



**Arbitration CAS 2014/A/3559 Alexandra Georgiana Radu v. Romanian National Anti-Doping Agency (RNADA), award of 3 December 2014**

Panel: Mr Hans Nater (Switzerland), President; Mr Michael Beloff QC (United Kingdom); Prof. Ulrich Haas (Germany)

*Aquatics (swimming)*

*Doping (dehydrochloromethyltestosterone)*

*Admissibility of new documents*

*Condition of elimination or reduction of the standard period of ineligibility for a non-specified substance*

*Elimination of the standard period of ineligibility under No Fault in case of fulfilment of the athlete's duty of diligence*

*Reduction of the standard period of ineligibility under No Significant Fault or Negligence in case of truly exceptional circumstances*

*Commencement of the ineligibility period*

1. **Based on Article R56 of the Code and in the absence of exceptional circumstances, the documents presented by an athlete after the submission of the appeal brief and of the answer shall be excluded from the proceedings.**
2. **Where the substance detected in an athlete's bodily specimen is a non-specified substance, the sole issue to be resolved is whether the athlete committed the offence with "no fault" or with "no significant fault or negligence". In any event, in order to benefit from the elimination or from a reduction of the period of ineligibility, an athlete must first establish how the prohibited substance entered into his or her body. This information is crucial in order to assess the athlete's degree of precaution in attempting to prevent the occurrence of an adverse analytical finding.**
3. **An athlete committed the offence with "no fault" if he/she has established that he/she bears no fault or negligence; *i.e.* he/she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he/she had used or been administered the prohibited substance. In this respect, an athlete failed to satisfy his/her duty of diligence if he/she suspected that the pills handed to him/her over a period of about one year by his/her mother who had no medical knowledge might contain prohibited substances but refrained from asking her out of fear of the answer he/she might receive. An athlete also could have either checked the label of the pills containers or entered into contact with a doctor or a professional who could have checked the status of the litigious pills. It is therefore impossible to conclude that the athlete bears "no Fault" and the elimination of the period of ineligibility is precluded.**
4. **A reduction of the otherwise applicable period of ineligibility can occur only in cases where the circumstances are truly exceptional *i.e.* when an athlete can show that the**

degree of fault or negligence in view of all circumstances was such that it was not significant in relation to the doping offence. In this regard, according to CAS jurisprudence, there is no special anti-doping regime for minors especially where no link between the athlete's age and his/her degree of fault has been demonstrated. It is also irrelevant that an athlete allegedly did not receive any formal drug education from his/her club or federation prior to his/her first in-competition drug test as long as the athlete is found capable of understanding anti-doping requirements. Therefore, by having voluntarily and knowingly ingested pills, despite suspicions of their possibly performance enhancing effects, an athlete acted negligently and cannot establish a truly exceptional circumstance sufficient to reduce his/her negligence or the applicable standard sanction of 2 years.

5. In the context of sport and the administration of sporting justice, the undue length of time of a two-stage process resulting in an athlete's state of uncertainty as to the outcome of his/her case for over 8 months is excessive. For that reason fairness requires that the standard period of ineligibility of 2 years should start on the date of the sample collection, as authorized by applicable national law.

## **I. PARTIES**

1. Alexandra Georgiana Radu (hereinafter the "Athlete"), born on 28 August 1998, is of Romanian nationality. She is a swimmer registered with Farul Constanta Sport Club, which is affiliated to the Romanian Swimming and Modern Pentathlon Federation.
2. The Romanian National Anti-Doping Agency ("Romania Agentia Nationala Anti-Doping" – hereinafter "ANAD") is the National Anti-Doping Organization for Romania. It is "*a public institution with decisional autonomy in anti-doping activity, subordinated to the Government, coordinated by the Prime-Minister, financed with its own incomes and subventions granted from State budget through the General Secretariat of the Government*" (see Article 4 of the Romanian Act no. 227/2006 regarding the prevention and fight against doping in sport – hereinafter "Act no. 227/2006"). ANAD is committed to the fight, at national level, against doping in sport, the promotion of clean-sport as well as anti-doping researches (see Article 5 of the Act no. 227/2006).

## **II. FACTUAL BACKGROUND**

### **II.1 Background facts**

3. Below is a summary of the relevant facts and allegations based on the Parties' written and oral submissions, pleadings, and evidence adduced. References to additional facts and allegations found in the Parties' written and oral submissions, pleadings, and evidence will be made, where relevant, in connection with the legal analysis 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 deems necessary to explain its reasoning.

## II.2 Introduction

4. This is an appeal brought by the Athlete against a decision (hereinafter “the Appealed Decision”) of the Appeal Commission beside the National Anti-Doping Agency (hereinafter the “Appeal Commission”), which found her guilty of an anti-doping rule violation and imposed a two-year suspension upon her. The Athlete is of the opinion that the sanction is too harsh, given (i) her young age, (ii) the fact that she has never been summoned to attend any educational program on anti-doping from ANAD, (iii) she has never received from the Romanian Swimming Federation or from her club any specific advice or warning on doping issues, (iv) she was not followed by any team doctor in spite of her taking part in international competitions and (v) her modest background.

## II.3 The Athlete’s adverse analytical findings

5. On 21 June 2013, the Athlete was subject to an in-competition doping control during the “*National Swimming Championship for seniors and juniors 2013*” in Bucharest, Romania. At that moment, the Athlete was almost 15 years old.
6. On the doping control form, the Athlete indicated that she had been taking the following substances: “*Mecopar, Sargenor, Unidin, Guarana, Tirozina, Oxyactivatori, Nirofen for pain, Creatina, Amino 2700, Inozin*”. This document was signed by the Athlete and by her mother.
7. The WADA-accredited “*Romanian Doping Control Laboratory*” in Bucharest, Romania (hereinafter the “*Laboratory*”) was instructed to conduct the analysis of the Athlete’s samples. In its analytical report dated 5 July 2013, the Laboratory confirmed that it detected in the Athlete’s samples the presence of the metabolite 6 $\beta$ -OH-4-cloro-dehydromethyltestosteron, which “*is consistent with the administration of the prohibited substance Dehydrochloromethyltestosterone*”.
8. Dehydrochlormethyltestosterone is a non-specified substance included in the category S1.1 (a) (“*Exogenous Anabolic Androgenic Steroids*”) on the 2013 WADA Prohibited List as well as on the corresponding list established under Article 18 of the Act no. 227/2006. It is prohibited both in- and out-of-competition.
9. On 15 July 2013, the adverse analytical findings were reported to various Romanian sporting authorities, to the Romanian Ministry for Youth and Sport, to Farul Constanta Sport Club as well as to the Athlete and her mother.

## II.4 The FIRST proceedings before the Hearing Commission of athletes and their support personnel who violated the anti-doping rules

10. The Hearing Commission of athletes and their support personnel who violated the anti-doping rules (hereinafter “the Hearing Commission”) initiated a disciplinary action against the Athlete

and was in charge of adjudicating whether a violation of the applicable anti-doping rules occurred. On 15 July 2013, it summoned the Athlete and her mother to appear to a hearing on 22 July 2013.

