competition Rules*."

(vi) With reference to Rules 40.1, 40.9 and 40.11 (a), (b) and (c) IAAF Competition Rules and considering both the delays in testing and notification, as well as the sabotage/contamination origin of the Prohibited Substance, no disqualification of the competitive results shall be imposed upon the Athlete (Rule 40.9 IAAF Competition Rules).

(5) In case, any suspension is imposed on the Appellant, "*it should clearly start not from the date of the award, but from the date of the notification of the AAF on July 8th 2016 and the Mr Schwazer's period of provisional suspension must be credited (Rules 40.11 (a) – (c) IAAF Competition Rules).*"

42. The Appellant submits the following Prayers for Relief:

a. Set aside the provisional suspension imposed by the IAAF on July 8th 2016.

b. Declare that Mr. Schwazer has not committed an anti-doping rule violation.

c. In the alternative, declare that no period of ineligibility is to be imposed on Mr. Schwazer.

d. In the further alternative, reduce any period of ineligibility imposed on Mr. Schwazer;

e. Declare that Mr. Schwazer's results from April 29th 2016 to July 8th shall not be disqualified;

f. Declare that any period of ineligibility imposed on Mr. Schwazer shall start from 8th July 2016 and that his provisional suspension shall be credited;

g. Condemn the IAAF, NADO/Italia, FIDAL, WADA, together in solidarity to pay the arbitration costs;

h. Order the IAAF, NADO/Italia, FIDAL, WADA together in solidarity to reimburse Mr. Schwazer's legal and other costs incurred in connection with the CAS proceedings.

43. The First Respondent's submissions may be summarized as follows:

(1) The Athlete committed an ADRV according to Rules 32.1 and 32.2 (a) IAAF Competition Rules because

- the analysis of the A Sample revealed the presence of metabolites of exogenous testosterone in the Appellant's body. The analysis was confirmed by IRMS.
- The Appellant's experts (Dr. Pieraccini and Dr. De Boer) confirmed the validity and reliability of the analysis performed on the A Sample in their respective reports.
- The findings in the A Sample were confirmed by the analysis of the B Sample conducted on 5 July 2016.
- The Appellant's representative, present at the opening and analysis of the B Sample, confirmed that the code number of the B Sample matched the code on the A Sample as well as the code on the corresponding doping collection forms. Furthermore, the representative acknowledged that the B Sample bottle was correctly closed and sealed.
- Testosterone is a Prohibited Substance under S1.1 b of the WADA Prohibited List, both in- and out-of-competition. It is not a Specified Substance. Thus, the violation of Rule 32.2 (a) IAAF Competition Rules is established.

(2) In order for the analysis results to be invalidated, the Appellant must prove the following conditions according to Rules 33.3(b) and 33.3(c) IAAF Competition Rules:

- The Appellant must, on the balance of probability, prove a departure from the standards or rules.
- The Appellant must demonstrate that the proven departure could reasonably have caused the ADRV.
- The IAAF must fail to prove to the comfortable satisfaction of the Panel that the proven departure did not cause the ADRV.

(3) With respect to the alleged breaches of the External Chain of Custody, the First Respondent remarks that the applicable "*provisions are generic in their formulation*." The "*most detailed provision regarding he transportation and storage of samples … are set out at section 4.36 et seq. of the IAAF Anti-Doping regulations*."

(i) According to the First Respondent, no breach occurred when transporting the 1 January Sample from Racines to Stuttgart.

- Mr. Dennis Jenkel, who conducted the doping control, "*works for the company GQS, which is a specialised doping control service provider*

with its head offices in Stuttgart, Germany. Mr. Jenkel is an experienced and qualified DCO."

- The doping control was conducted according to the directions given by the IAAF. The latter requested that the Appellant be submitted to a doping control in Racines, Italy in the morning of 1 January 2016. Consequently, Mr. Jenkel, who lives in Stuttgart, spent the night from 31 December 2015 in a hotel in Kolsass near Innsbruck, Austria in order to conduct the doping control, the next morning in Racines. He drove from the hotel in Kolsass to Racines with his colleague, Mr Fabian Hirtinger. The latter was responsible for conducting the blood control.

- Mr Jenkel and Mr Hirtinger arrived at the Appellant's house on 1 January 2016, around 7h10. The doping control session started – as evidenced in the Doping Control Form – at 7h25 and the Sample was sealed at 8h28.

- The Chain of Custody Form sets out "*the various movements of the 1 January Sample from the doping control station to the Cologne laboratory*". According thereto "*the sample collection session ended at 8.31 am*".

- Before leaving the Appellant's house, "*Mr. Jenkel placed the A and B samples in the Beringer 'Styroporbox'."* He then stored the Styoporbox in his car, which was parked outside the Appellant's home. He placed the "*Styoporbox in an electronic cooler box located in the boot of the car and plugged in the cooler box to the power socket. The blood sample was placed in a separate manual cooler box in the boot of the car*."

- Mr. Jenkel then drove back to the hotel in Kolsass, to drop off Mr. Hirtinger who had left his car there. Mr. Jenkel had breakfast at the hotel, where he had stayed in the night before. The "*samples remained in the cooler boxes in the car, which was locked during the entire period*." After the breakfast Mr. Jenkel "*continued his journey to Stuttgart. At around midday, Mr. Jenkel stopped at the petrol station at the Fernpass in order to use the bathroom. He locked the car before going to the bathroom*."

- Mr. Jenkel "*arrived at the GQS offices in Stuttgart. Eichriesenweg 10, at around 3 pm*." The First Respondent submits that from the foregoing, "*it is clear that the relevant urine sample was within the control of Mr Jenkel and secure at all times*."

(ii) According to the First Respondent no breach occurred while storing the 1 January Sample at the DCO office in Stuttgart.

- The First Respondent submits that Mr. Jenkel "*parked his car outside the GQS building, [and] took the cooler boxes to the GQS office, which is located on the first floor*." Being an employee of GQS, "*he had a key to*

unlock the main entrance to the building (on the ground floor) and another to unlock the door to the GQS office (on the first floor). The GQS office was empty that day because it was a public holiday. Mr. Jenkel went into his own office, plugged the electric cooler box into the mains in his office and set the manual cooler box down next to it. Before leaving the office, Mr. Jenkel also left the key to the rental car (which he had used for the doping control mission) in his office as it had been arranged that Mr. Wolfram Jablonski - who acts as a courier for GQS - would pick up the samples the next morning and take them to the Cologne laboratory using the same car. Mr. Jenkel locked the door to the GQS office when he left."

- The First Respondent concludes from the above that "*the urine sample was safely stored in a cooler box at the GQS office; indeed, there were two locked doors preventing access to the samples. Only GQS staff members had the key to unlock the (internal) door to the office*."

(iii) According to the First Respondent no breach occurred during the transportation of the Samples from Stuttgart to the Cologne Laboratory. In particular, the First Respondent submits that

- "*Mr. Wolfram Jablonski is the father of the Managing Director of GQS, Michael Jablonski. He is employed by GQS in matters of sample transportation and storage; he works for them on an almost daily basis. He is an experienced courier of doping control samples, having worked for GQS for approximately five and a half years.*"

- Mr. Jablonski was informed by Mr. Jenkel in the afternoon of 1 January 2016 that the samples had arrived at the GQS office. The First Respondent submits that "*Mr. Jablonski arrived at the GQS office at around 6:00 on 2 January 2016. As he had a key, he was able to access the GQS office space … went into Mr. Jenkel's personal office and found the two cooler boxes and the clipboard with the accompanying forms. He checked that the sample codes corresponded to the codes on the forms, which they did. He also found the key of the rental car …*" He then "*took the cooler boxes and forms down to the rental car, placed them in the boot of the rental car and plugged the electric cooler box into the socket. He then drove to the Cologne laboratory without stopping* [and] *arrived …* [there] *at around 10:00.*"

- The First Respondent concludes from the above that "*the samples were transported from Stuttgart to Cologne by an experienced, employee of GQS with full authorisation to do so* [and that] *he had the sample in his control during the entire period.*"

(iv) According to the First Respondent, no breach occurred during the receipt of the 1 January Sample at the Cologne Laboratory. In particular the First Respondent submits that

- "*Mr. Jablonski took the two cooler boxes and the clipboard with the forms and took them to the on-duty porter, a Mr. Kretschmer. Before signing the Confirmation of Receipt Form, both Mr. Jablonski and Mr. Kretschmer checked that the sample code numbers of the boxes matched the sample codes on the respective Doping Control Forms. The Confirmation of Receipt Form was signed by both Mr. Jablonski and Mr. Kretschmer at 10:20 on 2 January 2016.*"

- The First Respondent concludes from the above that "*the correct sample … was delivered in person to the Cologne laboratory* [and that all of] *this is documented on the Confirmation of Receipt Form.*

(v) The First Respondent holds that CAS case law on External Chain of Custody "*reinforces the conclusion that there is no departure in this case still less one that could lead to the invalidation of the analytical results*." The First Respondent, in particular, refers to the cases CAS 2010/A/2110, CAS 2011/A/2612 and 2014/A/3639. The First Respondent concludes that "*there can be no doubt that the 1 January Sample – with code number 3959325 – was delivered to the Cologne laboratory intact*", which has been confirmed also by Dr. Pieraccini. The latter acknowledged "*that the B-Sample bottle bore the correct code and was correctly sealed at the time of the opening of the B-Sample.*"

(vi) According to the First Respondent, there was no breach of the anonymity principle, the relevant provision of which are found in Section 4.37 of the IAAF Anti-Doping Regulations. According thereto "*documentation identifying the Athlete should not be included with the Samples or documentation sent to the Laboratory that will be analysing the Samples*." The First Respondent submits that

- no document was sent to the Cologne Laboratory that identified Mr Schwazer. The part of the Doping Control Form that mentioned Mr Schwazer's name had been redacted.

