



Arbitration CAS 2019/A/6249 Roman Balandin v. Association Russian Anti-Doping Agency (RUSADA), award of 13 September 2019

Panel: Mr Alexander McLin (Switzerland), Sole Arbitrator

Basketball

Doping (meldonium)

Criteria for the determination of the intentionality of an ADRV

CAS panels have to conduct fact-based and case-specific analyses. In the case of a young professional player not contesting the anti-doping rule violation (ADRV), the following elements can be relied upon in order to determine intent: relative experience level (with the sport and the relevant anti-doping rules), general anti-doping education (or lack thereof), level of awareness of previous cases involving the same prohibited substance, motivation to consume the product containing the prohibited substance, circumstances surrounding the player's visit to his team's doctor and the accounts of the various participants and witnesses, consistency of the player's explanations with the levels of prohibited substance found in his system.

I. PARTIES

1. Roman Balandin (the "Player, or the "Appellant") is a Russian basketball player from Stepnoye Ozero, Altai region, Russia. He was last employed by Basketball Club Avtodor Saratov (the "Club"), where he played for its youth team in the Youth Championship of Russia.
2. The Association Russian Anti-Doping Agency ("RUSADA") is the Russian national anti-doping organization which has issued the decision on appeal.

II. FACTUAL BACKGROUND

3. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced. 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 Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, he refers in his Award only to the submissions and evidence it he considers necessary to explain its his reasoning.

4. The Player started his professional career with the Club at the end of the 2014/15 sporting season.
5. In autumn 2016 the Player consumed Mildronate, medication available over-the-counter in Russia which contains the prohibited substance meldonium. The circumstances surrounding his consumption of the product, including his intent for doing so, are disputed and summarized below together with the parties' respective arguments.
6. On 21 April 2017, the Player was the subject of a doping control. On 19 May 2017, the "A" sample analysis showed an Adverse Analytical Finding for the presence of meldonium. He was suspended by RUSADA the same day.
7. The Player waived his right to a "B" sample analysis and did not contest that the Adverse Analytical Finding constitutes an Anti-Doping Rule Violation ("ADRV").
8. He requested a hearing before the RUSADA Disciplinary Anti-Doping Committee ("DADC"), prior to which he submitted a witness statement alleging an ADRV by the Club team doctor, whom he alleges gave him permission to consume the Mildronate. He did so under the "*substantial assistance*" provision of the Anti-Doping Rules approved by the order of the Ministry of Sport of the Russian Federation of 9 August 2016 No. 947 (the "ADR"), seeking to mitigate an expected sanction.
9. On 28 June 2018, the DADC imposed a period of ineligibility of four years on the Player by way of its Decision No. 97/2018 date 28 June 2018 (the "Appealed Decision"). The reasoned decision was received by the Player on 26 March 2019.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

10. On 16 April 2019, the Appellant filed its Statement of Appeal against the Respondent with respect to the Appealed Decision in accordance with Article R47 of the Code of Sports-related Arbitration (the "Code"). In his Statement of Appeal, the Appellant requested that this procedure be referred to a Sole Arbitrator.
11. On 18 April 2019, the CAS Court Office confirmed receipt of the Statement of Appeal and invited the Respondent to submit its views concerning the appointment of a Sole Arbitrator.
12. On 19 April 2019, the Respondent agreed that the case be submitted to a Sole Arbitrator.
13. On 26 April 2019, the Appellant filed his Appeal Brief, pursuant to Article R51 of the Code.
14. On 30 April 2019, the CAS Court Office notified the parties that the Deputy President of the CAS Appeals Arbitration Division had appointed Mr Alexander McLin, Attorney-at-Law in Geneva, Switzerland, as Sole Arbitrator.
15. On 30 May 2019, the Respondent filed its Answer pursuant to R55 of the Code.

16. On 21 and 24 June 2019, the Appellant and Respondent, respectively, signed and returned the Order of Procedure.
17. A hearing was held on 25 June 2019 at the CAS Court Office in Lausanne.
18. The Sole Arbitrator was assisted by Mr Brent Nowicki, Managing Counsel to the CAS. The Appellant was represented by Mr Mikhail Prokopets and Mrs Maria Tokmakova. The Respondent was present at the hearing and represented by Mr Graham Arthur, assisted by Mrs Alexandra Jurema, interpreter.
19. The following individuals provided testimony at the hearing:
 - a. For the Appellant:
 - Mr Roman Balandin, Appellant (via video link) ;
 - Mr Sergey Demidyuk, witness (via video link);
 - Mr Vladimir Rodionov, witness (via video link).
 - b. For the Respondent:
 - Dr Vladimir Syrchikov (via video link).
20. At the outset of the hearing, the parties confirmed that they had no objection to the Sole Arbitrator deciding this appeal. At the conclusion of the hearing, the parties confirmed that their right to be heard had been fully respected. A summary of the parties' arguments and evidence presented at the hearing is set out below.

