

**IN THE MATTER OF PROCEEDINGS BROUGHT BY THE INTERNATIONAL TENNIS
FEDERATION UNDER THE 2020 TENNIS ANTI-DOPING PROGRAMME**

Before:

Prof. Ulrich Haas (Chair)

Ms. Joëlle Monlouis

Prof. Dorian Haskard

BETWEEN

INTERNATIONAL TENNIS FEDERATION

and

ANASTASIYA SHOSHYNA

Anti-Doping Organisation

Respondent

DECISION OF THE INDEPENDENT TRIBUNAL

I. INTRODUCTION

1. The Anti-Doping Organisation and Claimant in the instant case, the International Tennis Federation (“**ITF**”), is the world governing body for the sport of tennis. It is a signatory to the World Anti-Doping Code (the “**WADA Code**”), and as part of its responsibilities under the WADA Code, the ITF has issued the Tennis Anti-Doping Programme (“**TADP**”), which

establishes the WADA Code-compliant Anti-Doping Rules for professional tennis. In particular, the ITF contracts International Doping Tests & Management (“**IDTM**”) to collect samples from players under the Tennis Anti-Doping Programme so that they can be tested for the Presence of Prohibited Substances under the WADA Code. The applicable Tennis Anti-Doping Programme in the present case are the 2020 edition (the “**TADP 2020**”) and the 2021 edition (the “**TADP 2021**”).

2. The Respondent or Player in the present case is Ms. Anastasia Shoshyna (30 November 1997), who is a professional tennis player and a national representative of Poland (she received her Polish citizenship on 14 April 2020). She represents the tennis club, *Akademia Tenisowa Tenis Kozerki* (the “**Club**”). The Player is presently ranked 1476 in singles by the Women’s Tennis Association (“**WTA**”), having held a career-high WTA singles ranking of 381.¹
3. The ITF is represented by Ms. Louise Reilly BL, instructed by Mr. Chris Lavey and Mr. Jumani Robbins of Bird & Bird LLP. The Player is represented by Mr. Łukasz Klimczyk of Kostka Klepuszewski I Wsólnicy Sp. J. The ITF and the Player shall be referred to collectively as the “**Parties**”.
4. This Independent Tribunal was established by the ITF pursuant to Article 1.3.5 of the TADP 2021, which provides that the Tribunal shall determine Anti-Doping Rule Violations (“**ADRV**”) committed under the TADP 2020.

II. THE CHARGE

5. On 30 November 2020, the ITF notified the Player of an ADRV pursuant to Article 2.1 of the TADP 2020 in connection with the presence of stanozolol metabolites (the “**Prohibited Substance**”) in a Sample collected from the Player at the W25 Ted Republican Girls’ in

¹ See paragraph 1.3 of the ITF’s Answer.

Istanbul (the “**Event**”) on 26 October 2020 (the “**Charge**”).² Stanozolol is an anabolic androgenic steroid prohibited In-Competition and Out-of-Competition, under category S1 of the 2020 Prohibited List from the WADA Code, pursuant to Appendix Three of the TADP 2020.

6. The Player was Provisionally Suspended on 10 December 2020.
7. Since then, the ITF and the Player have engaged in extensive correspondence and dialogue to ascertain how the Prohibited Substance came into the Player’s system.

III. BACKGROUND FACTS AND PROCEDURE BEFORE THE TRIBUNAL

1. The Event and Doping Control

8. The Player submitted to an In-Competition doping test at the Event in Istanbul, together with the Athlete’s declaration on the Doping Control Form and listed four (4) supplements that she had been using in the seven (7) days prior. On 26 October 2020, a urine sample was collected from the Player and assigned reference number 3153392 (the “**Sample**”). The Sample – split into A-Sample and B-Sample – was sent to the WADA-accredited laboratory in Montreal, Canada (the “**Montreal Laboratory**”) for analysis.
9. Under TADP 2020, WADA-accredited laboratories and laboratories approved by WADA are presumed to have conducted sample analyses and custodial procedural in compliance with the International Standard for Laboratories.³ This Tribunal notes that the Player is not seeking to rebut this presumption.
10. On 17 October 2020, the Montreal Laboratory reported an Adverse Analytical Finding (“**AAF**”) in respect of the A-Sample, in which metabolites of stanozolol were detected.⁴

² See also AAF-20-005/ Report of Adverse Analytical Finding under the TADP (Sample 3153392) dated 30 November 2020.

