Arbitration CAS anti-doping Division (OG PyeongChang) AD 18/004 International Ice Hockey Federation (IIHF) v. Ziga Jeglic, award of 9 August 2018

Panel: Mr Ken Lalo (Israel), Sole Arbitrator

Ice hockey
Doping (fenoterol)
Determination of the sanction in case of absence of intent
No Fault
Non-Significant Fault
Assessment of the degree of fault and reduction of the period of ineligibility

1. **In case the Anti-Doping Organization cannot establish that the violation was intentional or confirms that the violation was not intentional, pursuant to Article 7.2.2 of the IIHF Disciplinary Code and Article 10.2.2 of the WADC, the period of ineligibility shall be two years instead of four years. This two-year period of ineligibility may be subject to a potential reduction under Article 7.4 or Article 7.5 of the IIHF Disciplinary Code and Article 10.4 or Article 10.5 of the WADC i.e. in case of No Fault or Negligence or No Significant Fault or Negligence from the athlete.**

2. **For No Fault, an athlete must exercise *"utmost caution"*, i.e. he or she must take every conceivable effort that no prohibited substance enters his/her body. An athlete who knew or could have reasonably known that the asthma medication used by him/her immediately before a match contained or may have contained a prohibited substance and relied on his/her doctor's advice and confirmation did not exercise utmost caution and does not qualify for the application of No Fault or Negligence. In any event, even if the athlete acted reasonably in relying on his/her doctor, the doctor's negligence is imputed to the athlete.**

3. **In order to benefit from a reduction of the period of ineligibility based on No Significant Fault or Negligence, the athlete needs to establish to the satisfaction of the panel how the Prohibited Substance entered his/her system.**

4. **In order to determine the degree of fault in an individual case, CAS jurisprudence distinguishes between "significant", "normal", and "light" degrees of fault and allocates a time span to each of those categories. Moreover, with respect to the determination of the sanction, an "objective" and a "subjective" level of fault must be taken into consideration. The objective level of fault or negligence points to *"what standard of care could have been expected from a reasonable person in the athlete's situation"* and the subjective level consists of *"what could have been expected from that particular athlete, in the light of his particular capacities"*. The objective elements should be *"foremost in determining"* the category of fault.**

I. FACTS

1. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced in this procedure. Additional facts and allegations found in the parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, he refers in the Award only to the submissions and evidence he considers necessary to explain his reasoning as it relates to the Athlete's sanction.

2. The Athlete, a representative of the Slovenian National Olympic Committee, is a member of the Slovenian Men Ice Hockey Team who participated at the Olympic Winter Games PyeongChang 2018 ("PyeongChang 2018").

3. On 16 February 2018, following the ice hockey match between the teams of Olympic Athletes from Russia and Slovenia, the Athlete underwent an in-competition doping control (urine – sample no. 6331670).

4. On 20 February 2018, the International Olympic Committee (the "IOC") informed the Athlete that the results of the analysis of the Athlete's A sample revealed the presence of Fenoterol, which is a beta-2 agonist, prohibited under section S3 of the 2018 WADA Prohibited List. Fenoterol is a specified substance.

5. The Athlete was advised that he could seek an analysis of his B sample, and that if one is requested it would be scheduled for 21 February 2018.

6. On 20 February 2018, the IOC filed an application at the Anti-Doping Division of the Court of Arbitration for Sport (the "CAS ADD").

7. The application filed by the IOC asserted that the positive result of the Athlete's sample constitutes a sufficient proof of an anti-doping rule violation ("ADRV") under Article 2.1 of the IOC Anti-Doping Rules applicable to PyeongChang 2018 (the "IOC ADR"), which states in its pertinent part that the *"Presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's Sample"* constitutes an ADRV. The IOC argued that Fenoterol was found in the Athlete's bodily sample, thus establishing an ADRV.

8. The application filed by the IOC further sought the enforcement of a provisional suspension with immediate effect in accordance with Article 7.6.2 of the IOC ADR. The IOC referred to the WADA Guidelines on Results Management, Hearings and Decisions, according to which the optional provisional suspension is imposed taking into account all the facts and evidence. The IOC stressed that in view of the overriding interests of sport and of the Athlete's competitors, and, in addition, given that there is no indication whether the prohibited substance is still in the Athlete's systems, the Athlete must be provisionally suspended.