11. On 22 July 2013, the Athlete and her mother were heard by the members of the Hearing Commission. Their respective testimony was transcribed into the following written statement, duly signed:

The Athlete's statement

*"(...) last week, when I was on vacation at the seaside I received a phone call from Mr. Floroiu (President of Farul Constants Club) to inform me that there were some inconsistencies related to the doping control conducted at the National Championships for seniors and juniors. After receiving this information, I reported myself to the hearing where I have stated that I didn't know anything of that substance, as I have never taken not so much as a vitamin by myself because they were administered to me by my mother.*

*These pills, which contain a prohibited substance, were administered for delaying the menstruation, due to the fact that I have severe pains during the menstruation. I found out this when I came in Bucharest, without knowing what kind of pills they were and why they were given to me.*

*I am not asking for counter expertise through B sample analysis".*

The statement of the Athlete's mother:

*"I administered to my daughter some pills, 2 pills/day for a week, before the National Championships (until 16 June 2013). These tablets were given to me by a friend from England, through an intermediary from Romania, named Ovidiu, because I had told John (general practitioner) that Alexandra has severe pains during menstruation. Then, he told me he will arrange a meeting with a colleague from Romania to give me some pills for Alexandra with the purpose to delay her menstruation.*

*As I trusted him very much, given the fact that he supported me for two years with sport equipment, I didn't question and I didn't suppose for one second that he would be capable to harm me.*

*Last week, when I received the notification for Alexandra, I found out that the above mentioned substance had been detected and my first thought was at those pills.*

*I called John to find out their name, but he didn't want to tell me what they were, he just laughed at me. I have tried repeatedly ever since to get in touch with he but he doesn't answer to me anymore; instead, I can give you his phone number, if this would help somehow.*

*I completely agree with the statement given by Alexandra, i.e. the fact that she didn't ask for B sample analysis".*

12. After the closing of the hearing, the Athlete's mother made a subsequent statement also signed on 22 July 2013 and admitted on record, whereby she offered the following clarification:

- As the Athlete was not allowed to take part in her club's training sessions, her mother decided to be her coach in spite of the fact that she did not have any specific expertise in swimming or in other sports.

- The Athlete also encountered many difficulties to be accepted in the official team of the national Swimming Federation notwithstanding her good individual results and skills.

- *“As result of all these, I have decided by myself, but influenced by a friend from England, named John, to administer a medicine that could help her a little bit, rather to spite the coach Savu Doina when Alexandra would do well. Practically there was no stake for the competition in summer as the reckoner for the European Championships was inaccessible this year, there was no financial resources from the club for prizes as all rewards were suspended for 2013. I simply took a decision out of my extreme ambition, sacrificing my daughter for my incommensurable ego.*

*As for the administration of the prohibited medicine, it is called Turanobol and I have purchased it from the Internet, on the website [www.steroizi.com](http://www.steroizi.com), which had been recommended to me by my friend John and the medicine was presented as a low risk medicine regarding the health. I have ordered it on the phone, calling the number on the website and it was to be delivered personally, either at home or in a public place. I met with the delivery person, he put the medicines in an envelope and, after paying the pillbox, I have started to administer them on 20 May, 2 pills/day for 4 weeks, i.e. until 10.06.2013, while the competition was to begin on 19.06.2013.*

*When I saw that she wasn't submitted to doping control on 19.06.2013, I did it again and I gave her 2 more pills on Friday, 21.06.2013, together with the other vitamins I usually give her.*

*Thus, on 21.06.2013 she was submitted to doping control and the substances was detected.*

*I would like to mention that on that website, where I have read about the medicine's side effects, it was written that, after the first administration, the substance can be detected up to 8 days and, initially, I have tried to act under that timeframe, but the desire to spite this Mrs. Savu for all her gratuitous unkindness only because we dared to refuse her took my minds.*

*In other words, I knew she would fail the test as it wasn't a chance for the substance to be eliminated from the body in few hours”.*

- Alexandra is a good person, who was the victim of her mother's ambitions and who was constantly rejected by her fellow students, teammates, coaches and teachers. *“Not even her father looked for her; she is such a shy child who dedicated herself to sport”.*

13. By decision dated 22 July 2013, the Hearing Commission briefly summarized the factual background of the case and gave a short account of the proceedings before it, in particular of the attitude of the Athlete's mother during the hearing held the same day (*“The members of the Hearing Commission also noticed [the mother's] inappropriate emotional behavior, as well as the pressure she would put on her daughter”*). Without any reasoning or discussion, the Hearing Commission went on to declare the Athlete ineligible for a period of two years *“pursuant to the provisions of article 38 of Law 227/2006 (...) as the athlete had violated the provision of article 2, paragraph (2), letter a) of the above-mentioned law. The ineligibility period begins to run from the date of the current decision”*.

## II.5 The FIRST proceedings before the Appeal Commission

14. Eventually, the Athlete challenged the decision of the Hearing Commission before the Appeal Commission. This authority came to the conclusion that such decision was not reasoned within the meaning of Article 33 para. 2 letter h) of the Act no. 227/2006 and of the corresponding

Article 8.1 of the World Anti-Doping Code (hereinafter referred to as “WADC”), according to which the *“hearing process shall respect the following principles (...) a timely, written, reasoned decision, specifically including an explanation of the reason(s) for any period of Ineligibility”*. The Appeal Commission found that the lack of reasoning was in breach of the Athlete’s procedural rights and made it *“impossible to obtain judicial review”* as there was no indication as to what led the Hearing Commission to impose a two-year suspension on the Athlete.

15. As a result, on 28 October 2013, the Appeal Commission decided the following:

1. *Upholds the appeal filed by the [Athlete] (...).*
2. *Sets aside the Decision (...) of the [Hearing Commission] and remits the case for retrial in order to be grounded (...).*
3. *Maintains all the procedural deeds carried out in the case.*
4. *With regards to the athlete’s ineligibility, Art. 31 of Law no. 227/2006 (...) shall be applied”.*

## II.6 The SECOND proceedings before the Hearing Commission

16. On 9 January 2014, the members of the Hearing Commission met in order to *“retrial the case only for the purposes and within the limits set by the decision of the superior court, while the other provisions of the case are subjected to res judicata”*. The Athlete and her mother were not called to appear.

17. By decision dated 9 January 2014, the Hearing Commission (i) recalled the main facts of the case, (ii) made several references to the hearing held on 22 July 2013 as well as to the written statements signed by the Athlete and her mother, (iii) observed that the Athlete did not request the confirmatory analysis to be carried out and did not dispute the presence of the prohibited substance in her samples, and, therefore, (iv) held that she must take responsibility for it. According to the Hearing Commission, *“the prohibited substance 6β-OH-4-clor-dehydromethyltestosterone, a component of the administered medicine, respectively turabolin that although it has a rather weak androgenic effect, combined with the anabolic effect becomes a very strong steroid. Turabolin exits the body very quickly, thus making it untraceable in doping tests. It is very toxic to the liver, but it produces muscle growth without inducing water retention in the muscle, thereby the medicine increasing sport performance”*. The Hearing Commission quoted the relevant provisions of the Act no. 227/2006 and found that the Athlete did not bring satisfactory evidence showing that she bore no significant fault or negligence or that she did not know or suspect that she had been administered the prohibited substance. Accordingly and by decision dated 9 January 2014, the Hearing Commission confirmed the imposition of the two-year ban.

## II.7 The SECOND proceedings before the Appeal Commission

18. On 3 February 2014, the Athlete appealed against the decision rendered on 9 January 2014 by the Hearing Commission on the following grounds:

- Contrary to the instructions of the Appeal Commission, the first instance did not re-examine the Athlete’s case. It also breached her procedural rights as it did not convene an *inter partes* hearing.