³ See Article 8.7.3 of the TADP 2020.

⁴ See Report of AAF at Tab 1 of ITF Document Bundle, page 13.

11. Following the AAF report, on 30 November 2020, the ITF formally notified the Player in writing that she was being charged with an ADRV and she will be Provisionally Suspended from competition pending determination of the Charge. In the same letter dated 30 November 2020, the ITF also advised the Player that the B-Sample would be analysed on 8 December 2020, unless she admitted the Charge in the meantime.

2. The Player's Reaction to the Charge

12. On 4 December 2020, the Player responded via her Counsel, Mr. Klimczyk. In substance, the Player denied the Charge, and requested for the B-Sample to be opened with an independent third party witnessing the process. The Player also indicated that if the B-Sample analysis confirmed the A-Sample analysis, she would like to undertake testing of various supplements to ascertain the source of the Prohibited Substance. The ITF confirmed receipt of the said message from the Player and informed the Player that the ITF would be willing to discuss such testing thereafter, and advised the Player to retain any unused and unopened products along with their original packaging, receipts, prescriptions, or any other documentation.⁵

13. On 11 December 2020, the ITF responded to the Player with the outcome of the B-Sample analysis, confirming the presence of stanozolol metabolites as per the A-Sample,⁶ and the case would proceed in accordance with the ITF letter on 30 November 2020 - i.e., the imposition and publication of a Provisional Suspension on the Player. The ITF also asked the Player to confirm whether she will deny the Charge and/or dispute the default consequences, and the reasons for doing so.⁷

14. On 14 December 2020, the Player informed the ITF that she disputes the default consequences of an ADRV pursuant to the TADP 2020 and highlighted both the lack of intent on her part, and the possibility of contamination of supplement or meat.⁸

⁵ See Correspondence at Tab 4 of the ITF Document Bundle.

⁶ See B-Sample Certificate of Analysis at Tab 3 of the ITF Document Bundle.

⁷ See Correspondence at Tab 4 of the ITF Document Bundle.

⁸ See Correspondence at Tab 4 of the ITF Document Bundle.

3. Supplemental Analyses and Appointment of this Tribunal

15. On 23 December 2020, the Chairman of the Independent Panel, Charles Flint QC, appointed the Independent Tribunal, consisting of Prof. Dr. Ulrich Haas as Chair. The remaining members are Ms. Joëlle Monlouis and Professor Dorian Haskard, who were appointed on 21 December 2021 and 07 January 2022.
16. On 24 December 2020, the ITF informed this Tribunal that the Parties had agreed to stay the matter until at least 20 January 2021 to enable the Player to investigate the possible sources of the Prohibited Substance. The Chair of this Tribunal was requested to stay the proceedings until 20 January 2021, which was approved.⁹
17. On 20 January 2021, the Player informed the ITF that she and her coaching staff were undertaking investigations into identifying the source of origin of stanozolol which was detected in her Sample, as it is her position that she had never intentionally used such a substance.¹⁰ As such, to allow sufficient time for the ITF to conduct its own investigations on the receipt of the Player's findings, the Parties agreed to extend the stay of proceedings until 26 February 2021, which was approved by the Chair of this Tribunal on the same day.¹¹
18. On 22 February 2021, the Player provided the ITF with the results of the initial testing undertaken on supplements the Player was ingesting around the Event, which detected no traces of the Prohibited Substance or its metabolites. The Player stated that her investigations into the possibility of contaminated meat was still ongoing.¹²
19. On 26 February 2021, the ITF confirmed receipt of the email from the Player and warned her that neither the ITF nor its expert was aware of any case where meat contamination had been accepted as the cause of an AAF for stanozolol. The ITF agreed to a further

⁹ See Correspondence at Tab 5 of the ITF Document Bundle, pages 15 to 17.

¹⁰ See paragraphs 7 and 8 of the Defence Brief.

¹¹ See Correspondence at Tab 6 of the ITF Document Bundle.