IV. SUBMISSIONS OF THE PARTIES

21. The Appellant's submissions, in essence, may be summarized as follows:
 - Given that the commission of an ADRV by the Player is uncontested, the issues in this case are (1) whether the ADRV falls within the definition of "*intentional*" per the ADR, and, if not, (2) whether a fault-related reduction to the period of ineligibility imposed on the Athlete can be made.
 - The Player's ADRV was not intentional within the meaning of the ADR. The term is defined in Article 10.2.3 of the ADR as follows:

"Athletes who cheat. The term, therefore, requires that the Athlete or other Person engaged in conduct which he or she 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”.

- The rule should be applied in keeping with previous cases which interpreted the rule, in particular that of the ITF Independent Tribunal in *ITF and Maria Sharapova* dated 6 June 2016 (the “*Sharapova* case”), which reasoned as follows:

“68. It is clear from the wording of article 10.2.3 that whether conduct is intentional is to be judged on the actual knowledge of the player, not on the basis of what she ought to have known or understood. It is accepted by the ITF that her belief was that Mildronate was not a Prohibited Substance. On that basis of belief she did not know she was running a risk in taking Mildronate. She understood that the Prohibited List might from time to time be amended but she did not know or believe that it had been changed to make Mildronate a Prohibited Substance.

69. The ITF argument conflates the two elements of the test prescribed by the second limb of article 10.2.3. The first element is based on knowledge, the second on manifest disregard of the known risk. The second element may involve considering what steps the player took or ought to have taken, but the first element depends on the actual knowledge of the player”.

- The Player, having lived in rural environments most of his life was isolated and unaware of meldonium and its status as a prohibited substance. Like any ordinary person, he did not consider that commonplace medication that is neither an anabolic agent nor a stimulant could be considered as doping.
- In the autumn of 2016, the Player and his teammate Artyom Limonov, who had a cold, went to a pharmacy seeking medicine for Mr Limonov and vitamins in order to help fight colds and stay healthy during the season. At the pharmacy, they saw an advertisement for Mildronate (a supplement containing meldonium), which was recommended in order to help the body overcome fatigue. The two decided to buy it given that the whole team had taken it previously on the recommendation of the club’s doctor, though they had stopped doing so approximately in early 2016.
- Before purchasing and starting to use Mildronate, they checked with the team doctor, Vladimir Syrchikov, who confirmed that they could take it. The Player then consumed two capsules per day for a few days. Mr Limonov then learned from his father that meldonium was prohibited in sports, after which both athletes ceased taking the substance.
- After both Mr Limonov and Mr Balandin tested positive to meldonium, Dr Syrchikov had a conversation with the Club’s president, Vladimir Rodionov, in which he admitted his fault in allowing the two athletes to use meldonium. This ultimately led to his dismissal from the Club.

- The Player lacked any formal anti-doping education. As a result, it was difficult for him to conceive that a substance that he and his teammates had used previously could become prohibited all of a sudden.
- Regarding the second element of “*intention*” (manifest disregard of the risk to commit an ADRV), the Player took the most efficient means of determining whether or not he could consume the substance: he consulted with the team doctor. Lacking formal anti-doping education, he was unaware of the need to double-check the information he received from him.
- The Player accepts that his behavior was careless and negligent, though not significantly so, and most definitely not intentional. This is supported by the fact that as soon as he learned that meldonium was prohibited, he immediately stopped taking it.
- In light of the lack of intent, the maximum sanction for the Athlete’s ADRV is two years of ineligibility.
- Regarding the reduction of the Player’s sanction for fault-related reasons, while he admits that he did not use “*utmost caution*” and therefore cannot seek a reduction under the “*No Fault or Negligence*” rationale of Article 10.4 ADR, he considers his level of fault not to have been significant within the meaning of Article 10.5.2 ADR, which provides as follows:

“If an Athlete or other Person establishes in an individual case where Article 10.5.1 is not applicable, that he or she bears No Significant Fault or Negligence, then, subject to further reduction or elimination as provided in Article 10.6, the otherwise applicable period of ineligibility may be reduced based on the Athlete 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”.