- There is "*no obligation that requires information to be redacted to the extent that it could lead laboratory personnel – who studied that information and had the requisite background knowledge – to infer who the sample provider might be. In order to identify Mr Schwazer, the "laboratory personnel would have been required to know that Mr Schwazer was a long-distance athlete, that he came from Racines and that no other long distance athletes were resident, training or competing in Racines at the time of the sample collection. If the provision were interpreted in the manner suggested by the Athlete, it would place an undue and unrealistic burden on the DCO*." They would have to analyse the particular circumstances around the athlete and analyse which information might potentially convey information as to their identity.

- The First Respondent submits that "*the DCO and the courier filled the Chain of Custody Form as required to do*." Thus, there is no departure from the IAAF Anti-Doping Regulations or any International Standard. In "*any event, the Appellant does not even begin to explain how the knowledge of the testing location (in the hands of the Cologne laboratory personnel) could have caused the presence of exogenous steroids in his system*."

(4) The First Respondent submits that there was no breach of the Internal Chain of Custody. In particular, the First Respondent notes that the absence of analytical information from January 2016 does not amount to a breach of the applicable provisions.

(i) In accordance with WADA Technical Document TD2009LDOC, the documentation package must contain data "*from the Initial testing Procedure and the Confirmation procedure. A Confirmation Procedure is of course only conducted in the event that the Initial Testing Procedure is positive*." The First Respondent submits that this data is contained in the Documentation Package.

(ii) There is no requirement that the Documentation Package documents "*the aliquots movements and analyses for a negative screening test … that is not being relied upon to establish the anti-doping rule violation in this case*".

(iii) Contrary to what the Appellant submits, the movements of the A sample bottle are recorded from its delivery to the Cologne laboratory on 2 January 2016. According to the Sequenzblatt of the Documentation Package, the A sample bottle was taken from room 702 to 710 on 5 January 2016 at 7h40. From 7h40 onwards, aliquots of the urine were taken from the A sample bottle as shown by the phrase "Vor Dekantierung" in the table. At 8h25, the A sample bottle was transferred from room 710 to room 721a and then frozen. The next movement of the A sample bottle was on 14 April 2016.

(iv) In compliance with the Technical Document TD2009LDOC, the Documentation Package contains the GC-C-IRMS screening test data and the GC-C-IRMS confirmation test data, which means the Initial Testing Procedure and the Confirmation Procedure that led to the positive result. Since the January test was negative, the Documentation Package does not contain the aliquot movements for that negative screening test.

(v) As to the IRMS aliquot movements, in the view of the First Respondent, the Appellant misunderstood that the Internal Chain of Custody Form viz. Sequenzblatt reports only the movements of the sample bottle and does not record the operations performed on the aliquots. The A sample bottle was moved from frozen storage on 14 April 2016. The screening took place from 14 to 21 April 2016. The A sample bottle was replaced into frozen storage on 14 April 2016 and removed once again on 26 April 2016 for extraction of the aliquots and preparation for confirmation analyses, which were performed from 26 April to 12 May 2016.

(5) The First Respondent also contests any other administrative failures of the Cologne Laboratory.

(i) In particular, no issue arises from the fact that the Director of the Cologne Laboratory did not sign the cover page of the Documentation Package, but rather such was signed by another authorised person, Dr. Mareck, in his capacity as Quality Manager of the Cologne Laboratory. This is in line with section 1 of TD2009LDOC.

(ii) The fact that on the table regarding the integrity test were mentioned two different dates (5 January 2016 and 31 May 2016) does not mean that the test was not performed until 31 May 2016. Instead, the First Respondent submits that "*the date of 31 May 2016 is simply the date when the document was generated*".

(iii) The German word "verworfen" on a handwritten page of the Documentation Package does not mean – contrary to the speculation of the Appellant – "*that the sample may have been disposed of*". According to the First Respondent, "*the verworfen column of this sheet does not relate in any way to the 1 January Sample, which is mentioned in the 'umgelagert' (meaning 'transferred') column. This page is include in the LDP to show that the sample was placed into long-term storage (at minus 20 degrees) on 12 May 2016, i.e. after the completion of the confirmation analyses*".

(6) The First Respondent submits that in view of all of the above all "departure-related arguments" of the Appellant must be rejected. No "fundamental breaches" occurred. Consequently, there is no room for the application of any "fundamental breach" principle. The latter principle has been applied only when the athlete was denied the fundamental right to be present or represented at the opening of the B Sample (CAS 2002/A/385, CAS 2008/A/1607, CAS 2010/A/2161, CAS 2014/A/3487) and rejected where "*it cannot properly be said that it was one such as to undermine the fairness of the testing process to such an extent that it is impossible for us to be comfortably satisfied that an ADRV has occurred.*" (CAS 2014/A/3487). In the present case, Dr. Pieraccini attended the B Sample opening and confirmed that the sample bore the correct code, was properly sealed and that the analyses were properly conducted. According to the First Respondent, the "fundamental breach"-principle shall only be applied in the most exceptional and limited circumstances, when it is simply impossible for a Panel to be comfortably satisfied that the ADRV is established. In the present case, the ADRVs of presence and use of a Prohibited Substance are established.

(7) With respect to the Appellant's allegation that there is no "doping scenario", the First Respondent submits as follows:

(i) The fact that the Appellant underwent numerous private tests as of October 2015 (in addition to official doping controls) cannot exonerate the Athlete. According to the First Respondent "*private tests cannot be relied upon within an anti-doping context …* [because they] *are not subject to the same requirements, protocols and quality controls as official controls and analysis*

[and] *there can be no certainty that they were conducted randomly and unannounced and that all such tests have been disclosed.*"

(ii) The Appellant has "*not provided the details of these tests other than the dates … and certain basic blood values from a number of 2016 tests … In particular there is no analytical data whatsoever*." According to the First Respondent "*the values of the 2015 private blood tests are conspicuously absent from the Ronci report. If the private tests have any relevance at all …. then it would be the 2015 values … because the ingestion giving rise to the positive test must have occurred before 1 January 2016.*"

(iii) Even the Appellant's experts concede that the 1 January Sample is suspicious because it has "*an elevated T/E value, the highest concentration of testosterone and the lowest ratio of A/T. The Appellant's passport commences with the 1 January 2016 sample and does not provide any indication about whether the Appellant intentionally used steroids in late 2015.*" The First Respondent also refers to the expert report of Dr. Gmeiner who holds that T/E levels very often return to base level within 20 hours of the testosterone administration and that this has been demonstrated for oral application of Andriol (testosterone undecaoate) and the testosterone Androstenedione. Therefore, in Dr. Gmeiner's opinion, "*no conclusion can be drawn from one singular sample on the administration dose, the mode of administration, the substance / preparation or the frequency of administration*." Dr. Gmeiner sees a time gap of around six weeks between the two official doping controls either side of the 1 January Sample (10 December 2015 until 24 January 2016). According to Dr. Gmeiner, within such time frame "*multiple applications of either testosterone or other precursors cannot be excluded*".

(iv) Dr. Schumacher has confirmed that the values of the Appellant's blood passports do not allow one to exclude blood doping. The blood passport commences only after the positive sample.

(v) The Appellant has been using testosterone in the past. Dr. Pieraccini reported that the Athlete admitted to his coach at the outset of their relationship that "*he had taken 30mg of testosterone for nine consecutive days in October 2011, and then abandoned its use not having noticed any effect on the performance.*" Furthermore, the First Respondent submits that "*the Appellant has experimented with different types of testosterone in the past.*" As can be seen from his statement of 23 March 2015, the Appellant in spring 2011 purchased Andriol, subsequently Testogel, and in September 2011, during his stay in Turkey Virigen. After his return from Turkey he took testosterone again on three or four occasions. On 27 March 2015, before the Public Prosecutor in Bolzano, the Appellant conceded that he decided to take testosterone in addition to EPO, because EPO had to be stored at 3-6 degrees, which was not always practicable. The Appellant admitted to the Public Prosecutor that he wanted to increase his endurance and stamina by using testosterone and gave contradictory explanations why he purchased testosterone in Turkey. For the First Respondent it is clear that the Appellant used testosterone on multiple occasions, that he has

experimented with different kinds in order to find the most beneficial product and that he used testosterone on a short-term basis rather than according to a planned regime.

(vi) In conclusion, the First Respondent holds that the Appellant has failed to rule out a doping scenario.

(8) The First Respondent submits that the alternatives advanced by the Appellant of how the prohibited substance entered into his system (sabotage or contamination) are entirely unsubstantiated and mutually exclusive. In particular, the Appellant

(i) failed to establish the origin of the prohibited substance on the balance of probability test. This entails – according to the First Respondent – that the Appellant has the burden of convincing the Panel that the occurrence of the circumstances on which he relies is more probable than their non-occurrence. Mere "*protestations of innocence*" and "*speculations*" are not sufficient.

