

**IN THE MATTER OF DISCIPLINARY PROCEEDINGS BROUGHT BY THE
INTERNATIONAL TENNIS FEDERATION UNDER THE 2021 TENNIS ANTI-DOPING
PROGRAMME**

Before:
David Casement QC (Chair)
Erika Riedl
Dr Gary O’Driscoll

International Tennis Federation

Anti-Doping Organisation

-and-

Varvara Lepchenko

Respondent

DECISION OF THE INDEPENDENT TRIBUNAL

Introduction

1. The International Tennis Federation (“ITF”) asserts that Ms Varvara Lepchenko (the “Player”) has committed breaches of the 2021 Tennis Anti-Doping Programme (“TADP”) Articles 2.1 (presence of a Prohibited Substance or its Metabolites) and 2.2 (Use of a Prohibited Substance), based on the presence of modafinil acid, a Metabolite of the Prohibited Substances modafinil and adrafinil, in a urine sample she provided In-Competition on 12 July 2021 at the Hungarian Grand Prix in Budapest, Hungary (the “Event”). It is further asserted by the ITF that, absent of the Player proving the contrary, the Anti-Doping Rule Violations (“ADRVs”) must be taken to have been intentional as defined under Article 10.2.3.

2. The Player does not dispute the commission of the ADRVs which are strict liability offences. The Player however contends that she never knowingly ingested modafinil or adrafinil, and strenuously denies it was intentional as defined in Article 10.2.3. Given there is no dispute in respect of the commission of the ADRVs the sole issue for this tribunal is that of sanction. In fact, the issue, as agreed by both parties, is whether the applicable period of Ineligibility should be two or four years.
3. The ITF is represented by Chris Lavey and Robert Rose, solicitors with Bird & Bird. The Player is represented by Howard Jacobs and Lindsay Brandon of the Law Offices of Howard L Jacobs. Both sets of advocates have provided very helpful written submissions that were supplemented by oral submissions during the video-conference hearing on 17 February 2022.

Background

4. The Player is a 35 year old professional tennis player originally from Tashkent, Uzbekistan, but is now an American citizen residing in Pennsylvania. She has been a professional tennis player since 2001, and has won one singles title in the WTA Challenger Tour, as well as 13 ITF singles titles and one doubles title. The Player is currently ranked 119 in singles by the WTA and has a career-high WTA ranking of 19.
5. The Player participated in the Hungarian Grand Prix held at the Római Tennis Academy in Budapest, Hungary, between 12 and 18 July 2021 (the “Event”). The ITF commissioned International Doping Tests & Management (IDTM), an anti-doping service provider, to collect urine samples at the Event for testing under the TADP.
6. On 12 July 2021, the Player played and lost in the first round of the women's singles competition. After that match, an IDTM Doping Control Officer collected a urine sample from the Player on behalf of the ITF. The Sample was assigned reference number 3161471, split into an A and B Sample, and then sent to the WADA-accredited laboratory in Montreal for analysis. When asked on the Doping Control Form to declare *'any prescription/non-prescription medications or supplements, including vitamins and*

minerals, taken over the past 7 days', the Player confirmed that she had *'nothing to declare'*.

7. On 4 August 2021, the laboratory reported an Adverse Analytical Finding in respect of the Player's A Sample. More specifically, it reported that it had found modafinil acid, a Metabolite of modafinil and/or adrafinil, at an estimated concentration of 135.1 ng/ml. That appears to be a very low reading in the experience of the Montreal laboratory, a point that Mr Jacobs emphasised and deployed to assert its ingestion was not intentional.
8. It is not disputed that modafinil acid is the major Metabolite of both modafinil and adrafinil, which are synthetic substances (stimulants) marketed and used to increase alertness, attention, and wakefulness. However, modafinil and adrafinil are included by name in Class S6 (stimulants) on the 2021 WADA Prohibited List, meaning that their presence and use are prohibited In-Competition. They are classified as non-Specified Substances.