- “*No Significant Fault or Negligence*” is defined in the ADR as:

“The Athlete or other Person’s establishing that his or her Fault or negligence which viewed in the totality of the circumstances and taking into account the criteria for no Fault or Negligence, was not significant in relationship to the anti-doping rule violation. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system”.

- According to CAS jurisprudence, the threshold for establishing No Significant Fault (“NSF”) “*must not be set excessively high*”, as it would otherwise be impossible for a hearing panel to determine an appropriate period of ineligibility within a wide range of sanctions for an ADRV (CAS 2005/A/847). “*CAS jurisprudence has found that the threshold of NSF is met if the athlete observes the clear and obvious precautions which any human being would take in the specific set of circumstances*” (CAS 2016/A/4416). A finding of NSF must be established “*in view of the totality of the circumstances*”; “*the ‘bar’ should not be set too high for a finding of NSF. In other words, a claim of NSF is (by definition) consistent with the existence of some degree of fault and cannot be excluded simply because the athlete left some ‘stones unturned’.* As a result, a deviation from

the duty of exercising ‘utmost caution’ does not imply per se that the athlete’s negligence was ‘significant’” (CAS 2016/A/4643).

- While the Player “*left some stones unturned*” given that he did not personally cross-check the ingredients of Mildronate against the WADA Prohibited List, he acted in keeping with the standard of care that could be expected of a reasonable person by consulting the team doctor for professional advice. According to CAS 2016/A/4643, it is permissible for an athlete to delegate elements of his or her anti-doping compliance obligations. In such circumstances, the athlete’s degree of fault to be assessed is that attributable to his or her choice of delegate and extent (or failure) of supervision thereof.
- The Player, who was very young and lacked knowledge or an entourage, reasonably consulted the team doctor and relied on his advice. In addition, knowing that Mildronate had been prescribed to “*nearly every player*” at the Club in 2015 suggested the substance was “*safe and harmless*” in character.
- In light of this, the NSF reduction to the Player’s non-intentional ADRV should lead to a period of ineligibility in the range of 12 to 24 months per Articles 10.2.2 and 10.5.3 ADR. Applying the factors to assess degree of fault from CAS 2013/A/3327 and CAS 2013/A/3335 (the “*Cilic case*”), and CAS 2017/A/5110 (the “*Johaug case*”), and considering the Player’s lack of formal anti-doping education analogous to the situation in CAS 2012/A/3029 (the “*West case*”), the Player’s degree of fault should be considered as “*normal*” and leading to a sanction of no more than 16 to 20 months of ineligibility.
- The Appellant makes the following requests for relief:

“The Appellant hereby respectfully asks the Court of Arbitration for Sport to rule as follows:

- 1) *The appeal filed by Mr. Roman Balandin is upheld;*
- 2) *The Appealed Decision no. 97/2018 issued on 28 June 2018 by the RUSADA Disciplinary Anti-Doping Committee is set aside;*
- 3) *Mr. Roman Balandin’s Anti-Doping Rule Violation is considered unintentional with the maximum sanction of 24 months of Ineligibility commencing on 19 May 2017;*
- 4) *Mr. Roman Balandin’s sanction is further reduced under the ‘No Significant Fault or Negligence’ to a period of Ineligibility within the range of 16-20 months at the Panel’s discretion commencing on 19 May 2017;*
- 5) *RUSADA shall bear all costs incurred with the present procedure;*
- 6) *RUSADA shall pay to Mr. Roman Balandin a contribution towards his legal and other costs, in an amount to be determined at the discretion of the Panel”.*