(ii) Concrete and actual evidence must be provided according to CAS jurisprudence. The First Respondent refers in this context to numerous CAS decisions (in particular: CAS 2010/A/2230, CAS 99/A/234, CAS 2914/A/3820, CAS 2006/A/1067, CAS 2014/A/3615). In CAS 2006/A/1032, the Panel has held that the requirement of establishing origin must be applied quite strictly.

(iii) The First Respondent concludes that all these requirements are not met in the case at hand and that intentional use of a Prohibited Substances cannot be excluded.

(9) As for the sanction to be imposed, the First Respondent refers to Rule 40.2 IAAF Competition Rules which provides for a period of ineligibility of four years, unless the Appellant can establish that the ADRV was not intentional. The burden of proof lies with the Appellant. The First Respondent submits that in order to prove non-intentional use of the substance the Athlete must necessarily establish how the substance entered his body. According to the First Respondent this follows from CAS 2016/A/4377 and UK case law. Since the Appellant clearly failed to establish origin, he has also failed to rebut the presumption that the ADRV was committed intentionally. Consequently, a period of 4 years of ineligibility would apply in case of a first ADRV. However, this is the Appellant's second offence, which leads to application of Rules 40.7 (iii) IAAF Competition Rules. According thereto, the Appellant must be sanctioned with an eight-year period of ineligibility. According to Rule 40.11 IAAF Competition Rules, the sanction starts on the date of the CAS Award. However, the Appellant should receive credit for the period of provisional suspension served since 8 July 2016. Pursuant to Rule 40.9 IAAF Competition Rules, the results of the Appellant must be disqualified from the date of the ADRV, i.e. as from 1 January 2016, even though the Appellant only started to compete on 29 April 2016. There are no reasons of fairness to decide otherwise.

44. The First Respondent submits the following Requests for Relief:

"*1. The appeal and all requests for relief of Alex Schwazer are dismissed.*

2. Alex Schwazer is sanctioned with an eight-year period of ineligibility starting on the date on which the CAS award enters into force. Any period of provisional suspension effectively served by Alex Schwazer before the entry into force of the CAS award shall be credited against the total period of ineligibility to be served.

3. All competitive results obtained by Alex Schwazer from and including 1 January 2016 are disqualified, with all resulting consequences (including forfeiture of medals, points and prizes).

4. Alex Schwazer shall bear the entirety of the arbitration costs (if any).

5. Alex Schwazer shall be ordered to make a significant contribution to the legal and other costs of the IAAF."

45. The submissions of the NADO Italia (Second Respondent) may be summarized as follows:

(1) The Appellant in his Appeal Brief substantially changed his requests for relief. Consequently, the appeal directed against the decision of the National Anti-Doping Tribunal ("TNA") of 11/12 July 2016 contained in the Statement of Appeal should be considered withdrawn. It follows from the new prayers for relief that the Appellant has consented to the TNA ruling, which, therefore, shall be considered as final with no possibility of further appeal.

(2) NADO Italia submits that given the agreement of all parties based on Rule 38.19 IAAF Competition Rules, the CAS has full power to decide on the merits of the 1 January Sample. The procedure, which commenced as an appeal procedure, thus has turned into an ordinary procedure, in which the parties may submit their respective arguments in relation to the AAF.

(3) The award that will be issued by the CAS will supersede the provisional suspension imposed by IAAF and, therefore, any motion regarding the stay or annulment of said measure will be without object and devoid of purpose.

(4) Since the Second Respondent was not involved in the results management regarding the 1 January Sample or the subsequent procedure, its role in the present proceedings will be essentially limited to inform the Panel of its testing activity on the Appellant and eventually provide further information at its disposal.

(5) The Second Respondent refers to the First Respondent's motions regarding the relevant disciplinary issues.

(6) When the Appellant decided to prepare for competition during the remaining period of his ineligibility, NADO Italia conducted out-of-competition tests on the Appellant on 29 October 2015, 10 December 2015, 22 March 2016, 31 May 2016, 17 June 2016, and 27 June 2016 (altogether 6 tests). On 2 February 2016, a test assigned by NADO Italia was not carried out, because other DCOs appointed by

the First Respondent were already conducting a test. The results of the 6 tests have been communicated to the Appellant and the First Respondent and can be used for the scientific assessments of the steroidal profile of the Appellant by either of them.

46. The Second Respondent submits the following Requests for Relief:

a) Adjudge and declare that the TNA's decision is no more subject to appeal and, consequently, it is final and with no possibility of further appeal;

b) On the merits of the disciplinary violation relating to the AAF, NADO Italia makes reference to the IAAF's motions for relief;

c) Adjudge and declare that NADO Italia is entitled to receive from Mr. Schwazer a contribution towards its legal fees and other expenses incurred in connection with this arbitration.

47. At the beginning of the hearing, the Appellant expressly declared to herewith withdraw his appeal against NADO Italia. In turn NADO Italia declared the first of its requests for relief to be mute.

48. Neither the Third nor Fourth Respondent filed any written submissions.

V. JURISDICTION AND ADMISSIBILITY

49. Article R47 of the Code provides as follows:

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

50. The parties (NADO Italia also on behalf of FIDAL), by exchange of emails agreed to the jurisdiction of the CAS pursuant to Rule 38.19 of the IAAF Competition Rules, which reads as follows:

Cases asserting anti-doping rule violations may be heard directly by CAS with no requirement for a prior hearing, with the consent of the IAAF, the Athlete, WADA and any Anti-Doping Organisation that would have had a right to appeal a first hearing decision to CAS.

51. Consequently, the Panel has jurisdiction to hear and decide the matter in dispute. Furthermore, the appeal is admissible. The Panel takes note that this procedure is an expedited procedure according to Articles R44.4 and R52 para. 3 of the Code. The Panel further observes that all deadlines set to the parties in the framework of this procedure have been met. These provisions read as follows:

R44.4 Expedited Procedure

With the consent of the parties, the Division President or the Panel may proceed in an expedited manner and may issue appropriate directions therefor.

R 52 para.3

With the agreement of the parties, the Panel or, if it has not yet been appointed, the President of the Division may proceed in an expedited manner and shall issue appropriate directions for such procedure.

VI. APPLICABLE LAW

52. Article R58 of the Code provides as follows:

The Panel shall decide the dispute according to the applicable regulations and 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.

53. Rules 42.22 – 42.26 IAAF Competition Rules reads as follows:

The CAS Appeal
22. All appeals before CAS shall take the form of a re-hearing and the CAS Panel shall be able to substitute its decision for the decision of the relevant tribunal of the Member or the IAAF where it considers the decision of the relevant tribunal of the Member or the IAAF to be erroneous or procedurally unsound. The CAS Panel may in any case add to or increase the Consequences that were imposed in the contested decision.

23. In all CAS appeals involving the IAAF, CAS and the CAS Panel shall be bound by the IAAF Constitution, Rules and Regulations (including the Anti-Doping Regulations). In the case of any conflict between the CAS rules currently in force and the IAAF Constitution, Rules and Regulations, the IAAF Constitution, Rules and Regulations shall take precedence.

24. In all CAS appeals involving the IAAF, the governing law shall be Monegasque law and the arbitrations shall be conducted in English, unless the parties agree otherwise.

25. The CAS Panel may in appropriate cases award a party its costs, or a contribution to its costs, incurred in the CAS appeal.

26. The decision of CAS shall be final and binding on all parties, and on all Members, and no right of appeal will lie from the CAS decision. The CAS decision shall have immediate effect and all Members shall take all necessary action to ensure that it is effective.

54. The applicable rules, thus, are the IAAF Constitution, Rules and Regulations (including the Anti-Doping Regulations). Primarily relevant are the 2016-2017 IAAF Competition Rules, which entered into force on 1 November 2015, and the 2015 IAAF Anti-Doping Regulations, which entered into force on 1 May 2015. By reference in the IAAF Competition Rules / Anti-Doping Regulations, the relevant WADA International Standards and Technical Documents also apply.

55. By virtue of Rule 42.25 IAAF Competition Rules read in conjunction with Article R58 of the Code, Monegasque law shall apply on a subsidiary basis.

VII. MERITS

56. The issues in dispute in the present proceedings are

(A) whether the Appellant committed an ADRV and, if answered in the affirmative,

(B) what are the appropriate consequences of such an ADRV?

A. The ADRV

57. Rule 32.1 IAAF Competition Rules defines doping as "*the occurrence of one or more of the anti-doping rule violations set out in Rule 32.2 of these Anti-Doping Rules.*"

58. Rule 32.2 IAAF Competition Rules reads as follows:

> *2. The purpose of Rule 32 is to specify the circumstances and conduct which constitute anti-doping rule violations. Hearing in doping cases will proceed based on the assertion that one or more specific rules have been violated. Athletes or other Persons shall be responsible for knowing what constitutes an anti-doping rule violation and the substances and methods which have been included on the Prohibited List. The following constitute anti-doping rule violations:*
>
> *(a) Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample.*
>
> *(i) It is each Athlete's personal duty to ensure that no Prohibited Substance enters his 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 Rule 32.2(a).*
>
> *(ii) Sufficient proof of an anti-doping rule violation under Rule 32.2(a) is established by either 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 analysed; or, where the Athlete's B Sample is analysed 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 B Sample is split into two bottles and the analysis of the second bottle*

confirms the presence of a Prohibited Substance or its Metabolites or Markers in the first bottle.

[…]

59. None of the parties and none of the experts questioned the results of the analysis ordered by the IAAF on 29 March 2016 on the 1 January 2016 Sample, i.e. that both the A and the B Sample tested positive for exogenous testosterone.

