



**Arbitration CAS 2022/A/9033 International Tennis Federation (ITF) v. Mikael Ymer, award of 17 July 2023**

Panel: Mr Romano Subiotto KC (United Kingdom), President; Mr Jeffrey Benz (USA); Mr Nicholas Stewart KC (United Kingdom)

*Tennis*

*Doping (whereabouts failure)*

*Tempus regit actum*

*DCO's duty to locate athletes*

*Extent of an athlete's obligation to comply with anti-doping regulations*

*Concept of negligence under article 3.6 of the International Standard for Results Management (ISRM)*

*Sanction of ineligibility*

*Disqualification of results*

1. The procedural aspects of CAS proceedings are governed by the provisions that apply at the time of the proceedings whereas the substantive aspects are governed by the rules that applied at the time of the alleged anti-doping violation.
2. The Doping Control Officer (DCO) that did all that was required of him to locate the player, knowing that it is not his duty to try to find the athlete in another location than the athlete's specified location, took reasonable steps in the circumstances to locate the player. Therefore, the requirements of Article B.2.4(c) of the International Standard for Results Management (ISRM) are satisfied.
3. The obligation on athletes to comply with the antidoping regulations is personal, as reflected in the express terms of Article 1.3.1.1 Tennis Anti-Doping Programme (TADP). Indeed, the whereabouts regime represents a powerful and effective means of deterring and detecting doping in sport. It is crucial to know where athletes are located at any particular time and the regime is necessarily strict. An athlete in the International Registered Testing Pool (IRTP) may seek third party assistance to comply with the onerous whereabouts requirements. Delegation to assist in complying with the whereabouts requirements is not tantamount to delegating the athlete's responsibility to comply with those requirements. The athlete remains personally responsible, and cannot delegate the requirement to comply, just as, more generally, reliance on a doctor or on the athlete's entourage cannot do away with the athlete's obligation to comply with the antidoping regulations. The distinction is one that is well known in French law, between an "*obligation de moyen*" and an "*obligation de résultat*": where an athlete may choose the means, he/she is required personally to achieve the result, namely, in this case, compliance with the applicable antidoping regulations.

4. The concept of negligence as employed in Article 3.6 ISRM implies unintentional carelessness, which, in turn, requires one to define the standard by which to judge whether an athlete has been careless. Only the highest priority athletes are included in the IRTP. It reasonable to expect these athletes to be on high alert with respect to complying with the whereabouts requirements, and particularly so if two whereabouts failures have already occurred in any period of less than 12 months. Whether the person to whom the whereabouts filings tasks were delegated was negligent or there was a failure to inform that person of a change is irrelevant in the assessment just made. The key issue is that the player, like any other international-level athlete, cannot be discharged of his whereabouts duties by delegating away his obligation to comply with the applicable regulations. On a balance of probability, the delegation of this obligation is negligent and may cause or contribute to the athlete's failure to be available for testing.
5. The whereabouts regime is a cornerstone of the fight against doping, and its rules must be applied strictly. According to Article 10.3.2 TADP, the athlete will be sanctioned with a maximum two-year ban after the third violation of this rule. This ban can be reduced to one year depending on the athlete's fault. The standard by which respect of the rules must be assessed is the hypothetical experienced tennis player, a threshold that can reasonably be expected to be met by all athletes, who are included in the IRTP, who are acutely aware of the risk of ineligibility at the third whereabouts violation within a 12-month period. A player that failed in ensuring his compliance with the anti-doping regulations by failing to verify his whereabouts filing and by assuming that any discrepancy between his actual and declared whereabouts would be corrected by his agent or by the tennis authorities bears a high degree of fault, although the third Whereabouts Failure can be described as the result of culpable negligence. Recent case law impose sanctions ranging from 18 to 24 months depending on the degree of fault of the athlete.
6. Concerning the question of disqualification, which would apply from the date of the athlete's whereabouts filing failure until the date of adoption of the award, if there is no evidence suggesting that the player's results have been influenced by any doping, extending his sanction by disqualifying these results would simply be unfair.

## I. PARTIES

1. The International Tennis Federation (the "Appellant" or "ITF") is the international governing body for the sport of tennis, recognized as such by the International Olympic Committee, and is a signatory to the World Anti-Doping Code (the "WADA Code").
2. Mikael Ymer is a 24-year-old professional tennis player from Skara, Sweden, whose highest individual ATP ranking was No. 67 (as of 19 September 2022) (the "Respondent" or the "Player"). He is also Sweden's top male tennis player.

## II. FACTUAL BACKGROUND

3. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.
4. Article 5.4.2.2 of the Tennis Anti-Doping Programme ("TADP") (which reflects Article 4.8 of the International Standard for Testing and Investigations ("ISTI")) provides for an International Registered Testing Pool ("IRTP") of tennis players, who have a personal responsibility to advise the ITF of their whereabouts on a quarterly basis, to maintain that information accurate and complete at all times, and to make themselves available for testing at such whereabouts.
5. Players who fail to meet these requirements are liable to have a Whereabouts Failure recorded against them. The International Standard for Results Management ("ISRM") define a Whereabouts Failure as a failure to file or maintain accurate and complete information on an athlete's whereabouts enabling the athlete to be located for testing at the times and locations indicated (a "Filing Failure") or a failure by the athlete to be available for testing at the location and time indicated in the 60-minute time slot identified in the Whereabouts Filing for the day in question (a "Missed Test").
6. Article 2.4 TADP provides that a player in the IRTP commits an Anti-Doping Rule Violation ("ADRV") if he/she accrues any combination of Three Missed Tests and/or Filing Failures within a 12-month period.
7. On 5 December 2019, the ITF notified the Player that he had been selected for inclusion in its IRTP with effect from 1 January 2020.
8. The Player had three Whereabouts Failures (22 April 2021, 10 August 2021, 7 November 2021) recorded against him in the 12 months prior to 7 November 2021. At first instance, the Player accepted his first two Whereabouts Failures, but contested his third Whereabouts Failure, arguing that (a) the DCO who attempted to locate the Player did not make a reasonable attempt to do so, and (b) no negligence on the part of the Player contributed to the Whereabouts Failure.
9. More particularly concerning the third Whereabouts Failure, the Player was scheduled to play at the 2021 Open International de Tennis de Roanne from 8-14 November (the "Event" or the "Roanne Tournament"). On or around 5 November 2021, International Doping Tests & Management ("IDTM") had instructed one of its Doping Control Officers ("DCOs") to collect urine and blood samples Out-of-Competition in the period between 5 November 2021 and 8 November 2021 from the Player and another player. The DCO went online to the Anti-Doping Administration and Management System ("ADAMS") database to see the declared

location of the Player in that period. He noted that the Player had said that, between 6 am and 7 am on 7 November 2021, he would be at the 'Hôtel Ibis Styles Roanne Centre Gare 46 Cr de la Republique Roanne FRANCE 42300'. The DCO intended to test him in that 60-minute time slot on that day.

10. At 5:50 am on 7 November 2021, the DCO checked the Player's ADAMS account to see if he had changed or updated his whereabouts information at all, but he had not, i.e. the Player was still saying that he could be found for testing between 6 am and 7 am on 7 November 2021 at 'Hôtel Ibis Styles Roanne Centre Gare 46 Cr de la Republique Roanne FRANCE 42300'.
11. The DCO arrived at 'Hôtel Ibis Styles Roanne Centre Gare 46 Cr de la Republique Roanne FRANCE 42300' at 5:55 am local time on 7 November 2021. The DCO introduced himself to the hotel receptionist and explained to him the ITF hotel testing procedure and showed his credentials. The hotel receptionist checked the guest list and informed the DCO that the Player was not on the list, and that nobody with that name had checked in or was expected to check in on 7 November. The DCO stayed in the reception area until the end of the hour slot and Mr Ymer did not show up. In the last five minutes of the hour, the DCO called each of the two telephone numbers listed in the Player's whereabouts filing: the first call rang once before the DCO heard a message in Swedish and the call was transferred to an automatic inbox, and the second call rang four times before the DCO heard a message in English and the call was transferred to an automatic inbox. The DCO's calls were not returned. The DCO filled in an Unsuccessful Attempt Report and a Mission Summary and sent them to IDTM.
12. By letter dated 12 November 2021, the ITF formally notified the Player of this apparent Missed Test. The ITF asked the Player whether he accepted or contested the Missed Test and advised him of the consequences that would apply in the event that he accumulated three Whereabouts Failures within a 12-month period.
13. On 26 November 2021, the Player's legal representative responded to that letter, asserting that a Missed Test should not be recorded against the Player because he was moved to a different hotel by the tournament organiser, but the Player's agent (who updated the Player's whereabouts on his behalf) did not receive news of that change and therefore did not make the necessary update.
14. By letter dated 3 December 2021, the ITF informed the Player that it had considered his response and was recording a Missed Test and therefore a third Whereabouts Failure against him, and advised the Player that he could request an administrative review of that decision.
15. By letter of 10 December 2021, the Player requested an administrative review of that decision.
16. By letter dated 21 December 2021, the ITF informed the Player that an independent Review Board member had conducted an administrative review of the apparent Missed Test and concluded that all the elements of a Missed Test as set out at Article B.2.4 ISRM were met, and therefore the ITF was recording a third Whereabouts Failure against the Player.