9. The application for the enforcement of a provisional suspension was declared urgent due to the upcoming game of the Slovenian Men's Hockey Team scheduled for 20 February 2018.

10. On 20 February 2018, the President of the CAS ADD appointed Mr Ken Lalo as a Sole Arbitrator to deal with these proceedings.

11. On 20 February 2018, a hearing was held on the IOC's request for the enforcement of a provisional suspension at the CAS Anti-Doping Division in Pyeongchang-gun, Gangwon-do, Republic of Korea. During the hearing, the Athlete confirmed that he ingested the prohibited substance Fenoterol during the warm-up leading to the ice hockey match against the team of the Olympic Athletes from Russia held on 16 February 2018, following which he was tested. The Fenoterol was an ingredient in an asthma inhaler prescribed to him by a doctor in the past and used by him on occasion in a very limited dosage.

12. The IOC did not contest the Athlete's account as to the source of the substance and noted that such admission further supported their request for an ADRV.

13. The Athlete waived the right to have the B sample tested and confirmed the A test result. Furthermore, the Athlete indicated that he would not need the documentation package for the A sample.

14. The Athlete confirmed that he accepted both the ADRV and a suspension with immediate effect from all further competitions in which he had not yet participated at PyeongChang 2018. The Athlete was excluded from PyeongChang 2018 and left the athlete's village immediately.

15. Following the hearing, on 20 February 2018, the IIHF filed an application to join the procedure as a Co-Applicant.

16. On 22 February 2018, the Sole Arbitrator rendered his Partial Award on Anti-Doping Rule Violation declaring, *inter alia*, that the Athlete committed an ADRV in accordance with Article 2.1 of the IOC ADR. Moreover, the Sole Arbitrator confirmed the joinder of the IIHF as a Co-Applicant in this procedure in regard to the consequences of the ADRV which may be imposed on the Athlete in accordance with IIHF's delegation of power to the CAS ADD in accordance with Articles 7.1.2 and 10.2.2 of the IOC ADR (as confirmed by the IIHF in its letter to the CAS dated 2 November 2017). The Sole Arbitrator subsequently dismissed the IOC from the procedure.

II. PROCEDURE BEFORE THE CAS ADD

17. On 6 March 2018, upon consultation and agreement of the parties, the Sole Arbitrator set forth a procedural briefing schedule for the continuation of this procedure in accordance with Article 20 of the Arbitration Rules of the CAS ADD (the "CAS ADD Rules").

18. On 9 March 2018, the IIHF filed its preliminary request for relief seeking a two-year period of ineligibility. In addition, the IIHF noted that the Athlete has a right to accept a provisional suspension at any time up to the date of the final decision on his sanction.

19. On 12 March 2018, the Athlete informed the CAS ADD that it was his understanding that he had accepted a voluntary provisional suspension with immediate effect during the hearing on 20 February 2018.

20. On 20 March 2018, the IIHF informed the CAS ADD that the provisional suspension agreed to by the Athlete only related to his participation in PyeongChang 2018. However, the IIHF accepted that given the Athlete's misunderstanding and on the assumption that the Athlete has not competed since PyeongChang 2018, the date of his provisional suspension should commence on 20 February 2018.

21. On 28 March 2018, the Athlete filed his response submission to the IIHF's preliminary request for relief. In such submission, the Athlete requested as follows:

"Athlete requests that the Sole Arbitrator rules:

a) the penalty to be a reprimand and no period of ineligibility or alternatively

b) the ineligibility period be not more than 4 months with commencement of the ineligibility period being 20 February 2018".

22. On 18 April 2018, the IIHF filed its reply submission. In such submission, based on the Athlete's assertions as set forth in its response submission, the IIHF modified its request for relief as follows:

"At this time, the IIHF hereby respectfully requests CAS to rule:

1. Ziga Jeglic shall be sanctioned with a period of ineligibility of 8 months.

2. The period of ineligibility shall commence on 20 February 2018.

3. The Athlete is ordered to pay all arbitration costs and all costs of the IIHF incurred in connection with this proceeding".

23. On 8 May 2018, the Sole Arbitrator, noting that neither party wished to proceed with a hearing, granted the Athlete an opportunity to file a final reply submission.