Procedural History

9. On 11 August 2021, the ITF sent a pre-charge Notice to the Player, notifying her of the Adverse Analytical Finding, that she may have committed ADRVs under the Programme, and that she would be subject to a mandatory Provisional Suspension with effect from 19 August 2021 in accordance with TADP Article 7.12.1.
10. On 16 August 2021, the Player responded to the Notice, denying that she had committed an ADRV, requesting that her B Sample be analysed, and requesting a hearing before the Independent Tribunal explaining that she was *'investigating all possible causes of this test result'*.
11. On 20 August 2021, the laboratory reported that it had found modafinil acid in the Player's Sample B3161471, confirming the finding in the A Sample. On 22 August 2021, the ITF notified the Player of that result by message via the TADP portal.
12. On 25 August 2021, the ITF sent a Charge Letter to the Player, formally notifying her that she was being charged with ADRVs under TADP Articles 2.1 and 2.2 and requesting a response to the charge within 20 days. On 14 September 2021, the Player responded to

the Charge Letter, confirming that she denied the charge and that she *'continues to investigate the circumstances surrounding her positive test'*.

13. In the Player's Reply to the ITF's opening brief it was stated that *"Ms. Lepchenko understands that she is responsible for everything that she puts in her body and does not dispute that modafinil acid was found in her urine sample. The sole issue for this Tribunal, therefore, is whether Ms. Lepchenko can establish that she did not intentionally violate the anti-doping rules, such that the sanction in this case should be two years instead of four years."*
14. On 22 September 2021, the Chairman of the Independent Panel, Mr Charles Flint QC, appointed Mr David Casement QC as Chair of the Tribunal.
15. On 5 October 2021 the Chair gave directions for the filing of the parties' respective briefs and evidence in support. Those directions, with some agreed extensions, were complied with. There was no dispute regarding directions.
16. On 9 November 2021, Dr Gary O'Driscoll and Erika Riedl were appointed to form the Independent Tribunal to hear and determine this dispute.
17. The final hearing took place by way of video conference on 17 February 2022. The parties confirmed at the outset that they had no objections to the composition of the Independent Tribunal and confirmed that they agreed the 2021 TADP applied. The Player gave evidence and was asked questions by the advocate for the ITF. In addition, the statement of Lucas Aoun on behalf of the Player and the report of Professor Ayotte on behalf of the ITF were placed before the Tribunal on the basis that the other party was not deemed to have agreed to the correctness of the document.

Regulatory Framework

18. TADP Article 2.1 states:

"Doping is defined as the occurrence of one or more of the following (each, an Anti-Doping Rule Violation):

2.1 The presence of a Prohibited Substance or any of its Metabolites or Markers in a Player's Sample, unless the Player establishes that such presence is consistent with a TUE granted in accordance with Article 4.4.

2.1.1 It is each Player's personal duty to ensure that no Prohibited Substance enters their body. Players are responsible for any Prohibited Substance or any of its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary to demonstrate intent, Fault, Negligence, or knowing Use on the Player's part in order to establish an Article 2.1 Anti-Doping Rule Violation; nor is the Player's lack of intent, Fault, Negligence or knowledge a defence to an assertion that an Article 2.1 Anti-Doping Rule Violation has been committed."

19. TADP Article 2.2 'Use' violation. The ITF must prove (a) Use (i.e., the 'utilisation, application, ingestion, injection or consumption by any means whatsoever'), (b) of a Prohibited Substance, (c) by the Player.
20. Pursuant to TADP Article 3.1.1, the burden is on the ITF to establish each of the elements of the ADRVs charged *'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'*. In the present case the Player does not dispute that the ADRVs were committed. The Reply of the Player at paragraph 1.2 is that the Player recognises she is responsible for everything that she put in her body and does not dispute that modafinil acid was found in her urine Sample. The Independent Tribunal is therefore comfortably satisfied that the ADRV's were committed.
21. TADP Article 10.2.1.1 provides that the period of Ineligibility for an Article 2.1 or 2.2 ADRV that is the Player's first doping offence and does not involve a Specified Substance will be four years *'unless the Player or other Person establishes that the Anti-Doping Rule Violation was not intentional'* in which case the starting point for a period of Ineligibility is reduced to two years. For these purposes, 'intentional' is a term of art that *'is meant to identify those Players or other Persons who engage in conduct that they knew constituted an Anti-Doping Rule Violation or knew that there was a significant risk that the conduct might constitute or result in an Anti-Doping Rule Violation and manifestly disregarded that risk'* (TADP Article 10.2.3).

