Arbitration CAS 2008/A/1513 Emil Hoch v. Fédération Internationale de Ski (FIS) & International Olympic Committee (IOC), award of 29 January 2009

Panel: Prof. Ulrich Haas (Germany), President; Mr Hans Nater (Switzerland); Mr Michele Bernasconi (Switzerland)

Cross-country skiing
Doping (assistance to an anti-doping rule violation)
CAS power of review and breach of procedural fundamental principles
Serious antidoping offence
Calculation of the ineligibility period in case of multiple anti-doping rules violation

1. **The CAS has full power to review the facts and the law of an appeal, and therefore hears the case *de novo*, without being limited by the submissions and evidence that was available to the initial procedure. Furthermore, the procedural principles of the arbitration tribunal's independence and impartiality and of "fair proceedings" are guaranteed to a similar extent as before the state courts. Therefore, the breach of procedural fundamental principles in the initial proceedings can no longer be alleged in the appeal arbitration proceedings before CAS because the *de novo* hearing has cured any lack of due process in the decision appealed against.**

2. **Is considered to be a serious anti-doping offence an anti-doping offence that consists in providing substantial help for multiple third-party anti-doping rule violations; this is also the case for persons involved in a larger doping conspiracy and thus demonstrating a high degree of criminal energy, and where the doping practices are particularly dangerous for the athletes concerned.**

3. **A lifetime ban is only justified where the seriousness of the offence is most extraordinary, for instance, where an intentional assistance to anti-doping rules violation is committed on a minor or for the leader of a doping conspiracy. However, a lifetime ban is not proportionate so long as one cannot exclude that other people, including higher-ranking officials, pulled the strings in the doping conspiracy, even if the person accused had a decisive responsibility in the doping scandal, but not the sole or supreme leadership responsibility.**

Emil Hoch (the "Appellant"), who was born on 15 June 1964, is an Austrian citizen and was the trainer (coach) of the Austrian cross-country ski team at the Winter Olympic Games in Turin, Italy, in 2006 (the "Torino 2006 Olympic Games"). He held a trainer licence from the Austrian Ski

Federation (ÖSV), which in turn is a member of the First Respondent. Today the Appellant is the coach of the cross-country national team of Liechtenstein.

The International Ski Federation (the "First Respondent" or FIS) is the international sports federation governing the sport of skiing worldwide. FIS is an association incorporated and existing under the laws of Switzerland. It has its seat in Oberhofen, Switzerland.

The International Olympic Committee (the "Second Respondent" or IOC) is the supreme authority of the Olympic Movement and was the organiser of the Torino 2006 Olympic Games. The IOC is an association incorporated and existing under the laws of Switzerland. It has its seat in Lausanne, Switzerland.

The Appellant and the Respondents will hereafter be collectively referred to as "the Parties".

During the Torino 2006 Olympic Games (February 2006) the Appellant shared a room with Mr Markus Gandler, the Austrian team director, in a private house on Via Banchetta in Pragelato. The house was located a short distance from the chalet in which the athletes of the Austrian cross-country ski team were housed (Messrs Martin Tauber, Roland Diethart, Jürgen Pinter, Johannes Eder). These athletes were under the care of and trained by the Appellant.

On the night of 18 February 2006 the Italian police executed a search warrant in the accommodation of the Austrian cross-country ski team and support staff in Pragelato. In the course of the search the police seized various items, both in the chalet, in which the athletes were housed, and in the building in which, among others, also the Appellant lived during the Torino 2006 Olympic Games.

The Italian police documented the search in a written record. According to said record (in translation) a bag belonging to the Appellant and containing the following items was seized in the room occupied by the Appellant and Mr Markus Gandler:

"a. three containers for renal infusion equipment (evidence 'B'),

b. one phial for infusion brand name Kochsalz 'Braun 0.9%' (evidence 'C')

c. one needle with tubes and testing device intravenous drip (evidence 'D')

d. one phial for infusion brand name Kochsalz 'Braun 0.9%' (evidence 'E')

e. one phial for infusion brand name Kochsalz 'Braun 0.9%' containing liquid (evidence 'F')

f. one plastic container with red top labelled 'Hemcure' (evidence 'G')

g. one apparently empty phial for infusion brand name Kochsalz 'Braun 0.9%' (evidence 'H')

h. two glass phials containing liquid brand name 'Hatriumchlorod' 0.9% with cannulas and needles with blood (evidence 'I')

l. one plastic container with probable traces of blood (evidence 'L')

m. two corks for needles with case (evidence 'M')

n. one butterfly needle with probable traces of blood (evidence 'N')

o. five handkerchiefs with probable traces of blood (evidence 'O')

p. one plastic packet with a white substance (evidence 'P')

q. twelve pieces of plastic with red substance and plastic tops (evidence 'Q')

r. one glass container (evidence 'q')

s. one glass container with plastic top and metal bands (evidence 'R')

t. one glass container containing liquid (evidence 'S')".

In addition, according to the record, the Italian police seized the following further items from a dustbin at the entrance to the apartment, which was adjacent to the bedroom occupied by the Appellant and Mr Markus Gandler:

"a. three containers for intravenous drip containing liquid (evidence 'T')

b. five sterile needles (evidence 'U')

c. seven silver-coloured packets labelled 'Serafol Abo' (evicende 'V')

d. ten sterile intravenous drip cannulas (evidence 'Z')

e. three small corks with needles (evidence 'AA')

f. five 10 ml syringes with no needles (evidence 'AB')

g. one plastic syringe (evidence 'AC')

h. one yellow bag containing two pieces of paper handkerchiefs probably stained with blood, one needle cork and two plastic containers for syringe needles (evidence 'AD')".

The search record bears the following note:

> *"Si da atto che presente verbale è stato tradotto in forma integrale mediante lettura dal Brigadiere CC PECMLANER Helmut in forza alla Regione CC Trentino Alto Adice conoscitore della lingua Tedesca con mansioni di interprete … f.l.c.s. ALLE ORE 00.20 DEL 19.02.06".*

In translation:

> *"It is hereby attested that this record was translated in its entirety by being read aloud by Brigadiere CC PECMLANER Helmut, the member of the Caribinieri of the Trentino-South Tyrol region with a good command of the German language, acting as an interpreter. … Drawn up, read, confirmed, signed on 19.2.2006 at 00.20 am".*

The Appellant admits having collected the medical items found in his bag from the athletes at their home in order to dispose of them.

Immediately after the police had conducted the search the Appellant left Turin before daybreak to drive home to Austria.

As a result of the above-mentioned events various proceedings were initiated – amongst others – by the IOC and the FIS:

The IOC instituted proceedings against the athletes of the Austrian cross-country ski team (Messrs Tauber, Diethart, Pinter, Eder). All of them were declared by the IOC to be permanently ineligible for all future Olympic Games. The athletes filed an appeal against this disciplinary sanction with the CAS. By decision dated 4 January 2008 the CAS dismissed the appeals by Messrs Eder, Tauber and Pinter (CAS 2007/A/1286, 1288, 1289). By decision dated 4 January 2008 the CAS partially upheld the appeal filed by Mr Diethart and reduced the period of his ineligibility (CAS 2007/A/1290).

FIS also instituted doping proceedings against the above-mentioned four athletes by reason of the events at the Torino 2006 Olympic Games. By decision of 22 November 2007 the FIS Doping Panel ("FDP") convicted all but one of the athletes, namely Mr Pinter. While the FDP's decisions in the cases concerning Messrs Eder and Tauber have become final and unappealable, the other two proceedings are pending before the CAS. However, FIS also instituted proceedings against the Austrian team's athlete support personnel, in particular against Mr Markus Gandler, Prof. Peter Baumgartl, the medical doctor responsible for the Austrian Nordic team, and the Appellant. While the first two persons were acquitted because of a lack of evidence, the proceedings before the FDP against the Appellant were concluded on 28 February 2008 with a conviction as follows:

> *"… the Panel rules that:*
>
> 1. *regarding the violation of Article 2.6.2 the Respondent, Emil Hoch is declared ineligible from participating directly or indirectly in any capacity in any FIS sanctioned events for a period of two years;*
> 2. *regarding the violation of Art. 2.8 the Respondent, Emil Hoch is declared ineligible from participating directly or indirectly in any capacity in any FIS sanctioned event for life;*
> 3. *(…)".*

On 18 March 2008 the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport (the CAS) against the decision issued on 28 February 2008 by the FDP. In his Statement of Appeal the Appellant requested a stay of execution of the FIS decision in accordance with Art. 13.1 of the FIS Anti-Doping Rules ("FIS ADR").