24. On 15 May 2018, the Athlete filed a final reply submission. In his reply submission, the Athlete requested the following relief:

"Given the above, the Athlete believes that the sentence should not be more than 8 months as suggested by the Applicant, but lower. As the Athlete already suggested in his response on 28 March 2018, he believes that given the subjective elements, the penalty should be a reprimand and no period of ineligibility but in no case more than 4 months with commencement of the ineligibility period being 20 February 2018 since his light degree of fault is no higher than "standard" (point 70(c.) CAS 2013/A/3327)".

III. JURISDICTION

25. Pursuant to Rule 59.2.4 of the Olympic Charter, the IOC Executive Board delegated to the CAS ADD all powers which are necessary for it to take the measures and sanctions envisaged by the IOC ADR, in particular Articles 9, 10.1, 10.2 and 11 (Article 8.2.1 of the IOC ADR).

26. Article 1 of the CAS ADD Rules states that: *"[t]he CAS ADD shall be the first-instance authority to conduct proceedings and to issue decisions when an alleged anti-doping rule violation has been asserted and referred to it under the IOC ADR, and for imposition of any sanctions therefrom whether applied at the Games or thereafter. Accordingly, the CAS ADD has jurisdiction to rule as a first-instance authority in place of the IOC and/or the International Federation concerned"*.

27. The parties have not raised any objection to the jurisdiction of the CAS ADD.

28. Jurisdiction is, therefore, vested with the CAS ADD over this matter.

IV. APPLICABLE RULES

29. Pursuant to Article 17 of the CAS ADD Rules, the panel shall rule on the dispute pursuant to the IOC ADR, the World Anti-Doping Code 2015 (the "WADC" or "2015 WADC"), the rules of the relevant IF, the applicable regulations, Swiss law, and general principles of law.

30. In addition, Article 1400 of the IIHF Bylaws states that *"[a]ll matters relating to anti-doping shall be carried out in accordance with IIHF Doping Regulations and the World Anti-Doping Code"* and Article 1403 of the IIHF Bylaws states that *"[v]iolations of the IIHF Doping Regulations will be sanctioned according to the IIHF Disciplinary Code in strict compliance with the World Anti-Doping Code"*.

31. Thus, the IOC ADR, the IIHF Doping Control Regulations 2017 (the "IIHF ADR"), the IIHF Disciplinary Code 2016 (the "IIHF Disciplinary Code"), and the WADC are the applicable rules in this case.

V. ADMISSIBILITY

32. The procedural briefing schedule stipulated that the IIHF must submit its preliminary request for relief within ten days of receipt of the procedural briefing letter. The IIHF filed its preliminary request for relief on 9 March 2018, within three days of the procedural briefing schedule issued by the Sole Arbitrator, and is therefore timely.

33. The procedural briefing schedule stipulated that the Athlete must submit his response submission to the IIHF's preliminary request for relief within twenty days of receipt of the IIHF's submission. The Athlete filed his response submission on 28 March 2018, which was therefore timely.

34. The procedural briefing schedule stipulated that the IIHF must submit its reply submission within twenty days of receipt of the Athlete's submission. The Athlete filed his response submission on 28 March 2018 and the IIHF confirmed receipt of this submission on 29 March 2018. Therefore, the reply submission filed by the IIHF on 18 April 2018 was timely.