22. The Respondent’s submissions, in essence, may be summarized as follows:

- The Player has committed an Article 2.1 ADR ADRV, involving a Non-Specified Substance. The mandatory sanction for such a violation is a period of Ineligibility of four years, which the Player can avoid if he can demonstrate that his violation was not intentional. If he can demonstrate not only that his violation was unintentional but that in addition he acted with No Significant Fault, the period of Ineligibility can be reduced to no less than one year.
- The Player is unable to meet the burden of proving that he acted unintentionally.
- According to CAS jurisprudence, for intent to be established, it is sufficient that there be a situation in which an athlete's conduct might constitute or result in an anti-doping rule violation and for the athlete to manifestly disregard that risk. There is no need to prove in addition to this that there was a separate and distinct intent to cheat on the field of play (CAS 2016/A/4512).
- So as to demonstrate that the Player did not act intentionally, he must be able to demonstrate that he did not act in such a way as to create a significant risk of a violation occurring, or, in the event such a risk existed, did not "*manifestly disregard*" it. This means that the Player must explain the circumstances in which he came to ingest the Prohibited Substance and be able to establish that such circumstances fall outside the scope of the definition of "*intentional*".
- In CAS 2016/A/4609 (the "*Pereira* case"), a CAS panel found that a football player who received a series of injections from his medical advisors should have known that there was a significant risk that his conduct might constitute an ADRV, and the fact that he did not even attempt to verify whether the medication contained any prohibited substances meant that he manifestly disregarded the risk.
- In CAS 2017/A/5139 (the "*Da Costa* case"), an athlete who attributed an ADRV to a testosterone gel that had been prescribed by his medical advisors did not succeed in meeting his burden of disproving intention, despite his limited educational background, cultural environment and intellectual capacities.
- The testimony given by the Player before the RUSADA DADC is inconsistent with that provided before CAS, in particular the alleged presence of Mr Demidyuk during the encounter with Dr Syrchikov, who was not previously mentioned by either the Player or Mr Limonov in their testimony before the DADC.
- Since RUSADA does not believe that the evidence is sufficient for the Player to prove that his conduct was unintentional, it does not believe that an analysis as to his degree of fault is necessary. However, in the event his conduct is found not to be intentional, the totality of the circumstances is such that it is clear that the Player knew there was a risk associated with his use of Mildronate, and that he significantly failed to manage this risk. Applying the jurisprudence from CAS 2016/A/4416 and the *Cilic* case, the circumstances called for a high degree of care, which the Player did not meet.

- The Respondent makes the following requests for relief:

“RUSADA says that —

- (...).1 *Mr Balandin has committed an Anti-Doping Rule Violation contrary to ADR Article 2.1;*
- (...).2 *The Consequences to be applied in respect of the Anti-Doping Rule Violation are that a period of Ineligibility of four years be imposed;*
- (...).3 *If it is found that Mr Balandin did not act intentionally, the Consequences to be applied in respect of the Anti-Doping Rule Violation are that a period of Ineligibility of two years be imposed;*
- (...).4 *There are no grounds for reducing the period of Ineligibility to less than two years;*
- (...).5 *The period of Ineligibility should commence on the date the Provisional Suspension was imposed;*
- (...).6 *If a reduction of the period of Ineligibility of two years is deemed warranted pursuant to the ADR that this reduction should result in imposition of a period of not less than twenty months’ Ineligibility.*
- (...) *RUSADA respectfully requests that costs be awarded to RUSADA in accordance with Rule 64.4 and Rule 64.5 of the Code of Sports-related Arbitration (in force from 1 January 2017)”.*

V. THE HEARING

- 23. At the hearing, the following evidence was given:
- 24. Mr Balandin explained how he had gone to the pharmacy with Artyom Limonov because he had asked him to, and that Mr Limonov had seen the ad for Mildronate. Mr Limonov asked Mr Balandin if he had used it before, and Mr Balandin responded that he had, “*a long time ago*”, that the drug did not really feel like it had done anything but that it had been recommended by the Club. Given the cost of the drug, Mr Limonov said that they probably needed to check with the team doctor to see if they could take it. They did this, and after he “*said yes*”, they returned to the pharmacy to buy it. Mr Balandin recalled that Mildronate had last been given to him by the Club in August 2015. When asked why this had stopped, he explained that sometimes the Club didn’t have enough money, and he imagined that this was the reason they were no longer being supplied with Mildronate. When asked why he consumed the drug if he believed it did not have any effect, he responded that he consumed the drug “*like vitamins*” and that he believed it to be useful to stay healthy. He claimed not to have any knowledge of the *Sharapova* case as he was not interested in the matter. He also mentioned that he was not familiar with the ADR,

though he generally knew that one was not supposed to use anabolic steroids. No one had made him familiar with the ADR, even when he signed his contract with the Club. When asked why he believed that Dr Syrchikov had agreed to let him and Mr Limonov use Mildronate, he responded that Dr Syrchikov probably thought that he would not be tested. He mentioned that when he had spoken to Dr Syrchikov prior to the instant proceedings, he had told him that he was not angry at him, but asked him to tell the truth. When asked whether he had asked Dr Syrchikov for an explanation, after he and Mr Limonov had found out from the latter's father that meldonium was prohibited, Mr Balandin stated that they went back to him and that Dr Syrchikov had made them understand that they were not at risk of being tested.