On 9 April 2008 the Appellant filed his Appeal Brief with the CAS.

On 25 April 2008 the Deputy President of the CAS Appeals Arbitration Division dismissed the Appellant's request for a stay of execution.

On 29 April 2008 the IOC filed a Statement of Intervention in accordance with Art. R41.3 of the Code of Sports-related Arbitration (the "Code").

After granting the Parties the right to be heard on the IOC's intervention the Panel issued a decision dated 27 June 2008 by which the IOC was allowed to participate as Co-Respondent (i.e. Second Respondent), together with the FIS in the arbitration procedure CAS 2008/A/1513 initiated by the Appellant.

By letter dated 25 July 2008 the IOC filed its Answer with the CAS.

By letter dated 8 August 2008 the First Respondent informed the IOC that it would not file further observations in reply to the Answer submitted by the IOC.

By letter dated 21 August 2008 the Appellant informed the CAS Court Office that it would not file a Reply to the submissions of the IOC.

By letters dated 15 September 2008 the Appellant and the Second Respondent, and by letter dated 16 September the First Respondent, waived their right to a hearing. Furthermore, the Parties instructed the Panel to take its decision on the basis of the parties' entire written submissions.

By letter dated 23 September 2008 the Panel submitted a list of questions to the Appellant and to the First Respondent to answer which they did by letters dated 29 and 26 September 2008 respectively. All Parties were given the opportunity to respond to the answers submitted by the Appellant and by the First Respondent. Furthermore the Parties expressly stated that their right to be heard had been observed throughout the proceedings by the Panel.

The Appellant in his Appeal Brief dated 9 April 2008 requests the CAS *inter alia* to:

a) *change the challenged decision to the effect that the Appellant is cleared of the charges of having committed an anti-doping rule violation under Arts. 2.6.2 and 2.8 of the FIS ADR.*

b) *in the alternative the Appellant requests the CAS to quash the decision being appealed against and to find that the Appellant did not violate Arts. 2.6.2 and 2.8 of the FIS ADR.*

c) *in the second alternative the Appellant requests the CAS to quash the decision being appealed against and to refer the matter back to the FDP.*

The First Respondent, in its Answer dated 19 May 2008, requests the CAS *inter alia "to fully reject the appeal and to confirm the FDP's decision, and notably the sanction of ineligibility for life".*

The Second Respondent, in its Answer dated 25 July 2008, requests the CAS *inter alia "that the decision of the FDP regarding Mr Hoch be upheld".*

LAW

CAS Jurisdiction

1. Whether, and the extent to which, the Panel is competent to decide the present dispute is governed by Art. R47 of the Code. The provision stipulates three pre-requisites (cf. CAS 2004/A/748, no. 83), namely:

   - there must be a "decision" of a federation, association or another sports-related body,

- "the (internal) legal remedies available" must have been exhausted prior to appealing to the CAS and

- the parties must have submitted to the competence of the CAS.

2. The Appellant was convicted by the FDP based on Arts. 2.6.2 and 2.8 FIS ADR. The FDP is an organ of the FIS with the consequence that there is a "decision" in the sense of Art. R47 of the Code. According to Art. 13 FIS ADR a decision made by the FIS (i.e. the FIS Doping Panel) based on violations of the FIS ADR may be appealed exclusively to the CAS. There are no other internal appeals available against the decision, so the second pre-requisite of Art. R47 of the Code is also met. The fact that the parties have submitted to the jurisdiction of CAS follows from the applicable regulations, in particular Art. 13 FIS ADR, from the fact that all parties signed the order of procedure and from the fact that neither party has raised any objection as to the jurisdiction of the CAS. Accordingly, the jurisdiction is established.

