Arbitration CAS 2017/A/5317 Aleksei Medvedev v. Russian Anti-Doping Agency (RUSADA), award of 15 December 2015

Panel: Mr Murray Rosen QC (United Kingdom), Sole Arbitrator

Cycling
Doping (furosemide)
Applicable sanction for an ADRV regarding a specified substance
Exclusion of No Fault or Negligence for lack of fulfilment of the athlete's duty of diligence after the violation
Determination of the applicable sanction in view of the athlete's non-significant fault after the violation

1. **An athlete commits an Anti-Doping Rule Violation (ADRV) in the sense of Article 2.1 of the applicable Rules where the analysis of his or her A-sample reveals an Adverse Analytical Finding (AAF) for the presence of furosemide, a specified substance. For an ADRV under Article 2.1, Article 10.2.1 of the applicable Rules provides for a standard sanction of a four-year period of ineligibility where the ADRV involves a Specified Substance and is intentional. If Article 10. 2. 1 does not apply, the period of ineligibility shall be two years, subject to any further reduction based on No Fault or Negligence or No Significant Fault or Negligence.**

2. **A finding of No Fault applies only in truly exceptional cases. In order to have acted with No Fault, the athlete must have exercised "utmost caution" in avoiding doping. The athlete's fault is measured against the fundamental duty which he or she owes under the WADC to avoid ingesting any prohibited substance. In this respect, athletes must always bear personal responsibility and the failure of a doctor does not exempt an athlete from personal responsibility. Even if the athlete has little education and knowledge of anti-doping, including TUEs, it is his/her duty as a professional athlete subject to the applicable Rules to ensure that s/he does his/her best to avoid *and mitigate* any violation. The mitigation duty applies in particular to the continuing presence in the athlete's body of a prohibited substance where the violation was established by an out-of-competition test two days after an unknowing ingestion of a specified substance during an emergency treatment for a concussion. At that time, the athlete could and should have taken appropriate steps to mitigate against that ingestion. Absent the fulfilment of his or her duty to mitigate, the athlete's conduct does not warrant a finding of No Fault.**

3. **The evaluation of the level of fault or negligence relevant for determining the period of ineligibility for a violation depends on all the circumstances. The fact that the fault or negligence relating to the violation comes *after* rather than *before* the violation, may and usually will be an important component of that evaluation of blame and harm for, in and from the violation. In this respect, an athlete could and should have fulfilled his/her duty to mitigate once s/he became aware of said ingestion by disclosing the**

accidental ingestion. To regard negligence or fault *after* a violation of this sort as irrelevant to the violation would be contrary to the fundamental purpose of the applicable Rules. Whether or not the fault or negligence is a *prior cause* of the violation is not the only question – subsequent conduct may be as closely related to the compliance/violation equation, taking into account the scheme and objectives of the Rules as a whole. The starting point in a case of this nature of the ADRV is the ingestion of a single pill of furosemide by the athlete at the direction of an emergency room doctor while the athlete was in an uncontroverted, mentally incapacitated state. Under these circumstances, and not taking away from the athlete's duty to mitigate such inadvertent ingestion, the athlete's fault or negligence cannot be considered as "significant" and the period of ineligibility should be reduced from the mandated two years under Article 10.5.1.1 of the Rules.

I. PARTIES

1. Alexsei Medvedev (the "Athlete" or "Appellant") is a 34-year old professional cyclist affiliated to the All Russian Federation of Cycling and thereby the Union Cycliste Internationale ("UCI").

2. The Russian Anti-Doping Agency ("RUSADA" or "Respondent") is the body responsible for anti-doping control in Russia, which is regulated by the Anti-Doping Rules approved by the Russian Ministry of Sport on 9 August 2016 (the "Rules").

II. FACTUAL BACKGROUND

3. The Sole Arbitrator has taken account of all the contentions of the parties. The following summary is intended to provide an introduction to the reasoning below, and additional facts may be referred to, if and when necessary.

A. The events of May-June 2017

4. In May and June 2017, the Athlete was a member of an Italian team based in Verona, called Trekselle San Marco. He was on leave from 1 to 8 May 2017 when he and his family stayed with his parents near Izhevsk in Russia.

5. On the morning of 7 May 2017, a public holiday in Russia, the Athlete went on a training ride during which he had an accident on the road and was thrown from his bicycle, hurting his head, shoulder and hip on the left side. He returned home but experienced pain, dizziness, vomiting and erratic behavior, so his father drove him to the General Hospital.