17. Pursuant to Article 7.7.7 TADP, the ITF referred the three Whereabouts Failures within a 12-month period to the independent Review Board, which reviewed the file and determined that the Player had a case to answer for breach of Article 2.4 TADP.
18. On 13 January 2022, the ITF sent written notification to the Player (the “Notice”), in accordance with Article 7.10 TADP, that he may have committed an ADRV under Article 2.4 TADP because he appeared to have committed the three Whereabouts Failures within a 12-month period. The ITF enclosed copies of the relevant documentation and correspondence concerning each of the Whereabouts Failures, and gave the Player ten days to explain the possible ADRV.
19. On 22 January 2022, Mr Jacobs responded to the Notice on the Player’s behalf, using the TADP portal. The Player denied the violation and, by way of explanation, referred back to the letter and supporting documentation submitted by Mr Jacobs on 10 December 2021 regarding the third Whereabouts Failure.
20. On 27 January 2022, the ITF sent a Charge Letter to the Player, formally charging him in accordance with Article 7.13 TADP with commission of an ADRV under Article 2.4 TADP because he appeared to have committed the three Whereabouts Failures within a 12-month period. The ITF enclosed copies of the relevant documentation and correspondence concerning the Whereabouts Failures, and gave the Player twenty days (i.e. until 16 February 2022) to respond to the charge and to request a hearing before the Independent Tribunal established in accordance with the Tennis Anti-doping Programme.
21. On 17 February 2022, Mr Jacobs responded to the Charge Letter on the Player’s behalf, using the TADP portal. The Player denied the violation and, by way of explanation, referred back to the letter and supporting documentation submitted by Mr Jacobs on 10 December 2021 regarding the third Whereabouts Failure.
22. The Player was not subject to a provisional suspension under Article 7.12.1 or 7.12.2 TADP. In the Notice, the ITF explained to the Player his right to continue playing pending determination of the charge, but invited him to consider accepting a voluntary provisional suspension until the charge was determined. The Player has not accepted a voluntary provisional suspension, and has instead continued to compete.
23. On 24 February 2022, the case file was forwarded to Sport Resolutions, secretariat to the Independent Tribunal, to administer the Independent Tribunal proceedings, pursuant to Article 8 TADP.
24. Procedural directions were subsequently agreed between the Parties and approved by the Chair of the Independent Tribunal, and the Parties filed written submissions pursuant to those directions between April and May 2022.
25. On 8 June 2022, there was a one-day hearing before the Independent Tribunal.

26. On 23 June 2022, the Independent Tribunal in disciplinary proceedings brought by the ITF against the Player decided (the “Decision”) that the Player had not violated Article 2.4 of the TADP. The Independent Tribunal found, in connection with the third Whereabouts Failure, that the DCO did all that was required of him to locate the Player, but that no negligence could be attributed to the Player or his agent, finding that:

*“On a general point of view, it has been established that no reproach can be made against the Player for the delegation of his whereabouts duties. More specifically, as the Player did not know the name of the hotel he was supposed to stay in on the 7 November 2021, he had no compelling reason to inform his agent and ask him to amend his whereabouts after he received the information that he was at the wrong hotel. The Player also confirmed that his agent usually tells him that he is staying at official hotels, rather than specifically mentioning the name of the hotels”.*

27. The ITF appeals the Decision’s finding of no negligence in these proceedings.

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

28. On 14 July 2022, the Appellant filed its Statement of Appeal, and nominated Nicholas Stewart KC as arbitrator.
29. On 29 July 2022, the Respondent nominated Mr Jeffrey Benz as arbitrator.
30. On 9 August 2022, the Appellant filed its Appeal Brief.
31. On 19 September 2022, the Respondent filed his Answer.
32. On 29 September 2022, the Appellant requested permission to submit a Reply limited to the 10 August 2021 test attempt pursuant to Article R56 of the Code of Sports-related Arbitration (the “Code”).
33. On 7 October 2022, the Respondent indicated that he had no objections to a further round of submissions.
34. On 27 October 2022, on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Panel was constituted as follows:
- President: Mr Romano F. Subiotto KC, Attorney-at-law in Brussels, Belgium  
Arbitrators: Mr Nicholas Stewart KC, Barrister in London, United Kingdom  
Mr Jeffrey G. Benz, Attorney-at-law in London, United Kingdom
35. On 28 October 2022, the Respondent requested more information on Mr Romano Subiotto KC’s previous appointments by the ITF, the International Tennis Integrity Agency, the Tennis Integrity Unit, Bird & Bird and/or Louise Reilly.
36. On 1 November 2022, the CAS Court Office answered the Respondent’s questions on behalf of Mr Romano Subiotto KC.

37. On 7 November 2022, the Respondent requested that “CAS appoint another President of the Panel” in this case and justified his request as follows: “In making this request, Respondent does not submit that Mr. Subiotto or the ITF have done anything inappropriate. Rather, Respondent respectfully submits that the CAS should appoint a President of the panel who has not frequently been appointed by a party or a party’s counsel”.
38. On 15 November 2022, the CAS reminded the Respondent that the appointment of an arbitrator cannot be changed once the Panel has been constituted, unless there is a successful petition for challenge pursuant to Article R34 of the Code, a removal (Article R35 of the Code), or the arbitrator resigns (Article R36 of the Code).
39. On 15 November 2022, the Respondent filed a petition for challenge against Mr Romano Subiotto KC’s appointment.
40. On 16 November 2022, Mr Romano Subiotto KC filed his comments on the challenge.
41. On 23 November 2022, the Appellant filed its comments on the challenge.
42. On 1 December 2022, upon request of the CAS Court Office, the Respondent indicated that he maintained the challenge.
43. On 10 January 2023, the Challenge Commission of the International Council of Arbitration for Sport issued an Order on Challenge rejecting the Respondent’s challenge to Mr Romano Subiotto KC’s appointment as President in these proceedings.
44. On 11 January 2023, the CAS indicated the Panel’s agreement to a second round of written submissions strictly limited to the 10 August 2021 test attempt.
45. On 18 January 2023, the Appellant filed its Reply in accordance with Article R56 of the Code.
46. On 26 January 2023, the Respondent filed his Rejoinder.
47. On 9 February 2023, in view of the Parties’ availabilities, the CAS Court Office confirmed that the hearing would take place on 25 April 2023 in person at the CAS Court Office in Lausanne, Switzerland.
48. On 16 February 2023, the CAS invited the Parties to sign the Order of Procedure.
49. On 20 February 2023, the ITF returned the signed Order of Procedure.
50. On 23 February, 2023, the Respondent sent the signed Order of Procedure.
51. On 21 April 2023, the ITF submitted evidence concerning the location of the Player’s younger brother at a tournament in Finland at the time of the second Whereabouts Failure.
52. On 24 April 2023, the CAS Court Office invited the Player to comment on this evidence either before or at the Oral Hearing.

53. On 25 April 2023, the Oral Hearing was held in Lausanne, Switzerland. In addition to the Panel and Ms Delphine Deschenaux-Rochat, Counsel to the CAS, the following appeared:
- For the ITF: Dairmuid Laffan (barrister for the ITF) and Chris Lavey (counsel for the ITF), Miro Bratoev (ATP Tour (observer)), and Enrique Gonzalez Martinez (DCO and witness designated by the Appellant, attending remotely by video conference).
  - For the Respondent: the Player, Howard Jacobs and Manfred Löfvenhaft (counsel for Respondent), and Marijn Bal (witness designated by the Respondent).
54. At the end of the Oral Hearing, the Parties confirmed that their rights to a fair hearing had been respected to date.

#### IV. SUBMISSIONS OF THE PARTIES

##### A. The Appellant's Position

55. The ITF requests that the Panel rule as follows:
- *“The ITF’s appeal is admissible.*
  - *The Decision is set aside.*
  - *The Player is found to have committed an Anti-Doping Rule Violation in breach of 2021 TADP Article 2.4 as a result of three Whereabouts Failures on 22 April 2021, 10 August 2021 and 7 November 2021.*
  - *The Player is sanctioned with a two-year period of Ineligibility in accordance with 2021 TADP Article 10.3.2, commencing on the date the CAS award is issued (TADP Article 10.13).*
  - *All competitive results obtained by the Player from the date of the third missed test (7 November 2021) until the date on which the CAS award enters into force are disqualified, with all resulting consequences, unless fairness requires otherwise.*
  - *Without prejudice to the ITF’s position that these proceedings properly fall within the ambit of Article R65.2 of the CAS Code (i.e. the proceedings should be free), in the event these proceedings are deemed to fall within Article R64.2 of the CAS Code (i.e. the costs are to be borne by the Parties), the Player bears the costs of the arbitration and the ITF is granted a contribution towards its legal fees and other expenses incurred in connection with these proceedings”.*
56. In support of its request, the ITF explains that its appeal centres on the Player’s Third Whereabouts Failure, noting that the Player was specifically advised on 5 December 2019, when he was told that he had been designated for inclusion in the IRTP, that he would be liable for a Whereabouts Failure if he was unavailable for testing during the 60 minute time slot specified in his whereabouts filing at the location specified for that time slot (Missed Test)



or if no whereabouts filing was made by the relevant deadline or the information provided was insufficient and/or inaccurate (Filing Failure).