22. An Adverse Analytical Finding made in respect of a Player's sample is presumed, in the context of a non-Specified Substance to result from intentional use and accordingly the starting point is a four year period of Ineligibility (subject to further increase or reduction). It is the Player's burden to rebut that presumption on the balance of probabilities as provided in TADP Article 3.1.2.

23. In summary, the principal issue in this case is whether the length of the period of Ineligibility is four years or two years and that depends upon whether the Player has discharged the burden of proving on the balance of probabilities that it was not intentional, i.e. she did not engage in conduct that she knew constituted an Anti-Doping Rule Violation and did not know that there was a significant risk that the conduct might constitute or result in an Anti-Doping Rule Violation.

Evidence and Submissions on behalf of the Player

24. As set out by Mr Jacobs in his helpful written submissions the Player has been tested nearly 60 times in the course of her career. He submits that she has always been particularly careful about supplements or medications that she uses particularly after she tested positive for meldonium in 2016. The Player had been prescribed Mildronat during a bout of pneumonia long before it was added to the WADA Prohibited List. In respect of that ADRV the Player was found that she bore No Fault or Negligence as a result of the long period that meldonium remains in the body. It is common ground that the present charge represented a first Anti-Doping Rule Violation for the purposes of determining sanction pursuant to TADP Article 10.9.3.1.

25. Mr Jacobs submitted that there were a series of factual matters that clearly pointed to this not being a case where the offence was intentional. He submitted that notwithstanding that the Player cannot say with certainty how the Prohibited Substance entered her body she has nonetheless discharged the burden of proof that rests upon her. The factors that he pointed to were as follows:

25.1 the Player was recommended a number of supplements in the period prior to the test in question to assist with serious headaches and travel-induced illness such as colds

or viruses when she travelled for competition. Specifically he submits that supplement contamination “*cannot be completely eliminated*” as a possible cause of her positive test. Put another way “*it is entirely possible that one of these supplements was contaminated with adrafinil*”;

25.2 since the 2016 positive test the Player was extremely careful about what she put into her body;

25.3 the Player consulted a holistic nutritionist, Mr Aoun, who assured her that he has researched all of the supplements that he recommended and none of them were a risk from an anti-doping perspective;

25.4 the Player used supplements sparingly and only when she felt she needed help with her immunity or headaches;

25.5 prior to 12 July 2021 she had not tested positive for any Prohibited Substance while using the supplements recommended to her by her holistic nutritionist;

25.6 the Player arranged for each of the supplements she still had in her possession to be tested following the index positive test. This was not all of the supplements used because some had been used up by the time the positive test was communicated. Those that were tested were negative;

25.7 seven days prior to the positive test the Player had undertaken a test which was negative. She was also tested 15 days after the 12 July 2021 positive test and that was negative as well;

25.8 the Player has competed for over 20 years and has always followed the rules;

25.9 at the time she tested positive the Player had not engaged in any conduct that was significantly risky such that it might constitute or result in an Anti-Doping Rule Violation, therefore she could not be said to have “*manifestly disregarded that risk*”. On the contrary she took great care and worked with a nutritionist who was familiar with the World Anti-Doping Agency (“WADA”) Code and undertook appropriate research.

25.10 further, there could be no performance enhancing benefit to the Player in the small amount of modafinil acid in her system.