6. On arrival they were directed by reception to Dr Savaliev on the fifth floor. A report by Dr Savaliev dated 7 May 2017 and timed at 10.30 am stated (in an English translation):

"Examination by Traumatologist … Diagnosis: closed craniocerebral injury. Brain concussion. Soft tissue bruise in the parietal region on the left. Recommendations: Head MRI; Examination by a neurologist and a neurosurgeon if required; Rest; Cold to the head; Furosemide: 1 tablet once every other morning No 3; and Glycine: 2 tablets sublingually, dissolve to the mouth t.i.d. for 10 days …".

7. The Athlete and his father returned home and he rested before returning to Verona (via Moscow) on 9 May 2017. He did not report the accident or his injuries and any treatment to his team.

8. On 9 May 2017, upon arrival back in Verona, the Athlete was subjected to an out-of-competition (urine) test by an anti-doping control officer.

9. On 19 June 2017, he was notified that he had tested positive for furosemide, a prohibited "specified" substance (listed in WADA class S5) under Article 2.1 of the Rules. He was then provisionally suspended effective immediately.

10. Upon notification of the positive test, the Athlete waived his right to a B-sample test and sought to discover the source of the prohibited Furosemide in his A-sample.

11. On or about 27 June 2017, the Athlete's father, Petr Medvedev, accordingly returned to the hospital in Izhevsk, where Dr Savaliev confirmed that he had administered a Furosemide pill to the Athlete during his examination on 7 May 2017.

B. The proceedings before the RDADC

12. Under Article 10.2 of the Rules (which follow the World Anti-Doping Agency Code) a violation of Article 2.1 as regards the presence of a prohibited substance (which, as in the case of furosemide, is "specified") is to result in a period of ineligibility of two years, unless the anti-doping organization can establish that his ingestion of the prohibited substance was intentional, in which case the period is four years.

13. This is subject, among other things, to:

    (a) elimination of the period of ineligibility if the Athlete establishes in an individual case that he or she bears no fault or negligence (Article 10.4); or

    (b) reduction of the period of ineligibility, if the Athlete establishes that he or she bears no significant fault or negligence, the reduced period to be based on the Athlete's degree of fault (Article 10.5).

14. The Athlete was charged before the RDADC with the violation of Article 2.1, submitted an explanation dated 29 June 2017, and attended a hearing on 4 August 2017. He stated that he had not intended to ingest furosemide and did not know that he was doing so, or had done so, on or after 7 May 2017, because of his concussed state, and thus bore no fault or negligence.

15. On 22 August 2017, the RDADC found the violation and declared the Athlete ineligible to

participate in the sport of cycling for a period of two years from 19 June 2017 (the "Appealed Decision"). It held that he had shown a high degree of negligence by not following the doctor's orders, not inquiring about the drugs he had been prescribed, not reporting the case to his coach or sports director, and not applying for a retrospective Therapeutic Use Exemption ("TUE") certificate.

16. In this regard, the Sole Arbitrator notes that the Respondent does not challenge the source of the prohibited substance (i.e. the pill administered by Dr Savaliev), or the facts leading up to the injury sustained by the Athlete while on a training ride. The only factual issues in contention between the parties are, in essence, the Athlete's knowledge of the ingestion of Furosemide.

III. THE PROCEEDINGS BEFORE CAS

17. On 12 September 2017, the Athlete filed an appeal against RUSADA challenging the Decision before the Court of Arbitration for Sport ("CAS") in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the "Code").

18. On 14 September 2017, the Athlete submitted that this procedure should be referred to a Sole Arbitrator.

19. On 19 September 2017, RUSADA informed the CAS Court Office that it agreed to refer this procedure to a Sole Arbitrator.

20. On 22 September 2017, the Athlete filed his Appeal Brief in accordance with Article R51 of the Code.

21. On 18 October 2017, RUSADA filed its Answer in accordance with Article R55 of the Code.

22. On 24 October 2017, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, notified the parties that Mr. Murray Rosen QC had been appointed Sole Arbitrator in accordance with Article R54 of the Code.

23. On 7 and 9 November 2017, the Appellant and Respondent, respectively, signed and returned the order of procedure to the CAS Court Office.