57. The ITF recalls that Mr Enrique González Martínez, the relevant DCO, attempted to test the Player during the 60-minute time slot specified in the Player's whereabouts filing for the day in question (7 November 2021) by visiting the location specified for that time slot, and that Article B.2.3 ISRM was complied with because the third attempt was not made until after the Player had received notice of the second Missed Test.
58. The ITF notes that the key questions for this Panel are whether the requirements of Articles B.2.4(c) and B.2.4(e) ISRM are satisfied, namely whether the DCO did what was reasonable in the circumstances to locate the Player, and whether the Player is able to rebut the presumption that his negligence caused or contributed to the Missed Test.
59. On the first question, namely whether the DCO did what was reasonable in the circumstances to locate the Player, the ITF repeats its arguments at first instance, and concludes by recalling that the Independent Tribunal concurred with its position that the steps the DCO took to locate the Player on 7 November 2021 were reasonable. According to the ITF, first, the Independent Tribunal summarized the overall position set out in Article B.2.4(c) ISRM and the accompanying Comment, and the Comment to its predecessor Article I.4.3(c) ISTI in the following manner: *"this Independent Tribunal understands that if the athlete cannot be immediately located at the location specified: The DCO should remain at that location for whatever time is left of the 60 minute time; During that remaining time, the DCO should do what is reasonable in the circumstances to try to locate the athlete; As a last resort the DCO may (but does not have to) telephone the athlete to see if he/she is at the specified location"*.
60. It continued: *"[T]he evaluation of the DCO's behaviour during the 60-minute time slot relies on the premise that athletes have the duty to be diligent at filing Whereabouts Information that is accurate enough to allow DCOs to find them where they stated they would be"*.
61. Given that *"it is undisputed that the Player's information for his Whereabouts Filing indicated that he would be located at the Hotel Ibis on 7 November 2021 between 06:00 am and 07:00 am"*, when the DCO asked himself the question at paragraph 11 of the TADP Protocol – i.e. *"Given the nature of the location specified by the Player, what do I need to do to ensure that if the Player is present, he/she will know that a Doping Control Officer is here to collect a Sample from him/her?"* – this *"could not have led to the DCO finding the Player because the latter was not present where he said he would be"*.
62. Accordingly, by taking all the steps just described, *"the DCO did all that was required of him (nothing less and nothing more) to locate the Player at the Hotel Ibis"*.
63. The Independent Tribunal endorsed the general principle that *"it is not the duty of the DCO to try to find the athlete in another location than the athlete's specified location"*.
64. In conclusion, the Independent Tribunal said it must *"reject the Player's claims that the DCO did not try 'very hard' to locate him and did not do what was 'reasonable under the circumstances'"*.

65. In view of the above, and in line with the findings of the Independent Tribunal at first instance, the ITF submits that the requirements of Article B.2.4(c) ISRM are satisfied.
66. The second issue concerns the requirement of ISTI Article B.2.4(e) whether the Player is able to rebut the presumption that his negligence caused or contributed to the Missed Test. The Independent Tribunal found that *“It [...] appears that the third missed test of 7 November 2021 resulted from a communication issue between the platform Tennis UNO and the Player’s agent, which in turn and due to the specific circumstances of the case, created a miscommunication between the Player and his agent. [...] The Independent Tribunal therefore concludes that no negligence may be attributed to the Player or his agent”*.
67. The ITF argues that the Independent Tribunal reached certain factual findings that were simply not supported by the available evidence. The ITF recalls that Article B.2.4(e) ISRM provides that *“the Athlete will be presumed to have been negligent upon proof of the matters set out at sub-Articles B.2.4 (a) to (d)”*, meaning that the burden is on the Player to prove that no negligent behaviour on his part caused or contributed to his failure (i) to be available for Testing at the location indicated during the relevant time slot, and (ii) to update his most recent Whereabouts Filing to give notice of a different location where he would instead be available for Testing during a specified 60-minute time slot on the relevant day.
68. The ITF notes the Independent Tribunal’s observation that the concept of negligence is not defined in the WADA Code, the TADP, the ISRM, the ISTI or any other relevant guidelines or protocols, concluding that negligence will exist where there is *“a failure to observe a duty of care”*, and, more specifically, where steps are not taken that *“would have been expected from a reasonable person in a similar situation”*.
69. The ITF objects that the Independent Tribunal did not, however, discuss what the duty of care entails. In the ITF’s submission, the relevant framework defining the duty of care in these circumstances consist of the relevant requirements set forth in the TADP and ISTI, namely:
- Article 1.3.1 TADP and Article 4.8.8.5 ISTI that the Player has a *“personal responsibility”* to *“comply with [the TADP] at all times”* and to *“be available for Sample collection at all times upon request, whether In-, or Out-of-, Competition”*.
  - Article 4.8.8.6 ISTI that the Player’s quarterly whereabouts filings must be *“accurate and complete”*, containing information *“in sufficient detail to enable any Anti-Doping Organisation [...] to locate the Athlete for Testing”*.
  - Article 4.8.9.1 ISTI that the Player is under an ongoing responsibility to file updates where *“a change in circumstances means that the information in [his] Whereabouts Filing is no longer accurate or complete”*.
  - Annex I.4.1 ISTI that the Player *“must specifically be present and available for Testing on any given day during the 60-minute time slot specified for that day in their Whereabouts Filing, at the location that the Athlete has specified for that time slot”*.

70. The ITF recalls the Player's assertion that the Third Whereabouts Failure resulted from a 'miscommunication' between the Player and his agent, Mr Bal, meaning that the Player did not realize that the hotel he was staying at was different to the one that Mr Bal specified in the Player's whereabouts information on ADAMS. The ITF argues that the Third Whereabouts Failure would not have happened if the Player had completed his own whereabouts filings, because upon arriving at the Hotel Ibis and being told his room booking was elsewhere, he would have realized that the information on ADAMS was incorrect and taken steps to rectify it.
71. The ITF criticizes the Independent Tribunal's analytical approach that, it argues, decoupled the overarching question of whether the Player had rebutted the presumption of negligence from any scrutiny of the Player's delegation of his whereabouts responsibilities, citing the following passage from the Decision: "*The Independent Tribunal finds that it shall first analyse whether a negligence exists in this matter before analysing the consequences of the delegation, if a negligence is established[...] Considering that no negligence exists in this case, the Independent Tribunal thus does not need to analyse further the question of the delegation and the application of the delegation doctrine in the present matter*".
72. The ITF submits that this approach is wrong and that the Player's decision to outsource certain tasks that were integral to fulfilling his personal duty under the TADP and ISTI is a relevant factor in assessing whether the Player departed from the applicable duty of care. The ITF adds that negligence may result simply where the Player's delegation to an agent is careless or otherwise deficient, such that it gave rise to miscommunications. In the ITF's view, whether the acts (or omissions) committed by Mr Bal constitute negligence to be imputed to the Player is a secondary question.
73. The ITF notes the Player's admission that he routinely tasks others with his anti-doping obligations, adding that this is permissible but the Player assumes the dangers of doing so. The ITF recalls that it is an established principle that the duty of utmost caution or due diligence to avoid a doping violation cannot be delegated to a third party, that an athlete cannot therefore delegate away his or her responsibilities to avoid doping, that an athlete is responsible for the behaviour of his or her entourage, and that an athlete must monitor or supervise the activities of the person to whom certain tasks have been delegated, meaning in practical terms that, as was stated in case CAS 2016/A/4643, "*a player who delegates his/her anti-doping responsibilities to another is at fault if he/she chooses an unqualified person as her delegate, if he/she fails to instruct him properly or set clear procedures he/she must follow in carrying out his task, and/or if he/she fails to exercise supervision and control over him/her in the carrying out of the task*".
74. The ITF adds that Article 4.8.14.4 ISTI expressly confirms that an athlete "*remains ultimately responsible at all times*" for ensuring that whereabouts information is provided correctly and on time and for ensuring availability for Testing in accordance with the whereabouts information, regardless of whether the athlete makes the filing personally or delegates the task to a third party. Incorrect implementation of the delegated task cannot in any event be a defence to a Whereabouts violation.

75. The ITF recalls that the Player was clearly informed in the 2020 Whereabouts Programme summary that was sent to him upon his entry to the IRTP that: *“you may wish to have your coach or agent assist you in complying with these Whereabouts requirements. However, please note that you remain personally responsible for any failure to comply with the requirements of the Programme as set out in this document. As with any other Anti-Doping Rule Violation, a tribunal would not accept a plea that you delegated the task to someone else and should not be blamed for his or her failure to carry it out properly”*.
76. The ITF points to the inadequacy of the Player’s assertions at first instance that he was not negligent in his delegation of his whereabouts responsibilities because Mr Bal was well qualified, he agreed with Mr Bal on clear procedures to be followed in carrying out his task, and he made sure that Mr Bal followed the agreed procedures. Mr Bal stated at first instance that there was a very clear procedure to maintain the Player’s whereabouts information, including the implementation of safeguards and additional protections, such as buying the Player a second mobile telephone following his first Whereabouts Failure, and he and the Player maintained near-constant communication to ensure Mr Bal was always aware of the Player’s location.
77. However, the ITF remains unconvinced on the details of their arrangement or the ‘rules’ that were meant to be followed to ensure the delegation was successful, pointing to the Player’s reference in cross-examination at first instance to the arrangement being recorded in notes on A4 paper, which are not on file, and to the absence of any contemporaneous evidence, whether in the form of text messages, WhatsApp chat logs, emails, or other documents, to support these claims. The ITF suggests that Mr Bal could have checked if the Player had made it to his hotel, that the hotel matched his whereabouts filing, adding that the Player could have raised an issue when his hotel was different from the one he was booked into.
78. The ITF points out that the implementation of the so-called arrangement between the Player and Mr Bal appears to have been faulty also in connection with the Player’s other Whereabouts Failures. For example, the Player originally stated that his first Missed Test, in April 2021, occurred whilst he was in Spain for the Barcelona Open. He said that he had stayed in Barcelona after losing his match on 17 April 2021, and this was not updated in his whereabouts filing. However, at the first instance hearing, it emerged that actually the Player had travelled to Ethiopia, without having informed Mr Bal.
79. On 6 November 2021, the day before the third Missed Test, the Player’s specified location and time was at the Hotel Ibis in Roanne between 6 am and 7 am, despite the fact he did not arrive in Roanne until very late that night, more than 12 hours after his specified timeslot.
80. Against this background, the ITF submits it is difficult to understand how the Independent Tribunal could have accepted at face value the Player and Mr Bal’s assertions about their whereabouts arrangements, finding that the *“Player and Mr Bal have put in place a protocol in order to make sure that no mistakes will happen with the whereabouts. The Player and Mr Bal were in regular contact regarding the whereabouts information”*, and this when the ITF understands that the Player missed three of the four Out-of-Competition tests that he was subject to in the seven months leading up to 9 November 2021.