60. It is further undisputed that exogenous testosterone is a prohibited substance, falling under class S1.1 b) (Exogenous androgenic anabolic steroids) of the WADA Prohibited List, that this substance is prohibited at all times and that the substance is not a specified substance within the meaning of the WADA Prohibited List.

61. However, what is disputed between the parties is whether or not the results of the laboratory analysis can be attributed to the Athlete. The Athlete has raised a number of objections in this respect. In particular, the Appellant argues that departures from the International Standards and the IAAF Regulations have occurred which relate a) to the identification of the Athlete (confidentiality), b) the external chain of custody, c) the internal chain of custody and other reporting and administrative failures by the Cologne Laboratory. These failures are so serious – according to the Athlete – that taken individually or together they invalidated the analysis result.

1. Preliminary Observations

62. As a preliminary issue, the Panel notes that, in principle, a breach of the applicable International Standards as such does not automatically lead to an invalidation of the analytical results. This follows from Rules 33.3(b) and 33.3(c) IAAF Competition Rules which provide as follows:

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

If the Athlete or other Person rebuts the preceding presumption by showing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding, then the IAAF, Member or other prosecuting authority shall have the burden of establishing that such departure did not cause the Adverse Analytical Finding.

(c) Departures from any other International Standard or other anti-doping rule or policy set out in these Anti-Doping Rules or the rules of an Anti-Doping Organisation which did not cause an Adverse Analytical Finding or other anti-doping rule violation shall not invalidate such evidence or results. If the Athlete or other Person establishes a departure from another International Standard or other anti-doping rule or policy which could reasonably have caused an anti-doping rule violation based on an Adverse

Analytical Finding or other anti-doping rule violation, then the IAAF, Member or other prosecuting authority shall have the burden of establishing that such departure did not cause the Adverse Analytical Finding or the factual basis for the anti-doping rule violation.

2. Breaches with Respect to Confidentiality

63. With respect to the alleged breach of confidentiality, the Appellant refers to the following provisions of the International Standard for Testing and Investigation ("ISTI"):

Section 9.3.3 ISTI

Documentation identifying the Athlete shall not be included with the Samples or documentation sent to the laboratory that will be analyzing the Samples.

Section 4.34 IAAF Anti-Doping Regulations

The DCO/other responsible person shall complete the Laboratory advice form/Chain of Custody form and shall also ensure that the Laboratory is provided with the information under 4.22 (c), (f), (h), (j), (k), (l), (o), (p), (q), (y), (z) and (aa). The Laboratory copy of the Doping Control Form shall be placed in the transport bag with the Samples and sealed, preferably in the presence of a witness. Documentation identifying the Athlete shall not be included with the Samples.

64. In the case at hand the IAAF used the WADA-standardized templates for documenting the proper performance of the taking, verifying, transporting and storing of the 1 January Sample. This standard template provides – *inter alia* – that the DCO records the place where the sample has been taken. The Appellant submits that this place should not have been recorded for reasons of confidentiality. The place of the sample taking (Racines) is – according to the Appellant – so small that anybody could trace back the sample to the Athlete, if this village was included in the documentation. According to the Appellant this constitutes a clear breach of the ISTI according to which his samples must be analysed anonymously.

65. The Panel does not concur with the view held by the Appellant. Not recording the place of the taking of the sample would render the whole purpose of the standardized documentation meaningless. If the location of the taking of a sample is not disclosed, the route of transport cannot be established ex post and consequently, possible manipulations during the transportation of the sample cannot be excluded. In addition, it would place an undue burden on the DCOs to decide in every individual case whether or not the place of sample taking should be disclosed or not, since out-of-competition testing frequently leads DCOs into small villages and isolated places where athletes are training or preparing for competitions, in particular in endurance sports. The Panel understands the provisions in the ISTI referred to by the Appellant to prohibit only the inclusion of any additional information (not provided for in the standard documentation) permitting the laboratory to identify the athlete. The provisions do not deal with the question whether and how the standard template has to be filled out by the DCO. Since no such additional document or information identifying the Athlete (e.g. a copy of a passport or driver's licence) were sent to the Cologne Laboratory, no breach of the relevant ISTI could be asserted.

66. In addition, the Panel finds that the Appellant's fear that the place of the taking of the sample could have disclosed his identity seems unjustified when looking at the specific circumstances of this case. During the evidentiary part of the hearing it appeared quite clear that a number of the delays in the processing the Athlete's sample were due to the fact that the staff responsible for the analysis completely ignored whose sample it was. Instead, the Appellant's sample was just treated like anybody else's sample. The staff – in fact – had no idea of the urgency of the matter and had no clue to whom the 1 January Sample belonged. Dr. Geyer and Prof. Ayotte repeatedly stated that they would have used their scarce resources differently had they known that the sample belonged to the Appellant. The questioning of the witnesses Mr. Jenkel, Mr. Jablonski and Dr. Geyer by the Appellant did not reveal any evidence of a misuse of the standardized process by any of the persons involved that led or could lead to a "special" treatment of the Appellant's sample. The Panel concludes that the anonymity of the 1 January Sample was respected at all given times and that, therefore, no breach of the anonymity of the sample and of the anonymity of the Appellant occurred.

3. Breaches with respect to the External Chain of Custody

67. With respect to the External Chain of Custody, the Appellant refers to the following provisions of the ISTI that have been allegedly breached:

> ISTI
>
> *8.2 General*
> *Post-test administration begins when the Athlete has left the Doping Control Station after providing his/her Sample(s), and ends with preparation of all of the collected Samples and Sample collection documentation for transport.*
>
> *8.3 Requirements for security/post-test administration*
> *8.3.1 The Sample Collection Authority shall define criteria ensuring that each Sample collected is stored in a manner that protects its integrity, identity and security prior to transport from the Doping Control Station. At a minimum, these criteria should include detailing and documenting the location where Samples are stored and who has custody of the Samples and/or is permitted access to the Samples. The DCO shall ensure that any Sample is stored in accordance with these criteria.*
> […]
>
> *9.2 General*
> *9.2.1 Transport starts when the Samples and related documentation leave the Doping Control Station and ends with the confirmed receipt of the Samples and Sample Collection Session documentation at their intended destinations.*
> *9.2.2 The main activities are arranging for the secure transport of Samples and related documentation to the laboratory that will be conducting the analysis, and arranging for the secure transport of the Sample Collection Session documentation to the Testing Authority.*
>
> *9.3 Requirements for transport and storage of Samples and documentation*

9.3.1 The Sample Collection Authority shall authorize a transport system that ensures Samples and documentation are transported in a manner that protects their integrity, identity and security.
9.3.2 Samples shall always be transported to the laboratory that will be analyzing the Samples using the Sample Collection Authority's authorised transport method, as soon as practicable after the completion of the Sample Collection Session. Samples shall be transported in a manner which minimizes the potential for Sample degradation due to factors such as time delays and extreme temperature variations.

[Comment to 9.3.2: Anti-Doping Organizations should discuss transportation requirements for particular missions (e.g., where the Sample has been collected in less than hygienic conditions, or where delays may occur in transporting the Samples to the laboratory) with the laboratory that will be analyzing the Samples, to establish what is necessary in the particular circumstances of such mission (e.g., refrigeration or freezing of the Samples).]
[…].

IAAF Anti-Doping Regulations

4.25 The DCO/other responsible person shall be responsible for ensuring that all Samples collected at the Doping Control Station and corresponding Sample collection documentation are securely stored prior to their dispatch from the Doping Control Station.

4.26 The DCO/other responsible person should ensure that all sealed Samples are stored in appropriate conditions in a manner that protects their integrity, identity and security prior to transport from the Doping Control Station.

4.27 Where possible, urine Samples are to be stored in a cool environment, with warm conditions avoided. If the Samples are not to be handed over to the courier immediately and subsequently transported to the nearest Laboratory without delay, the DCO/other responsible person may consider refrigerating or freezing the Samples to minimise the risk of Sample degradation due to factors such as time delays and hot temperature conditions.
[…].

4.30 Samples must not be left unattended, unless they are locked away, for example, in a refrigerator or cupboard. Access to the Doping Control Station shall wherever possible be restricted to authorised personnel only.

4.31 Before the Samples are packed for transportation, it should be confirmed that all Samples that have been taken are present and that the number of Samples is in accordance with the list of code numbers.

4.32 The DCO/other responsible person shall accurately complete appropriate documentation for each transport bag/container to ensure that the Laboratory can verify the contents of the bag/container.
[…].

4.34 The DCO/other responsible person shall complete the Laboratory advice form/Chain of Custody form and shall also ensure that the Laboratory is provided with the information under 4.22 (c), (f), (h), (j), (k), (l), (o), (p), (q), (y), (z) and (aa). The Laboratory copy of the Doping Control Form shall be placed in the transport bag with the Samples and sealed, preferably in the presence of a witness. Documentation identifying the Athlete shall not be included with the Samples.

4.35 The DCO/other responsible person shall keep the Samples under his control until they are passed to the courier or other Person responsible for their transportation.

Transportation of Samples and Documentation
4.36 A transportation system authorised by the IAAF should be used that ensures that Samples and Sample documentation are transported to the Laboratory in a manner that protects their integrity, identity and security as soon as practicable after the completion of the Sample Collection Session. Samples should, at a minimum, be placed in a suitable outer container for despatch to the Laboratory.
[…].