VI. SUBMISSIONS OF THE PARTIES

35. The IIHF's submissions may be summarized as follows:

- The analysis of the Athlete's A sample revealed the presence of Fenoterol, a prohibited substance mentioned as a beta-2 agonist under S3 of the 2018 Prohibited List prohibited both in- and out- of competition. Fenoterol is a specified substance. The Athlete did not request the analysis of the B sample, he confirmed during the hearing held on 20 February 2018 that he accepted the ADRV and he did not dispute the existence of an ADRV in his submission. Thus, it is established that the Athlete violated Article 2.1 of the IIHF ADR and Article 2.1 of the WADC.
- Considering the Athlete's explanation, it cannot be established that the Athlete intentionally committed the ADRV. Thus, in accordance with Article 7.2.2 of the IIHF Disciplinary Code and Article 10.2.2 WADC, the maximum period of ineligibility to be imposed on the Athlete is two years.
- The circumstances relevant to this case do not warrant the application of "No Fault or Negligence". The elimination of the period of eligibility based on No Fault or Negligence is also not requested or argued by the Athlete in his submission. Therefore, Article 7.4 of the IIHF Disciplinary Code and Article 10.4 WADC are not applicable to this case.
- To benefit from a reduction of the period of ineligibility under Article 7.5.1 of the IIHF Disciplinary Code and Article 10.5.1.1 WADC, the Athlete must establish that there was no Significant Fault or Negligence when he committed the ADRV.
- The IIHF follows the opinion expressed by the IOC during the procedure before the CAS ADD in PyeongChang that there is no reason to contest the Athlete's explanation that the prohibited substance entered his system as a consequence of using a Berodual asthma inhalator prior to the game against the Olympic Athletes from Russia. Therefore, the first requirement of the definition of No Significant Fault or Negligence, the establishment of the source of the substance, is fulfilled by the Athlete.
- Taking into account the circumstances of the case, the IIHF is ready to accept that the ADRV was committed with No Significant Fault or Negligence and therefore a reduction of the Athlete's period of ineligibility based on Article 7.5.1 of the IIHF Disciplinary Code and Article 10.5.1.1 WADC should be granted.
- According to the so-called *Cilic* guidelines established by the Panel in CAS 2013/A/3327 and CAS 2013/A/3335, and based on the following objective elements, the degree of fault on the Athlete's part falls into the *"light degree of fault"*:
    - The Athlete was diagnosed with a light form of asthma and was prescribed an asthma inhalator by a doctor;

  - The Berodual asthma inhalator was administered to him by Dr Milan Rajtmajer;
  - Dr Rajtmajer was the doctor of the Slovenian national team and thus specialized in the treatment of athletes;
  - From the Athlete's email correspondence with Dr Rajtmajer it is clear that the Athlete was not aware whether he was using a Ventolin or Berodual inhalator;
  - The Athlete explicitly asked Dr Rajtmajer if the use of the inhalator would cause a doping problem and Dr Rajtmajer confirmed to him that the use of the inhalator for two puffs twice a day would not cause an ADRV;
  - The Athlete did not act contradictory to common sense by using the inhalator upon Dr Rajtmajer's advice;
  - Dr Rajtmajer's correct advice could have led the Athlete to obtaining a TUE in relation to his asthma condition which would have avoided this entire doping case.
- Subsequently, in order to determine the appropriate sanction within the light degree of fault category, the IIHF considered the following subjective elements:
  - The Athlete is 30 years of age and an experienced player with a long career in ice hockey;
  - The Athlete is a top-level athlete that was playing in the Russian first division and participating for his national team at PyeongChang 2018;
  - The Athlete, given his long ice hockey career at the highest level, received extensive anti-doping education;
  - The Athlete did not indicate that he was using the Berodual inhalator on the Doping Control Form.
- Therefore, the IIHF is of the opinion that, in this respect, no mitigating factors can be claimed. Thus, within the light degree of fault category, the maximum period of ineligibility is applicable. Consequently, an 8-month period of ineligibility should be imposed on the Athlete.
- The IIHF agrees that the Athlete's provisional suspension commences on 20 February 2018.

36. The Athlete's submissions may be summarized as follows:
  - The Athlete admitted since the beginning of the procedure at PyeongChang 2018 that he used Berodual in order to ease his asthma condition.
  - The Athlete had occasional breathing problems since his youth and was occasionally using different types of inhalers. In August 2016, he was examined by his doctor in Bratislava (where he played hockey for HC Slovan Bratislava from 2014 to 2017). The spirometry showed that he had *"obstructive disorder of ventilation of a mild degree"* and was diagnosed with light asthma (Asthma Bronhiale). The doctor prescribed him Flutiform which contains Formoterol.