Admissibility

3. It remained uncontested and is not at issue in the present proceedings that the Appellant's Appeal was filed in time.

4. According to Art. R49 of the Code the time limit for filing an appeal with CAS is 21 days unless the regulations of the sports federation or association concerned provides another time limit. In the present case, the decision of the FDP bears the date of 28 February 2008 so the Statement of Appeal filed with the CAS on 18 March 2008 was in due time.

Applicable Law

5. Art. R58 of the Code provides that 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 issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate.

6. In the present case the applicable regulations are the FIS ADR. The FDP based its decision on said rules, which are designed to implement the World Anti-Doping Code (the WADC). All of the Parties also referred to the FIS ADR in their written pleadings. Also, at no point did the Appellant claim that he was not bound by said regulation. Moreover, Art. 14 FIS ADR stipulates that each national Ski Association shall specifically provide that all Athletes, Athlete Support Personnel and Other Persons under the jurisdiction of the National Ski Association shall be bound by the FIS ADR.

Merits of the Dispute

7. The Appellant's appeal must be upheld if the decision by the FDP is unlawful. In the present case the Appellant is asserting both procedural (see (A) below) as well as substantive irregularities in the decision by the FDP (see (B) and (C) below).

A) Did the FDP comply with the procedural rules?

8. The Appellant considers the FDP's decision to be unlawful from a procedural aspect because it – allegedly – has a number of serious procedural defects. The Appellant is particularly claiming that the decision violates procedural fundamental rights enshrined in Art. 6(1) ECHR. These rights particularly include the right to a reasoned decision and the right to due process.

9. Whether and to what extent sports associations are bound by the ECHR in the context of their disciplinary jurisdiction is not clear. The Panel has serious doubts as to the applicability of the ECHR in said cases in view of Art. 1 ECHR. According to this provision only state authority, not private third parties, are bound to observe the rights under the Convention. Nevertheless, there are more and more authorities in legal literature advocating that the ECHR also applies directly to sports associations (cf TAYLOR/LEWIS (eds), Sport: Law and Practice, 2nd ed. 2008, Haywards Heath, pp. 516 *et seq*.). However, in the present case, this question can be left unanswered because not every breach of a procedural fundamental right constitutes a breach of Art. 6(1) ECHR. Thus, the decision by the European Court of Human Rights of 25 October 1995 in *Bryan v. United Kingdom* (Application no. 44/1994/491/573) reads as follows under marg. no. 40:

"As was explained in the Court's Albert and Le Compte v. Belgium judgment (10 February 1983, Series A no. 58, p. 16 para 29), even where an adjudicatory body determining disputes over 'civil rights and obligations' does not comply with Article 6 para 1 in some respect, no violation of the Convention can be found if the proceedings before that body are 'subject to subsequent control by a judicial body that has full jurisdiction and does provide the guarantees of Article 6 para 1'".

10. Under Art. R57 of the Code, CAS – in appeals arbitration proceedings – has full power to review the facts and the law of the case and therefore has full jurisdiction. In other words, the Panel hears the case *de novo*, without being limited by the submissions and evidence that was available to the FDP. Furthermore, the procedural principles of the arbitration tribunal's independence and impartiality and of "fair proceedings" are guaranteed to a similar extent as before the state courts. It follows from the decision of the European Court of Human Rights of 25 October 1995 (see supra para. 9) that in such case the (alleged) breach of procedural principles in the proceedings before the FDP can no longer be complained about in the present arbitration proceedings. This approach is also in line with this arbitration court's consistent case law. Accordingly, procedural deficiencies by the tribunals of an association are generally cured in CAS proceedings (cf. for example CAS 2007/A/1286, 1288 & 1289, pp. 16 and 17). This opinion is also in conformity with existing case law in Switzerland (cf. Judgment of the Swiss Federal Court dated 11 June 2001, A. v/ UEFA).

11. The Appellant has taken the opportunity to bring this Appeal before the CAS and has expressly confirmed that he was given the right to be heard and to be treated equally in these CAS proceedings. In light of this, the Panel finds that its *de novo* hearing of this case has cured any lack of due process in the FDP's decision and that it is therefore not necessary to consider whether or not the FDP did in fact afford due process to the Appellant.