26. During the course of her oral testimony the Player explained that she went to Mr Aoun because she came across his services being provided through Instagram and he was recommended by others on Instagram. She was assured by Mr Aoun that he was knowledgeable about the World Anti-Doping Code and when she enquired as to whether the supplements he recommended were in accordance with the Code or if there was a risk of contamination, he assured her they were produced by reputable companies. When asked why she went to Mr Aoun for advice as opposed to a qualified medical professional she explained that her concern was to obtain natural remedies rather than artificial medicines that a doctor would likely recommend. She explained that some of the supplements were provided to her by Mr Aoun, whereas she would order others on Amazon. Further, she claimed that she would check all ingredients of anything she took against the WADA Prohibited List, as well as via globaldro.com.
27. Further during the course of her testimony the Player stated that during the 7 days prior to the positive test she consumed bemetyl which she bought in a shop in Ukraine although she was not able to provide the name of the shop. The Player had not mentioned bemetyl prior to her testimony. It was not mentioned in any of the written evidence or submissions provided by the Player. It was however referred to in the laboratory report filed by the ITF, along with ecdysterone, and which raised the question of how those substances, which, while not on the WADA Prohibited List are being monitored by WADA, came to have entered her system. Those substances were not ingredients of the supplements the Player claims to have been recommended.
28. When asked why when she completed the Doping Control Form on 12 July 2021 she declared she had not taken any medicines and supplements over the previous 7 days, she explained that she was tired after the match, and she simply wanted to go back to her hotel to sleep.
29. During the course of the Player's short witness statement and her oral testimony she did not provide any details about which supplements she took, when and in what doses.

30. Mr Jacobs made detailed and comprehensive submissions, as did the ITF, as to whether an inability to identify the source of the substance was fatal to the Player's discharge of the burden of proving it was not intentional. He submitted eloquently and strongly that while an inability to identify the source of the substance made it more difficult to discharge the burden it was not an absolute requirement to do so. He cited a number of cases that demonstrate that identification of source is not an absolute or threshold requirement.

31. In particular among the authorities relied upon by Mr Jacobs he included *Villanueva v FINA* (CAS 2016/A/4534) and *Ademi v UEFA* (CAS 2016/A/4676). In *Villanueva* at para 37 the panel held:

"The Panel finds the factors set out in paragraph 35 [that establishment of the source of the prohibited substance in an athlete's sample **is not** a *sine qua non* of proof of absence of intent] more compelling than those in paragraph 36 [that establishment of the source of the prohibited substance in an athlete's sample **is** a *sine qua non* of proof of absence of intent]. In particular, it is impressed by the fact that the FINA DC, based on WADC 2015, represents a new version of an anti-doping Code whose own language should be strictly construed without reference to case law which considered earlier versions where the versions are inconsistent. Furthermore, the Panel can envisage the theoretical possibility that it might be persuaded by an athlete's simple assertion of his innocence of intent when considering not only his demeanour, but also his character and history (it is recorded if apocryphally, that the young George Washington admitted chopping down a cherry tree because he could not tell a lie. *Mutatis mutandis* the Panel could find the same fidelity to the truth in the case of an athlete denying a charge of cheating). That said, such a situation would inevitably be extremely rare. Even on the persuasive analysis of Rigozzi, Haas *et al.*, proof of source would be "an important, even critical" first step in any exculpation of intent. Where an athlete cannot prove source it leaves the narrowest of corridors through which such an athlete must pass to discharge the burden which lies upon him." Emphasis added.

32. Mr Jacobs also relied upon the case of *WADA v Jack* (CAS 2020/A/7579) and in particular the two part approach adopted by the CAS panel at para 153-155:

"153. (...) Does this circumstance lead to the (...) conclusion that she cannot disprove (a) culpable intent or (b) recklessness?"

154. (...) The determination of the two-part question is to be made in light of all the facts, and the Panel's conclusion that the two factual propositions which the Athlete must establish are more likely true than false, on a simple balance of probability.