4.38 Samples may be taken directly to the Laboratory by the DCO/BCO (as applicable) or handed over to a third party for transportation. The third party should document the Chain of Custody of the Samples. If an approved courier company is used to transport the Samples, the DCO/BCO should record the waybill number.

4.39 Samples should always be transported to the Laboratory that will be analysing the Samples using the IAAF's authorised transport method, as soon as practicable after the completion of the Sample Collection Session. Samples should be transported in a manner which minimises the potential for Sample degradation due to factors such as time delays and extreme temperature conditions.
[…].

4.43 All information relating to the Chain of Custody of the Samples collected should be recorded, including confirmation that the Samples have arrived at their intended destination.

4.44 The DCO/BCO (as applicable) should send all relevant Sample Collection Session documentation to the Sample Collection Authority/IAAF as soon as practicable after the completion of the Sample Collection Session.

4.45 If the Samples with accompanying documentation are not received at their intended destination, or if a Sample's integrity or identity may have been compromised during transport, the Sample Collection Authority/IAAF shall check the Chain of Custody and the IAAF shall consider whether the Sample(s) shall be voided. The opening of the outer container during transportation will not, however, of itself, invalidate the Sample(s).
[…].

(i) The Transport from Racines to Stuttgart

68. The Panel finds that the applicable provisions were respected during the transport of the 1 January Sample from Racines to the Cologne Laboratory. In particular, the transport occurred "*in a manner that protects their integrity, identity and security*". The Panel heard the evidence of Mr. Jenkel, who transported the 1 January Sample from Racine to GQS's headquarters in Stuttgart. During this transport by car the sample was under the supervision of the DCO at all times. Only on two occasions the DCO left the 1 January Sample unattended in the car. The first time was when he had breakfast at Kolsass (near Innsbruck) for an hour. Mr. Jenkel explained that the car was parked in front of the hotel where he had breakfast and that the sample was locked in the trunk of the car. The second time when he left the sample unattended was when he stopped to take a convenience break at a petrol station near Fernpass (Austria). He explained that he left the car only for 5 minutes and that the 1 January Sample was locked in the trunk of the vehicle during that time.

69. The Athlete submitted that leaving his sample unattended in a locked car was unacceptable, because it made it accessible for manipulations by third persons. The Panel is not prepared to follow these speculations. There is no evidence on file that there was any attempt to manipulate the 1 January Sample during its transport to Stuttgart. Furthermore, the DCO had good (personal) reasons to leave the sample in the car. Stopping for having a meal and/or going to the bathroom are perfectly acceptable. The "*integrity, identity and security"* of the sample during that time was not jeopardized. The 1 January Sample was stored in a cooling box in the locked car. This was much safer than taking the sample to the breakfast room or bathroom. The Panel finds that it would create an unnecessary financial burden on a sample transportation system to provide for additional personnel so that a sample could remain under personal supervision at all times. Consequently, the Panel finds that there is no breach of section 4.30 or any other of the above quoted sections of the IAAF Anti-Doping Regulations in the present case.

(ii) Storage in Stuttgart

70. The Panel further finds that the "*integrity, identity and security*" of the 1 January Sample was also maintained during its storage in Stuttgart. The testimony of Mr. Jenkel and Mr. Jablonski showed that the sample was securely stored from 1 to 2 January 2016 at the GQS's office in Stuttgart. The evidence also showed that non-authorized persons (e.g. cleaning personnel) had no access to the storage room where the sample was held because they do not hold the keys to the office. No concrete evidence was advanced that anybody accessed the 1 January Sample during the night from 1 to 2 January 2016. Furthermore, it is difficult to perceive who would have an interest in manipulating the sample and have the knowledge that the sample was being stored in Stuttgart. Besides Mr. Jenkel and Mr. Jablonski the only other person who knew that the 1 January 2016 Sample was being kept in storage in Stuttgart was the CEO of GQS.

(iii) The trip to Cologne

71. The transport from Stuttgart to the Cologne Laboratory commenced on 2 January 2016 at around 6h00. Mr. Jablonski, the courier, is an employee of GQS. He is a trained and authorized specialist in sample transportation. He arrived at the Cologne Laboratory at

around 10h00. Consequently, the Panel finds that no breach of the applicable provisions occurred also during this time of transportation.

(iv) The handover of the 1 January Sample to the Cologne Laboratory

72. The Panel heard the testimony of Mr. Jablonski and Dr. Geyer with respect to the handover of the 1 January Sample on 2 January 2016. Dr. Geyer explained that the porter who accepted the delivery from Mr. Jablonski is part of the custody system at the Cologne Laboratory, since he belongs to the staff of the Sports University in Cologne, which is the institution that runs the Cologne Laboratory. The Confirmation of Receipt Form, which has been signed (by the porter and Mr. Jablonski), thus, is part of the official documentation accompanying the Sample.

73. In the opinion of the Panel, none of the above-quoted provisions requires that the information pertaining to the handover of the samples to the laboratory must be given on one specific form or piece of paper. The Panel accepts that it is standing practice at the Cologne Laboratory to use a particular Confirmation of Receipt Form which is then included into the official Documentation Package for a particular sample. This Confirmation of Receipt Form provides all necessary information as to the hand-over of the samples. Looking at all the elements of the Documentation Package for the 1 January Sample, there can be no doubt in the view of the Panel that it was delivered and received by the Cologne Laboratory. As per standing practice, the porter stored the samples securely and on the first working day (3 January 2016), the control of the registry of the 1 January Sample and documents took place.

74. Despite there being no violation of section 4.43 IAAF Anti-Doping Regulations and section 9.3.1 ISTI, the Panel nevertheless observes a weakness of the document "Confirmation of Receipt Form". The latter does not include the sample code number. In the view of the Panel, it would be preferable – in order to reach the same legal quality as chapter 5 of the Chain of Custody Form – that the document used by the Cologne Laboratory also includes the sample code numbers (or the porter shall also fill in chapter 5 of the Chain of Custody Form and sign it).

(v) Conclusion

75. To conclude, the Panel finds that there was no breach of the external chain of custody. The 1 January Sample was safe and secure at all moments of time, i.e. in the car on the way from Racines to Stuttgart, in the GQS office in Stuttgart, in the car on the way to Cologne the next day and when being delivered to the porter of the Sports University in Cologne who immediately put it into a refrigerator. In the absence of any breach of the external chain of custody the Panel does not see the need to discuss respective CAS case law and the jurisprudence of the Swiss Federal Tribunal with respect to the consequences of any such breach.

4. Breaches with respect to the Internal Chain of Custody and Other Administrative Issues

(i) The delayed re-testing

76. The initial screening of the 1 January Sample occurred in January 2016 and did not reveal the presence of any prohibited substance. A re-analysis of the sample was only commenced on 19 April 2016, i.e. much later. The reason for this delay was plausibly explained by the testimony of Dr. Geyer and Prof. Ayotte. The Panel is convinced that the delays were not due to any manipulation of the process by anybody internal or external of the Cologne Laboratory.

77. The testimony of Dr. Geyer and Prof. Ayotte revealed that there had been technical problems in uploading the testing results of the 1 January Sample onto ADAMS. These problems lasted from January until the beginning of March. They were caused by the implementation of a new WADA Technical Document coming into force on 1 January 2016. A further problem resulted from the fact that tests which contained confounding factors could not be uploaded because ADAMS was not yet adapted. Dr. Geyer told the Panel that the initial screening of the 1 January Sample had been finished on 15 January 2016 and that the respective report was ready on 8 February 2016. However, since the findings of the analysis involved confounding factors, the report could only be uploaded onto ADAMS on 24 February 2016. This also explains why the results of the 1 January Sample were uploaded later then the results from the other tests performed on the Athlete on 24 January and 2 February 2016. Since the latter did not involve confounding factors, the obtained results could be uploaded earlier.

78. Once the technical problems related to ADAMS had been solved, there was a big backlog of reports that had to be uploaded. This was all done at the same time resulting in a large number of requests for (re)testing in connection with the Athlete Biological Passports. The new data entries triggered the flagging of a lot of passport findings in the Steroid Module requiring follow-up analysis. Additional workload around that time was also caused by the IOC that in view of the upcoming Olympic Games requested the reanalysis of a lot of additional samples.

79. Based on the testimony of Dr. Geyer and Prof. Ayotte the Panel considers it as established that the 1 January Sample was flagged by the Steroid Module on 24 February 2016 as "unusual". Prof. Ayotte, the representative of the APMU, was responsible to review the respective documentation. Once ADAMS was fully operational again and the data being uploaded all at once, she became clocked up with a tremendous workload resulting from the Steroid Module, since a great number of samples were being flagged. She was only able to review the documentation of the (flagged) 1 January Sample at the end of March 2016. She acted as quickly as she could when reviewing all the cases. On 28 March 2016 she wrote an email to the Cologne Laboratory requesting the re-testing of 5 samples, including the 1 January Sample.