- The decision was not sufficiently reasoned, as it did not address the mitigating factors raised in the Athlete's appeal brief filed during the first proceedings before the Appeal Commission.
  - Her mother's second statement should never have been admitted into evidence as it had been filed after the conclusion of the hearing of 22 July 2013.
  - The Athlete was a minor and had no reason to suspect that the pills given to her by her mother could serve another purpose than to reduce her menstrual pains. She was largely under the influence of her mother, whose medical record "*lists a track of emotional issues and several suicide attempts*". Under the specific circumstances of the case, she bore no fault or negligence with regard to the presence of the prohibited substance in her bodily sample.
  - The collection and the analysis of the Athlete's samples were not correctly carried out. Hence the positive results could not be held against her.
  - The Athlete established how the prohibited substance entered her body, "*namely being administered by her mother with the claimed purpose to remove certain menstruation-related issues which the athlete was experiencing. The use of this substance (...) was not aimed to enhance sport performance or to mask the use of another prohibited substance*". Consequently, only a reprimand or, at the most, a 6-month suspension should be imposed upon her.
19. The Athlete was called to appear before the Appeal Commission on 11 February 2014. At the Athlete's request and because her legal counsel claimed to be sick, the hearing was postponed to 18 February 2014. The Athlete failed to be present or represented at the scheduled time and place and the Appeal Commission decided to proceed in her absence.
20. By decision dated 18 February 2014, the Appeal Commission dismissed the Athlete's appeal namely on the following grounds:
- The decision of 22 July 2013 was indeed not adequately reasoned. As a consequence, the matter was referred back to the Hearing Commission to remedy the situation and not to reopen the case with a full retrial.
  - The decision of 9 January 2014 was by contrast sufficiently reasoned as regards the facts and the legal basis for the imposition of the two-year ban. It also explained in a satisfactory manner why the Athlete could not reasonably claim that she bore no significant fault or negligence.
  - "*As to the second subsidiary count (...) whereby the [Athlete] requested the substitution of the 2 year suspension sanction with a reprimand or suspension not exceeding 6 months, given all that was shown above in point 2 in relation with the athlete's fault and considering the provision of art. 39 of the Law, the Commission holds that the [Athlete's] request is unfounded*".
21. As a result, on 18 February 2014, the Appeal Commission decided the following:

*“It rejects as unfounded the appeal filed by the [Athlete] (...) and it upholds as founded and legal, the Decision no. 24/09.01.2014 of the Hearing Commission (...).*

*The decision is subject to appeal to the Court of Arbitration for Sport (CAS) in Lausanne within 21 days from notification”.*

22. On 5 March 2014, the Athlete was notified of the Appealed Decision.

### **III. SUMMARY OF THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

23. On 27 March 2014, the Athlete filed her statement of appeal with the CAS in accordance with Article R47 et seq. of the Code of Sports-related Arbitration (hereinafter the “Code”). She requested the present matter to be submitted to a sole arbitrator and required the CAS *“to ask [ANAD] to forward the complete case files (the file of the first instance body – Hearing Commission of Romanian NADA – and the file of the Appeal Committee), duly translated in English”.*
24. On 8 April 2014, the Athlete requested the suspension of the time limit to file her appeal brief until the production by ANAD of the documents required in her statement of appeal.
25. On 11 April 2014, the CAS Court Office invited ANAD to comment within five days on the Athlete’s request to submit the present matter to a sole arbitrator and on her application for a suspension of the deadline to file her appeal brief.
26. On 15 April 2014, ANAD informed the CAS Court Office that it objected to the Athlete’s application for the extension of the deadline to file her appeal brief, alleging that the Athlete *“was provided with all the requested documents during the procedures conducted at national level”.* Separately, ANAD requested the matter to be referred to a panel of three arbitrators.
27. On 22 April 2014, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division had decided (i) to submit the case to a panel of three arbitrators and (ii) to dismiss the Athlete’s request concerning the suspension of her time limit for filing her appeal brief. The Parties were therefore invited to respectively nominate an arbitrator within ten days and the Athlete was given five days to file her appeal brief.
28. On 28 April 2014, the Athlete filed her appeal brief in accordance with Article R51 of the Code.
29. On 2 June 2014, the CAS Court Office took note of the fact that ANAD would not pay its share towards the advance of costs for this procedure. It informed the Parties that in *“view of the Request for Legal Aid granted to the [Athlete] by Order dated 21 May 2014, the full amount of the advance of cost shall be borne by the CAS”.*
30. On 2 June 2014, ANAD filed its answer in accordance with Article R55 of the Code.
31. On 4 June 2014, the Parties were invited to inform the CAS Court Office whether their preference was for a hearing to be held.

32. On 11 June 2014, ANAD confirmed to the CAS Court Office that it preferred for the matter to be decided solely on the basis of the Parties' written submissions, whereas, on 23 June 2014, the Athlete expressed her preference for a hearing to be held.
33. On 23 June 2014, the CAS Court Office informed the Parties that the Panel to hear the case had been constituted as follows: Mr Hans Nater, President of the Panel, The Hon. Michael J. Beloff Q.C. (nominated by the Athlete) and Prof. Ulrich Haas (nominated by ANAD), arbitrators.
34. On 15 July 2014, the Parties were informed that the Panel had decided to hold a hearing. Additionally, ANAD was invited to submit "*the complete file at the prior instance within 20 days*".
35. On 22 July 2014, ANAD requested a 20-day extension of the deadline to produce the required documents, in order to translate them into English.
36. On 23 July 2014, the CAS Court Office invited the Athlete to comment on ANAD's request for an extension within two days.
37. On 23 July 2014, the Athlete informed the CAS Court Office that she objected to ANAD's application for the extension of the deadline, which was eventually granted by the President of the Panel.
38. On 4 August 2014, ANAD informed the CAS Court Office that it wished to file a new evidence (*i.e.* a sworn declaration of Mr Victor Voicu in order to describe the nature and effect of the substance ingested by the Athlete), which was not indicated in its answer. In the light of (i) the Athlete's disagreement with the production of this new document and (ii) the fact that ANAD failed to establish that its request was justified by the presence of exceptional circumstances or could not have been made at an earlier stage of the procedure, the President of the Panel decided to dismiss ANAD's request in accordance with Article R56 of the Code.
39. On 18 and on 20 August 2014, ANAD and the Athlete respectively signed and returned the Order of Procedure in this appeal.
40. On 21 August 2014, ANAD filed with the CAS the complete case file of its previous instances. The CAS Court Office sent a copy of these documents to the Appellant on 26 August 2014.
41. On 26 September 2014, the hearing was held at the CAS premises in Lausanne. The Panel members were present and assisted by Mr Antonio de Quesada, Counsel to the CAS, and Mr Patrick Grandjean, *ad hoc* Clerk.
42. The following persons attended the hearing:
  - The Athlete accompanied by her mother, Mrs Alina Clodeanu, and by Mr Mincu Paul Alexandru, attorney-at-law.
  - ANAD was represented by its General Director, Mrs Valentina Alexandrescu, accompanied by Mr Paul-Filip Ciucur, attorney-at-law.

43. At the outset of the hearing, the Parties confirmed that they did not have any objection as to the composition of the Panel.
44. No witness or expert was heard. However, the Athlete, her mother and Mrs Valentina Alexandrescu were examined by their respective counsel, cross-examined by the opposing party and questioned by the members of the Panel.
  - The Athlete's evidence: She swims 2 hours a day, from 7 to 9, before she goes to a school, which is divided into a sport academy (attended by the Athlete) as well as into classes with general disciplines. Among her classmates, there are two or three athletes with significant sporting results. Later on, she intends to go to university and to become a professional swimmer.

The pills she ingested were always prepared and handed out by her mother, who eventually explained that they were nutritional supplements and vitamins. She is aware of the fact that her mother has no particular medical knowledge. She ignored the origins of the pills and their real effect until she appeared before the Hearing Commission on 22 July 2013. She had been taking up to five pills on a regular basis, in the morning, at noon and in the evening for about a year before her positive results. The pills came in various shapes and colours and were stored in different containers, which were placed somewhere in the kitchen. She had never taken the time to read their label by lack of curiosity.

In spite of the fact that she had some suspicions about the prohibited nature of the pills, the Athlete did not question her mother about them, from fear of the answer she might receive. She was afraid that that her mother's response would upset her and, in any event, was unconvinced that her mother would tell the truth.

In the weeks before competitions, the number of pills would decrease. In the last few days before the race she would not be given any. She had never asked her mother the reasons behind this approach.