24. On 13 November 2017, a hearing was held at the CAS Headquarters in Lausanne, Switzerland. The Sole Arbitrator was assisted by Mr. Brent J. Nowicki, Managing Counsel to the CAS, and joined by the following:

    (a) the Athlete, a Russian interpreter Mrs Irina Aga, and his legal representative Mr Kaiser, who called as witnesses by telephone Anastasia Medvedeva (the Athlete's wife), Mr Petr Medvedev, and Dr Sergei Savaliev (the Athlete's emergency room doctor)

    (b) RUSADA's legal representative Mr Arthur, who called no witnesses; and

    (c) with the consent of the parties, Ms Dominique Leroux of UCI as an observer.

25. At the outset of the hearing, the parties confirmed that they had no objection to the appointment of the Sole Arbitrator. At the end of the hearing, both parties confirmed that their rights to be heard had been fully respected.

IV. THE PARTIES' SUBMISSIONS

26. The Sole Arbitrator has considered all the parties' submissions, and the following summary again seeks to assist in the reasoning that follows, rather than repeating them comprehensively.

A. The Appellant

27. The Athlete's main submissions may be summarised as follows:

(a) the Athlete was unaware during and following the examination on 7 May 2017 that the trauma doctor administered or prescribed furosemide, and bore no relevant or significant fault or negligence;

(b) in particular he was not negligent in failing, when he recovered from the concussion, to make inquiries as to his treatment, report the matter to his team and/or apply for a retrospective TUE; and

(c) any such later failure on his part was not relevant or significant, because it did not cause the presence in his body of the prohibited substance, which was the violation charged and admitted, and in any event no more than a maximum of 6 months ineligibility starting on the date of the test on 9 May 2017 was justified.

28. The Athlete's requested by way of relief that CAS:

"(A) Find he bear no Fault or Negligence and is immediately eligible to compete since his period of ineligibility shall be eliminated;

(B) In the alternative, reduce his period of ineligibility based on No Significant Fault or Negligence and sanction him with a reprimand and no period of ineligibility so that he is immediately eligible to compete;

(C) Order the start date of his suspension, if applicable to begin on 9 May 2017, the day of sample collection, pursuant to Article 10 of the Code;

(D) Grant Mr Medvedev all reasonable attorney's fees and expenses associated with this appeal;

(E) Order any other relief for Mr Medvedev that this Panel deems to be just and equitable".

B. The Respondent

29. RUSADA's main submissions were, in summary, that:

(a) while the Athlete had not intentionally ingested furosemide under Article 10.2.2, such that the period of ineligibility should be two years, he bore significant fault or negligence

such that this period should not be reduced;

(b) the definition of Fault in the Rules involved a lack of care in the particular situation taking account of the Athlete's experience, any impairment and the degree of risk and level of investigation applicable; and

(c) in particular, the Athlete was an experienced professional and was responsible for ensuring that any medical treatment which he received did not violate the Rules and that he was aware of and implemented the inquiries and applications necessary if it did.

30. In its answer, the Respondent requested the following relief:

62. For the reasons explained in this Response Brief, RUSADA says that-

62.1 Mr Medvedev has committed an Anti-Doping Rule Violation contrary to ADR Article 2.1;

62.2 The Consequences to be applied in respect of the Anti-Doping Rule Violation are that a period of Ineligibility of two years be imposed;

62.3 That if a reduction of the period of Ineligibility is deemed warranted pursuant to the ADR that this reduction should result in the imposition of a period of not less than twenty months' Ineligibility;

62.4 The period of Ineligibility should commence on the date the Provisional Suspension was imposed;

63. 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. JURISDICTION

31. Article R47 of the Code states:

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

32. The Athlete relies on Section 13.2 of the Rules as conferring jurisdiction on the CAS. Section 13.2 of the Rules provides as follows:

"13.2 Appeals against decisions with regard to anti-doping rules violations, consequences, suspensions, recognition of decisions and jurisdiction

Decisions below may be appealed only in accordance with the procedure stipulated by clauses 13.2-13.6 of the Rules:

- *decision establishing the fact of anti-doping rules violations;*
- *decision on imposition or non-application of consequences for anti-doping rules violation;*

…".

33. The jurisdiction of the CAS is not contested by RUSADA and was confirmed by signature of the order of procedure.

34. In consideration of the foregoing, the Sole Arbitrator confirms that CAS has jurisdiction to deal with the present case.