80. The list of the samples to be-tested was received by the Cologne Laboratory on 29 March 2016. Dr. Geyer explained that around that time there were many other requests (in particular from the IOC) pending. Dr. Geyer explained that the Cologne Laboratory dealt with the requests in the sequence as they had come in, since no particular sequence had been ordered by Prof. Ayotte. The latter had and could not give priority to the re-testing of a particular sample, since – due to confidentiality – she ignored the names of the respective athletes. Prof. Ayotte and Dr. Geyer explained that "more time is needed" when executing a request for an IMRS analysis. In effect, Dr. Geyer confirmed that an

IRMS analysis requires some weeks. Consequently, the screening was done between 14 and 21 April 2016, followed by the IRMS confirmation analysis of the Athlete's A Sample as of 26 April 2016. The IRMS confirmation analysis was finalized on 12 May 2016 and the findings were reported to the IAAF immediately thereafter, i.e. on 13 May 2016. The Panel concludes that the delays that have occurred are for sure deplorable, but are not the result of any manipulation to the detriment of the Athlete.

(ii) No Incomplete Data

81. The Steroid Module did not use all data available from tests performed on the Athlete before 1 January 2016. The reasons for this with respect to tests conducted by NADO Italia are simple and do not point towards a conspiracy against the Athlete. The reason is that – as was testified by Mr. Vigna – NADO Italia only started using ADAMS as of 1 January 2016. However, only data entered into ADAMS can be used by the Steroid Module.

82. Neither Prof. Ayotte nor any other of the experts could explain why a sample taken from the Athlete on 19 October 2015 (upon directions of IAAF) did not show up in ADAMS. Prof. Ayotte submitted (and this was not contested by any of the other experts) that this was immaterial, since with or without the sample showing up on ADAMS the analysis result of the 1 January 2016 would have been flagged as "unusual" and, more importantly, would not have changed the results of the re-testing by the Cologne Laboratory.

(iii) Delayed Notification

83. A further considerable delay occurred between the notification of the IAAF of the findings of the re-testing (13 May 2016) by the Cologne Laboratory and the subsequent notification of the Athlete by the IAAF of the presence of an AAF (21 June 2016). After listening to the testimony of Prof. Ayotte, the Panel is persuaded that this (again) unfortunate delay was not due to or caused by any manipulation. It usually takes up to 10 days for a laboratory to generate the Documentation Package. The latter then has to be reviewed by Prof. Ayotte before notifying the Athlete of an alleged AAF. This is provided for by the standardised protocol within the IAAF. Only once the Documentation Package has been reviewed, the IAAF Anti-Doping Manager may notify the result to the athlete. The Document Package including the results from the re-testing was sent to Prof. Ayotte on 8 June 2016. It took her another 10 days to review the Documentation Package and to respond to the IAAF that everything was fine.

(iv) Internal Movements of the Aliquots

84. The Panel received satisfactory explanations from the experts on all movements of the 1 January Sample within the Cologne Laboratory. In addition, the Panel is comfortably satisfied that the movements were properly documented. It appears to the Panel that some of the German wording used in the Documentation Package was misinterpreted by the Athlete ("Aufarbeitung", "Messung" "Vor Dekantierung", "verworfen"). The Panel is comfortably satisfied after having heard the evidence from Dr. Geyer and Prof. Ayotte that the proper procedures were followed by the Cologne Laboratory. It appears, however, that the use of the German words on documents that will later be included on a

Documentation Package designed for international purposes is not advisable to be included now as doing so leads to misunderstandings as it did in the present case. This did not, however, amount to any departure from International Standards or the IAAF Competition Rules or Anti-Doping Regulations.

(v) Conclusion

85. Even if – *quod non* – the Panel would be prepared to accept a deviation from the applicable International Standards, the Panel feels comfortably satisfied that these (alleged) breaches did not undermine the fairness of the testing process. By no means did they reach the position that "*it is impossible for a reviewing body to be comfortably satisfied that a doping violation has occurred*" (see CAS 2014/A/3487 at para. 152). If there were breaches of the internal chain of custody or other administrative and reporting issues at all, in the opinion of the Panel their number and intensity certainly did not reach "*a level which may call into question the entire doping control process*" (see CAS 2001/A 337, at para. 68). Consequently, the Panel finds that the Appellant on a balance of probability failed to demonstrate that there were departures from the relevant International Standards or IAAF Rules and Anti-Doping Regulations, which might have reasonably caused exogenous steroids to be present in the 1 January Sample. The fairness of the testing process was at no time undermined.

5. Breaches with respect to the Opening of the B Sample

86. The Appellant sees further evidence of manipulation in the fact that he was prevented from obtaining an early analysis of the B Sample. According to the Athlete, the opening of the B Sample was purposely delayed in order to put him at a disadvantage when defending his case. The Panel is of the view that such understanding of the Athlete is due to an unfortunate misunderstanding of the relevant facts. The Cologne Laboratory had previously informed the IAAF that the B Sample analysis could be performed on 28 June 2016. However, the Cologne Laboratory also informed the IAAF that on that date neither the Appellant nor any representative could attend the opening of the B Sample. The IAAF then communicated to the Appellant that there was no earlier date available for the opening of the B Sample then 5 July 2016. This information given to the Athlete is – in essence – correct. Furthermore, when being asked by the IAAF to communicate possible dates for the opening of the B Sample, Dr. Geyer stated that the Cologne Laboratory was not aware of the urgency of the matter, because it was only later, i.e. after a phone call of the Appellant's representative that it became aware that the 1 January Sample belonged to the Athlete and was linked to the 2016 Rio Olympic Games deadlines. The Panel, thus, concludes that there was no attempt to put the Athlete at a disadvantage to defend his case.

6. Totality of the Delays Caused

87. The Appellant submits that because of the delays caused by technical problems of ADAMS and workload on the part of the IAAF, the APMU and the Cologne Laboratory put him at a procedural disadvantage and violated his right to be heard. In particular, the Appellant submits that there was no time left to request a DNA-analysis of residues of the sample at the Cologne Laboratory before the entry deadlines for the 2016 Olympic

Games in Rio de Janeiro. Furthermore, the Appellant submits that he had only insufficient time to prepare his legal defence.

88. The Panel concedes that the time for preparation was short on all sides and that delays were caused by a chain of unfortunate factors. The Panel also notes that some time was lost by the Appellant when filing recourse before an incompetent judicial body (TNA). However, the Panel is not prepared to draw any consequences from the tight deadlines in the case at and all parties have agreed to an expedited procedure directly before CAS. CAS took all possible efforts as to deadlines, hearing modalities and with regard to the administration of the procedure as such in order to enable the parties to present their case in a fair proceeding. To conclude therefore, the Panel finds that even though the deadlines were short, no damage has been inflicted to the Athlete that warrants to invalidate the findings of the Cologne Laboratory.

7. Other Aspects of the Sabotage Theory

89. The Appellant submitted that – most likely – he was the victim of sabotage. According to him, there are people that had motivation to manipulate his sample. His doping history and his sporting success had provoked a lot of resentments in the sporting community and among sport officials. He also pointed to the fact that some of his fiercest competitors came from Russia and that since the so-called McLaren Report on state-controlled doping in Russia, it is known and accepted for a fact today that samples can be manipulated without leaving a trace. The Appellant expects that in view of ongoing investigations by public authorities in Italy new information will soon be available to corroborate his suspicion. Also Prof. Donati in his testimony declared that there were persons in Italy, Russia and China who had motivation to sabotage the Appellant. Prof. Donati declared that people had exercised pressure on him and on the Appellant not to resume competition, or, at least not participate in the 2016 Rio Olympic Games. According to Prof. Donati, other competitors, coaches and/or some persons under criminal investigation could be the authors of anonymous emails or emails with fake addresses that more or less openly expressed such threats towards him. The Appellant also made allegations that the sabotage might have been orchestrated from within the IAAF. The Appellant in this context referred to staff from the IAAF's anti-doping department that are currently suspended and under investigation.

90. The Panel concedes that the Appellant and his coach may well have been threatened. The Panel is aware of the fact that there are other coaches and competitors that might be interested in the Appellant being eliminated from competitions and the Panel is following the reports on organized doping in and around athletics and many other sports. However, based on the information before the Panel, the Panel does not find any evidence which supports the Appellant's assertions. When balancing the two scenarios (sabotage versus an ADRV), the Panel takes into account that the Appellant's submission related to sabotage amounts to a mere hypothesis or speculation. This is not enough to make the Panel satisfied on a balance of probabilities that the results of the analysis of the 1 January Sample cannot be attributed to the Appellant. In this context, the Panel recalls that all alleged breaches of the internal chain of custody or other administrative and reporting issues could be rationally explained in the evidentiary part of the hearing. The Appellant did not submit a scenario, which "*could make plausible a mistaken manipulation*" of the

1 January Sample "*or a wrongful intervention by a third party who would have been able to contaminate*" his sample or substitute it with another with the same identification number without traces (see Judgement of the Swiss Federal Tribunal of 28 February 2013, 4A_576/20121). The Appellant's case in essence is that it cannot be excluded that there are persons in this world with a motive and the capacity to sabotage him. The identity of such persons having a motive and the capacity to conspire against the Athlete, however, was left in the dark as well as the time and place when such manipulation occurred.