In spite of the fact that she was registered with Farul Constanta Sport Club, which is located in Constanta, she trained in Bucharest, by herself, under her mother's supervision. Her mother would also accompany her at competitions but not systematically. This situation left her with little opportunity to discuss the subject of pills with anyone else. In any event, she would not bring up the subject, as she did not see the point in doing so. She had never undergone a doping control before 21 June 2013 and had never heard other athletes mention the administration of prohibited substance. However, she had seen on television how some swimmers were selected for in-competition testing, although she was ignorant as to how the controls were actually carried out. She had first heard about the fact that some substances could be prohibited between 2011 and 2012. She knew of ANAD's existence but knew nothing about its actual program.

When she found out about the adverse analytical findings, she asked her mother if the latter gave her any prohibited substance. At that moment, her mother explained that the pills were meant to ease her menstrual pains. The fact that such an explanation was

inconsistent with the number of pills given to her on a daily basis and inconsistent with her mother's earlier explanation that the pills were nutritional supplements, did not make any impact on her, as she trusted her mother. It was only when she returned to school in September 2013 and had to put up with the mockery of her schoolmates that she requested more detailed explanation from her mother, who conceded that the pills were intended to enhance her sporting performance.

She has attended an anti-doping presentation for the first time in her life in spring 2014. Her different coaches have never brought up the subject with her and it is only recently that she found out that the national team has its own doctor. As her club is in Constanta and she trains in Bucharest, she has never had any contact with the team doctor. In addition, she makes use of the services of the school doctor only for general check ups, consisting essentially of measurement of her height and weight. No doctor has ever investigated whether she was under medication. It is only recently that she has an access to Internet. Since her positive result, she has not taken any pill, other than a couple of times, to treat a cold.

- Mrs Alina Clodeanu gave a comprehensive account (i) of the Athlete's swimming career, (ii) of the early and continuous harassment and pressure on herself and on her daughter by ill-intentioned coaches, teammates and other parents, which forced the Athlete regularly to change of instructor or training facility, (iii) of her own mental health issues and the social conditions under which she and the athlete lived. She eventually decided to resort to doping and to seek to enhance her daughter's performance partly to compensate for the disadvantages summarised under (ii), partly out of a sense of grievance resulting from them and, partly, to satisfy her own selfish desire to prove to Mrs Savu (a coach with apparently great influence and hostile to the Athlete and her mother) that ultimately, she could train her child and obtain good results without anybody else's assistance.
  - Mrs Valentina Alexandrescu briefed the members of the Panel on the full range of activities and efforts pursued by ANAD to implement the WADC as well as to combat doping in sport through educational programs and other actions.
45. Shortly before closing arguments were due to be heard, Mr Mincu Paul Alexandru announced for the first time that the Athlete, her mother and himself had to leave within the next hour or so in order to catch their flight. Prior to his departure, Mr Mincu Paul Alexandru:
- presented his final submissions;
  - withdrew the Athlete's first two requests for relief, confirming that she was exclusively seeking to obtain a reduction of the sanction;
  - declared that the Athlete's right to be heard and to be treated equally in the present proceedings had been fully respected (something he confirmed in a subsequent letter dated 27 September 2014); and
  - confirmed that the Athlete would not ask to reply to ANAD's final submissions, which were about to be presented.

46. After ANAD's final arguments, the President of the Panel closed the hearing and announced that the award would be rendered in due course. Upon closure, ANAD expressly stated that its right to be heard and to be treated equally in these arbitration proceedings had also been fully respected.

#### IV. SUBMISSIONS OF THE PARTIES

##### A. The Appeal

47. The Athlete submitted the following requests for relief:

*“Based on the provisions of Article R57 of the Code, we request CAS to issue an arbitral award that:*

- 1. Annul the Decision no. 1 of 18.02.2014 issued by Romanian NADA in the case ANAD vs. Radu Alexandra Georgiana.*
- 2. State that the swimmer Radu Alexandra Georgiana has not violated the anti-doping rules, thus no sanction has to be imposed against her.*

*Only if the abovementioned prayers for relief are rejected:*

- 3. Replace the appealed decision and state that the appropriate sanction for the swimmer Radu Alexandra Georgiana is a suspension of 6 (six) months.*

*Subsidiary*

- 4. Replace the appealed decision and establish a suspension for the swimmer Radu Alexandra Georgiana shorter than the suspension of 2 years applied by the Romanian NADA.*

*Finally*

- 5. Order that each party to bear its costs (legal fees, advance of costs to the CAS, others) related to the procedure”.*

48. During the hearing before the CAS, the Athlete confirmed that she withdrew her requests for relief n° 1) and 2).

49. The Athlete's submission, in essence, may be summarized as follows:

- ANAD accepted to hand to the Athlete copies of the A Sample laboratory documentation package, subject to the payment of a fee of EUR 249. Such a requirement is not laid down in the applicable Romanian regulations or in the WADC. Given her limited means, the Athlete was not in a position to make the requested payment and was therefore denied the right to review her personal data. *“In this context, the refusal to present the laboratory documentation appears to be unjustified and ANAD's conduct is equal to a lack of laboratory documentation. The lack of laboratory documentation for the testing of the sample taken from the athlete on 21.06.2013 triggers the nullity of this procedure resulting in the annulment of the sanction unlawfully imposed on the [Athlete]”.*
- The Athlete has nevertheless seen some of the documents of the Laboratory's file, which suggest that her samples were unsealed before they were delivered to the Laboratory for

analysis. As a result there are “*suspicious regarding the regularity of the sampling procedure. In this situation, it can be considered that the [Athlete] is not guilty of the violation stipulated in art. 2 par. (2) of Law no. 227/2006, and therefore the two-year suspension sanction (...) must be set aside*”.

- Should the Athlete be found guilty of a doping offence, the fact that she is a minor is a mitigating circumstance justifying the imposition of a sanction below the standard range of a two-year ban.
- In spite of the fact that she participated in international competitions, the Athlete has never been summoned to attend an educational program on anti-doping and has never received from ANAD, from the Romanian Swimming and Modern Pentathlon Federation or from her club any specific advice or warning on doping issues. By law, ANAD has the duty to offer to the Athlete at least some kind of information on doping prevention as well as on her rights and responsibility regarding this matter. ANAD failed to do so and, consequently, should not be entitled to impose any sanction upon a 14-year old athlete, who has never been sanctioned before and who had absolutely no anti-doping culture. In any event, the above consideration should lead to a reduction of the two-year suspension.
- It is also a mitigating factor the fact that during “*her entire sporting career, the [Athlete] was never subjected to any medical examination by the club where she was registered or by the Romanian Swimming Federation. (...)*”. This illustrates the Athlete’s training conditions “*despite the competition level in which she participated, as well as the lack of interest / omission committed by the persons that were closest and most qualified and that should have supervised her health*”.
- Further mitigating factors are (i) the Athlete’s modest background, in a torn apart family, with a mother who suffers from “*depression and obsessive-compulsive disorder, and in 2003 had a suicide attempt*”, (ii) the fact that she explained how the prohibited substance entered her body, (iii) the fact that the prohibited substance was not administered in order to enhance her sporting performance, (iv) the fact that the present case is her first anti-doping rule violation.