VI. ADMISSIBILITY

35. Article R49 of the Code provides:

"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".

36. Article 13.6 of the Rules provides as follows:

"13.6 Term of filing an appeal to CAS

The term of filing an appeal to CAS shall be twenty-one days upon receipt of the decision by the party filing such appeal. …".

37. The Decision was notified on 22 August 2017 and the Athlete filed his statement of appeal on 12 September 2017, that is within the 21-day deadline specified in Article 13.6 of the Rules. The appeal is therefore within time and admissible.

VII. APPLICABLE LAW

38. Article R58 of the Code states:

"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".

39. In the present case, the applicable regulations are those of RUSADA, namely the Rules and as a subsidiary matter, the applicable law is Swiss law.

40. The Sole Arbitrator also has regard to the CAS jurisprudence cited by the parties which will be considered and relied upon, as necessary.

VIII. MERITS

A. Anti-Doping Rule Violation

41. According to Article 2.1 of the Rules, *"the presence of a prohibited substance or its* metabolites *or markers in the Athlete's sample"* constitutes an anti-doping rule violation ("ADRV"). Pursuant to Article 2.1.2 of the Rules, sufficient proof of such ADRV is established by the presence of a prohibited substances or its metabolites or markers in the Athlete's A-sample where the Athlete waived the right to have the B-sample analysed.

42. The analysis of the Athlete's A-sample revealed an Adverse Analytical Finding ("AAF") for the presence of furosemide, which is prohibited under class S5 of the WADA Prohibited List, both in- and out-of-competition. Therefore, the Athlete committed an ADRV in the sense of Article 2.1 of the Rules. The parties do not dispute this conclusion.

43. For an ADRV under Article 2.1, Article 10.2.1 of the Rules provides for a standard sanction of a four-year period of ineligibility where the ADRV involves a Specific Substance *"and the Anti-Doping Organization can establish that the anti-doping rule violation was intentional"*. If Article 10. 2. 1 does not apply, the period of ineligibility shall be two years.

44. Furosemide is a Specific Substance. Thus, considering that it is undisputed between the parties that the ADRV was not intentional, the period of ineligibility to be imposed on the Athlete, subject to any further reduction, is two years.

B. The Question of Relevant Fault

a) Considerations for No Fault

45. "No Fault or Negligence" is defined in Appendix 1 of the Rules as follows:

> *"The Athlete or other Person'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 or otherwise violated an anti-doping rule. 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".*

46. There is no dispute between the parties as to how furosemide entered the Athlete's body. The Sole Arbitrator accepts that this was a result of the direct ingestion of the furosemide pill given to the Athlete by Dr Savaliev when the Athlete was admitted to the hospital following his bicycle accident.

47. In assessing an athlete's degree of fault, *"the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behavior"* (Definition of Fault set out in Appendix 1 of the WADA Code). CAS jurisprudence is very clear that a finding of No Fault applies only in truly exceptional cases. In order to have acted with No Fault, the Athlete must have exercised "utmost caution" in avoiding doping. As noted in CAS

2011/A/2518, the Athlete's fault is *"measured against the fundamental duty which he or she owes under the Programme and the WADC to do everything in his or her power to avoid ingesting any Prohibited Substance"*. It also emphasized the personal duty of care, citing the basic principle that it is *"each Competitor's personal duty to ensure that no Prohibited Substance enters his or her body"*.

48. Even where the circumstances are "extraordinary" and there is minimal negligence, athletes are not exempt from the duty to maintain "utmost caution". (CAS 2006/A/1025).

49. In support of his plea of "no fault", the Athlete relies on, among other CAS cases, *P v IIHF*, CAS 2005/A/990. In principle, this decision appears apposite. In *P v IIHF*, a hockey player injured during a game was taken to the emergency room and given intravenous injections for an acute heart failure of which he was apparently unaware until after he investigated the matter following a positive doping test nearly 6 weeks later. The Panel commented that the WADA Code:

"… is not entirely clear as to whether … [the] defence [that the Athlete bore no (significant) fault or negligenæ for the violation]… requires the athlete to prove that he is without fault or negligence not only in connection with the entering of the substance into his body but also in respect of that substance staying there. The latter interpretation is supported by section 4.7 of the WADA International Standard for Therapeutic Use Exemptions which provides 'an application for a TUE will not be considered for retroactive approval except in cases where: a. emergency treatment or treatment of an acute medical condition was necessary … This rule indicates that in the present case the Player would in fact have been obligated to apply for a retroactive TUE and that his failure to do so makes him liable for sanctions under the Code unless he establishes that he bears no fault or negligence in connection with the failure…".