¹² See Correspondence at Tab 5 of the ITF Document Bundle.

one-month extension of the stay of proceedings until 26 March 2021, which was approved by the Chair of this Tribunal on 1 March 2021.¹³

20. On 31 March 2021, the Player informed the ITF that the Warsaw Laboratory, which she is sending her analyses to for testing for the presence of stanozolol,¹⁴ required a confirmation from the ITF as to the status of the proceedings in order for the analysis to take place, which the ITF provided.¹⁵
21. On 16 April 2021, the Player informed the ITF that the Warsaw Laboratory had accepted the request and would provide the results by the final week of April 2021.¹⁶
22. On 27 April 2021, the Player informed the ITF that the Warsaw Laboratory's analysis had detected no stanozolol or its metabolites in any of the submitted supplements and provided a copy of the test report.¹⁷
23. On 28 April 2021, the ITF confirmed receipt of the information and reminded the Player that the stay was shortly due to expire.¹⁸
24. On 29 April 2021, the Player requested a further four-week stay of proceedings until the end of May 2021 while she sought to investigate one more possible explanation for the presence of stanozolol in her system.¹⁹ The ITF agreed, and this was approved by the Chair of this Tribunal.²⁰

¹³ See Correspondence at Tab 7 of the ITF Document Bundle

¹⁴ See paragraphs 19 to 23 of the Defence Brief. See also Exhibits 1 to 9 of the Defence Brief.

¹⁵ See Correspondence at Tabs 8 and 10 of the ITF Document Bundle

¹⁶ See Correspondence at Tab 8 of the ITF Document Bundle

¹⁷ See Correspondence at Tab 8 of the ITF Document Bundle

¹⁸ See Correspondence at Tab 8 of the ITF Document Bundle

¹⁹ See Correspondence at Tab 8 of the ITF Document Bundle

²⁰ See Correspondence at Tab 11 of the ITF Document Bundle

25. Following the expiry of the stay of proceedings on 31 May 2021, the Chair of this Tribunal invited the Parties to extend the stay indefinitely pending settlement discussions and/or agreement on the continuation of the proceedings.²¹
26. Following discussion between the Parties, it was agreed that the Player would submit to the ITF an Opening Brief by 1 July 2021, which the ITF would consider in deciding whether to continue with these proceedings or pursue settlement talks.

4. The Player's Opening Brief and Answers

27. In the Opening Brief filed on 1 July 2021, the Player set out her position:²²
- a. The Player acknowledged that the presence of any substance from the WADA Prohibited List shall be considered a ADRV under the TADP.
 - b. The Player denied any intention and/or conscious use of Prohibited Substances, and she has always applied verified training and nutrition methods, as she was aware of the risk of an ADRV.
 - c. In ascertaining the source of the Prohibited Substance in her system, she explored the possibilities of contaminated supplements and contaminated meat consumed in Turkey, which are both ruled out.
 - d. Upon ruling out the two (2) possibilities of sources of contamination, she was advised by one of her expert witnesses, Dr Douwe de Boer, on the possibilities that she had direct contact with a primary user of the Prohibited Substance. The Player asserted that the most likely explanation for the AAF is her direct contact with one [REDACTED], who was allegedly using stanozolol or the Prohibited Substance in oral form then.
 - e. Accordingly, the presumption of intent ought to be rebutted as she exhibited "No Fault or Negligence".

²¹ See Correspondence at Tab 12 of the ITF Document Bundle

²² See paragraphs 11 to 30 of the Opening Brief at Tab 13 of the ITF Document Bundle.

28. On 5 August 2021, the ITF sent a number of follow-up questions on the nature of the interactions between the Player and [REDACTED], and his procurement and consumption of the Prohibited Substance.²³
29. On 13 August 2021, the Player provided answers to the ITF's First Supplemental Questions.²⁴
30. On 25 August 2021, the ITF sent a number of additional follow-up questions to the Player, on the specific events of 22 and 23 October 2020, being the days on which the Player and [REDACTED] last engaged in sexual activity and kissing before the Player flew off to Turkey for the Event.²⁵
31. On 6 September 2021, the Player provided answers to the ITF's Second Supplemental Questions.²⁶

5. Other Relevant Facts on the Source

32. During preliminary investigations, the Player and her team sent all her supplements to three (3) different laboratories in Warsaw i.e., Bielsko-Biala, Wroclaw, and a WADA-accredited laboratory in Warsaw, and none of the analyses confirmed the presence of stanozolol. The Player and her team also analytically eliminated the possibility of contaminated meat.²⁷
33. The Player allegedly contacted one Dr Douwe de Boer, in order to seek other possible scenarios of ingesting stanozolol. Dr Douwe de Boer reported of the possibilities that

²³ See First Supplemental Questions at Tab 14 of the ITF Document Bundle.

²⁴ See First Supplemental Answers at Tab 15 of the ITF Document Bundle.

²⁵ See Second Supplemental Questions at Tab 16 of the ITF Document Bundle.