B. *The Answer*

50. ANAD submitted the following requests for relief:

*“On the grounds of article R55 of the [Code] the Respondent respectfully asks the Panel:*

- A. *to dismiss the appeal lodged by the Appellant against the Decision (...) rendered on February 18, 2014 by the RADA Appeal Committee*
- B. *to maintain and consider RADA Appeal Committee’s decision undisturbed*
- C. *subsequently, to deny all the prayers for relief made by the Appellant*
- D. *to order the Appellant to pay all costs, expenses and legal fees relating to the arbitration proceedings before CAS encumbered by the Respondent”.*

51. ANAD’s submission, in essence, may be summarized as follows:

- Dehydrochlormethyltestosterone is a non-specified substance. Therefore, the Athlete cannot rely on Article 39 of the Act no. 227/2006 or the corresponding Article 10.4 of the WADC (*“Elimination or Reduction of the Period of Ineligibility for Specified Substances under Specific Circumstances”*) to obtain a reduction of the standard period of ineligibility.
- In the Athlete’s case, the two-year suspension can also not be reduced on the basis of Articles 10.5.1 or 10.5.2 of the WADC as the Athlete has not established that she committed the offence with *“no Fault or Negligence”* and/or, respectively, with *“No significant Fault or Negligence”*. Even if *“the Athlete’s explanation of how the Substance had come into her body were plausible, the Athlete’s behaviour was significantly negligent under the circumstances. Her departure from the required duty of utmost caution was clearly significant. Indeed, the Athlete did not exercise the slightest caution”*. She actually deliberately used the prohibited substance. In any event, a sanction may be reduced for no significant fault or negligence only when the circumstances are truly exceptional. This is not the case here.
- *“The Athlete admitted to having taken the pills on her mother’s recommendation, and purchased them from an on-line shop, www.steroizi.ro. (...) The Athlete, prior to ingesting the pills of Turabolin, never performed any checks with regard to the contents of prohibited Substances, neither with her physician, pharmacist, team doctor or any other person with medical training. (...) The Athlete made absolutely no steps towards ‘the research and investigation which could be reasonably expected from an informed athlete wishing to avoid risks connected to the use of food supplements’ (CAS 2009/A/1870 [...])”*.
- The Athlete’s young age, her depressed social condition and her lack of education on doping are irrelevant as regards her degree of fault. This has already been confirmed by the CAS in several awards. Likewise, since Dehydrochlormethyltestosterone is a non-specified substance, the Athlete’s alleged absence of intent to enhance her performances is irrelevant.
- The fact that the Athlete was 14 years old at the moment of the sample collection is not a mitigating factor, considering that she has been competing since she was 6 years old. In other words, at the moment of the positive findings, she already had approximately 8 years of experience.
- Contrary to the Athlete’s allegations, ANAD has organised many anti-doping programs. In *“the period 2012/2014 alone [ANAD] organised and conducted 2 educational programs with the very club of the Athlete (Farul Constanta) and other 5 programs in 2012 and 4 in 2013, so in all 11 educational and training programs. (...) One should note that the anti-doping programs are not and can not be conducted individually, that is for each athlete in particular. (...) Last but not least, the Athlete’s mother (...) had in fact a duty to inform and educate the Athlete. According to the WADC, by Athlete Support Personnel it is to be understood ‘Any coach, trainer, manager, agent, team staff, official, medical, paramedical personnel, parent or any other Person working with, treating or assisting an Athlete participating in or preparing for sports Competition’* (emphasis added by ANAD). Hence, the Athlete cannot put the blame on ANAD for her absence of knowledge to appreciate the need to avoid committing a doping offence.
- The sanction imposed on the Athlete is consistent with the principles of proportionality

and equal treatment. It is also in accordance with the sanctions imposed in similar cases at national as well as at international levels.

- There has been no departure from the relevant rules concerning storage and transport of the Athlete's samples. In any event, the alleged departure could not have been the cause of the adverse analytical finding.
- The fact that the Athlete's right to obtain copies of the laboratory documentation package is subject to the payment of a fee is in compliance with Article 7.2 letter f) of the WADC. *"(...) it is not acceptable that an independent laboratory work for free in order to make available results to the interested persons. To use an analogy, the free access to justice is not denied by the legal requirement to pay a court office or judicial fee (...)"*. The Athlete had access to all the necessary documentation for her to exercise her right to defence, *"including the right to request the sample B. However, the Athlete chose out of her own will, not to exercise this right"*.

## V. APPLICABLE LAW

52. Article R58 of the Code of Sports-related Arbitration (hereinafter "the Code") provides the following:  
*"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision"*.
53. The Parties agree that the Act no. 227/2006 shall govern the present dispute. In this regard, it notes both (i) that the Appealed Decision was rendered on the basis of this regulation and (ii) that, in their respective submissions, the Parties refer to this set of rules.
54. The fact that the Act no. 227/2006 applies to the Athlete arises from its Article 3 para. 1, according to which is an "Athlete" *"any person who participates in sport at the international level, as defined by each international federation or any person who participates in sport at the national level, registered to a sport club affiliated to a national sport federation or to a county sport association and any other person competing in sport at an inferior level, under the jurisdiction of other sport organization accepting the [WADC]"*. The Panel finds that the Athlete fulfils the definition stated in this provision. It is undisputed that she participated in sport at national as well as at international levels and is registered with a club affiliated to a national sport federation.
55. For the above reasons, the Panel finds that the Act no. 227/2006 and, to the extent necessary, Romanian Law shall apply.
56. As regards the interpretation of the Act no. 227/2006, it is to be observed that it was adopted following the acceptance by Romania of the International Convention Against Doping In Sport adopted by the General Conference of UNESCO in October 2005 (See its Article 1 para. 2). According to article 3 of the UNESCO Convention, *"In order to achieve the purpose of the Convention, States Parties undertake to: (a) adopt appropriate measures at the national and international levels which are*

*consistent with the principles of the [WADC]”. Pursuant to article 4 para. 1 of the UNESCO Convention “In order to coordinate the implementation, at the national and international levels, of the fight against doping in sport, States Parties commit themselves to the principles of the Code as the basis for the measures provided for in Article 5 of this Convention. Nothing in this Convention prevents States Parties from adopting additional measures complementary to the Code”.*

57. In order to accomplish its objectives, ANAD must elaborate “*the national anti-doping strategy, in conformity with the objectives and the provisions of the [WADC] and International Standards*” (see Article 6 para. 1 letter a) of the Act no. 227/2006). Likewise and pursuant to Article 66 of the Act no. 227/2006 “*National Sports Federations shall modify and complete their statutes and regulations according to the provisions of the present law, the [WADC], the International Sport Federations regulations and the Methodological Norms regarding the organization and conduct of doping control*”.
58. In other words, the Panel is of the view that the Act no. 227/2006 shall be interpreted in a manner that is consistent with the applicable provisions of the WADC. If necessary, the comments annotating various provisions of the WADC shall also be referred to, where applicable, to assist in the understanding and interpretation of the Act no. 227/2006.

## **VI. JURISDICTION**

59. The jurisdiction of the CAS is not disputed by the Parties. It derives from Article R47 of the Code and from Article 61 of the Act no. 227/2006, which states the following:  
  
*“The decisions of the Appeal Commission may be appealed to the Court of Arbitration for Sport (CAS), in Lausanne in 21 days since the date of the notification”*
60. In the present case, it is not disputed that the Appealed Decision has been issued by the Appeal Commission and that there is no internal remedy available to challenge it. It follows that the CAS has jurisdiction to decide on the present dispute.
61. Under Article R57 of the Code, the Panel has full power to review the facts and the law.

## **VII. ADMISSIBILITY**

62. The appeal is admissible as the Athlete submitted it within the deadline provided by article R49 of the Code as well as by article 61 of the Act no. 227/2006. This is furthermore not challenged by ANAD (“*The Appeal Brief was duly sent to CAS within the 21 days time limit*” – see para. 16, page 6, of the answer).
63. The appeal complies with all the other requirements set forth by article R48 of the Code.

### VIII. PROCEDURAL ISSUE – NEW DOCUMENTS FILED BY THE PARTIES

64. On 25 September 2014, the Athlete filed before the CAS a letter dated 2 February 2012 from the Romanian Swimming and Modern Pentathlon Federation as well as a letter dated 22 May 2013 of the Ministry of Youth and Sport, purporting to bear on the question whether the Athlete could properly be described as having represented her country in international competition. Both documents were accompanied by a translation from Romanian into English.
65. At the hearing before the CAS, ANAD confirmed to the Panel that it objected to the production by the Athlete of this new evidence.
66. Article R56 para. 1 of the Code provides as follows:  
*“Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer”.*
67. Pursuant to this provision, once the appeal brief has been filed, the President of the Panel may authorize a party to supplement its submissions only on the basis of *“exceptional circumstances”*.
68. At the hearing before the CAS, the Athlete’s counsel could not provide a satisfactory explanation as to why those documents could not have been submitted at an earlier stage of the procedure. As a consequence, based on Article R56 of the Code and in the absence of exceptional circumstances, the documents presented by the Appellant on 25 September 2014 were excluded from the proceedings and the Panel declined to take them into account in its decision. However the precise status of the Athlete in terms of her representation of Romania in international competition did not in any event seem to have bearing in the issue it had to decide.