- Flutiform contains steroids and therefore must be used regularly as prescribed (2x21 puffs daily) to be effective. Flutiform eased the breathing conditions but caused side effects such as heart palpitations and the Athlete, therefore, stopped using it.
- In November 2017, the Athlete attended the Euro Ice Hockey Challenge (EIHC) in Cergy as a member of the Slovenian national team. The national team doctor, Dr Rajtmajer, recommended the inhalators Ventolin or Berodual and administered to him an inhalator, Berodual, which immediately and in approximately 15 minutes eased the Athlete's condition. The Athlete kept the inhalator and used it occasionally.
- In response to the Athlete's concerns about any prohibited use of the inhaler, Dr Rajtmajer replied that: *"Ventolin and Berodual, administered in the therapeutic dose, are not on the prohibited list, but you must inform the doctor of your club about it"*. The Athlete informed his club doctor regarding the use of inhalators and continued to use Berodual whenever he experienced breathing problems.
- The Athlete assumed that Berodual, which has only short term effects and can be effectively used only when a problem arises, is even less problematic than using Ventolin or Formoterol which were prescribed to the Athlete by the Slovak doctor and had long term effects (requiring multiple daily usage).
- The Athlete was not aware that Berodual contains Fenoterol, a specified substance.
- The Athlete completely trusted Dr Rajtmajer, as the doctor of his national team.
- Asthma can be induced by sports, particularly winter sports including ice hockey, due to cold air in which trainings and competitions are held. Ice hockey is listed among high-risk sports when considering the potential risk of exercise induced asthma (EIA) or exercise induced bronchoconstriction (EIB). Exposure to indoor pollutants during intensive training increases the risk of asthma attacks.
- The Athlete considers that his fault or negligence, when viewed in the totality of circumstances *"was not significant"* in relationship to the ADRV, and that therefore he should not be sanctioned with any period of ineligibility but only with a reprimand.
- CAS panels indicated that while the standard of care should be rigorous especially in the interest of all other competitors to a fair competition, this standard should not lead to unrealistic and impractical expectations from athletes (CAS 2012/A/2895).
- CAS 2016/A/4416 held that the threshold of no significant fault is met if the athlete observes the clear and obvious precautions which a *"reasonable person"* in the Athlete's situation would take in the specific set of circumstances. The Athlete has met such precautions by checking with the national team doctor several times, whether he has any additional obligations regarding the medicine he was given, and it was confirmed to him that he only need to inform the team doctor in Russia, which he has done.
- The situation is similar to that of the cyclist Simon Yates who has tested positive for the substance Terbutaline and was handed a four-month suspension from competition by the Union Cycliste Internationale (UCI). Yates failed to apply for a Therapeutic Use Exemption ("TUE") for asthma medication supplied to him by a team doctor. Yates was found to have committed a *"non-intentional"* violation of the anti-doping rules. Therefore,

if the Athlete is penalized with more than a reprimand, then the period of ineligibility should be no more than four months and his provisional suspension should be taken into account.

- The Athlete acted in accordance with his doctor's instructions, understanding that Berodual is administered in a therapeutic dose and is not on the prohibited list.
- The Athlete was given the medicine directly by the doctor and was not certain whether he was provided with Ventolin or Berodual.
- The Athlete was only using Berodual when absolutely necessary; in February 2018 he was still using the same package that was administered to him in November 2017.
- The Athlete has never before been found guilty of an ADRV.
- No period of ineligibility should be imposed on the Athlete because:
  - The Athlete immediately confessed to taking Berodual.
  - The substance was used only once during the PyeongChang 2018, before the game with the team of the Olympic Athletes from Russia, due to the fact that his asthma symptoms were the strongest at the time. The Athlete was also tested on 9 February and on 20 February 2018, and there were no adverse analytical findings.
  - The Athlete established how the substance entered his system.
  - The Athlete had no intention to enhance his sporting performance (*see* CAS 2009/A/1782) by using Berodual but was merely trying to reduce the symptoms of his asthma/heavy breathing and could at best help raise his performance back to his regular sporting performance.
  - Studies prove that anti-asthmatic drugs do not enhance performance in healthy persons.
  - The Athlete has never before been found guilty of an ADRV.
- The commencement of any period of ineligibility, if any, should be 20 February 2018, which is the date when the Athlete voluntary accepted the suspension with immediate effect.
- The Athlete has voluntarily ceased trainings and competitions beyond the PyeongChang 2018 until this matter is finally resolved.