B) The subject matter of the review

12. The Appellant was convicted by the FDP on the basis of Art. 2.6.2 and Art. 2.8 FIS ADR. The relationship between these two provisions is defined in Art. 10.6 FIS ADR ("Rules for certain Potential Multiple Violations"). Art. 10.6.1 FIS ADR provides:

"For purposes of imposing sanctions under Article 10.2, 10.3 and 10.4, a second anti-doping rule violation may be considered for purposes of imposing sanctions only if the FIS … can establish that the Athlete or Other Person committed the second anti-doping rule violation after the Athlete or Other Person received notice, or after FIS … made a reasonable attempt to give notice, of the first anti-doping rule violation; if the FIS cannot establish this, the violations shall be based on the violation that carries the more severe sanction".

13. In the present case the two infractions, with which the Appellant is charged are – indisputably – to be considered as one single anti-doping rule violation, not as two separate anti-doping rule violations. Therefore, the main criterion is the provision of the FIS ADR, which carries the more severe sanction.

14. For violations of Art. 2.8 FIS ADR, the period of ineligibility to be imposed is a minimum of four years up to lifetime ineligibility (cf. Art. 10.4.2 FIS ADR). For violations of Art. 2.6.2 FIS ADR, the period of ineligibility to be imposed is two years (cf. Art. 10.2 FIS ADR). Art. 2.8 FIS ADR therefore obviously carries the more severe sanction. If, in the present case, there is a violation of Art. 2.8 FIS ADR, there is no need to review Art. 2.6.2 FIS ADR because that provision then no longer has any independent significance any more. In that case, the Appellant and the Respondents would not have any independent legitimate interest in a finding of whether there has been a violation or not of Art. 2.6.2 FIS ADR in addition to a violation of Art. 2.8 FIS ADR. Therefore, the focus of the Panel's attention in the following review is on the question whether there has been a violation of Art. 2.8 FIS ADR.

C) The pre-requisites for a violation of Art. 2.8 FIS ADR

15. Art. 2.8 FIS ADR provides that:

"The following constitute anti-doping rule violations:

(…)

Administration or Attempted administration of a Prohibited Substance or Prohibited Method to any Athlete, or assisting, encouraging, aiding, abetting, covering up or any other type of complicity involving an anti-doping rule violation or any Attempted violation".

16. The provision covers numerous acts, which are intended to assist another or a third party's anti-doping rule violation. The assistance can constitute assistance provided in the preliminary stages before an offence is committed. However, it also covers acts, which are supposed to prevent an anti-doping rule violation from being discovered after it has been committed. The rule does not expressly stipulate how substantial the assistance has to be in order to fulfil the elements of Art. 2.8 FIS ADR. However, the standard is probably low because according to the wording even just *"any type of complicity"* is sufficient. In any event, though, an act of assistance for the purposes of Art. 2.8 FIS ADR requires that the person concerned is aware of the anti-doping rule violation committed by another party because otherwise there is no intent to assist a third-party act in the first place.

17. The starting point is that, in the present case, there has undoubtedly been a "third-party" anti-doping rule violation, namely by the athletes Eder, Tauber, Pinter and Diethart. This has been established by cases CAS 2007/A/1286, 1288 & 1289 and CAS 2007/A/1290. Having examined the decisions and also in the light of the Appellant's submissions, the present Panel has no reason to call into question the findings made in said cases. Therefore, in the present case, the only question that needs to be answered is whether the Appellant – knowingly – supported said anti-doping rule violations by the athletes.

D) Objective assistance

18. On the basis of the evidence submitted by the Respondents, the Panel considers that it has been established that the Appellant - objectively - assisted the anti-doping rule violations by the athletes. In cases 2007/A/1286, 1288 & 1289 and CAS 2007/A/1290 the athletes were found guilty of having been involved in blood doping and blood manipulation. Mr. Hoch himself admitted that he collected the used medical items, which the police seized from the bag in his room, from the athletes. It is easy to determine the nature of the pieces of evidence seized with the aid of the seizure record and the photographs. By means of the corresponding letters a photograph of each item can be definitively matched against the corresponding item listed in the seizure record.