81. The ITF adds that the Player is an experienced international tennis player subject to the TADP since 2014. This is his seventh year as a professional and his third year in the ITF's International Registered Testing Pool. He has been ranked by the ATP as high as 67 in singles. He has also received significant anti-doping education, as he attested at first instance. Furthermore, by 7 November 2021, the Player had committed two Whereabouts Failures in the preceding seven months, namely the Missed Tests on 22 April 2021 and 10 August 2021. He was on notice of that, and was aware that he was only one Missed Test or Filing Failure away from committing an ADRV. In such circumstances, the Player should have been on 'high alert'.
82. The ITF submits that there are at least seven different ways in which the Player (and/or Mr Bal, as his delegate) behaved negligently, pointing out that any one of these acts or omissions would be sufficient to prove the ADRV if this Panel finds that it constitutes a departure from the Player's duty of care, because the Player has the burden of rebutting the presumption of negligence by demonstrating a complete absence of negligence. The ITF argues as follows:
  83. First, as just described, the Player has been unable to prove that his delegation to Mr Bal was done in a way that was consistent with his duty of care.
  84. Second, the ITF rejects the Player's assertion that he was not negligent because he and his agent did not know that his reservation was at the Hotel Kyriad, rather than the Hotel Ibis. The ITF explains that the Association of Tennis Professionals (ATP) uses an online platform known as 'Tennis UNO', inter alia, to manage accommodation in relation to ATP tournaments, which players and their managers use to request accommodation. The administrators for each individual tournament respond to these applications and either grant them, amend them, or reject them. Use of Tennis UNO is mandatory at ATP Challenger tournaments, such as the Event.
  85. The Player and/or his support team used Tennis UNO to make bookings for the tournament in Roanne. At 5:57 pm GMT on 1 November 2021, Tennis UNO sent an automatically generated email to the Player's personal email address, copying Mr Bal among others, in response to the Player (or a delegate) making a request for accreditation using Tennis UNO with the subject line 'Roanne CH 100 2021 – Request for Credential', confirming the Player's request for credentials.
  86. At 6:22 pm GMT on 1 November 2021, Tennis UNO sent an automatically generated email to the Player, copying Mr Bal among others, in response to the Player (or a delegate) recording a request for accommodation using Tennis UNO with the subject line 'Roanne CH 100 2021 – Request for Accommodation' at "Hôtel Ibis Styles Roanne Centre Gare (Primary Hotel)" with the note "Can you please have two, separate beds in the hotel room since they are sharing?".
  87. At 6:54 pm GMT on 1 November 2021, Tennis UNO sent an automatically generated email to the Player, copying Mr Bal among others, with the subject line 'Roanne CH 100 2021 – Request for Accommodation', reminding the Player of the above accommodation request at

“Hôtel Ibis Styles Roanne Centre Gare (Primary Hotel)” with the note “Can you please have two, separate beds in the hotel room since they are sharing?”.

88. The following day, at 10:28 am GMT on 2 November 2021, Tennis UNO sent an automatically generated email to the Player, copying Mr Bal among others, with the subject line ‘Roanne CH 100 2021 – Request for Accommodation’ recording a change in the accommodation request to “Kyriad Direct Roanne (Secondary Hotel)”. The email was sent in response to the actions of an Event representative (Ms Jean) using Tennis UNO.
89. The same minute, at 10:28 am GMT on 2 November 2021, Tennis UNO sent an email to the Player, copying Mr Bal among others, with the subject line ‘Roanne CH 100 2021 – Request for Accommodation’, confirming the approval of the Player’s request for accommodation at “Kyriad Direct Roanne (Secondary Hotel)”, with the following additional statement *“Hello Mickael the Ibis style didn’t provide twin room so I change you in Kyriad Hotel, thank you”*.
90. The ITF explains that, following amendment and approval of the request for accommodation, the ‘status’ of the request on Tennis UNO was automatically changed from ‘Submitted’ in black text, to ‘APPROVED’ in green text next to a green tick, listing the hotel as the ‘Kyriad Direct Roanne’, and providing the additional explanation ‘Hello Mickael the Ibis styles didn’t provide twin room so I change you in Kyriad Hotel, thank you’.
91. The ITF rejects Mr Bal’s claim that he did not receive these emails, adding that, as the Independent Tribunal found, *“it is evident that negligence would have materialised if the agent would have failed to amend the whereabouts after being aware of the modification of the initial hotel”*.
92. Concerning Mr Bal’s claim, the ITF says that it does not bear the onus of proving the emails were received. Rather, the Payer must prove they were not received, adding that the Player has produced no concrete evidence that Mr Bal did not receive the email from Tennis UNO informing him that his request for the Player to stay at the Hotel Ibis had been amended to a request for the Player to stay at the Hotel Kyriad, or the email that approved that amended request.
93. In any event, the ITF commissioned CCL Solutions Group to conduct an analysis of material within the ITF’s possession in order to rule out certain circumstances that might have resulted in the non-delivery of the email(s) in question, which confirms that *“[N]o explicit technical reasons were identified which would disallow the delivery of these email[s] to the intended recipients [...] Analysis of email security controls (SPF, DKIM and DMARC), email Headers and anti-spam related metadata reveal no indicators which would prompt an email server or client to flag the messages as spam [...] Temporal analysis of email transition between multiple Internet servers and analysis of codepages show no suspicious artefacts”*. The ITF adds that other recipients to the same emails confirmed to the ITF that they received such emails.
94. The ITF also rejects Mr Bal’s argument that he cannot prove he did not receive these emails, explaining that Mr Bal or the Player could have taken various steps to narrow down the likelihood that they did or did not receive the emails. As noted in the technical report of CCL Solutions Group filed with the Appeal Brief, an examination of the recipient mail server (i.e.

that of Mr Bal's email account, affiliated with IMG) would enable the identification of *“any errors which might prevent transmission/delivery of the target email, to create a timeline of email transmission, and analyse email routing/tracing information, etc. Some server logs record information about the state of the email item and operations with the item such as movement and deletion [...] If the recipient uses a mail server with audit logging enabled, it may be possible to trace movements of an email item through that system in finer detail”*. An examination of the recipient mailbox *“together with the examination of the target email item provides the most comprehensive information about the state of the item such as send/received and associated timestamps, opened and read, moved before/after reading, etc”*.

95. Third, the ITF argues that, even if Mr Bal did not receive the Tennis UNO email approving the request to stay at the Hotel Kyriad, Mr Bal is an experienced player's agent, who is fully aware of the Tennis UNO process, the Player Guide, and the sequence of accommodation request made, recorded, and finally approved. The ITF submits that Mr Bal should have been expecting an approval email confirming the accommodation he requested was available and he should not have updated the Player's whereabouts on 6 November 2021 until he received that approval. In addition, the ITF points out that Tennis UNO copied the Player on the confirmation emails stating that a room had been reserved for him at the Hotel Kyriad (rather than the Hotel Ibis). The Player failed to act upon the notice that his hotel had been changed, nor did he check or notice the discrepancy between his filed whereabouts information and the name and address of the hotel where he would be staying. The ITF submits that notice that his hotel has been changed should be a red flag for further action for a player who already has two Whereabouts Failures recorded against them.
96. The ITF submits that, at a minimum, particularly in circumstances where (by his own testimony) Mr Bal believed there were issues with the Tennis UNO system that meant emails were not being sent properly, Mr Bal should have logged on to the Tennis UNO system at any time between 1 November 2021 (when Mr Bal made the initial request for the Player to stay at the Hotel Ibis) and 6 November 2021 (when Mr Bal updated the Player's whereabouts to the Hotel Ibis) to check the status of his accommodation request. The ITF explains that if either of them had logged in and checked the Player's 'My Requests' page before 10:28 am on 2 November 2021, the request status would have shown 'Submitted' (i.e., pending and unresolved). If either of them had logged in and checked the 'My Requests' page after 10:28 am on 2 November 2021, the request status would have shown 'APPROVED' with a green tick and a prominent explanation 'Hello Mickael the Ibis styles didn't provide twin room so I change you in Kyriad Hotel, thank you'. The ITF points out that it remains unclear why Mr Bal updated the whereabouts filing on 6 November, five days after first making the booking request, without first checking that such booking had been confirmed.
97. Fourth, the ITF points out that the Player found out when he arrived at the Hotel Ibis just after 9 pm on 6 November 2021 that he was not booked to stay there. The Player stated at first instance that Mr Bal had informed him he was "booked to the official hotel", apparently failing to realise there were two tournament hotels (the other being the Hotel Kyriad). At a minimum, the Player or Mr Bal should have then checked whether his whereabouts information was still accurate once he became aware that he was booked at a different official hotel.