IV. MERITS

A. Anti-Doping Rule Violation

37. The Sole Arbitrator has already ruled that the Athlete committed an ADRV in accordance with Article 2.1 of the IOC ADR in his Partial Award on Anti-Doping Rule Violation rendered on 22 February 2018. This also constitutes an ADRV pursuant to Article 2.1 of the IIHF Doping Regulations and Article 2.1 of the WADC.

B. Determining the Sanction

38. Article 7.2.1 of the IIHF Disciplinary Code and Article 10.2.1.2 of the WADC state that the period of ineligibility shall be four years where the Anti-Doping Organization can establish that the violation was intentional. In case the Anti-Doping Organization cannot establish that the violation was intentional, pursuant to Article 7.2.2 of the IIHF Disciplinary Code and Article 10.2.2 of the WADC, the period of ineligibility shall be two years.

39. The Athlete immediately and expressly confirmed, already at the hearing held at PyeongChang 2018 on 20 February 2018, that he had used a Berodual asthma inhalator administered to him by Dr Rajtmajer, the doctor of the Slovenian national team, to ease his breathing problems associated with his asthma condition, which have increased during the warm-up leading to the match with the Olympic Athletes from Russia held on 16 February 2018. Following the positive finding, the Athlete concluded that the inhaler he used was Berodual which contains Fenoterol.

40. This source of the substance was confirmed by the Slovenian team doctor and other members of the Slovenian Ice Hockey Team.

41. The IIHF confirmed that it did not consider that the Athlete intentionally committed the ADRV.

42. The Sole Arbitrator accepts that the Athlete did not commit the ADRV intentionally.

43. Thus, in accordance with Article 7.2.2 of the IIHF Disciplinary Code and Article 10.2.2 WADC, the Athlete's period of ineligibility shall be a maximum of two years. This two-year period of ineligibility may be subject to a potential reduction under Article 7.4 or Article 7.5 of the IIHF Disciplinary Code and Article 10.4 or Article 10.5 of the WADC.

C. No Fault or Negligence

44. Article 7.4 of the IIHF Disciplinary Code and Article 10.4 of the WADC state that: *"[i]f an Athlete or other Person establishes in an individual case that he or she bears No Fault or Negligence, then the otherwise applicable period of Ineligibility shall be eliminated"*.

45. *"No Fault or Negligence"* is defined in the WADC as:

    "The Athlete or other Person's establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system".

46. For no fault, an athlete must exercise *"utmost caution"*, i.e. he or she must take every conceivable effort that no prohibited substance enters his/her body.

47. In the present case the Athlete knew or could have reasonably known that the asthma medication used by him immediately before the match contained or may have contained a prohibited substance. The Athlete relied on his doctor's advice and confirmation but this reliance is not sufficient as the ingredients of the inhaler could have easily been checked, they should have been verified and, in any event, even if the Athlete acted reasonably in relying on his doctor, the doctor's negligence in this matter is imputed to the Athlete. Therefore, the circumstances of this case do not warrant the application of No Fault or Negligence.

D. No Significant Fault or Negligence

48. Article 7.5.1 of the IIHF Disciplinary Code and Article 10.5.1.1 of the WADC state that:

"Specified Substances: where an anti-doping rule violation involves a Specified Substance and the player or other person can establish No Significant Fault or Negligence, the period of ineligibility shall be, at a minimum, a reprimand and no period of ineligibility, and at a maximum, two years of ineligibility, depending on the player's or other person's degree of fault".

49. To benefit from such reduction of the period of ineligibility, the Athlete must establish that there was no Significant Fault or Negligence when he committed the ADRV. *"No Significant Fault or Negligence"* is defined in the WADC as follows:

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

50. In accordance with the definition and in order to benefit from a reduction of the period of ineligibility based on No Significant Fault or Negligence, the Athlete needs to establish how the Prohibited Substance entered his system.

51. The Athlete and his witnesses confirmed to the satisfaction of the Sole Arbitrator that the prohibited substance entered his system as a consequence of the Athlete's use of a Berodual asthma inhalator prior to the game against the Olympic Athletes from Russia.

52. The IIHF also confirmed that it was ready to accept that the ADRV was committed with No Significant Fault or Negligence and, therefore, a reduction of the Athlete's period of ineligibility based on Article 7.5.1 of the IIHF Disciplinary Code and Article 10.5.1.1 of the WADC should be granted.