25. Mr Demidyuk explained that he had been present when Messrs Balandin and Limonov had first asked Dr Syrchikov about whether they could use Mildronate, as he was taping his knee in the same room prior to practice. He heard that the doctor answered "*yes, take it, why not?*", and did not say more as all of the players were hurrying to get to practice. When asked whether anyone had told him about the ADR and/or the Prohibited List, Mr Demidyuk responded that yes, he had been told, but he was not interested in what they meant until after Mr Balandin and Mr Limonov received their (positive) test results. He explained that he came forward and offered to act as a witness as he had been present and believed it was unjust for Mr Balandin and Mr Limonov to "*suffer*" when it was not their fault. He also mentioned that it was not unusual for Dr Syrchikov to be asked about the use of substances.
26. Mr Rodionov explained that he had been President of the Club since the 1980s and was now its owner. He considered that Dr Syrchikov had been negligent in not telling Mr Balandin and Mr Limonov not to use Mildronate. He believed that as Dr Syrchikov had previously been working in a hospital as a nurse, that he was unfamiliar with the ADR and should have done more to inform himself and others. No seminars had been conducted within the Club on this issue. Mr Rodionov considered that it was Dr Syrchikov's responsibility to educate athletes about the ADR, and that it was "*80% his fault*" that Mr Balandin was facing a four-year ban. He said that while Dr Syrchikov had probably denied that he had permitted the Player to use Mildronate, that he was nevertheless aware that they had consumed it and had failed to stop them from doing so. He denied having asked Dr Syrchikov to change his testimony so that the players would not have to face sanctions. He did state that he had a conversation with Dr Syrchikov in which he asked him to "*confess and tell the truth*" as it was "*(80% his responsibility)*". He mentioned that the outcome would have been different in the "*A team*", where athletes make enough money to have an entourage to advise them, however "*youths know nothing*".
27. Dr Syrchikov explained that he informed athletes of the content of the ADR, and that before each season they would sign a declaration that they were aware of the ADR. He confirmed that he remembered that Mildronate became prohibited on 1 January 2016, and that players had been given Mildronate by the Club prior to this date. He said that information about the Prohibited List had been communicated to the whole team at the beginning of the season. He mentioned that he had informed the team that they were not supposed to use Mildronate immediately when he found out it would be banned, about two months before it was included on the Prohibited List, as he had been surprised about this. He informed the players that they could look up prohibited substances on the WADA website. Regarding the conversation with Artyom Limonov, he had told him that if he took the substance and he would be tested, he

would be banned. He believed that the player thought he would not be tested. He recalls that there were other players listening.

VI. JURISDICTION

28. 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.

29. Article 13.2 ADR provides:

13.2.1 Appeals concerning athletes of international level or international sporting events. If the violation occurred during an international sporting event or if athletes of international level are involved, an appeal for the award must be submitted solely to the CAS.

13.2.2 Appeals concerning other athletes or other persons.

13.2.2.1. In cases in which subparagraph 13.2.1 of the Rules does not apply, an appeal for a decision must be submitted exclusively to the CAS.

30. The jurisdiction of CAS derives from the above provisions of the ADR and the Code.

31. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the Appellant and the Respondent.

32. The CAS, therefore, has jurisdiction to decide this appeal.

VII. ADMISSIBILITY

33. Article R49 of the Code provides as follows:

In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.

34. The concluding paragraph of the Appealed Decision provides that “*In accordance with chapter 13 of the Russian Anti-Doping Rules the decision of Disciplinary Anti-Doping Committee may be appealed to the Court of Arbitration for Sport, Lausanne, Switzerland within 21 (twenty-one) days*”.

35. Article 13.6 ADR provides:

The period for filing an appeal with the CAS is twenty-one days from the date of receipt of the decision by the party filing the appeal.

36. The Appellant received the reasoned DADC decision on 26 March 2019.
37. The Appellant submitted his Statement of Appeal on 16 April 2019.
38. The appeal is, therefore, admissible.

VIII. APPLICABLE LAW

39. 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, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.

40. Article 187(1) of the Swiss Private International Law Act (“SPILA”) provides as follows:

The arbitral tribunal shall decide on the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to the rules of law with which the case has the closest connection.

41. Article R58 of the Code provides more specifically as follows:

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

42. Article 1.3.3.1 ADR provides that the ADR are applicable to:

a) all athletes who are citizens or residents of the Russian Federation, license holders or members of sports organizations registered in the territory of the Russian Federation, including athletes who are not citizens or residents of the Russian Federation but located on the territory of the Russian Federation, as well as athletes participating in sports competitions organized by a sports organization registered on the territory of the Russian Federation.

43. The Appealed Decision was rendered on the basis of the ADR.

44. Article 20.5 ADR provides:

The Code and the International Standards shall be considered integral parts of these Anti-Doping Rules and shall prevail in case of conflict.