²⁶ See Second Supplemental Answers at Tab 17 of the ITF Document Bundle.

²⁷ See paragraphs 24 to 27 of the Defence Brief.

stanazolol could have been detected upon direct contact with other users of the substance i.e., via saliva.²⁸

34. The Player then confessed to her team to having private sexual relations and direct contact with [REDACTED] and was not aware that [REDACTED] was using any Prohibited Substances.²⁹ During the period of September and October 2020, the Player was practicing in Warsaw, Poland, and scheduled to participate in the Event in Istanbul, Turkey. The Player generally works together with Mr. Krzysztof Puna (Sports Director of the Club) and Ms. Anna Szymanska (Physical Preparation Coach). When preparing with Ms. Szymanska, the Player was acquainted with [REDACTED] who was working together with Ms. Szymanska. Subsequently, it also came to light that [REDACTED] was privately consuming stanazolol orally as part of his pre-training support [REDACTED].³⁰

35. This “direct contact” or sexual relationship between the Player and [REDACTED] was alleged to have started sometime during the period of September and October 2020 and ended after the Player’s return from Istanbul sometime at the end of October 2020.³¹ The last sexual contact between the Player and [REDACTED] prior to the Event was on 22 October 2020.

36. The results of the preliminary investigation by the Player and her team were sent to Dr Douwe de Boer, who submitted an expert report on 23 May 2021, that the “very likely” source of stanazolol in the Player’s body is direct contact between the Player and [REDACTED].³²

²⁸ See paragraphs 28 and 29 of the Defence Brief.

²⁹ See paragraphs 30 to 31 of the Defence Brief. See also Witness Statements of the Player and [REDACTED] at Exhibits 16 and 13 respectively.

³⁰ See Witness Statement of [REDACTED] at Exhibit 13 of the Defence Brief.

³¹ See Witness Statement of [REDACTED] at Exhibit 14 of the Defence Brief.

³² See paragraph 34 of the Defence Brief. See also pages 13 and 14 of Exhibit 12 of the Defence Brief

37. To support the Player's position that she had come into contact with the Prohibited Substance through direct contact with [REDACTED], the Player also submitted two (2) further expert reports:
- a. Professor Pascal Kintz, who conducted hair analyses of the Player;³³ and
 - b. Mr. Andrzej Kwaśnica, who gave his opinion on the respective test results and circumstances, and on whether it was probable that a Prohibited Substance could enter an athlete's body through direct contact with another person who was consuming the said substance.³⁴
38. The expert report of Professor Pascal Kintz, dated 7 January 2022 pertains to the analysis of a lock of hair specimen, allegedly from the Player.³⁵ Professor Kintz conducted laboratory tests on the said specimen for the presence of stanozolol, and concluded that the test was "negative in the whole hair length (24cm)". Professor Kintz further concluded that:
- a. The result "does not support long-term abuse of stanozolol"; and
 - b. "The minimal detectable dose of stanozolol in hair is unknown".
39. The expert report of Mr. Andrzej Kwaśnica, dated 9 January 2022 pertains to a brief by the Player's counsel to address the following issue: Whether it is probable for a Prohibited Substance to enter a player's body through direct contact with another person who was consuming the said substance. Mr. Kwaśnica evaluated the submitted documents i.e., the expert report of Professor Kintz, dated 7 January 2022, the Player's urine analysis from the Event, and a letter from the Player's counsel detailing the possible scenarios of source and concluded as follows:

³³ See Player's Written Submission dated 10 January 2022. See also Exhibit 1 of Player's Written Submission dated 10 January 2022.

³⁴ See Player's Written Submission dated 10 January 2022. See also Exhibits 2 and 3 of Player's Written Submission dated 10 January 2022.

³⁵ See Player's Written Submission dated 10 January 2022. See also Exhibit 1 of Player's Written Submission dated 10 January 2022.

“... the most probable scenario explaining the entry of stanozolol metabolites into the body of Anastasiya Shoshyna is their transfer with saliva as a result of intimate contacts with ██████████ ██████████ in the period immediately preceding the competition in Turkey in October 2020.”

40. It is prudent to note here that Mr. Kwaśnica’s expert report did not include the consideration of the urine analysis of ██████████ which was conducted by the same company i.e., Lab4Tox, dated 6 July 2021.³⁶ There is no expert report or opinion following the urine analysis report of ██████████ dated 6 July 2021.