E. Reduction of the period of ineligibility

53. When determining an Athlete's degree of fault, under the definition of Fault, the WADC stipulates:

"Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete or other Person's degree of Fault include, for example, the Athlete's or other Person's experience, whether the Athlete or other Person is a Minor, special considerations such as

impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In assessing the Athlete's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behavior. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Athlete only has a short time left in his or her career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.5.1 or 10.5.2".

54. The point of departure for the level of care expected from athletes is their high responsibility to take care that no prohibited substance enters their system in order to ensure the integrity of sports and a level playing field for all competitors.

55. The benchmark CAS case when deciding on the level of fault on the part of an athlete is CAS 2013/A/3327 & 3335, in which the so-called guidelines were established by the panel. In the CAS 2013/A/3327 & 3335 proceedings the panel distinguished between "significant", "normal", and "light" degrees of fault and allocated a time span to each of those categories: 24 to 16 months for a "significant" degree with a "standard" significant fault leading to 20 months, 16 to 8 months for a "normal" degree with a "standard" normal degree leading to 12 months, and 8 to 0 months for a "light" degree of fault with a "standard" light degree leading to a period of 4 months.

56. Moreover, with respect to the determination of the sanction, the case CAS 2013/A/3327 & 3335 considers that an "objective" and a "subjective" level of fault must be taken into consideration. The objective level of fault or negligence points to *"what standard of care could have been expected from a reasonable person in the athlete's situation"* and the subjective level consists of *"what could have been expected from that particular athlete, in the light of his particular capacities"*. The objective elements should be *"foremost in determining"* the category of fault.

57. The CAS 2013/A/3327 & 3335 award of 2014 was rendered under rules corresponding to the 2009 WADC. Article 10.5.1.1 of the 2015 version of the WADC differs from its predecessor, Article 10.4 of the 2009 version of the WADC.

58. Under the 2009 WADC:

    a. the regular sanction for an ADRV in the form of the presence of a prohibited substance was a period of ineligibility of two years (Article 10.2 of the 2009 WADC);

    b. where an athlete can establish how a specified substance entered his or her body and that such substance was not intended to enhance the performance, the sanction was between 2 and 0 years and the extent of reduction depended on the degree of fault (Article 10.4 of the 2009 WADC);

    c. Article 10.4 of the 2009 WADC was applicable to all degrees of fault, including a significant degree of fault or negligence and, therefore, the time span of 24 months was to be allocated amongst the three categories defined by the CAS 2013/A/3327 & 3335 panel;

d. Article 10.5 of the 2009 WADC (elimination or reduction for no fault or negligence or for no significant fault or negligence), did not apply if a specified substance was involved.

59. Under the 2015 WADC, the sanctioning regime was considerably modified:

a. the regular sanction for an ADRV in the form of the presence of a prohibited substance, amounts to 4 years if a specified substance is involved and it is established that the ADRV was intentional (Article 10.2.1 of the 2015 WADC);

b. if the ADRV is not intentional, the regular sanction for the presence of a specified substance is two years (Article 10.2.2 of the 2015 WADC 2015);

c. under Article 10.5.1.1 of the 2015 WADC, with respect to a specified substance, a reduction can only be considered if an athlete can establish that he or she bore no significant fault or negligence; as a consequence, a reduction can no longer be granted for the category of significant fault but only for a normal or light degree of fault or negligence.

60. CAS 2017/A/5301-5302 concluded that the CAS 2013/A/3327 & 3335 doctrine, therefore, has to be adapted to the sanctioning system of the 2015 WADC by providing two-tier categories of fault (a "normal" degree of fault with 24 to 12 months and a "light" degree of fault with 12 to 0 months), rather than three-tier categories of fault under the 2009 WADC. Other panels applied the three-tier CAS 2013/A/3327 & 3335 approach also in decisions rendered under the 2015 WADC (see for example CAS 2016/A/4371). The Sole Arbitrator need not decide on the preferred approach under the specifics on this case and considering that the IIHF requested only an eight-month period of ineligibility.

61. Regardless, the other guiding principles identified in CAS 2013/A/3327 & 3335 in order to determine the degree of fault in an individual case continue to be applicable; namely, the consideration of the objective elements of the level of fault which bear the "foremost" relevance, as well as the subjective elements relating to what could have been expected from that particular athlete.