### IX. MERITS

69. At the hearing before the CAS, the Athlete confirmed that she was no longer challenging the fact that ANAD had successfully established the presence of Dehydrochloromethyltestosterone in her samples.
70. In addition, the Parties agree that (i) Dehydrochloromethyltestosterone is a non-specified substance included in the category S1.1 (a) (*“Exogenous Anabolic Androgenic Steroids”*) on the 2013 WADA Prohibited List and on the corresponding list established under Article 18 of the Act no. 227/2006, (ii) the Athlete’s offence must be sanctioned as a first anti-doping rule violation, (iii) the standard sanction for an anti-doping rule violation according to the applicable regulations is a two-year period of ineligibility and (iv) there are no aggravating circumstance which may increase the period of ineligibility (as set under Chapter XII of the Act no. 227/2006).
71. Hence, the only issues to be resolved by the Panel are the following ones:

- Is the Athlete entitled to the elimination or to a reduction of the standard period of ineligibility?
- How must the sanction be calculated and applied?

**A. Is the Athlete entitled to the elimination or to a reduction of the standard period of ineligibility?**

a) *The Applicable rules related to the issue to be resolved by the Panel*

72. The relevant provisions of the Act no. 227/2006 read as follows:

*TITLE I General Provisions*

**Art. 2.** - (1) *Doping in sport represents the occurrence of one or more of the anti-doping rule violations set forth in Paragraph 2.*

(2) *The following actions constitute anti-doping rule violations:*

(a) *The presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's sample; (...)*

**TITLE II Organization of Anti-Doping Activity on National Level**

**CHAPTER IX Sanctions**

**Art. 37.** - (1) *Any anti-doping rule violation set forth in art. 2, paragraph 2 committed by the Athlete during or in connection with a competition and/or sport event, proven in conformity with the procedure stipulated by the present law, leads to disqualification, invalidation of all of the Athlete's individual results obtained in that competition and forfeiture of all medals, points and prizes. (...)*

**Art. 38.** - *The anti-doping rules violations set forth in Article 2 paragraph (2) letters a), b) and f) are sanctioned with 2 years ineligibility for the first violation, except for the cases when the provisions of Article 39, Article 48 and Article 49 are applicable.*

**Art. 39.** - *Where the anti-doping rules violations set forth in Article 2 paragraph (2) letters a), b) and f) involve a specified substance and the athlete or the athlete's support personnel can establish how the specified substance entered his or her body or came into his or her possession and that the use of such specified substance was not intended to enhance the sport performance or to mask the use of another prohibited substance, the period of ineligibility set forth in Article 38 shall be replaced for the first violation, with at least a reprimand and no period of ineligibility, or at most two (2) years ineligibility. (...)*

**Art. 44.** - (1) *The Ineligibility period shall start on the date of the decision providing for Ineligibility.*

(2) *Any period of provisional suspension shall be credited against the total period of Ineligibility.*

(3) *In case of delays in the decision providing for Ineligibility, for reasons not attributable to the Athlete, the Ineligibility may start as early as the date of Sample collection. (...)*

## **CHAPTER XI**

### ***Elimination or Reduction of the Period of Ineligibility based on Exceptional Circumstances***

**Art. 48.** - (1) *The athlete is strictly responsible for the presence in his / her biological sample of any prohibited substance or its metabolites or markers and there's no need to establish the intention or fault to determine an anti-doping rules violation.*

(2) *When the athlete establishes that he or she bears no fault in case of an anti-doping rule violation set forth in Article 2 paragraph 2, letter a), the otherwise applicable period of ineligibility shall be eliminated and the case shall not be considered as an anti-doping rules violation.*

(3) *In case of anti-doping rules violations set forth in Article 2 paragraph (2), letters a)-c) and e)-h), the ineligibility period may be reduced but the reduced period of ineligibility may not be less than half of the period of ineligibility otherwise applicable, when the athlete or other person establishes that he or she bears no significant negligence.*

(4) *In order to apply the provisions set forth in paragraphs (2) and (3), the athlete must establish how the prohibited substance entered his or her body.*

(5) *The provision set forth in paragraph (3) shall not be applied in situations where the provisions of Article 39 are applicable.*

(6) *When the applicable period of ineligibility is lifetime, the reduced period under paragraph (3) may be no less than 8 years.*

(7) *When the athlete or other person has provided substantial assistance to the Hearing Commission of athletes and their support personnel who violated the anti-doping rules and to the Appeal Commission in discovering or establishing an anti-doping rule violation committed by another athletes or athlete's support personnel, the ineligibility period may be reduced to at maximum three-quarters of the otherwise applicable period of ineligibility. After the expiration of the time limit for submitting an appeal or after taking a decision under Article 60, the Agency may reduce the applied period of ineligibility only if the World Anti-Doping Agency and the relevant International Federation approves it.*

(8) *If the otherwise applicable period of ineligibility is lifetime, the reduced period under paragraph (7) may be no less than 8 years.*

(9) *When an athlete or other person voluntarily admits the commission of an anti-doping rule violation before having received notice of a sample collection which could establish the anti-doping rule violation or before establishing one of the anti-doping rules violations set forth in Article 2 paragraph (2) letters b)-h) and receiving first notice of the admitted violation pursuant to Article 29 and that admission is the only reliable evidence of the violation at the time of admission, then the period of ineligibility may be reduced, but not less than half of the otherwise applicable period of ineligibility.*

(10) *In case an athlete or a person from the athlete's support personnel meets the requirements to apply at least two of the provisions set forth in paragraphs (3), (7) or (9), then the period of ineligibility may be reduced but not less than one-quarter of the otherwise applicable period of ineligibility”.*

- b) *The possible elimination / reduction of the standard period of ineligibility – in principle*
73. Pursuant to Article 48 para 1, first sentence of the Act no. 227/2006, “*The athlete is strictly responsible for the presence in his / her biological sample of any prohibited substance or its metabolites or markers*”.
74. In the present case, a non-specified prohibited substance was detected in the Athlete’s samples.
75. At the hearing before the CAS, the counsel for the Athlete claimed that the Act no. 227/2006 does not distinguish between “*specified*” and “*non-specified*” substances. He inferred therefrom that the same rules apply, regardless of the nature of the substance.
76. The Panel does not agree with this submission. According to its unambiguous wording, Article 39 of the Act no. 227/2006 comes into play only in the case of specified substances.
77. In contrast, Article 48 para. 3 of the Act no. 227/2006 (which states that “*In case of anti-doping rules violations set forth in Article 2 paragraph (2), letters a)-c) and e)-b), the ineligibility period may be reduced (...) when the athlete or other person establishes that he or she bears no significant negligence*”.) does not apply “*in situations where the provisions of Article 39 are applicable*” (see Article 48 para. 5 of the Act no. 227/2006). In other words, the Act no. 227/2006 does indeed differentiate situations where specified substances are involved from other situations. This is actually consistent with the regime put in place in the WADC (see its Articles 10.4 and 10.5).
78. Given that the substance detected in the Athlete’s bodily specimen is a non-specified substance, the Panel does not need to identify whether the requirements of Article 39 of the Act no. 227/2006 are met. The sole issue to be resolved by the Panel is whether the Athlete committed the offence with “*no fault*” (Article 48 para. 2 of the Act no. 227/2006) or with “*no significant negligence*” (Article 48 para. 3 of the Act no. 227/2006).
79. The definition of “*No Fault*” is as follows (Article 3 para. 30 of the Act no. 227/2006):  
*“The Athlete’s establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had used or been administered the Prohibited Substance or Prohibited Method”.*
80. The definition of “*No Significant Fault or Negligence*” is the following (Article 3 para. 31 of the Act no. 227/2006):  
*“The Athlete’s establishing that his or her fault or negligence was not significant in relationship to the anti-doping rule violation”.*
81. The Act no. 227/2006 does not provide any details or examples to explain or illustrate the standard of “*no fault*” or of “*no significant fault or negligence*”. However, the language of its Article 48 is substantially similar to Article 10.5.1 and 10.5.2 of the WADC. As a result, the official commentary to the WADC can be viewed as providing a guideline as to how the expressions “*no fault*” and “*no significant negligence*” should be interpreted.