91. Nor more plausible appears the Appellant's theory that the alleged manipulation or sabotage might have been steered from within the IAAF. In this respect, the Panel notes that it is unknown for what reasons some of the personnel of the anti-doping department of the IAAF have been suspended. It is true that Mr. Jenkel confirmed that he received orders to test the Athlete on 1 January 2016 from the anti-doping department of the IAAF. However, it is difficult to perceive how this request to test the Athlete (on a specific day) could be part of a plan or scheme to sabotage the Athlete. Apart from the selection of the Athlete for testing and the determination of the time and date on which the testing shall be performed, all operational decisions for the implementation of the testing order rested with GQS. Mr. Jenkel testified that he was responsible for preparing the trip to Racines. He testified that he took 20 sample kits from the office storage on 31 December 2016 and stored them in his car. Every single kit is marked with individualised and engraved code numbers. One of these 20 kits was subsequently randomly picked by the DCO when submitting the Appellant to testing. On 1 January 2016, only the Athlete was tested by Mr. Jenkel. No evidence was presented that the code number of the kit used by Mr. Jenkel had been communicated or leaked to the IAAF or any other person. The latter was, thus, not in a position to sabotage the sample. Furthermore, it appears from the evidence on file that neither the staff of the Cologne Laboratory nor of the APMU were aware that the sample with the code 3959325 belonged to the Athlete. Finally, the Appellant was unable to submit a plausible scenario how and when the sabotage of his sample could have occurred.

B. Sanctions

1. The normally applicable Period of Ineligibility

92. Since the Panel is comfortably satisfied that the Athlete committed an ADRV, it now turns to the consequences of such ADRV. Rules 40.2, 40.3, 40.5, 40.6 and 40.8 IAAF Competition Rules provide as follows:

> *Ineligibility for Presence, Use or Attempted Use or Possession of a Prohibited Substance or a Prohibited Method*
>
> *2. the period of ineligibility imposed for a violation of Rules 32.2(a) (Presence of a Prohibited Substance or its Metabolites or Markers), 32.2(b) (use or Attempted use of a Prohibited Substances or Prohibited Method) or 32.2(f) (Possession of a Prohibited Substance or Prohibited Method) shall be as follows, subject to potential reduction or suspension pursuant to Rules 40.5, 40.6 or 40.7:*
> *(a) the period of ineligibility shall be four years where:*

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

[…]

(b) if Rule 40.2(a) does not apply, the period of ineligibility shall be two years.

3. As used in Rules 40.2 and 40.4, the term "intentional" is meant to identify those Athletes who cheat. The term therefore requires that the Athlete or other Person engaged in conduct which he knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited in-Competition shall be rebuttably presumed to be not "intentional" if the substance is a Specified Substance and the Athlete can establish that the Prohibited Substance was used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited in-Competition shall not be considered "intentional" if the substance is not a Specified Substance and the Athlete can establish that the Prohibited Substance was used Out-of-Competition in a context unrelated to sport performance.

[…]

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

5. If an Athlete or other Person establishes in an individual case that he bears No Fault or Negligence, the otherwise applicable period of ineligibility shall be eliminated. Except in the case of a Minor, for an Athlete to establish No Fault or No Negligence in a case where a Prohibited Substance or its Markers or Metabolites is detected in an Athlete's Sample in violation of Rule 32.2(a) (Presence of a Prohibited Substance), the Athlete must establish how the Prohibited Substance entered his system in order to have his period of ineligibility eliminated.

Reduction of Period of Ineligibility where there is No Significant Fault or Negligence

6. (a) Reduction of Sanctions for Specified Substances or Contaminated Products for violations of Rules 32.2(a), (b) or (f):
(i) Specified Substances: where the anti-doping rule violation involves a Specified Substance and the Athlete or other Person can establish No Significant Fault or Negligence, then the period of ineligibility shall be, at a minimum, a reprimand and no period of ineligibility and, at a maximum, two years' ineligibility, depending on the Athlete's or other Person's degree of Fault.
(ii) Contaminated Products: In cases where the Athlete or other Person can establish No Significant Fault or Negligence and that the detected Prohibited Substance came from a Contaminated Product, then the period of ineligibility shall be, at a minimum, a reprimand and no period of ineligibility and, at a maximum, two years' ineligibility, depending on the Athlete's or other Person's degree of Fault.

(iii) Except in the case of a Minor, for an Athlete to establish No Significant Fault or Negligence in a case where a Prohibited Substance or its Markers or Metabolites is detected in an Athlete's Sample in violation of Rule 32.2(a) (Presence of a Prohibited Substance), the Athlete must establish how the Prohibited Substance entered his system in order to have his period of ineligibility reduced.
(b) Application of No Significant Fault or Negligence beyond the application of Rule 40.6(a):
If an Athlete or other Person establishes in an individual case where Rule 40.6(a) is not applicable that he bears No Significant Fault or Negligence, then, subject to the further reduction or elimination as provided in Rule 40.7, the otherwise applicable period of ineligibility may be reduced based on the Athlete's or other Person's degree of Fault, but the reduced period of ineligibility may not be less than one-half of the period of ineligibility otherwise applicable. If the otherwise applicable period of ineligibility is a lifetime, the reduced period under this Rule may be no less than eight years. except in the case of a Minor, when a Prohibited Substance or its Markers or Metabolites is detected in an Athlete's Sample in violation of Rule 32.2(a) (Presence of a Prohibited Substance), the Athlete must establish how the Prohibited Substance entered his system in order to have his period of ineligibility reduced.

[…]

Multiple Violations

8. (a) For an Athlete or other Person's second anti-doping rule violation, the period of ineligibility shall be the greater of:
(i) six months;
(ii) one-half of the period of ineligibility imposed for the first anti-doping rule violation without taking into account any reduction under Rule 40.7; or
(iii) twice the period of ineligibility otherwise applicable to the second anti-doping rule violation treated as if it were a first violation without taking into account any reduction under Rule 40.7.
The period of ineligibility established above may then be further reduced by the application of Rule 40.7.

[…]

Commencement of Period of Ineligibility
11. Except as provided below, the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date the Ineligibility is accepted or otherwise imposed.
(a) Delays not Attributable to the Athlete or other Person:
Where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Athlete or other Person, the period of Ineligibility may start at an earlier date commencing as early as the date of Sample collection or on the date on which another anti-doping rule violation occurred. All competitive results achieved during the period of Ineligibility, including retroactive Ineligibility, shall be Disqualified.

[…]

(c) Credit for Provisional Suspension or Period of Ineligibility Served:
If a Provisional Suspension is imposed and respected by the Athlete or other Person, then the Athlete or other Person shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed. If a period of Ineligibility is served pursuant to a decision that is subsequently appealed, then 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.

93. The ADRV committed by the Athlete on 1 January 2016 constitutes a second ADRV. Thus, pursuant to Rule 40.2(a)(i) read together with Rule 40.8(a)(iii) IAAF Competition Rules, a period of eight (8) years ineligibility shall be imposed, unless the Appellant can establish that the ADRV was not intentional.

(i) No Doping Scenario

(**aa) The Position of the Athlete**

94. The Appellant submits that in the case at hand the ADRV could not have been committed intentionally. This is evidenced – according to the Appellant – first and foremost by the anti-doping regime to which he had submitted himself voluntarily. The Panel notes that the Appellant was part of an impressive personal anti-doping program. He engaged a coach that has been renowned worldwide for his national and international fight against doping. Prof. Donati disclosed that it was him who on 12 July 2012 sent an email to the WADA Director Europe demanding to test the Athlete and to open a disciplinary proceeding against him. It was on his initiative that a disciplinary procedure was eventually opened against the Athlete that lead to the latter's ineligibility.[1] The Appellant on 15 April 2015 moved close to his coach's home for permanent residence in Rome to be under his constant supervision. The Athlete's living conditions were simple and modest. From October 2015 onwards he underwent numerous doping controls, organized privately, in addition to the official doping tests, ordered by NADO Italia, the IAAF and/or WADA. The purpose of all of this was to gain and strengthen public confidence in the Athlete being clean when resuming competition. The Appellant was assisted by a team of medical and psychological specialists supporting and monitoring him. On 3 December 2015, the Appellant even waived the one hour testing slot per day for availability for testing and declared to be available 24 hours per day for unannounced doping controls. The Appellant communicated his availability for testing to the WADA Director General. Besides, he engaged in educational activities to underline his conviction, having been a doper in the past but wishing to resume competitions as a clean athlete.

[1] Upon question of Mr. Vigna, where the detailed information on Italian police investigations on the Appellant contained in the letter to WADA Europe originated from, Prof. Donati did not name persons, but pointed at sources in the police and public prosecutor's office of Padua. According to Prof. Donati, the borderline values of the Appellant at that time (2012) were widely known within FIDAL and the NADO Italia.

95. Furthermore, the Appellant submits that the lack of a doping scenario is also evidenced by the fact that a single use of a Prohibited Substance was irrational, since it could not possibly have enhanced his performance. In addition, the Athlete submits that a multiple use scenario could be excluded scientifically and that there was no need for him to use doping substance having improved his walking techniques considerably. In fact the Panel heard the witness testimony of Prof. Donati who explained details of the training success he could achieve with changing the walking technics of the Appellant. Only by increasing the width of the Appellant's individual steps, 50 m every kilometer could be gained. The phenomenal sporting results of the Appellant, in particular at the competition held on 18 May 2016, could be simply explained by this biomechanical success of the new training technique of the Appellant.

(bb) The Results from the Evidence Taking

96. The Panel only refers to the results of the Evidence taking here insofar as new elements, not contained in the written expert opinions, were raised. For the rest, reference is made to the written submissions of the parties and the experts.