62. In the present case, the objective elements which should be considered when determining which degree of fault the Athlete's actions fall into include: (i) the Athlete had asthma attacks for years and was prescribed an asthma inhalator by a doctor; (ii) a Berodual asthma inhalator was administered to the Athlete by Dr Rajtmajer, the doctor of the Slovenian national team; (iii) the Athlete was not aware whether he was using a Ventolin or a Berodual inhalator; (iv) the Athlete was explicitly advised by Dr Rajtmajer that the use of the inhalator for two puffs twice a day would not cause an ADRV; (v) the Athlete did not act contradictory to common sense by using the inhalator upon Dr Rajtmajer's advice; and (vi) had the Athlete been properly advised, he could have obtained a TUE, thus avoiding this entire doping case.

63. It is paramount to note that athletes may not "hide" behind failures or mistakes of their doctors or other members of their entourage and that athletes are responsible for the behavior of their entourage, be they coaches, medical staff, or others. It is clear that the Athlete's medical staff must have known that the asthma inhaler contained a prohibited substance and should have sought a TUE.

64. Based on these elements, the Sole Arbitrator accepts the parties' positions that the Athlete's degree of fault falls into the "light" degree of fault. The Athlete failed to meet the required level of care and displayed a light degree of fault or negligence.

65. Subsequently, in order to determine the appropriate sanction within the "light" degree of fault category, the following subjective elements are considered: (i) the Athlete is an adult experienced player with a long career in ice hockey; (ii) the Athlete is a top-level athlete that was playing in the Russian first division and participated for his national team at PyeongChang 2018; (iii) the Athlete may be assumed to having received anti-doping education given his long career at the top level of the sport; (iv) the Athlete encountered no language or other cultural barriers and was not under a high degree of stress; and (v) the Athlete did not indicate that he was using the Berodual inhalator on the Doping Control Form.

66. Having thoroughly considered the evidence, the Sole Arbitrator concludes that the Athlete's personal departure from the objective and subjective standards of care, expected to be exercised by him, together with the fault of his medical and coaching staff which is imputed to him, amounts to a light degree of fault, however in its upper range.

67. The relief sought by IIHF in these proceedings is the imposition of a period of ineligibility of eight (8) months on the Athlete. The Sole Arbitrator, therefore, need not decide on whether the specifics of this case require an eight-month period of ineligibility or a longer one and accepts that the period sought by the IIHF is reasonable, even if at its lower range. Such is in compliance with the applicable ADR. Therefore, a period ineligibility of eight (8) months is imposed upon the Athlete.

F. Commencement of the period of ineligibility

68. A provisional suspension was imposed on the Athlete as from 20 February 2018. This applied to the period of the games at PyeongChang 2018.

69. On 12 March 2018, the Athlete informed the CAS ADD that it was his understanding that he had accepted a voluntary provisional suspension with immediate effect during the hearing on 20 February 2018. The Athlete informed that he did not train or compete since 20 February 2018 and that he will not do so prior to the rendering of a decision in these proceedings.

70. In its letter of 20 March 2018, the IIHF accepted that, given the Athlete's misunderstanding and on the assumption that the Athlete has not competed since PyeongChang 2018, the date of his provisional suspension should commence on 20 February 2018.

71. In accordance with the agreement of the parties on this point and based on the understanding that the Athlete was effectively suspended from 20 February 2018, the Athlete would be credited for the total period of suspension served from 20 February 2018 to the date of this Award on Sanctions. Thus the period of ineligibility shall end eight months after 20 February 2018.

V. RIGHT TO APPEAL

72. The Athlete has the right to appeal this decision in accordance with Article 21 of the CAS ADD Rules.

VI. DECISION

The CAS Anti-doping Division hereby rules:

1. The application of the IIHF is granted and therefore:
   a. Mr Ziga Jeglic is sanctioned with a period of ineligibility of eight (8) months commencing on the date of this Award on Sanctions.
   b. Mr Ziga Jeglic is credited the period of provisional/voluntary suspension already served as from 20 February 2018 and through the date of this Award on Sanctions.
2. (…).
3. (…).
4. All other or further motions or prayers for relief are dismissed.