82. The commentary to the WADC indicates that it is consistent with basic principles of human rights for an athlete to be entitled to establish that, in view of the exceptional circumstances of his/her individual case, the otherwise applicable period of ineligibility shall be eliminated (in case of no fault or negligence) or reduced (in case of no significant fault or negligence).
83. An *“example where No Fault or Negligence would result in the total elimination of a sanction is where an Athlete could prove that, despite all due care, he or she was sabotaged by a competitor. Conversely, a sanction could not be completely eliminated on the basis of No Fault or Negligence in the following circumstances: (a) a positive test resulting from a mislabelled or contaminated vitamin or nutritional supplement (Athletes are responsible for what they ingest (...) and have been warned against the possibility of supplement contamination); (b) the administration of a Prohibited Substance by the Athlete’s personal physician or trainer without disclosure to the Athlete (Athletes are responsible for their choice of medical personnel and for advising medical personnel that they cannot be given any Prohibited Substance); and (c) sabotage of the Athlete’s food or drink by a spouse, coach or other Person within the Athlete’s circle of associates (Athletes are responsible for what they ingest and for the conduct of those Persons to whom they entrust access to their food and drink)”* (see commentary to the WADC, ad. Art. 10.5.1).
84. According to CAS precedents, *“No fault” means that the athlete has fully complied with the duty of care. [...] “No significant fault” means that the athlete has not fully complied with his or her duties of care. The sanctioning body has to determine the reasons which prevented the athlete in a particular situation from complying with his or her duty of care. For this purpose, the sanctioning body has to evaluate the specific and individual circumstances. However, only if the circumstances indicate that the departure of the athlete from the required conduct under the duty of utmost care was not significant, the sanctioning body may [...] depart from the standard sanction”* (CAS 2005/C/976 & 986; CAS 2007/A/1370 & 1376; CAS 2009/A/2012, para. 53, page 12).
- c) *The possible elimination / reduction of the standard period of ineligibility - In the case at hand*
85. In order to benefit from the elimination (Article 48 para. 2 of the Act no. 227/2006) or from a reduction of the period of ineligibility (Article 48 para. 3 of the Act no. 227/2006), the Athlete must first establish how the prohibited substance entered into her body (Article 48 para. 4 of the Act no. 227/2006). This information is obviously crucial in order to assess the Athlete’s degree of precaution in attempting to prevent the occurrence of an adverse analytical finding.
86. In the present case, it has been established to the satisfaction of the Panel that the Athlete had been administered the prohibited substance by her mother over a period of about one year. The litigious pills had been bought over the Internet on a website, the name of which speaks for itself: *“www.steroizi.ro”*. It is also now undisputed that the mother had the intention to enhance her daughter’s sporting performance.
- ca) *The elimination of the sanction*
87. According to the Act no. 227/2006, the sanctions available are either two years (no exceptional circumstances), one year to two years (no significant fault or negligence), or no sanction at all (no fault or negligence).

88. The first question which has to be clarified is whether the Athlete has established that she bears no fault or negligence; *i.e.* she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that she had used or been administered the prohibited substance.
89. In the case at hand, it is the Athlete's own evidence that she suspected that the pills handed to her might contain prohibited substances but refrained from asking her mother out of fear of the answer she might receive. In spite of its inquiry, the Panel has not been able to obtain from the Athlete an unambiguous answer as to the cause of her apprehension about questioning her mother, whether it was because she was frightened of her mother's angry reaction to being questioned or that she might herself discover from her mother's response that her own sporting results were actually assisted by the use of illegitimate substances. The Athlete admittedly knew that her mother had no medical knowledge but still accepted to take from her numerous pills of various shapes and colours on a daily basis over a long period of time. The Athlete was obviously aware that her mother could not be blindly trusted as she had suspicions. Nevertheless, she did not bother to either check the label of the pills containers, which were easily accessible, or to enter into contact with a doctor or a professional who could have checked the status of the litigious pills. Her environment (Sport academy, competitions at national and international events) offered her ample opportunities to seek information or advices as regards the real nature of the pills she was being administered. The Panel also finds that the Athlete's behaviour after being confronted with the adverse analytical finding is unhelpful to her case. While she stated that her mother originally told her that the pills were vitamins and nutritional supplements, she nevertheless stated in the First proceedings that the pills were meant to delay her menstruation. This second statement was obviously wrong and inconsistent with her actual knowledge at the time.

From the above, it appears that the Athlete failed to satisfy her duty of diligence. The Panel finds it impossible to conclude that she bears "*no Fault*" within the meaning of Article 3 para. 30 of the Act no. 227/2006. Therefore the elimination of the period of ineligibility is precluded.

cb) Reduction of the sanction

90. A reduction of the otherwise applicable period of ineligibility can occur only in cases where the circumstances are truly exceptional, *i.e.* when an athlete can show that the degree of fault or negligence in view of all circumstances was such that it was not significant in relation to the doping offence (CAS 2011/A/2522, para. 4.38, page 9; CAS 2011/A/2524, para. 5.23, page 15, in the same sense, see commentary to the WADC, ad Article 10.5.1 WADC). However, the requirements to be met by the qualifying element "*no significant fault or negligence*" must not be set excessively high (CAS 2005/A/847, para. 16, page 9).
91. The Athlete contends, as set out above, that the two-year standard period of ineligibility should be reduced based on the following mitigating circumstances:
- she was a minor when she tested positive for Dehydrochlormethyltestosterone;
  - she has never received from ANAD, from the Romanian Swimming Federation or from her club any specific advice or warning on doping issues;

- the national team / club / school doctors have never paid any attention to the Athlete, to her health condition or to her medical situation/history;
  - her modest background, in a torn apart family, with a mother who suffers from “*depression and obsessive-compulsive disorder, and in 2003 had a suicide attempt*”;
  - it is her first anti-doping rule violation.
92. The Panel observes that the rules contained in the Act no. 227/2006 and in the WADC do not specifically deal with the issue of age. Accordingly, there is no special anti-doping regime for minors (CAS 2011/A/2524, para. 5.27, page 16; CAS 2011/A/2522 para. 5.33, page 23; CAS 2010/A/2311, 2312, para. 9.28, page 34). In particular, there is no automatic exception based on age. The simple fact that the Athlete was a minor at the time she was tested, does not constitute a circumstance either eliminating or reducing her fault or negligence (CAS 2007/A/1413 para. 81, page 19; CAS 2006/A/1032, para. 132; CAS 2005/A/830, para. 10.11, page 11; CAS 2007/A/1413, para 79, page 18).
93. In this regard, CAS Panels have explained that “*in order to achieve the goals of equality, fairness and promotion of health, (...) the anti-doping rules must apply in equal fashion to all participants in competitions they govern, irrespective of the participant’s age. The rules do not provide a different yardstick or regime for minors when considering the question of “no fault or negligence” or “no significant fault or negligence”. The need to have regard to the best interests of the Athlete as a young person as a primary consideration do not require that the overall interests of the sport and of all the other competitors should be ignored*” (CAS 2010/A/2268 para. 117, page 28; CAS 2011/A/2582, para. 8.4, page 13, CAS 2012/A/2895, para. 61, page 16, all of them refer to CAS 2006/A/1032, para. 139, page 34).
94. However, the young age of an athlete and his/her lack of experience are potentially relevant factors to determine his/her degree of fault (CAS 2011/A/2523, para. 5.31, page 23; CAS 2010/A/2311, 2312). They could exceptionally explain complete ignorance of the fact that doping is prohibited in sport, more usually why, even if equipped with that knowledge, the minor has failed to take the steps to avoid the commission of an offence which would reasonably be expected of an adult. The weight to be given to these factors must of course depend upon the particular circumstances of the case.
95. In the present case, the Athlete has not submitted any fact, which shows that there is a link between her age and her degree of fault. She was certainly aware, at the time she took the pills, of the need to avoid doping:
- she has seen other swimmers being selected for doping controls;
  - between 2011 and 2012, she has heard about the fact that some substances could be banned and she was aware of ANAD’s existence;
  - as soon as she tested positive, her first reaction was to ask her mother whether the pills contained any prohibited substance;
  - she admittedly had suspicions as regards the status of the pills handed to her by her

mother.