IV. PROCEDURE BEFORE THIS TRIBUNAL

41. On 24 October 2021, the ITF informed the Player that given all the information provided, it had decided to proceed with a hearing before this Tribunal, rather than seek to resolve the matter without a hearing. The ITF proposed draft directions setting out the procedural timetable for the case moving forward.³⁷

42. On 8 November 2021, the Player provided her comments on the draft directions.³⁸

43. On 23 November 2021, the draft directions agreed upon by the Parties was agreed upon by the Chair of this Tribunal, as follows:³⁹

- *By 5:30pm (UK time) on 10 December 2021 Ms Shoshyna will submit a defence brief setting out argument on the issues that Ms Shoshyna wishes to raise at the hearing, as well as written witness statements from Ms Shoshyna and from each other witness (fact and/or expert) that Ms Shoshyna intends to call at the hearing, setting out the evidence that Ms Shoshyna wishes the Independent Tribunal to hear from the witness, and enclosing copies of the documents that Ms Shoshyna intends to introduce at the hearing.*

³⁶ See Exhibit 18 of the Defence Brief.

³⁷ See Correspondence at Tab 18 of the ITF Document Bundle.

³⁸ See Correspondence at Tab 19 of the ITF Document Bundle.

³⁹ See Correspondence at Tab 20 of the ITF Document Bundle.

- *By 5:30pm (UK time) on 12 January 2022 the ITF will submit an answer brief, setting out argument on the issues that the ITF wishes to raise at the hearing, as well as written witness statements from any witness (fact and/or expert) that the ITF intends to call at the hearing, setting out the evidence that the ITF wishes the Independent Tribunal to hear from the witness, and enclosing copies of the documents that the ITF intends to introduce at the hearing.*
 - *On 31 January 2022, a hearing will be held by video conference call, commencing at 9:00am (UK time).*
 - *Each party may apply (on notice) to vary these Directions.*
44. On 10 December 2021, the Player filed her Defence together with supporting exhibits, albeit some missing expert reports,⁴⁰ which were eventually filed on 10 January 2022.⁴¹
45. On 17 December 2021, the ITF sent a number of follow-up questions to the Player in respect of new aspects of her case advanced in the Defence.⁴²
46. On 20 December 2021, it was communicated to this Tribunal that the Parties have agreed to the amendment of the Directions issued on 23 November 2021, as follows:
- *By 5:30pm (UK time) on 10 January 2022 Ms Shoshyna will submit written expert reports from Prof. Kintz and Mr. Kwasinca, setting out the evidence that Ms. Shoshyna wishes the Independent Tribunal to hear from each witness.*
 - *By 5:30pm (UK time) on 31 January 2022 the ITC will submit an answer brief, setting out the argument on the issues that the ITF wishes to raise at the hearing, as well as written witness statements from any witness (fact and/or expert) that the ITF intends to call at the hearing, setting out the evidence that the ITF wishes the Independent Tribunal to hear from the witness, and enclosing copies of the documents that the ITF intends to introduce at the hearing.*

⁴⁰ See Correspondence at Tab 21 of the ITF Document Bundle.

⁴¹ See Correspondence at Tab 22 of the ITF Document Bundle.

⁴² See Third Supplemental Questions at Tab 23 of the ITF Document Bundle.

- *On [date to be confirmed by the Independent Tribunal; the parties can be available on 7, 8, 10, 14, 21, 22, or 23] February 2022, a hearing will be conducted by video conference call, commencing at 9:00 am (UK time).*

47. On 26 January 2022, there was a request by the ITF for an extension of the deadline to file the ITF's reply brief and supporting evidence from 31 January 2022 to 4 February 2022, due to illness-related significant absence. There was no objection by the Player.
48. On 10 January 2022, the Player provided responses to the ITF's Third Supplemental Questions.⁴³
49. On 13 January 2022, the Player and her counsel attended an interview with the ITF.⁴⁴
50. On 4 February 2022, the ITF submitted its Answer and its Document Bundle.
51. On 11 February 2022, the ITF requested for a postponement of the hearing, which was initially scheduled for 14 February 2022, on the basis that additional investigation is required for potential use or possession violation. The Player's counsel requested for additional information arising out of this investigation.
52. On 12 February 2022, the Chair of the Tribunal determined that the matter of the postponement of the hearing be taken as a preliminary matter on 14 February 2022, after the Tribunal has heard the positions of the Parties. However, the Player's counsel had requested for the decision for the postponement of the hearing to be made on that day instead of 14 February 2022, as there was a need to secure the attendance of witnesses and expert witnesses for the hearing. Nevertheless, the Chair of the Tribunal determined

⁴³ See Third Supplemental Answers at Tab 24 of the ITF Document Bundle.