155. As certitude with respect to the source of contamination decreases, so the Athlete's chances of prevailing depend on a counterbalancing increase of the implausibility of bad motive and negligence. The doping hypothesis must no longer (on balance) make sense in all the circumstances, and the charge of recklessness must (on balance) be overcome."

33. As a secondary part of the case advanced by Mr Jacobs, he submitted that proportionality is always relevant to the sanctioning process. He relied upon a number of authorities including *Squizzato v FINA* (CAS 2005/A/830), *FINA v Mellouli* (TAS 2010/A/2268), *Football Association v Livermore*, *Klein v ASDA* (CAS A4/2016), *Walilko v FIA* (CAS 2010/A/2268) and *Puerta v ITF* (CAS 2006/A/1025). He submitted that, irrespective of the express sanction set out in the Code, proportionality must be considered and on the facts of the present case, as referred to above, a four year sanction would be disproportionate.

Evidence and Submissions on behalf of the International Tennis Federation

34. The ITF submits that the Player admits that she cannot identify the source of the modafinil acid that was found in her urine Sample collected on 12 July 2021. It is submitted that this is a threshold requirement for the Player to be able to discharge the burden of proof on her in respect of proving the ingestion was not intentional. This was questioned by the Chairman as to whether the ITF's advocates were submitting this as an absolute express requirement under the TADP or case law or whether it was more accurate to say that as a matter of logic and practice it was very difficult for a player to discharge the burden of proof without first proving the source of the Prohibited Substance. It was clarified by the advocates for the ITF that the latter was more reflective of the case law.

35. Nonetheless, the ITF emphasised how difficult it was for the Player to discharge the burden of proof that the ingestion of the Prohibited Substance was not intentional. Mr Lavey cited many cases in support of his analysis including *WADA v Adak & Athletics Kenya* (CAS 2017/A/5295) para 105, *WADA v Caribbean RADO & Greaves* (CAS 2016/A/4662), *UKAD v Graham* NADP Tribunal 27 August 2015 and *UKAD v Williams* NADP Tribunal dated 7

October 2015. In UKAD v Williams the tribunal held *“The burden is on the Athlete to explain what “the conduct” was that led to the positive test and show that it falls outside of the definition of “intentional” in Article 10.2.3. This means at a minimum, that an Athlete has to show how the relevant Non-Specified Substance got into his or her system, because that is (or is a crucial part of) “the conduct”. If an Athlete cannot explain what “the conduct” was that led to the positive test then he or she cannot show that the violation was not intentional.”*

36. It was submitted on behalf of the ITF that the Player’s case amounted to nothing more than the following: protestations of innocence; her unsuccessful testing of some (not all) of the supplements that she says she had been using in 2020 and 2021; negative tests seven days before and fifteen days after the positive test; and her assertions that her conduct in consulting the ‘holistic nutritionist’ (Lucas Aoun) who recommended taking the supplements was not reckless. All of this is said to be inadequate in order to discharge the burden of proof.
37. Alternatively, the ITF notes, the Player asks the Independent Tribunal to reduce the otherwise applicable four year ban based on proportionality. In fairness it was accepted by Mr Lavey on behalf of the ITF that, on the basis of a well known line of CAS case law, the principle of proportionality might be relevant to rare cases such as where there is a lacuna in the rules. It was submitted on behalf of the ITF that this case is very different from the rare cases relied upon by Mr Jacobs and there was no basis upon which the principle of proportionality could affect the result of this case.
38. Mr Lavey made cogent submissions on the facts highlighting what he submitted were inadequacies in the factual case presented by the Player and in particular the following:
 - 38.1 the Player has been very vague in respect of what she consumed, when and in what doses. This is particularly so during the highly important week prior to the positive test of 12 July 2021;
 - 38.2 this is particularly concerning because on the Doping Control Form the Player confirmed she had taken no medicines or supplements during the seven days prior to the test. No good explanation for such a declaration has been provided;