98. Fifth, the ITF argues that the Player cannot simply rely on his assumption that “whatever Mr Bal tells him regarding his travel itinerary is reflected in his Whereabouts”. The Player should have been on ‘high alert’. He was on notice that he would not be warned by the ITF if his whereabouts filings were insufficient. He arrived in Roanne late in the evening and was advised of his change of hotel. But he did nothing to ensure compliance with his anti-doping obligations. On Mr Bal’s own account of events, he was not aware of the change in hotel until the Player received notice of the third Missed Test from the ITF.
99. Sixth, the ITF submits that the Player cannot simply assume that his whereabouts information was updated because some of the Roanne tournament officials knew where he was. The Player’s assumptions highlight his failure to understand his personal responsibilities and whereabouts obligations. He assumed the risk of not being where his whereabouts information said he would be and not updating his whereabouts information.
100. Seventh, the ITF submits that the Player and Mr Bal were negligent in failing to answer the ‘failsafe’ or ‘last resort’ telephone calls made by the DCO: two to the Player’s mobile telephone at 6:55 am and 6:56 am, and one to Mr Bal’s mobile telephone at 6:57 am and the reasons provided for not doing so are inadequate to rebut the presumption of negligence. As previously noted, the fact that the DCO called the Player from a Spanish rather than a French telephone number is irrelevant. There is nothing unusual about a DCO from one country travelling to another country to conduct testing, and the Player admitted in oral testimony that he had previously received calls from a DCO using an English mobile telephone number when abroad in France. The Player and Mr Bal should have known and expected that if a DCO needed to call them, he would do so within the last five minutes of the 60-minute time slot, and he would call from an unknown number.
101. The ITF submits that there can be little doubt that those decisions, actions and omissions – by the Player himself and by Mr Bal on his behalf – contributed to the Player’s failure to make himself available for testing and to update his whereabouts information, and were negligent. Each one amounts to negligence individually, and when assessed collectively represents a composite level of negligence that can only be described as significant. As previously noted, the Player must show a ‘complete absence’ of negligence, so unless he can successfully refute each one, the charge must be upheld.
102. In addition, the ITF submits that the other reasons provided by the Player in support of his submission that the presumption has been rebutted are irrelevant and/or fail to meet the Player’s burden, namely that the Player provided ‘samples in the weeks just prior to and just after 7 November 2021’ and that the Player “would have responded and immediately made himself available for testing” if the DCO had left a message when he called the Player.
103. The ITF argues, in the alternative, that the essential elements of three Filing Failures are all present in this case.
104. In its Reply to the Respondent’s Answer, the ITF focuses on the second Whereabouts Failure on 10 August 2021 in response to the Player’s assertion in his Answer that in the early morning of 10 August 2021 he travelled to see his brother, who was ‘vomiting’, and therefore the Player



was not negligent in relation to the Missed Test because what he did was ‘reasonable under the circumstances’. The ITF submits that the Player limits himself to asserting the above facts, without adducing objective and corroborative evidence. In any event, the ITF argues that the Player is unable to discharge his burden to demonstrate the complete absence of negligence, even the Player were to prove all of these facts, in line with the relevant case law.

105. Indeed, on 21 April, 2023, the ITF submitted evidence of the Player’s younger brother’s location at tournament in Finland, meaning that the Player’s assertion, described above, could not be accurate. As a result, the Player withdrew his objections to the second Whereabouts Failure at the Oral Hearing.

## **B. The Respondent’s position**

106. The Respondent requests that the Panel rule as follows:

- *“That the Award of the ITF Tribunal be upheld; and,*
- *Alternatively, if the CAS Tribunal finds that Mr. Ymer has committed an anti-doping rule violation, any appropriate sanction should not exceed 12 months.*
- *If the CAS Tribunal finds that Mr. Ymer has committed an anti-doping rule violation, any results prior to the start date of the sanction should not be disqualified; or alternatively, any results disqualification must be limited to the period between 7 November 2021 and 27 November 2021 (the next date thereafter that Mr. Ymer tested negative in-competition for any banned substances).*
- *That Appellant shall bear all costs of the proceedings including a contribution toward Respondent’s legal costs”.*

107. In his Answer, the Player contests the second Whereabouts Failure of 10 August 2021 and submits that the Independent Tribunal was correct in finding that the events of 7 November 2021 did not constitute a third Whereabouts Failure.

108. Concerning the second Whereabouts Failure of 10 August 2021, the Player explains in his Answer and Rejoinder that it results from exceptional circumstances, and not from the Player’s negligence. The Player’s younger brother, a minor, fell ill in the middle of the night and called the Player to come take care of him. The Player rushed to him and ended up staying up all night watching his little brother, then fell asleep about an hour before his one-hour testing window, missing several calls from his mother who tried to reach him and inform him that a DCO had arrived to test him. The Player submits that an athlete cannot be expected to have his Whereabouts at the top of mind all the time, particularly when the health and welfare of a family member is at stake, and unexpected circumstances may arise that force athletes to abandon their normal day. The Player argues that he did what was reasonable under the circumstances.

109. As indicated above, on 21 April 2023, the ITF submitted evidence of the Player’s younger brother’s location at a tournament in Finland on 10 August 2021, meaning that the above

explanations could not be accurate. As a result, the Player withdrew his objections to the second Whereabouts Failure at the Oral Hearing.

110. Concerning the third alleged Whereabouts Failure, the Player recalls that, under Annex B.2.4 ISRM, a “Missed Test” finding requires the ITF to prove (i) that the DCO did what was reasonable in the circumstances to locate the Player, and (ii) that the Player was negligent.
111. The Player submits that the DCO who attempted to test him did not do what was reasonable under the circumstances to locate the athlete on 7 November 2021, when the Player was at the only other designated athlete hotel, the Kyriad Hotel, and not the Hotel Ibis. The DCO states that he arrived at the Hotel Ibis and spoke to the front desk representative, who answered that the Player was not on the guest list. The Player argues that there is no evidence beyond the DCO’s “bare assertion” that he did this. Furthermore, the DCO then had no reason to wait until approximately 5 minutes before his departure to call the Player, and, in addition, from a Spanish number (thus causing the Player to believe it was a spam number), and without leaving a voicemail. The Player notes that the guidelines are silent with respect to instructions if the front desk indicates that the athlete is not staying at the hotel (as opposed to being refused entry, for example), but points out that no evidence suggests that the DCO, who knew that the Player was competing in Roanne, and presumably, according to the Player, was assigned to test athletes at the only other designated hotel, made any attempts to contact the Hotel Kyriad to determine whether the Player was there instead. The DCO could have easily made the six-minute commute to the other hotel to successfully collect a sample from the Player in his 60-minute window, had he done so. Instead, the DCO claims wrongly that he was not required to do anything other than show up at the Hotel Ibis, despite the clear requirement to locate the Player.
112. Furthermore, circumstances beyond the Player’s or Mr Bal’s control, rather than their negligence, caused the Player’s failure to be tested by the DCO. The Player explains that Mr Bal requested the Player’s travel accommodations through the “Tennis Uno” portal. Mr Bal requested a double occupancy room at the Hotel Ibis, which was designated as the primary hotel for players. On the same day, Mr Bal received written confirmation of his request from the “Tennis UNO” portal. Mr Bal stated in his testimony before the Independent Tribunal that he is fairly certain he received no further communication from Tennis UNO or the tournament organizers, including on the Player’s accommodation change, and therefore assumed that the request had been accepted. Mr Bal informed the Player that he would be staying at the tournament hotel, and updated the Player’s Whereabouts at 3:05 GMT on 6 November 2021 (i.e., 4:35 p.m. on 5 November 2021 in Los Angeles, USA, where Mr Bal was at the time) to reflect that he would be staying at the Hotel Ibis for the duration of the Roanne Tournament. The Player submits that Mr Bal could not have known that he needed to change the Player’s Whereabouts, while the tournament organizers the Player’s correct hotel. While travelling to Roanne, the Player checked online and saw that the primary tournament hotel was the Hotel Ibis, where he went as soon as he arrived in Roanne. However, he was told by the Hotel Ibis reception that there was no reservation under his name. Tournament officials, whom the Player contacted, informed him that his reservation was at the secondary tournament hotel, the Kyriad Direct. The Player was taken on a five minutes’ drive to that hotel in a tournament vehicle, and checked in. Having had no issues at the Kyriad Direct, the

Player says that he reasonably believed that he had simply gone to the wrong tournament hotel when he went first to the Hotel Ibis, which also meant that he believed that his whereabouts identified the other tournament hotel (the Kyriad Direct); for that reason, he felt no need to notify Mr Bal that he was at a different hotel, or suspect that his whereabouts required updating. The Player submits that his belief that his Whereabouts reflected he was staying at the Kyriad cannot be considered to be negligent under the circumstances, in particular because his agent had assumed the entirety of his Whereabouts responsibilities.

113. The Player explains that a DCO tried to test him at the Hotel Ibis at 5.55 am the following morning, without attempting to contact the Player until five minutes before the end of his one-hour testing window, despite the fact that the DCO was informed repeatedly that the Player was not at the hotel, because the Player was, quite obviously according to the Player, at the secondary hotel. Furthermore, the DCO attempted to call from a Spanish number, which confused the Player when he saw it, because the Player knew that when he had been tested at his hotel in the past, he would be notified of the DCO's arrival either by the front desk on the hotel room phone or by a knock on his hotel room door. For these reasons, he did not suspect that a call from a Spanish number could be a DCO trying to test him in France.
114. Mr Bal found out that the Player had stayed at the Kyriad Hotel and not at the Hotel Ibis only when the Player received notification of his Apparent Missed Test on 12 November 2021. Mr Bal then emailed Tennis UNO on 17 November 2021 asking for any copies of communications regarding the Player's accommodations. He received a copy of four emails, only one of which Mr Bal actually received, as confirmed by the IT department of IMG, where Mr Bal works. IMG IT suggested that the fact that Tennis UNO generated these two e-mails (as opposed to replying to an e-mail sent by Mr Bal) from a "no-reply" email address could have caused Mimecast to flag the e-mails containing information about the Player's accommodation as spam and segregate them, which means that they never would have appeared in Mr Bal's Microsoft Office outlook "inbox" or "junk" folder, and would have been archived in the portal only accessible by specific request, which Mr Bal had no reason to believe he had to do and was not even aware was an option until very recently.
115. The Player points further to the Independent Tribunal's approval of his arrangement with Mr Bal that the latter should handle the Player's whereabouts duties because of the condition from which the Player suffers, and the Independent Tribunal's finding that such delegation was done appropriately and diligently both regarding the instructions given to Mr Bal, whom the Independent Tribunal found to be entirely qualified to carry out the required tasks, and the Player's supervision and control of Mr Bal's execution of those instructions, and submits that this should be taken into account in the analysis of any potential negligence on the part of the Player.
116. The Player concludes that, consistent with Annex B.2.4 ISRM the 7 November 2021 Whereabouts Failure should be set aside, because he was not negligent and because the DCO did not do what was reasonable under the circumstances to locate him.