96. In addition, the facts that the Athlete has been swimming since the age of four, has taken part in several national as well as international competitions and is attending a sport academy, makes it unrealistic to conclude that she lacked general familiarity with issues of doping in sport.
97. Nor is the Panel satisfied that, given that level of awareness of anti-doping issues, her age can excuse her failure to avoid taking the minimum action to prevent ingestion of illegitimate substances. On her own admission she deliberately and consciously decided (i) not to ask her mother about the origin or purpose of the pills, despite the ways in which and the times as which they were administered (which were of course designed by her mother to maximize their impact and minimize their detection), (ii) not to inspect the labels on the container, freely accessible, (iii) not to seek to obtain assurances from her physician, pharmacist or team/school doctor that her pills did not contain a prohibited substance.
98. It is clear from the evidence, in particular the Athlete's testimony at the hearing, that she was sufficiently intelligent and mature enough to understand and to comply with anti-doping requirements. However, she took scant interest in any aspects of anti-doping. As a consequence, the fact that the Athlete allegedly did not receive any formal drug education from her club or federation prior to her first in-competition drug test is irrelevant. She voluntarily and knowingly ingested pills, despite her suspicions of their possibly performance enhancing effects.
99. The Athlete cannot assign responsibility for her own default to her mother, Mrs Alina Clodeanu. The Panel has no doubt that her mother did encounter obstacles in acquiring for her daughter the level of coaching at convenient places that she wished for or that she met with some hostility or even ostracism from some coaches and parents at her daughter's school and clubs, although it did not assess her as someone naturally prone to understatement. It accepts that, even when she resorted to supplying the prohibited substances to her daughter, she was acting, albeit misguidedly, in what she, at any rate partly, thought to be in her daughter's best interests (and the Panel had the opportunity to observe that the Athlete's mother was deeply affected by her own deeds). These factors can explain, though it cannot excuse, her actions, but are, in the final analysis, irrelevant to the Panel's assessment which has to focus on the Athlete's own actions or inaction.
100. It appeared to the Panel that the two women, mother and daughter, were bound by a strong family feeling and presented a united front. The Athlete was supportive of her mother's despair and emotional vulnerability and there was no indication that she was being abused in any manner or under her mother's extreme pressure. Since the Athlete was found to be capable of understanding anti-doping requirements, the role played by her mother is no more than background. In this regard, the Panel considers that the following findings in the case CAS 2011/A/2582 are pertinent and applicable *mutatis mutandis* to the present dispute:

*"While the rights of a young person have to be carefully protected it does not follow that a person of 14 or 15 will be entitled automatically to assert that there has been no fault or negligence in each case where there has been reliance on a parent or coach or other person in a similar position of trust. It is not possible for a young person who is sufficiently skilled and mature to compete on equal terms with adults to avoid the consequences of having*

*ingested prohibited substances simply by pointing the finger of blame at a parent or advisor*" (CAS 2011/A/2582, para. 8.4, page 13).

101. For the reasons already exposed here above, it appears that Athlete had acted negligently and her behaviour fell short of the diligent approach to be expected of someone who has the ambition to make a career out of her sport. Her degree of fault appears to be particularly high as numerous pills were administered to her over a long period of time (by her mother with no medical knowledge) three times a day. She noticed that the intake of the so-called vitamins and supplements would decrease in the last few days before races but did not confront her mother with this fact. She chose to live with her own suspicion and to turn a blind eye to what her mother was supplying her and why. Her doping control form was casually and inaccurately completed. Worse, she later falsely declared that the purpose of the pills (that she was taken over a full year) were to delay menstruation.
102. She cannot establish a "*truly exceptional*" circumstance sufficient to eliminate or even reduce her fault or negligence, or that in the totality of circumstances it was not significant in relation to the doping offence (Even now the Panel is not convinced from her evidence that the Athlete is fully sensitive to her responsibilities as an aspirant professional swimmer and expresses the hope that when she resumes her career she will seek appropriate available advice from ANAD).
103. The fact that the Athlete has never previously been found guilty of an anti-doping rule violation has no weight in the present dispute, as the same point can be made for any first-time offender. Therefore the Panel finds no ground to reduce the sanction according to Article 48 para. 3 of the Act no. 227/2006.

## **B. How must the sanction be calculated and applied?**

### *a) Ineligibility period*

104. It is not disputed that this is the first time that the Athlete has been found to have violated an anti-doping rule.
105. The minimum period of ineligibility is prescribed by Article 38 of the Act no. 227/2006; *i.e.* 2 years. For the reasons exposed above, there are no mitigating circumstances justifying the imposition of a lesser sanction.
106. As a result, the Panel considers it appropriate to declare that the Athlete is ineligible for a period of two years.

### *b) Ineligibility commencement*

107. Article 44 of the Act no. 227/2006 states the following:

**Art. 44.** - (1) *The Ineligibility period shall start on the date of the decision providing for Ineligibility.*

(2) *Any period of provisional suspension shall be credited against the total period of Ineligibility.*

*(3) In case of delays in the decision providing for Ineligibility, for reasons not attributable to the Athlete, the Ineligibility may start as early as the date of Sample collection. (...)*

108. As to commencement date, the Panel notes that the Athlete was suspended as of 22 July 2013, when the Hearing Commission found her guilty of a doping offence and decided that the *“ineligibility period begins to run from the date of the current decision”*.
109. Subsequently, the Athlete won the next round before the Appeal Commission, which referred the case back to the first instance. Another decision was taken by the Hearing Commission on 9 January 2014, confirmed on appeal on 18 February 2014. This decision was notified to the Appellant on 5 March 2014; *i.e.* more than 8 months following the anti-doping test conducted on her on 21 June 2013.
110. The Panel is concerned about this sequence of events. The two-stage process before the Hearing and Appeal commissions, prompted by flaws of the former, took an undue length of time with the result that the Athlete was left in a state of uncertainty as to the outcome for over 8 months. In the context of sport and the administration of sporting justice this is excessive.
111. For that reason the Panel is of the opinion that fairness requires that the period of ineligibility should start on 21 June 2013, as authorized by Article 44 para. 3 of the Act no. 227/2006

*c) Disqualification*

112. The Appealed Decision did not purport in accordance with Article 37 of the Act no 227/2006 to disqualify all competitive individual results obtained by the Athlete and ANAD did not make any request in this respect. Hence, the Panel refrains too from engaging with this issue.

## **ON THESE GROUNDS**

### **The Court of Arbitration for Sport rules:**

1. The appeal filed by Ms Alexandra Georgiana Radu against the decision issued on 18 February 2014 by the Appeal Commission beside the National Anti-Doping Agency is partially upheld.
2. The decision issued on 18 February 2014 by the Appeal Commission beside the National Anti-Doping Agency is amended as follows:

Mrs Alexandra Georgiana Radu is found guilty of an anti-doping rule violation and is declared ineligible for a period of two years running from 21 June 2013.

(...)

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