38.3 this is even more concerning because during the Player's oral testimony the Player stated that she consumed bemetyl that she bought from a shop in Ukraine. This, it was submitted, appeared to be a way of the Player addressing the query raised in the laboratory report and highlighted by the ITF in written submissions that it was unclear where this substance came from;

38.4 the evidence of the Player regarding the research undertaken in respect of products was vague. Whereas she says, that for about one year after the 2016 positive test, out of an abundance of caution, she sent supplements to laboratories for testing before using them, she admitted she did not test, in advance of the positive test of 12 July 2021, the supplements recommended and/or supplied by Mr Aoun.

38.5 according to the testimony of the Player, Mr Aoun recommended some products to her which she would then source herself but others he would supply directly to her. The ITF questioned Mr Aoun's qualifications to be able to give such advice and to give the requisite assurance such that it was reasonable for the Player to rely upon him.

Analysis

39. The Tribunal accepts that where an athlete is unable to identify how a Prohibited Substance entered his or her body it is very difficult for the athlete to discharge the burden of proof that his or her conduct that led to the positive test was not intentional. As was said in "*Breaking down the process for determining a basic sanction under the 2015 World Anti-Doping Code*", (Rigozzi, Haas, Wisnosky, Viret) Intl. Sports Law J (2015) 15.3-48: "*The 2015 Code does not explicitly require an Athlete to show the origins of the substance to establish that the violation was not intentional. Whilst the origin of the substance can be expected to represent an important, or even critical, element of the factual basis of the consideration of an Athlete's level of Fault, in the context of Article 10.2.3, panels are offered flexibility to examine all of the objective and subjective circumstances of the case and decide if a finding that the violation was not intentional is warranted.*" The Tribunal finds that this reflects the correct approach and therefore the Tribunal has considered all of the facts and evidence presented by the parties in respect of the issue.

40. In the case of *Jack* (para 155) the CAS panel considered “*As certitude with respect to the source of contamination decreases, so the Athlete’s chances of prevailing depend on a counterbalancing increase of the implausibility of bad motive and negligence. The doping hypothesis must no longer (on balance) make sense in all the circumstances, and the charge of recklessness must (on balance) be overcome.*” This calls for a close examination of the explanation given by the Player as to her conduct in so far as it relates to intent and the credibility of that explanation.
41. The Tribunal found the evidence provided by the Player to be vague to the point of non-existent in respect of what, when and in what doses the supplements were taken especially in the period immediately prior to the positive test of 12 July 2021. The witness statement did not address this in any detail and the oral testimony did not either, with one notable exception. During oral testimony the Player was able to recall for the first time that she consumed bemetyl and explained that she had bought it in a shop in Ukraine.
42. The explanation given as to why the Doping Control Form incorrectly stated that she had consumed no supplements in the week prior to the test was said to be because the Player was tired and simply wanted to leave to sleep. That is not a cogent explanation. The Player was aware, on her account of events, that she was taking supplements, but she declared she was not. It is important for players to complete accurately the Doping Control Form as it is for them to take seriously their responsibilities under all aspects of the TADP.
43. Some of the supplements the Player had been taking were tested following the notification of the positive test. Those were the supplements the Player had left and which were available for testing. However, those that had been used up were not tested because it was said they were unavailable for testing. In circumstances where the Player has not identified what, when and in what doses the Player consumed particular supplements in the period immediately prior to the positive this is unhelpful to the Player in seeking to discharge the burden of proof. The Tribunal is left with a vague account of supplement use, none of which was disclosed on the Doping Control Form, which raises more questions than answers. The submission made on behalf of the Player that “supplement contamination cannot be completely eliminated as a possible cause of her positive test” may be correct, but that is nowhere near enough to assist the Player to discharge the burden of proof on the facts of

this particular case. There is in fact no evidence whatsoever that the supplements referred to by the Player were the source of the Prohibited Substance detected on 12 July 2021.