19. Said medical items are, in the Panel's opinion – and as follows from the plausible and logical statements made by Prof. Don H. Catlin in his expert opinion – items which are typically used for manipulating blood and for blood doping. Merely disposing of the medical items for the benefit of the athletes therefore already exceeds the threshold for – objective – assistance within the meaning of Art. 2.8 FIS ADR.

E) Subjective components

20. On the basis of the evidence submitted by the Respondents, the Panel is also satisfied that the Appellant acted with the knowledge and intent required for Art. 2.8 FIS ADR.

21. In the present case the Panel concludes that the Appellant knew of the anti-doping rule violation from a number of pieces of circumstantial evidence. The Appellant had a special, close relationship with the athletes both in terms of physical proximity and in terms of subject matter. He lived in the direct vicinity of the athletes and was their coach. He went in and out of the athletes' accommodation and was therefore – due to his function – involved in all of the athletes' sports decisions. The fact that the Appellant disposed of the athletes' medical items shows that the Appellant – by reason of his closeness to the athletes – was involved in not only their sports decisions but also in their doping practices. Therefore, the Panel is satisfied that the Appellant rendered this assistance "for" the athletes. Although the Appellant claims that, as far as this is concerned, he acted upon the instruction of higher officials within the association, not for the athletes, the Panel considers this to be an irrelevant defensive lie because the Appellant was not in a position to name the persons above him in the hierarchy, who are supposed to have given him these instructions.

22. The fact that the used medical items were collected in order to assist the athletes in their doping practices also follows from the fact that, in this specific case, the medical items served no purpose other than doping practices. This is shown by the fact that some of the medical items found in the Appellant's bag could, from the outset, not be used for purposes that are permitted in sport. This is so with, for example, the blood bag seized from the Appellant's bag and which is designated in the seizure record as evidence "L" and "l". However, even as regards those items which could – at least in theory – possibly have a "dual use", i.e. could also be used for permitted purposes, the Appellant was unable to give any plausible explanation. The Appellant submitted that, particularly the used syringes found in the bag, were needed in connection with haemoglobin measurements with the haemoglobin meter. Said measurements would have had the purpose of preventing a protective ban on athletes because of the altitude at which the Torino 2006 Olympic Games took place. However, in the Panel's opinion, this is an irrelevant defensive lie because, according to the convincing and plausible statements by Prof. Don H. Catlin in his expert opinion, the altitude, at which the athletes lived and in which the competitions took place, did not have a significant influence on the haemoglobin concentration in the athletes' blood. However, this suggests that both the haemoglobin meter as well as the syringes were used on the athletes for prohibited, not for permitted, purposes.

23. The Appellant's submissions that the medical items were intended to make on-site drip infusions possible in the event of an emergency is, in the Panel's opinion, also an irrelevant defensive lie. For, in the present case, it is undisputed that at least the medical items seized from the Appellant's bag, had in fact been used. However, in that case the medical items cannot have been intended for a hypothetical emergency, as it is undisputed that there was no medical emergency in the Austrian cross-country ski team. Consequently, the medical items must obviously have been used for other purposes, i.e. for purposes that are prohibited in sport.

24. Also the other miscellaneous circumstances confirm the Panel's opinion that the Appellant helped the athletes with their anti-doping rule violation knowingly and intentionally. Thus, the Appellant did not collect any and all kinds of rubbish from the athletes, rather only the "suspicious" rubbish, i.e. he disposed of that rubbish which could incriminate the athletes. The explanation that precisely medical items – because of their nature – had to be disposed of

"carefully" and thereby by the Appellant does not appear to be very plausible. Firstly, the Appellant did not explain how he intended to dispose of it allegedly "carefully". The fact that the medical items were kept in a bag belonging to the Appellant in his room at least suggests the suspicion that the professional disposal of medical (special) rubbish was not in the forefront of the Appellant's mind when he acted. Rather, he was supposed to ensure that this rubbish would not be found on the athletes so as not to give rise to any suspicion of doping that might incriminate them.

25. The Appellant's rushed departure to return home following the search is, in the Panel's opinion, also an indication that the Appellant saw himself as part of the doping network, not as an innocent recipient of recommendations. Finally, another fact to support the view that the Appellant was more at the centre of the doping events in Pragelato than on the fringes thereof is the fact that a large number of other medical items were found in the vicinity of his room, namely in the dustbin; apart from the fact that they were mainly unused, said items largely corresponded to the ones which the Appellant had collected from the athletes.