45. As a result, the applicable rules and regulations are the ADR and the World Anti-Doping Code (“WADC”) and its International Standards.

IX. MERITS

46. The Player does not contest that his consumption of Mildronate constitutes an ADRV, which the Respondent says necessarily leads to a four-year period of ineligibility unless the Player can prove lack of intent, given that the prohibited substance at issue is not a “*Specified Substance*” in the Prohibited List. Proving lack of intent would halve the applicable period of ineligibility under the ADR. Furthermore, in the event of lack of intent, the Player may be able to further reduce the applicable period of ineligibility by demonstrating that his level of fault was less than significant.
47. The issues for consideration in this case are therefore (A.) whether the ADRV was intentional in nature, and (B.) if it was not and rather resulted from negligence, whether or not the Player’s level of fault was significant.

A. Was the Player’s use of Mildronate intentional?

48. The Player emphasizes his lack of anti-doping education, his relative isolation (in particular from media reports of high-profile cases involving meldonium) and his young age and relative dependency on the Club’s medical staff for guidance as to which substances are and are not prohibited. His position is that prior to learning from his teammate’s father that the substance was indeed prohibited, he understood the consumption of meldonium to be not dissimilar from that of vitamins. It was, to him, a relatively innocuous substance with respect to performance enhancement (unlike, for instance, anabolic steroids), but rather one that could be useful in recovering from physical effort and in staving off illness during the autumn and winter months. The fact that Mildronate had previously been supplied by the Club seemed to indicate that it was not of the same nature as drugs that clearly had “doping” properties.
49. The Respondent correctly points out that the Player bears the burden of proving that his conduct was unintentional. In its view, the Player has not met this burden. The Respondent grounds its position in some specific precedent.
50. In CAS 2016/A/4512 (the “*Kuru* case”), a football player tested positive to a banned substance after failing to have obtained a Therapeutic Use Exemption (“TUE”) permitting the use of said substance for reasons unrelated to sport. The CAS found that such use was to be considered intentional as the player was aware of the existence of a risk which he recklessly disregarded. The existence of this risk, and the player’s awareness of it, was undeniable as the player had previously applied for a TUE which he was not granted. In ingesting a prohibited substance, he therefore acted in full knowledge of the illegal nature of his conduct (and full disregard of the associated risk).

51. The instant case presents some significant factual differences. The question of the level of awareness of the Player with respect to the status of meldonium as a prohibited substance at the time he ingested it must be assessed against the evidence presented. The Player here posits that he was trying to determine whether or not the consumption of Mildronate was permissible without a TUE (*i.e.*, whether it was prohibited at all). Submitting a TUE application is incontrovertible proof that the individual requesting the TUE is aware that, absent the TUE, the use of the substance would be prohibited. The conscious use of the substance thereafter, if not authorized, must therefore be an intentional ADRV. In the absence of a TUE request, and where the substance involved is not a "*Specified Substance*" under the Prohibited List, the Player must nevertheless meet the burden of proving that the use of the substance was unintentional, but this is not out of the realm of possibility.
52. A few other cases cited by the Respondent (CAS 2016/A/4845, 2016/A/4563, 2017/A/4962 and 2016/A/4534) refer to situations in which athletes tested positive to exogenous anabolic steroids claiming, without being able to sufficiently prove, that their ADRVs stemmed from contamination. In each of these cases, this was insufficient to meet the burden of proving lack of intent.
53. Nevertheless, the Player's burden is not an insubstantial one. The source of the prohibited substance is not contested. What is, however, is the extent to which the decision to consume Mildronate was such that it contained both sufficient risk, and sufficient disregard of that risk, as to constitute intent under the ADR. The Respondent has argued that by the time the Player chose to consume Mildronate, the perils associated with its use for athletes were common knowledge. The *Sharapova* case in particular had made headlines and the rounds on social media. As a result, the Player must convincingly demonstrate lack of awareness.
54. The case made by the Respondent that it is unlikely that Mr Balandin would have been unexposed to media or social media reports concerning the prohibited nature of meldonium is not unconvincing. Neither however is the Player's account of his relative isolation and disinterest with such matters. Finally, the levels of meldonium found in the Player's sample is not inconsistent with the dates and length of time he claims to have taken the substance, which, moreover, is not disputed.
55. As to the second prong of the intention test (whether or not Mr Balandin manifestly disregarded a risk that might have been present), the Player has provided not only his testimony, but that of Mr Demidyuk. Furthermore, the Respondent has provided the transcript of Mr Limonov before the DADC proceedings. All concur in the fact that there was a conversation with Dr Syrchikov which led them to believe that they were able to consume Mildronate without issue.
56. All of the accounts of this conversation provided by the Appellant, his witness and his teammate were such that it was brief, and that Dr Syrchikov's response to the question of whether or not they could use the substance was permissive in nature. Dr Syrchikov denies this, and rather explains that he had made the team aware of the forbidden nature of Mildronate, and the Player had only admitted to him that he had used Mildronate when he learned that he had been selected for doping control. At this point, Dr Syrchikov refers to a conversation he had with Mr Balandin

in the changing room of the Club in April 2017, where the latter allegedly admitted to having consumed Mildronate as late as February, and where he admonished Mr Balandin.