## V. JURISDICTION

117. Article R47 of the Code provides that “[a]n 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”.
118. The procedural aspects of CAS proceedings are governed by the provisions that apply at the time of the proceedings, in this case the 2022 version of the TADP. Article 13.2 2022 TADP provides that “a decision that no Anti-Doping Rule Violation has been committed” made under the Programme in cases involving an International-Level “may be appealed exclusively to CAS” by the parties listed in Article 13.2.3.1 2022 TADP.
119. The Player is an International-Level Athlete, and the ITF falls within the scope of Articles 13.2.3.1 (b) and (c) 2022 TADP. Accordingly, the ITF has a right of appeal to CAS against the Decision, as confirmed also by the Parties’ signature of the Order of Procedure.
120. Furthermore, pursuant to Article R57 of the Code, this panel may review the facts and law of this case de novo, and replace the lower instance’s decision by its own.

## VI. ADMISSIBILITY

121. The ITF filed its Statement of Appeal against the Decision with the CAS on 14 July 2022, in accordance with the time limits set out in Article 13.8.1.1 2022 TADP. The Statement of Appeal further complied with the requirements of Article R48 of the Code. As a result, this Appeal is timely and admissible.

## VII. APPLICABLE LAW

122. Article R58 of the Code provides 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*
123. The procedural aspects of CAS proceedings are governed by the provisions that apply at the time of the proceedings, in this case the 2022 version of the TADP, whereas the substantive aspects are governed by the rules that applied at the time of the alleged anti-doping violation.
124. The Whereabouts Failures giving rise to the charge that was the subject of the Decision occurred on 22 April 2021, 10 August 2021, and 7 November 2021. As a result, the 2021 TADP applies to the substantive issues on appeal, as confirmed by Article 1.5.2.2 2022 TADP.

125. Art. 1.1.5 TADP provides that it is governed by English law, subject to the specific provisions of Art. 1.1.4, meaning that English law applies to resolve any issues that cannot be resolved under the TADP.

## VIII. MERITS

### A. Relevant provisions

126. Article 1.3.1.1 & 1.3.1.2 TADP:

*It is the personal responsibility of each Player to: be knowledgeable of and comply with this Programme [the 2021 Tennis Anti-Doping Programme] at all times; [and] be available for Sample collection at all times upon request, whether In-Competition or Out-of-Competition”.*

127. Article 2.4 TADP: “Whereabouts Failures by a Player.

*Any combination of three Missed Tests and/or Filing Failures within a 12-month period by a Player in a Registered Testing Pool”.*

128. Article 3.1.1 TADP:

*“The ITF will have the burden of establishing that an Anti-Doping Rule Violation has occurred. The standard of proof will be whether the ITF has established the commission of the Anti-Doping Rule Violation to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation that is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt”.*

129. Article 3.1.2 TADP:

*“Where this Programme places the burden of proof on the Player or other Person alleged to have committed an Anti-Doping Rule Violation to rebut a presumption or establish specified facts or circumstances, then except as provided as in Articles 3.2.4 and 3.2.5 the standard of proof will be by a balance of probability”.*

130. Article 5.4.2.1 TADP:

*“The ITF may from time to time designate any Player or Players for inclusion in a pool of Players to be known as the ‘International Registered Testing Pool’. Any Player designated for inclusion in (or removed from) the International Registered Testing Pool will be notified of such inclusion or removal in accordance with ISTI Article 4.8.7”.*

131. Article 5.4.2.2 TADP:

*“A Player who is included in the International Registered Testing Pool is required (in each case, in accordance with ISTI Article 4.8): (a) to advise the ITF of their whereabouts on a quarterly basis; (b) to update that information as necessary, so that it remains accurate and complete at all times; and (c) to make themselves available for Testing at such whereabouts”.*

132. Article 7.7.5 TADP:

*“If the Review Board concludes that all of the requirements for recording a Whereabouts Failure are met, or if the Player does not request an administrative review, the ITF notify the Player that it is recording a Whereabouts Failure against them”.*

133. Article 7.7.7 TADP:

*“Where the Whereabouts Failure recorded in accordance with Article 7.7.5 is the Player's third Whereabouts Failure within a 12-month period, the matter will be referred to the Review Board to determine whether the Player may have committed an Article 2.4 Anti-Doping Rule Violation. If the Review Board determines(s) that the Player may have committed an Article 2.4 Anti-Doping Rule Violation, the ITF will send the Player a Notice in accordance with Article 7.10”.*

134. Article 4.8.1 ISTI:

*“Whereabouts information is not an end in itself, but rather simply a means to an end, namely the efficient and effective conduct of No Advance Notice Testing. Therefore, where an Anti-Doping Organization has determined that it needs to conduct Testing (including Out-of-Competition Testing) on particular Athletes, it must then consider how much information it needs about the whereabouts of those Athletes in order to conduct that Testing effectively and with no advance notice. The Anti-Doping Organization must collect all of the whereabouts information that it needs to conduct the Testing identified in its Test Distribution Plan effectively and efficiently. It must not collect more whereabouts information than it needs for that purpose.*

*Comment to 4.8.1: In accordance with Code Article 5.6, whereabouts information collected by an Anti-Doping Organization may be used for planning, coordinating or conducting Doping Control, providing information relevant to the Athlete Biological Passport or other analytical results, to support an investigation into a potential antidoping rule violation, and/or to support proceedings alleging an anti-doping rule violation. In addition, the collection of whereabouts information can have a useful deterrent effect”.*

135. Article 4.8.2 ISTI:

*“One consideration is whether the whereabouts information has to be provided by the Athlete, or alternatively whether it can be obtained from other sources. For example, where Competition and/or training in a sport is organized and carried out on a collective basis rather than on an individual basis, involving Team Activities, an International Federation or National Anti-Doping Organization may (in its absolute discretion) decide that it is sufficient to collect whereabouts information from the Athlete's team during such periods of Team Activity, without requiring the Athlete to provide further information for those periods. In such cases, however, in periods where there are no Team Activities scheduled or where an Athlete is not participating in Team Activities, then the Athlete may be required to provide more individualized whereabouts to enable No Advance Notice Testing of the Athlete during these periods”.*

136. Article 4.8.5 ISTI:

*“Anti-Doping Organizations with Testing Authority over an Athlete in a Registered Testing Pool should conduct Out-of-Competition Testing on that Athlete using the whereabouts information provided by the Athlete*

*in accordance with the WADA Code Article 2.4 Whereabouts Requirements. Any such Athlete who fails three times in any 12 month period to provide the required information about his/her whereabouts (a Filing Failure) and/or to be available for Testing at such whereabouts (a Missed Test) shall be liable for an anti-doping rule violation under WADA Code Article 2.4”.*

137. Article 3.6 ISRM:

*“Filing Failure: A failure by the Athlete (or by a third party to whom the Athlete has delegated the task) to make an accurate and complete Whereabouts Filing that enables the Athlete to be located for Testing at the times and locations set out in the Whereabouts Filing or to update that Whereabouts Filing where necessary to ensure that it remains accurate and complete, all in accordance with Article 4.8 of the International Standard for Testing and Investigations and Annex B.2 of the International Standard for Results Management”.*

138. Article B.2.1 ISRM:

*“An Athlete may only be declared to have committed a Filing Failure where the Results Management Authority establishes each of the following:*

*(a) That the Athlete was duly notified: (i) that they had been designated for inclusion in a Registered Testing Pool; (ii) of the consequent requirement to make Whereabouts Filing; and (iii) of the Consequences of any Failure to Comply with that requirement;*

*(b) That the Athlete failed to comply with that requirement by the applicable deadline;*

*[Comment to Article B.2.1(b): An Athlete fails to comply with the requirement to make Whereabouts Filing (i) where they do not make any such filing, or where they fail to update the filing as required by Article 4.8.8.6 of the International Standard for Testing and Investigations; or (ii) where they make the filing or update but do not include all of the required information in that filing or update (e.g. they do not include the place where they will be staying overnight for each day in the following quarter, or for each day covered by the update, or omit to declare a regular activity that they will be pursuing during the quarter, or during the period covered by the update); or (iii) where they include information in the original filing or the update that is inaccurate (e.g., an address that does not exist) or insufficient to enable the Anti-Doping Organization to locate them for Testing (e.g., “running in the Black Forest”).]*

*(c) In the case of a second or third Filing Failure, that they were given notice, in accordance with Article B.3.2(d), of the previous Filing Failure, and (if that Filing Failure revealed deficiencies in the Whereabouts Filing that would lead to further Filing Failures if not rectified) was advised in the notice that in order to avoid a further Filing Failure they must file the required Whereabouts Filing (or update) by the deadline specified in the notice (which must be within 48 hours after receipt of the notice) and yet failed to rectify that Filing Failure by the deadline specified in the notice; and*

*[Comment to Article B.2.1(c): All that is required is to give the Athlete notice of the first Filing Failure and an opportunity to avoid a subsequent one, before a subsequent Filing Failure may be pursued against them. In particular, it is not necessary to complete the Results Management process with respect to the first Filing Failure before pursuing a second Filing Failure against the Athlete.]*