26. To summarize, on the basis of the many pieces of circumstantial evidence and pieces of evidence submitted by the Respondents, the Panel is satisfied for the purposes of Art. 3 FIS ADR that the Appellant fulfilled the elements of the offence under Art. 2.8 FIS ADR.

F) Length of the sanction

27. The FDP suspended the Appellant for life.

28. For violations of Art. 2.8 FIS ADR, the period of ineligibility imposed shall be a minimum of four years up to lifetime ineligibility (cf. Art. 10.4.2 FIS ADR). Indeed violations of Art. 2.8 FIS ADR are considered particularly serious under the WADC.

29. CAS's jurisprudence makes it clear that a sanction imposed on an athlete or on athlete support personnel must respect the principle of proportionality. This is particularly so where – like in the present case – the applicable rules regarding the extent of the sanction allow ample scope. In that case the sanction imposed must be in line with the seriousness of the offence. In the present case the FDP fully exhausted the range of sanctions and imposed the highest possible sanction.

30. It seems to the Panel, as a matter of principle, that – in view of the specific circumstances of a case – a lifetime ban could be considered both justifiable and proportionate in doping cases even if the ban is imposed for a first violation. However, in the Panel's opinion this is only justified where the seriousness of the offence is most extraordinary. For instance, the FIS ADR consider a case to be particularly serious if the anti-doping rule violation under Art. 2.8 was committed on a minor.

31. In the present case the Panel is of the opinion that the offence committed by the Appellant is a serious offence. The Appellant provided substantial help for multiple third-party anti-doping

rule violations. He was thus involved in, so to speak, a larger doping conspiracy and thereby demonstrated a high degree of criminal energy. This is all the more so in that the doping practices in this specific case are particularly dangerous for the athletes concerned. However, the Panel is not satisfied that the offence has reached a level of seriousness that would justify imposing the highest possible sanction, i.e. preventing the Appellant from participating directly or indirectly in any FIS sanctioned event for the rest of his life. A sanction of that kind may be appropriate if the Appellant was the principal or the leader of the doping conspiracy surrounding the Austrian cross-country ski team. However, the Panel thinks there are substantial doubts about this. In view of the doping history of the Austrian cross-country team (see the events at the Salt Lake City 2002 Olympic Games) one cannot exclude that other people, including higher-ranking officials, pulled the strings in this doping conspiracy. The Panel cannot shake off the feeling that the Appellant no doubt had a decisive leadership responsibility in this doping scandal, but not the sole or supreme leadership responsibility. However, if it has not been established that the Appellant was the head of the doping conspiracy, the Panel does not consider it appropriate to penalise the Appellant as the head, thereby diverting attention from the responsibility of others. In the light of all of these considerations the Panel considers only a limited period of ineligibility to be proportional.

32. Taking into account the fact that the Appellant is born in 1964 and that he will retire in 21 years, the Panel considers a sanction of approximately 2/3, namely 15 (fifteen) years justified. In the light of the foregoing and in accordance with Art. R57 of the Code, the period of ineligibility of the Appellant to participate directly or indirectly in any capacity in any FIS sanctioned events shall be reduced to a period of 15 years starting on 18 September 2007 (date of the first hearing of the FDP, in accordance with Art. 10.8 FIS ADR) and the decision of the FDP shall be modified accordingly.

33. This conclusion, finally, makes it not necessary for the Panel to consider the other requests submitted by the Parties to the Panel. Accordingly, all other prayers for relief are rejected.

The Court of Arbitration for Sport rules:

1. The Appeal filed by Mr. Emil Hoch against the decision rendered on 28 February 2008 by the FIS Doping Panel is partially upheld;

2. The decision rendered on 28 February 2008 by the FIS Doping Panel is set aside as far as the period of ineligibility is concerned;

3. Mr. Emil Hoch shall be ineligible to participate directly or indirectly in any capacity in any FIS sanctioned events up to 18 September 2022;

4. (…)

5. (…)

6. All other claims are dismissed.