44. If the supplements used by the Player were the source of the Prohibited Substance detected on 12 July 2021, the extent of any research done by either the Player or the nutritionist she relied upon for advice was vague. Not only does the Tribunal not know what supplements were taken in the period prior to the test it is also unclear as to what specific research was undertaken in respect of those supplements and their manufacture. The Tribunal was also left without any cogent evidence as to how the Player was satisfied that Mr Aoun was in a position to give reliable advice to the Player and in particular what research he carried out and what his qualifications were that enabled him to opine.
45. The high point of the case advanced by the Player was that the amount of the Prohibited Substance detected by the laboratory was well below those amounts previously detected by the laboratory. It was said that the amount was about 1% of the lowest quantity previously detected by the laboratory. It was submitted on behalf of the Player that this was entirely consistent with a contaminated supplement being the source and not consistent with any deliberate use. This was even more important for substances prohibited In-Competition only, such as in the present case. Such reasoning is an invitation to speculate as to the amount of the dose and its timing, as well as being based upon the suggested prior assumption that it was a supplement referred to by the Player that was the source as opposed to some other supplement or source. That is speculation based upon an assumption. It is not cogent evidence.
46. This case is an example of where, due to the absence of identification of the source of the Prohibited Substance, the Tribunal has not been presented with sufficient evidence to be persuaded that the Player has discharged the burden of proof placed upon her by the TADP to prove the breach of the rules was not intentional. On the facts of this case the Tribunal finds that the Player's evidence has not been anywhere near sufficient to enable the Player to pass through that "narrowest of corridors available" where the source of the Prohibited Substance has not been identified.
47. The Tribunal further finds that there is no basis for reducing the period of Ineligibility on the basis of proportionality. The cases referred to by Mr Jacobs were cases involving either

lacunae in the World Anti-Doping Code in place at that particular time or were so exceptional on the facts that they invoked the application of the principle of proportionality such that the panels were moved to reduce the otherwise applicable period of Ineligibility or to remove it altogether. The present case falls well within the parameters for sanction set out under the TADP and there is no factual or other basis for reducing the sanction provided under the TADP.

Conclusion

48. There is no dispute that the Anti-Doping Rule Violations were committed and the starting point for the period of Ineligibility is four years. The Tribunal finds that the evidence adduced by the Player is not sufficient to discharge the burden of proof set out under TADP 10.2.1.1 and therefore there is no basis for reducing the four year period to two years. Further, the Tribunal is satisfied that there is no basis for reducing the period on the basis of proportionality.
49. The parties agreed with respect of the disqualification of results and forfeiture of prize money as set out below. The results of the Hungarian Grand Prix which took place between 12-18 July 2021 are disqualified. In addition, all results for the Player after the Hungarian Grand Prix up to but not including 27 July 2021 when the Player had a negative test result, are disqualified and the prize money is forfeited.
50. The Independent Tribunal is unanimous in respect of the order set out herein and the reasoning above. The order of the Independent Tribunal is as follows:
 - 49.1 The Player has committed ADRVs pursuant to TADP Articles 2.1 and 2.2 based on the Presence of a Metabolite of modafinil and/or adrafinil in her urine Sample collected on 12 July 2021;
 - 49.2 The Player is hereby subject to a period of Ineligibility of four years commencing on 19 August 2021, the date the Player was provisionally suspended, in accordance with TADP Article 10.13.2; and

49.3 There shall be Disqualification of the Player's results obtain at the Event (with all resulting consequences) in accordance with TADP Articles 9.1 and 10.1, and Disqualification (with all resulting consequences) of her results obtained in the period between 13 July 2021 up to but not including 27 July 2021.

51. The Player has the right to appeal this decision, pursuant to TADP Article 13, to the Court of Arbitration for Sport ("CAS"), located at Château de Béthusy, Avenue de Beaumont 2, CH-1012 Lausanne, Switzerland (procedures@tas-cas.org).



David Casement QC (Chair)
on behalf of the Independent Tribunal
03 March 2022

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