*(d) That the Athlete's failure to file was at least negligent. For these purposes, the Athlete will be presumed to have committed the failure negligently upon proof that they were notified of the requirements yet did not comply with them. That presumption may only be rebutted by the Athlete establishing that no negligent behavior on their part caused or contributed to the failure".*

139. Article 3.6 ISRM:

*"Missed Test: A failure by the Athlete to be available for Testing at the location and time specified in the 60-minute time slot identified in their Whereabouts Filing for the day in question, in accordance with Article 4.8 of the International Standard for Testing and Investigations and Annex B.2 of the International Standard for Results Management".*

140. Article B.2.2 ISRM:

*"While [WADA] Code Article 5.2 specifies that every Athlete must submit to Testing at any time and place upon request by an Anti-Doping Organization with Testing Authority over them, in addition, an Athlete in a Registered Testing Pool must specifically be present and available for Testing on any given day during the 60-minute time slot specified for that day in their Whereabouts Filing, at the location that the Athlete has specified for that time slot in such filing. Where this requirement is not met by the Athlete, it shall be pursued as an apparent Missed Test [...]".*

141. Article B.2.3 ISRM:

*"To ensure fairness to the Athlete, where an unsuccessful attempt has been made to test an Athlete during one of the 60-minute time slots specified in their Whereabouts Filing, any subsequent unsuccessful attempt to test that Athlete (by the same or any other Anti-Doping Organization) during one of the 60-minute time slots specified in their Whereabouts Filing may only be counted as a Missed Test (or, if the unsuccessful attempt was because the information filed was insufficient to find the Athlete during the time slot, as a Filing Failure) against that Athlete if that subsequent attempt takes place after the Athlete has received notice, in accordance with Article B.3.2(d), of the original unsuccessful attempt".*

*Comment to Article B.2.3: All that is required is to give the Athlete notice of one Missed Test or Filing Failure before a subsequent Missed Test or Filing Failure may be pursued against them. In particular, it is not necessary to complete the Results Management process with respect to the first Missed Test or Filing Failure before pursuing a second Missed Test or Filing Failure against the Athlete.*

142. Article B.2.4 ISRM:

*"An Athlete may only be declared to have committed a Missed Test where the Results Management Authority can establish each of the following:*

*(a) That when the Athlete was given notice that they had been designated for inclusion in a Registered Testing Pool, they were advised that they would be liable for a Missed Test if they were unavailable for Testing during the 60-minute time slot specified in their Whereabouts Filing at the location specified for that time slot;*

*(b) That a DCO attempted to test the Athlete on a given day in the quarter, during the 60-minute time slot specified in the Athlete's Whereabouts Filing for that day, by visiting the location specified for that time slot;*



(c) That during that specified 60-minute time slot, the DCO did what was reasonable in the circumstances (i.e. given the nature of the specified location) to try to locate the Athlete, short of giving the Athlete any advance notice of the test;

*[Comment to Article B.2.4(c): Due to the fact that the making of a telephone call is discretionary rather than mandatory, and is left entirely to the absolute discretion of the Sample Collection Authority, proof that a telephone call was made is not a requisite element of a Missed Test, and the lack of a telephone call does not give the Athlete a defense to the assertion of a Missed Test.] [...]*

143. Article 3.6 ISRM & Annex 6 TADP:

*“Whereabouts Failure: A Filing Failure or a Missed Test”.*

## **B. Assessment**

144. Concerning the issue of whether the DCO took reasonable steps in the circumstances to locate the Player, this Panel endorses the findings of the Independent Tribunal summarized above at paras. 59-65, namely that the Player’s information for his Whereabouts Filing indicated that he would be located at the Hotel Ibis on 7 November 2021 between 06:00 am and 07:00 am, that the DCO did all that was required of him to locate the Player at the Hotel Ibis, and that it is not the duty of the DCO to try to find the athlete in another location than the athlete’s specified location.
145. This Panel concludes, in line with the findings of the Independent Tribunal, that the requirements of Article B.2.4(c) ISRM are satisfied.
146. Concerning the issue on appeal, namely whether the Player was negligent in not updating his whereabouts in order to enable the DCO to carry out the intended test, the Panel recalls that the obligation on athletes to comply with the antidoping regulations is personal, as reflected in the express terms of Article 1.3.1.1 TADP, and that it has consistently been held that the whereabouts regime represents a powerful and effective means of deterring and detecting doping in sport, that it is crucial to know where athletes are located at any particular time, and that the regime is necessarily strict.
147. The Panel notes that an athlete in the International Registered Testing Pool may seek third party assistance to comply with the onerous whereabouts requirements. In doing so, CAS has held (CAS 2016/A/4643) that an athlete must delegate the relevant tasks to a qualified person, instruct the delegate properly or set clear procedures he/she must follow in carrying out the delegated tasks, and exercise supervision and control over the delegate in the carrying out of the tasks.
148. The Panel must make it clear that delegation to assist in complying with the whereabouts requirements is not tantamount to delegating the athlete’s responsibility to comply with those requirements. The athlete remains personally responsible, and cannot delegate the requirement to comply, just as, more generally, reliance on a doctor or on the athlete’s entourage cannot do away with the athlete’s obligation to comply with the antidoping

regulations. The distinction is one that is well known in French law, between an “*obligation de moyen*” and an “*obligation de résultat*”: where an athlete may choose the means, he/she is required personally to achieve the result, namely, in this case, compliance with the applicable antidoping regulations.

149. The Panel further notes that the concept of negligence as employed in Article 3.6 ISRM implies unintentional carelessness, which, in turn, requires one to define the standard by which to judge whether an athlete has been careless. The Panel notes that only the highest priority athletes are included in the IRTP, and finds it reasonable to expect these athletes to be on high alert with respect to complying with the whereabouts requirements, and particularly so if two whereabouts failures have already occurred in any period of less than 12 months.
150. In the circumstances of this case, the Panel finds it reasonable to expect that a tennis player in the IRTP would not have delegated the filings task entirely to a third party, but that such a player would have verified the whereabouts filing made for that day, and would thus have realized that his stay at the Hotel Kyriad, rather than the Hotel Ibis, did not correspond with his whereabouts filing for that day, enabling him to correct the filing, or, at the very least, that such a player would have made this verification on being told that he was not staying at the hotel to which he had initially travelled.
151. The Panel wishes to stress that whether the person to whom the whereabouts filings tasks were delegated was negligent or there was a failure to inform that person of a change is irrelevant in the assessment just made. The key issue is that the Player, like any other international-level athlete, cannot be discharged of his whereabouts duties by delegating away his obligation to comply with the applicable regulations; but this is what he effectively did by relying on Mr Bal without taking the steps one would expect a hypothetical tennis player to take at the very least. As a result, the Panel is not satisfied on a balance of probability that the Player’s behaviour was not negligent and did not cause or contribute to his failure to be available for testing.
152. The Panel adds that Mr Bal must also be considered to have been negligent when telling the Player where he would stay in Roanne. The written record indicates that Mr Bal told the Player that he would stay at the tournament hotel. However, it is uncontested that there were two tournament hotels, meaning that Mr Bal’s indication was imprecise, and negligent in the circumstances, because the Player could not know in which of the two hotels he was staying and which featured in his whereabouts filings, but for checking them himself. At the Oral Hearing, Mr Bal could not recall whether he told the Player he would stay at the “official hotel” or at the Hotel Ibis. In case of the latter, then Mr Bal must also be deemed to be negligent as a result of his reliance on an email confirmation of his reservation at the Hotel Ibis, as opposed to a final confirmation of the booking at that hotel. Mr Bal says he never received the email notification of the final booking at the Hotel Kyriad Direct (and in his closing submissions for the ITF, Mr Laffan dropped reliance on Mr Bal having received that notification). Be that as it may, the Panel considers that it was incumbent on Mr Bal to make the appropriate enquiries to determine whether his reservation had been confirmed at the Hotel Ibis or at the Hotel Kyriad, which he failed to do.

## C. Sanctions

### a) *Relevant Provisions*

153. Art. 10.3.2 TADP:

*“For an Art. 2.4 Anti-Doping Rule Violation that is the Player’s first anti-doping offence, the period of Ineligibility imposed will be two years, subject to reduction down to a minimum of one year, depending on the Player’s degree of Fault. The flexibility between two years and one year of Ineligibility in this Article is not available where a pattern of last-minute whereabouts changes or other conduct raises a serious suspicion that the Player was trying to avoid being available for testing”.*

154. Annex B.3.6 TADP:

*“A finding that an Athlete has committed a Code Article 2.4 anti-doping rule violation has the following Consequences: (a) imposition of a period of Ineligibility in accordance with Code Article 10.3.2 (first violation) or Code Article 10.9 (subsequent violation[s]); and (b) in accordance with Code Article 10.10 (Disqualification, unless fairness requires otherwise) of all individual results obtained by the Athlete from the date of the Code Article 2.4 anti-doping rule violation through to the date of commencement of any Provisional Suspension or Ineligibility period, with all of the resulting Consequences, including forfeiture of any medals, points and prizes. For these purposes, the anti-doping rule violation shall be deemed to have occurred on the date of the third Whereabouts Failure found by the hearing panel to have occurred. The impact of any Code Article 2.4 antidoping rule violation by an individual Athlete on the results of any team for which that Athlete has played during the relevant period shall be determined in accordance with Code Article 11”.*

155. Article 10.10 TADP:

*“Unless fairness requires otherwise, in addition to the Disqualification of results under Articles 9.1 and 10.1, any other results obtained by the Player in Competitions taking place in the period starting on the date the Sample in question was collected or other ADRV occurred and ending on the commencement of any Provisional Suspension or Ineligibility period, will be Disqualified, with all of the resulting consequences, including forfeiture of any medals, titles, ranking points and Prize Money”.*

### b) *Parties’ submissions*

156. Concerning the disqualification of the Player’s results, the ITF argues that disqualification of the results following the ADRV is the norm, and non-disqualification is the exception, to be applied only where the Player proves that fairness so requires, and that fairness in this context must be assessed by considering the circumstances of the case ‘in the round’ so as to arrive at a result that meets the justice of the case overall.