97. In the hearing, Dr. Gmeiner, Prof. Ayotte, Dr. Pieraccini and Dr. Schumacher agreed that it cannot be concluded from the analytical results of the 1 January Sample whether or not the Athlete used the prohibited substance repeatedly in small doses or on a single occasion only. Dr. Pieraccini focussed on discussing the eventual motives for an eventual intentional ingestion, which he could see only in either increasing the sporting performance, or in reducing the recovery period. The first motive would require a prolonged use, which due to the frequent and un-announced private and official tests was not possible. The low dose use for a short period, i.e. between 10 December 2016 and 24 January 2016 cannot have any performance effect. The second motive was equally unlikely according to Dr. Pieraccini because in the relevant time the Athlete was "*in a period of light training*" only. The submission that the Athlete was in a period of light training was contested by the First Respondent. According to the latter, the training plan showed a rather intensive training for the respective time period.

98. Dr. Gmeiner submitted that the detection window for testosterone use was rather small. The T/E ratio goes down to normal within 10 hours after the ingestion of the prohibited substance. According to Dr. Gmeiner, it appears from the testing data in the Steroid Module that the Athlete has a normal T/E ratio of around 1. The analysis result from the sample 3959325 (taken on 1 January 2016) significantly differs from this normal value and shows a T/E ratio of 3.4. The testosterone concentration found in the Athlete's sample (65 ng/ml) excludes food contamination as possible source of origin, because contaminated meat or nutritional supplements can only lead to a microgram concentrations. Thus, according to Dr. Gmeiner, the Appellant must have applied an active dose of testosterone in the milligram range. Dr. Gmeiner further stated that there was a gap of six weeks between the last test of 10 December 2015 before the 1 January Sample and the first test after the 1 January Sample, which was 24 January 2016. In this time period at least one application of testosterone must have occurred. However, according to Dr. Gmeiner, multiple applications as well as an intentional use cannot be excluded.

99. Dr. Gmeiner also submitted that a motive to apply low levels of testosterone could also have been to influence the blood parameters. Also, Dr. Schumacher had referred to published articles according to which testosterone at low doses may lead to an increase of the haematocrit levels in young people. This motive for an application of testosterone was contradicted by Dr. Ronci. In view of the testing regime to which the Athlete had voluntarily submitted it could be excluded – according to Dr. Ronci – that the Athlete tried to manipulate his blood parameters, since the latter were constantly being monitored. However, no significant variations of the haematological parameters had been observed.

(cc) The Findings of the Panel

100. The Panel is reluctant to discuss a possible doping scenario. It starts instead its analysis based on the applicable legal provisions. According thereto the Appellant must demonstrate that the ADRV was not intentional. The term "intentional" is defined as follows: "*to identify those Athletes who cheat. The term therefore requires that the Athlete or other Person engaged in conduct which he knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk.*"

101. The mere fact that the Athlete was embedded in an impressive anti-doping program is – in itself – not sufficient to exclude cheating. The support personnel, thus, may well have become a victim of an athlete. It is not excluded that also the support personnel is being misused as a shield for the purpose of deceiving the public. The burden of proof to demonstrate and to rebut the legal presumption of having acted intentionally lies with the Appellant. The Appellant, in the opinion of the Panel, clearly failed to rebut the presumption.

102. In the view of the Panel, it follows from the findings of the experts Dr. Pieraccini, Dr. Ronci and Dr. De Boer on the one hand, and Dr. Gmeiner and Dr. Schumacher on the other hand that – based on the results of the analysis of the 1 January Sample – it is impossible to conclude whether or not the ingestion of the prohibited substance occurred intentionally or not. In addition, Dr. Pieraccini, Dr. Gmeiner and Dr. Schumacher agreed that based on the results of the analysis of said sample one cannot deduct whether or not the prohibited substance was used a single time only or repeatedly. Dr. Pieraccini and Dr. Gmeiner (for different reasons) also expressed their understanding that contamination as the source of the prohibited substance can be excluded in the case at hand. It is exactly this situation "in limbo" that the applicable regulations wish to solve by attributing the risk that the true motive of the ingestion of a prohibited substance by athlete cannot be ascertained to the latter. The Athlete in the view of the Panel could not demonstrate by a balance of probability as required by Rule 33.2 IAAF Competition Rules that the prohibited substance unintentionally entered his body. Consequently, the period of ineligibility to be imposed upon the Athlete shall be eight (8) years.

2. No Fault-Related Reductions

103. The finding of the Panel that the Appellant could not demonstrate how the prohibited substance entered his system, automatically excludes any elimination of the sanction based on No Fault or Negligence or a reduction of the sanction based on No Significant

Fault or Negligence. This follows from Rule 40.5 IAAF Competition Rules. The latter requires, except for a case involving a Minor, that an athlete wishing *"to establish No Fault or No Negligence in a case where a Prohibited Substance or its Markers or Metabolites is detected in an Athlete's Sample in violation of Rule 32.2(a) (Presence of a Prohibited Substance),"* … *"must establish how the Prohibited Substance entered his system in order to have his period of ineligibility eliminated."* The same obligation follows from Rule 40.6(b) IAAF Competition Rules for the case in which an athlete wishes to have his sanction reduced for No Significant Fault or Negligence. Rule 40.6(a) IAAF Competition Rules is not applicable in the present case, because contamination as possible source of the AAF has been excluded by the Appellant's expert. Dr. Gmeiner came to the same conclusion based on the concentrations found in the Athlete's Sample.

104. Given this result, the Panel rules that the period of ineligibility of eight (8) years based on Rule 40.8(a)(iii) IAAF Competition Rules shall neither be eliminated nor reduced. Pursuant to Rule 40.11 IAAF Competition Rules, the sanction shall commence at the date of this Award. The Panel does not see substantial delays in the hearing process. To the opposite, the expedited procedure before CAS allowed for a particularly fast hearing process. The delays as to the confirmation of the 1 January Sample by IRMS analysis, described above under para. 76 *et seq.*, were not attributable to the Appellant, but are – in the opinion of the Panel – sufficiently compensated by the expedited CAS proceedings. The period of the Provisional Suspension, which commenced on 8 July 2016, shall be credited against the period of ineligibility.

3. Disqualification of Results

105. Rule 40.9 IAAF Competition Rules reads as follows:

> *Disqualification of Individual Results in Competitions Subsequent to Sample Collection or Commission of an Anti-Doping Rule Violation*
>
> *9. In addition to the automatic Disqualification of the Athlete's individual results in the Competition which produced the positive sample under Rules 39 and 40, all other competitive results obtained by the Athlete from the date the positive Sample was Collected (whether In-Competition or Out-of-Competition) or other anti-doping rule violation occurred, through to the commencement of any Provisional Suspension or Ineligibility period shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences for the Athlete including the forfeiture of any titles, awards, medals, points and prize and appearance money.*

106. The Panel rules that pursuant to Rule 40.9 IAAF Competition Rules, the results obtained by the Appellant as from 1 January 2016, when the Sample was collected, shall be disqualified, including the forfeiture of any titles, awards, medals, points and prize and appearance money. The Panel having to sanction a second ADRV committed by the Appellant does not see that fairness otherwise requires. This is all the more true considering that multiple use of a prohibited substance could not be ruled out and that the prohibited substance in question is a non-specified substance from the use of which long-lasting benefits could be achieved.

VIII. COSTS

107. This case emanates from an appeal against the decision of an international federation having imposed a provisional suspension. Article R65 of the Code applies.

108. Article 65.1 of the CAS Code reads as follows:

> *This Article applies to appeals against decisions which are exclusively of a disciplinary nature and which are rendered by an international federation or sports-body. In case of objection by any party concerning the application of the present provision, the CAS Court Office may request that the arbitration costs be paid in advance pursuant to Article R64.2 pending a decision by the panel on the issue.*

109. Article R65.2 of the CAS Code provides as follows:

> *Subject to Articles R65.2, para. 2 and R65.4, the proceedings shall be free. The fees and costs of the arbitrators, calculated in accordance with the CAS fee scale, together with the costs of CAS are borne by CAS.*
>
> *Upon submission of the statement of appeal, the Appellant shall pay a non-refundable Court Office fee of Swiss francs 1,000.-- without which CAS shall not proceed and the appeal shall be deemed withdrawn.*
>
> […]

110. Article R65.3 of the CAS Code provides:

> *Each party shall pay for the costs of its own witnesses, experts and interpreters. In the arbitral award, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and the outcome of the proceedings, as well as the conduct and financial resources of the parties.*

111. Rule 42.25 IAAF Competition Rules confirms the discretion disposed of by the Panel.

112. The present award is rendered without costs, except for the Court Office fee of CHF 1,000 (one thousand Swiss francs), which has already been paid by the Appellant and which is retained by the CAS.

113. (…).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr. Alex Schwazer on 14 July 2016 is dismissed.

2. Mr. Alex Schwazer is sanctioned with an eight-year period of ineligibility starting on the date of this Award. Any period of provisional suspension effectively served by Mr. Alex Schwazer as of 8 July 2016 shall be credited against the total period of ineligibility to be served.

3. All competitive results obtained by Mr. Alex Schwazer from and including 1 January 2016 are disqualified with all resulting consequences, including forfeiture of medals, points and prizes.

4. The present award is rendered without costs, except for the Court Office fee of CHF 1,000 (one thousand Swiss francs), which has already been paid by Mr. Alex Schwazer which is retained by the Court of Arbitration for Sport.

5. (…).

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

Seat of arbitration: Lausanne, Switzerland
Date: 30 January 2017
Operative part communicated on 11 August 2016

THE COURT OF ARBITRATION FOR SPORT

Michael Geistlinger
President of the Panel

José Juan Pinto
Arbitrator

Ulrich Haas
Arbitrator