50. As it happened in *P v IIHF*, the Panel did not have to decide on the proper construction of the WADA Code because *"in the unique circumstances of this case, the Player bears no fault or negligence for his failure to disclose his treatment or apply for a (retroactive) TUE"*. The Sole Arbitrator does not find the same true here.

51. As far as the facts of the present appeal are concerned, the Sole Arbitrator is not satisfied that the Athlete did not bear some fault or negligence relating to the ADRV. As discussed below, the Sole Arbitrator has some skepticism surrounding both the Athlete's treatment with the furosemide pill while in the hospital and the Athlete's actions following notification of his ADRV on 19 June 2017. Such skepticism creates doubt in the Sole Arbitrator's mind that the Athlete used "utmost caution" to avoid the ADRV.

52. The anomalies in the evidence put forward by the Athlete and his family include the following:

(a) Dr Savaliev testified that the Athlete's father informed him before his examination that the Athlete was a professional athlete who must not be administered prohibited drugs. Understandably, Dr Savaliev further testified that he was not concerned with such pronouncement because his first priority was applying proper medical treatment;

(b) In such circumstances, given his father's astute recognition of his son's anti-doping obligations, and even if the Athlete's father was unaware at the time that the doctor was

indeed administering furosemide - a prohibited substance - in a separate room, it is implausible that the Athlete's father (or later, the Athlete himself) would not have sought reassurance from Dr Savaliev as to what treatment was administered or should be continued as treatment upon discharge;

(c) Moreover, noting the serious nature and condition of the Athlete's injury, the first concern of everyone involved would have been the Athlete's health. In this regard, the Sole Arbitrator finds it unlikely that the Athlete, his father, or wife would not have been fully aware of Dr Savaliev's medical conclusions on the injury and his prescription of furosemide for treatment to follow;

(d) The Athlete, his father, and his wife testified that no follow-up treatment plan or prescription for furosemide (or the actual pills themselves) was given by Dr Savaliev upon discharge. Dr Savaliev could not recall whether such treatment plan or prescription was provided, although under ordinary circumstances his patients leave the hospital with some form of paperwork. This said, such paperwork indeed existed as the Athlete's father was able to retrieve such documentation from the hospital with ease once the Athlete was notified of the ADRV. No evidence was provided as to why this paperwork would not have been provided to the Athlete when he was discharged.

53. In the end, the Sole Arbitrator has to find it more likely that the Athlete and his family were aware of the prescription for furosemide but he was concerned not to take it once he was responsible for his own care again. He recovered quickly without further need for it.

54. Moreover, his evidence that he did not inform his team of the accident or his concussion or treatment was very telling. He said that, while he mentioned the accident and his recovery to his assistant "Dario", he did not tell his team because he was concerned that he should not have been training on leave, and it might incur financial penalties and jeopardize his future with them.

55. The Athlete, at the very least, should have made further inquiries and sought disclosure as to the ramifications of his treatment (for himself and his team). And with this, he should have been more diligent about what transpired at the hospital while he was under Dr Savaliev's care, especially considering he was fully aware of his anti-doping obligations and was not in a clear mindset when he was admitted to the hospital. Here, the Sole Arbitrator is reminded that athletes must always bear personal responsibility and the failure of a doctor does not exempt an athlete from personal responsibility (*see* CAS 2006/A/1133).

56. While the Sole Arbitrator accepts that the Athlete had little education and knowledge of anti-doping, including TUEs (a point not contested by the Respondent), it was his duty as a professional athlete subject to the Rules to ensure that he did his best to avoid *and mitigate* any violation, including the continuing presence in his body of a prohibited substance.

b) Considerations for No Significant Fault or Negligence

57. Considering that the Sole Arbitrator finds that the Athlete's conduct does not warrant a finding of No Fault, it is appropriate for the Sole Arbitrator to consider the Athlete's alternative

argument, namely that his ADRV resulted from No Significant Fault or Negligence.

58. No Significant Fault or Negligence is defined by the Rules as follows:

"The Athlete or other Person's establishing that his or her Fault or negligence, when 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".