57. Curiously, while Dr Syrchikov states that this conversation took place *“in the presence of everybody who was in the changing room”*, the Respondent has not provided corroborating testimony. This contrasts with the Appellant’s approach, who has provided the testimony of Mr Demidyuk confirming his account and that of Mr Limonov.
58. In determining the intentionality of an ADRV, CAS has typically and unsurprisingly had to conduct fact-based and case-specific analyses. The instant case is no exception. Given that the source of the prohibited substance found in the Player’s sample, namely the Mildronate which, it is accepted, he ingested in 2016, the Sole Arbitrator is of the consideration that a number of factors are relevant to this analysis, including:
 - a. The Player’s relative experience level (with the sport and the ADR);
 - b. The Player’s general anti-doping education (or lack thereof);
 - c. The Player’s level of awareness of previous meldonium cases;
 - d. The Player’s motivation to consume Mildronate;
 - e. The circumstances surrounding the Player’s visit to the team doctor and the accounts of the various participants and witnesses (crucially);
 - f. The consistency of the Player’s explanations with the levels of meldonium found in his system.
59. While ignorance of the applicable rules is no defence to the ADRV, the extent of understanding that the Player had of the ADR and the Prohibited List is relevant to determining the extent of his intent, or more specifically in this case the extent of his awareness of the existence of a risk that his behaviour would result in an ADRV and the extent to which this risk was or was not disregarded. The evidence demonstrates, despite Dr Syrchikov’s assurances that he informed the team of where they could go online to look up which substances were prohibited, that the level of awareness about the anti-doping rules and anti-doping system was relatively low. Moreover, given the Player’s experience predominantly at the youth level, it was clear from both Mr Balandin and Mr Demidyuk, as well as Mr Rodionov, that unlike *“A team”* players who have advisers to help them ensure their anti-doping compliance requirements, youth players’ levels of understanding of the ADR are not particularly high.
60. This leaves the various explanations surrounding the manner in which Mr Balandin and Mr Limonov claim to have consulted Dr Syrchikov and obtained approval for their use of Mildronate. While in some respects it would seem unlikely for Dr Syrchikov to allow the use of a substance which he knew to have been prohibited, the fact that Mr Demidyuk confirmed the conversation carries some weight. Moreover, there is room for some degree of doubt or varying interpretation of Dr Syrchikov’s alleged reaction to the question. It is unclear, for example,

whether he told the two athletes to take it if they wanted to in a frustrated response to their question and if they took this to be approval. He may have believed that it was for them to make their own decisions based on information he believed they had. He may also have believed that, as evidenced in the transcript of Mr Limonov’s DADC hearing, they were unlikely to be tested as they were not playing for the national team at the time, and he did not forbid them entirely from taking a calculated risk. Either way, the Sole Arbitrator did not find Dr Syrchikov’s testimony to be particularly compelling despite the potential issues associated with the testimonies of the Appellant’s witnesses. He considers that a preponderance of the evidence tends to indicate that the Player and his teammate did seek out advice from Dr Syrchikov, which was not an unreasonable approach to informing themselves about the legality of the substance under the circumstances, and that Dr Syrchikov’s response could reasonably be interpreted as permissive.

61. This situation presented by the present case differs substantially from the precedent cited by Respondent. In the *Pereira* case, the substance at issue was an anabolic steroid administered by injection. The nature of administration was a clear red flag, and, unlike Mildronate, the substance did not have a recent history of being a permitted substance. In the *Da Costa* case, the name of substance at issue was clearly indicative of its contents, namely an androgenic steroid.
62. Taking these elements together, the Sole Arbitrator finds that the Player very narrowly, by a balance of probabilities, has met his burden of proving that his ADRV was not intentional. As a result, this case appears to be one of very few (along with CAS 2018/A/5583 and 2016/A/4676), in which an ADRV involving a non-Specified Substance was found not to be intentional. As in these cases, this conclusion “*should not accordingly be misused as creating some kind of precedent where inevitably the facts will be different*” (CAS 2018/A/5583).