157. Concerning the period of ineligibility, the ITF notes that this would be the Player’s first ADRV, as far as it is aware, and does not suggest that there has been a pattern of last-minute whereabouts changes or other conduct raising serious suspicion that the Player was trying to avoid being available for testing. As a result, the ITF concludes that there is no absolute bar to reducing the ban below two years, although it does not make any such reduction automatic.

To the contrary, the ITF submits that the burden is on the Player to prove on a balance of probability that his degree of fault is sufficiently small to justify any reduction sought.

158. The ITF points to Appendix One of the TADP’s definition of “Fault”:

*“Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing a Player’s [...] degree of Fault include, for example, the Player’s [...] experience, whether the Player [...] is a Protected Person, special considerations such as impairment, the degree of risk that should have been perceived by the Player and the level of care and investigation exercised by the Player in relation to what should have been the perceived level of risk. In assessing the Player’s [...] degree of Fault, the circumstances considered must be specific and relevant to explain the Player’s [...] departure from the expected standard of behaviour. Thus, for example, the fact that a Player would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Player only has a short time left in their career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.6.1 or 10.6.2”.*

159. Against this background, the ITF submits that there is no reason to find that the Player’s Fault in this case is anything but significant. Referring to the definition of “Fault”, the ITF submits that the first question is the expected standard of behaviour, which the ITF says is that the Player will file and keep updated accurate whereabouts information and be present and available and accessible for testing at the time and location he has specified.

160. The ITF then submits that the relevant questions must be the degree of risk that should have been perceived by the Player and the level of care and investigation exercised by the Player in relation to what should have been the perceived level of risk. The ITF then considers the circumstances of the three whereabouts violations, concluding that the Player’s fault for the first whereabouts violation was very high, because he stated that he was watching tennis at the Barcelona Open after being knocked out of that tournament, instead of being at the family home in Sweden, as was indicated in the whereabouts filing, when he in fact had travelled to Ethiopia. The ITF does not take a position on the second whereabouts failure, stating that the Player cannot be exonerated of fault for this second violation. Concerning the third violation, the ITF submits the Player should have been on high alert, instead of taking what the ITF describes as a carefree approach, relying on assumptions that his agent or the tournament organizers would take the necessary steps. The ITF adds that the Player showed a scant regard for his antidoping responsibilities, that he took a cavalier approach to the fulfilment of his antidoping obligations, and that is impossible to say that his fault was at the lowest end of the scale. The ITF submits that there must be serious consequences for whereabouts ADRVs because there would otherwise be no deterrent effect, undermining the whole whereabouts regime, to the detriment of all tennis players.

161. The ITF adds that the definition of fault also takes account of the Player’s experience. The ITF says the Player is an experienced player, who has played at the highest levels for years, has been part of the IRTP since 1 January 2020, has been subject to numerous Out-Of-Competition tests, and has received significant antidoping education.

162. The ITF submits that the Player has no excuse for failing to engage with his anti-doping obligations and failing to do everything in his power to satisfy those requirements, and asks for a two-year period of Ineligibility commencing on the date this award is rendered, and the disqualification of all competitive results from the date of the third whereabouts violation until the date of issue of this award, with all resulting consequences, unless fairness requires otherwise.
163. The Player submits that the sanction must be solely based on the assessment of his degree of fault, because there was no pattern of last-minute whereabouts changes or other conduct raising a serious suspicion, and more particularly, that the applicable sanction should be limited to a maximum of 12 months. The Player points to the USADA v. Rollins case, 4 April 2017, AAA No. 01-17-001-3244, which confirmed that the burden to update whereabouts remains with the athlete at all times, but where the sanction was reduced to one year based on her limited degree of fault that she attributed to (i) travelling and (ii) a general lack of understanding of the Whereabouts reporting system.
164. In this case, the Player was in the midst of travelling, and mistakenly believed his Whereabouts to be accurate as a result of his delegation of that responsibility to Mr Bal. The Player also believed that, if the tournament organizers knew his accurate hotel information, his Whereabouts would have been updated to reflect as much. Mr Bal, who was halfway around the world, never received the information that the Tournament readily had available regarding the Player's correct hotel accommodations.
165. The Player also submits that athletes may delegate elements of their anti-doping obligations, and that his degree of fault must be assessed in consideration of the fact that he had, in part, delegated an element of his anti-doping obligations to his agent. In case of a mistake, the fault to be assessed is the fault made by the athlete in the choice of delegate, rather than the delegate's fault. The Player submits that one must therefore consider (i) whether his delegation to Mr Bal was reasonable; (ii) whether Mr Bal was properly instructed; and (iii) whether he exercised control or supervision of Mr Bal in carrying out the task of ensuring that his Whereabouts were updated. The Player submits that the answer is affirmative on all three counts. Mr Bal is a premier tennis agent, who understands the requirement of the whereabouts regime, the Player has issues that make it difficult for him to handle administrative tasks, and Mr Bal was responsible for the Player's tournament scheduling and travel, and knew of the Player's whereabouts even before the Player.
166. The Player argues that fairness is not intended to be narrowly construed. The term itself is particularly broad and, may be interpreted to encompass situations where the athlete's *"results...were not likely to have been affected by the [athlete's] anti-doping rule violation"*.
167. There is no indication or even suggestion that Mr Ymer has ever used any banned substances. In fact, all evidence is to the contrary.
168. None of the Player's results dating from 7 November 2021 are likely to have been affected by any whereabouts violation, and all of those results were fairly obtained by the Player.

169. The Player tested negative during in-competition tests both shortly before and after the alleged 7 November 2021 alleged Missed Test.
170. The Player has continued to test negative since his 8 June 2022 hearing before the ITF Tribunal.
171. Here, the Player faces a potential sanction of minimum one year, and the results disqualification request would effectively increase that sanction by an additional 7 months or longer (from 7 November 2021 until the date of the hearing). Such a result would be disproportionate, particularly in light of the Player's testing history, especially given his young age and recent inclusion into the RTP from the dates of the alleged Missed Tests.
172. For all of the foregoing reasons, it is submitted that the results from 7 November 2021 to the date of the start of any sanction should not be disqualified. Alternatively, it is submitted that any results disqualification must be limited to the period between 7 November 2021 and 27 November 2021 (the next date thereafter that the Player tested negative in-competition for any banned substances).

**c) *Assessment***

173. Concerning the question of ineligibility, the Panel recalls that the whereabouts regime is a cornerstone of the fight against doping, and that its rules must be applied strictly. According to Article 10.3.2 TADP, the athlete will be sanctioned with a maximum two-year ban after the third violation of this rule. This ban can be reduced to one year depending on the athlete's fault.
174. The standard by which respect of the rules must be assessed is the hypothetical experienced tennis player, a threshold that can reasonably be expected to be met by all athletes, who are included in the IRTP, who is acutely aware of the risk of ineligibility at the third whereabouts violation within a 12-month period. The Panel recognizes that compliance with the regime is onerous, and that athletes can therefore seek assistance in ensuring compliance. However, as stated, whereas an athlete may choose the means, he/she is required personally to achieve the result, namely, in this case, compliance with the applicable antidoping regulations.
175. The Panel finds that the Player failed in ensuring his compliance with the anti-doping regulations by failing to verify his whereabouts filing for 7 November 2021, and by assuming that any discrepancy between his actual and declared whereabouts would be corrected by his agent or by the tennis authorities. The Panel finds that his degree of fault was high, although the third Whereabouts Failure can be described as the result of culpable negligence. In this respect, the Panel has taken into account the recent CAS case law imposing sanctions ranging from 18 months (CAS 2021/A/8391; CAS 2020/A/7528) to 24 months (CAS 2020/A/7526 & 7559; CAS 2020/A/6763) depending on the degree of fault of the athlete. As a result, the majority of the Panel finds that the Player must be declared ineligible for 18 months from the date of adoption of this award.

176. Concerning the question of disqualification, which would apply from 7 November 2021 until the date of adoption of this award, the Panel has not seen any evidence suggesting that the Player's results have been influenced by any doping. Evidence of the tests prior to and following 7 November 2021 adduced by the Respondent are all negative. Furthermore, the Player was exonerated by the Independent Tribunal's decision of 23 June 2022 until the date of this Award and there was no basis for him to have not participated in competitions from that time onward. Given the facts and circumstances here, the Panel is of the view that effectively extending his sanction another seven months by disqualifying these results would simply be unfair.
177. For all these reasons, the Panel rules that the Player should not suffer any disqualification of his results prior to this Award.

## **ON THESE GROUNDS**

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

1. The Appeal filed by the International Tennis Federation against Mr Mikael Ymer with respect to the decision of the Independent Tribunal of 23 June 2023 is partially upheld.
2. The decision rendered by the Independent Tribunal on 23 June 2023 is set aside.
3. Mr Mikael Ymer is found to have committed an anti-doping violation under Article 2.4 of the Tennis Anti-Doping Programme.
4. Mr Mikael Ymer is sanctioned with a period of ineligibility of 18 (eighteen) months, starting from the date of notification of this Award.
5. No results occurring between the time of the third missed test on 7 November 2021 and the date of this award are disqualified.
6. (...).
7. (...).
8. All other applications and requests for relief are dismissed.