59. As it concerns furosemide, a Specified Substance, Article 10.5.1.1 of the Rules provides as follows:

"10.5.1.1 Specified Substances

Where the anti-doping rule violation involves a Specified Substance, and the Athlete or other Person can establish No Significant Fault or Negligence, then the period of ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years of Ineligibility, depending on the Athlete's or other Person's degree of Fault".

60. With regard to the construction of the Rules (and the WADA Code), the Sole Arbitrator finds that their meaning as a whole, as they concern Article 10.5.1.1, clearly requires that the Athlete remain under a duty to deal appropriately with the presence of a prohibited substance in his or her body *after* ingestion. This involves consultation and might lead to withdrawal from competition for example, as well as a retroactive TUE application (albeit that there was no specific separate obligation for him to apply for the same).

61. In the present case, the violation was the presence of furosemide in the Athlete's body on 9 May 2017, two days after unknowing ingestion during emergency treatment for a concussion. At that time, the Athlete could and should have taken appropriate steps to mitigate against that ingestion.

62. This is not a semantic or theoretical analysis. To regard negligence or fault after a violation of this sort as irrelevant to the violation would be contrary to the fundamental purpose of the Rules – to monitor and prevent the improper use of prohibited substances and the risk of cheating and unfairness in sport which that carries. Disclosure of accidental ingestion is a necessary consequence of that and related so closely to the violation as to determine its character and substance.

63. Whether or not the fault or negligence is a *prior cause* of the violation is not the only question – subsequent conduct may be as closely related to the compliance/violation equation, taking into account the scheme and objectives of the Rules as a whole.

64. Having said that, it must be stressed that the evaluation of the level of fault or negligence relevant for determining the period of ineligibility for a violation depends on all the circumstances (as illustrated in the examples from CAS jurisprudence identified by the parties in this case). If and to the extent that the fault or negligence relating to the violation comes *after* rather than *before* the violation, that may and usually will be an important component of that

evaluation of blame and harm for, in and from the violation.

65. Having regard to the above analysis, in the view of the Sole Arbitrator, the Athlete's fault or negligence in the present case was not "significant" and the period of ineligibility should be reduced from the mandated two years under Article 10.5.1.1 of the Rules.

66. The starting point in a case of this nature of the ADRV is the ingestion of a single pill of furosemide by the Athlete at the direction of an emergency room doctor while the Athlete was in an uncontroverted, mentally incapacitated state. Under these circumstances, and not taking away from the Athlete's duty to mitigate such inadvertent ingestion as set forth above, and considering the skepticism put forth by the Sole Arbitrator concerning the post-treatment paperwork, the Sole Arbitrator finds that a 6-month period of ineligibility is appropriate.

67. The fact that, as is conceded by the Respondent, the Athlete would have been eligible for a retroactive TUE, and there are no reasons suggested why it would not have been granted, is in the Sole Arbitrator's opinion, particular mitigation. That is not to demote the importance of such applications being necessary and promptly made and the Athlete's duty to be aware of such procedures. His failure to do so, of course, goes to his degree of fault.

68. But in this case the Athlete was not aware of his ability to seek a retroactive TUE and had not been educated at any significant level. He had suffered a dangerous accident, the emergency treatment was not in his hands, his focus and judgment must have been affected, and he was anxious about the effect on his team role.

C. Starting Date for Sanction

69. The Sole Arbitrator determines that the state date for the Athlete's period of ineligibility should be 19 June 2017 - the date of notification of the ADRV and provisional suspension. While it would be unrealistic and too harsh to hold the Athlete's failures *too much* against him, by the same token the commencement date established by the RDADC (i.e. 9 May 2017 - the date of the testing) did not prevent the Athlete from training and competing with the remains of the undisclosed and unauthorised furosemide pill in his body.

D. Conclusion

70. Based on the foregoing, the Athlete is suspended for a period of six (6) months as from 19 June 2017.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Aleksei Medvedev against RUSADA concerning the decision of the RUSADA Anti-Doping Disciplinary Committee dated 22 August 2017 is upheld.

2. The decision of the RUSADA Anti-Doping Disciplinary Committee dated 22 August 2017 is set aside.

3. Aleksei Medvedev is suspended for a period of six (6) months commencing on 19 June 2017.

4. (…).

5. (…).

6. Any and all other and further requests for relief are dismissed.