B. Was the Player’s level of fault significant?

63. Article 10.5.2 ADR provides the following:

If an athlete or other person establishes in an individual case where Article 10.5.1 of the Anti-Doping Rules is not applicable, that he or she bears no significant fault or negligence, then, subject to further reduction or elimination as provided in Article 10.6 of the Anti-Doping Rules, the otherwise applicable period of ineligibility may be reduced based on the athlete 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 Article may be no less than eight years.

64. Both parties refer the *Cilic* guidelines under the 2009 WADC that were applied in a number of subsequent CAS cases, including *Sharapova*, under the 2015 WADC. These are as follows:

There are three degrees of fault which can be applied to the possible sanction range of 0-24 months: (a) significant degree or considerable fault, with a sanction range from 16-24 months, and a ‘standard’ significant fault leading to a suspension of 20 months; (b) normal degree of fault, with a sanction range from 8-16 months, and a ‘standard’ normal degree of fault leading to a suspension of 12 months; (c) light degree of fault,

with a sanction range from 0 to 8 months, and a ‘standard’ light degree of fault leading to a suspension of four months. In order to determine into which category of fault a particular case might fall, it is helpful to consider both the objective and the subjective level of fault. The objective element describes what standard of care could have been expected from a reasonable person in the athlete’s situation. The subjective element describes what could have been expected from that particular athlete, in light of his personal capacities. The objective element should be foremost in determining into which of the three relevant categories a particular case falls. The subjective element can then be used to move a particular athlete up or down within that category. In exceptional cases, it may be that the subjective elements are so significant that they move a particular athlete not only to the extremity of a particular category, but also into a different category altogether. That would be the exception to the rule, however.

65. The *Cilic* guidelines have evolved to a relatively minor extent over time and were found to be applicable to the fault analysis under the 2015 WADC in *Sharapova*, and notably in CAS 2016/A/4371 [...], which found that:

“[b]ecause the language of Article 10.5.1.1 [of the 2015 WADC] is different from Article 10.4.1 of the 2009 WADC (which did not require an initial determination of whether the athlete’s degree of fault is ‘significant’), it is necessary to modify slightly the descriptions of the three categories of fault as follows:

- a. ‘considerable degree of fault’: 16-24 months, with a ‘standard’ considerable degree of fault leading to a suspension of 20 months.*
- b. ‘moderate degree of fault’ (preferable to ‘normal degree of fault,’ which sends the wrong message): 8-16 months, with a ‘standard’ moderate degree of fault leading to a suspension of 12 months.*
- c. ‘light degree of fault’: 0-8 months, with a ‘standard’ light degree of fault leading to a suspension of 4 months”.*

66. Despite the fact that the Player was not particularly experienced at the time he made his decision to take Mildronate, he nevertheless was a professional athlete who could have (and should have) taken basic additional steps towards ensuring that the substance he was ingesting was not prohibited (which it was). Even if consulting the team doctor was a logical step in assessing whether or not he should consume a particular substance, a simple Internet search would have yielded enough information to have a more educated discussion about the substance, undoubtedly leading to the inevitable conclusion that the substance was not to be used. The Sole Arbitrator finds it surprising that the Appellant, being a young professional seeking to pursue a career in basketball, was not more curious about his responsibilities and appears to have been led in part by his teammate to a bad decision which has proven to have dire consequences.

67. As a result, the Sole Arbitrator finds that there are no grounds upon which to reduce his level of fault, finding it significant and considerable.
68. As determined above, Mr Balandin has met the burden of proving that the ADRV was not intentional, meaning that his period of ineligibility is reduced from four years to two years under Article 10.2.2 ADR. He was not able to demonstrate, however, that his level of fault was any

less than significant under Article 10.5.2 ADR, meaning that his period of ineligibility cannot be reduced any further.

69. The Player has been ineligible to compete since he was temporarily suspended on 19 May 2017. The Sole Arbitrator sees no grounds for changing the start date of his period of ineligibility. As a result, his 2-year period of ineligibility begins on 19 May 2017.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Roman Balandin on 16 April 2019 against the decision issued by the RUSADA Disciplinary Anti-Doping Committee on 28 June 2018 is partially upheld.
2. The decision issued by the RUSADA Disciplinary Anti-Doping Committee on 28 June 2018 is set aside.
3. Mr Roman Balandin is sanctioned with a two-year period of ineligibility commencing as from the date of his provisional suspension (*i.e.* 19 May 2017).
4. (...).
5. (...).
6. All other motions or prayers for relief are dismissed.