⁴⁴ See Transcript at Tab 25 of the ITF Document Bundle.

that the matter should still be taken as a preliminary matter together with the remaining of the Tribunal, on 14 February 2022.

53. On the evening of 12 February 2022, the ITF indicated the Parties' agreement to postpone the hearing, scheduled for 14 February 2022, and requested for a decision to postpone the said hearing. Pursuant to the Parties' agreement, the Chair of the Tribunal agreed to the postponement of the hearing to another date in due course.

54. On 5 April 2022, notice was given to all Parties and the Tribunal members that the hearing will be conducted on 12 April 2022 via video conference.

55. The first part of the hearing was conducted before the Tribunal on 12 April 2022, via video conference. With the agreement of the Parties the second part of the hearing was held on 10 May via video conference. The following representatives were present at the hearing:

The Tribunal

Prof. Dr Ulrich Haas (the Chair);

Ms. Joëlle Monlouis; and

Prof. Dorian Haskard.

Assistant

Ms. Chui Ling Goh (Legal assistant to Prof. Dr. Ulrich Haas)

Secretariat to Independent Tribunal

Ms. Kylie Brackenridge (Senior Case Manager, Sport Resolutions)

On Behalf of the Player

Ms. Anastasiya Shoshyna (The Player);

Mr. Lukasz Klimczyk (Counsel for the Player);

██████████████████ (Witness of Fact for the Player);

Ms. Anna Szymańska (Witness of Fact for the Player);

██████████████████ (Witness of Fact for the Player);

Mr. Krzysztof Puna (Witness of Fact for the Player);

Dr Douwe de Boer (Expert Witness for the Player);

Prof. Pascal Kintz (Expert Witness for the Player); and

Mr. Andrzej Kwaśnica (Expert Witness for the Player).

On Behalf of the ITF

Ms. Louise Reilly BL (Counsel for the ITF);

Mr. Chris Lavey (Counsel for the ITF);

Prof. Christiane Ayotte (Expert Witness for the ITF);

Dr Stuart Miller (Witness of Fact for the ITF); and

Courtney McBride (Observer from WTA).

Interpreter

Andy Serkiz (Temple Translations)

56. For the sake of completion, this Tribunal records that three (3) of the expert witnesses were examined via expert conferencing i.e., hot tubbing, on the two areas of expertise:

For Urine Analysis

a. Dr Douwe de Boer (Expert Witness for the Player); and

- b. Prof. Christiane Ayotte (Expert Witness for the ITF).

For Hair Analysis

- a. Prof. Pascal Kintz (Expert Witness for the Player); and
- b. Prof. Christiane Ayotte (Expert Witness for the ITF)

V. SUBMISSIONS OF THE PARTIES

57. In the course of the consideration and resolution of the present matter, the written and oral submissions of the Parties have been taken into account by this Tribunal. The following summary of the Parties' positions is illustrative and does not necessarily comprise each contention put forward by the Parties. The Tribunal, however, has carefully considered all the submissions made by the Parties, even if no explicit reference is made in what immediately follows:

1. The Player's Position

58. The relief sought by the Player is summarised as follows:⁴⁵

- a. The Player has committed a violation of Article 2.1 of the TADP;
- b. The Player has committed the violation of Article 2.1 of the TADP with No Fault or Negligence and therefore no period of Ineligibility is imposed;
- c. The Player is eligible to compete with immediate effect;
- d. This Decision is not to be made public; and
- e. The ITF shall bear the costs of the arbitral proceedings and contribute an amount to the legal costs and other expenses incurred in connection with the proceedings of the Player.

⁴⁵ See paragraph 64 of the Defence Brief.

59. The alternative reliefs sought by the Player are as follows:⁴⁶
- a. The Player has committed a violation of Article 2.1 of the TADP;
 - b. The Player has committed the violation of Article 2.1 of the TADP with No Significant Fault or Negligence and therefore there are grounds for reduction of the period of Ineligibility;
 - c. The Player is sanctioned with a period of Ineligibility of between one (1) and two (2) years. Any period of Provisional Suspension effectively served by the Player before the entry into force of the Tribunal's Decision shall be credited against the total period of Ineligibility to be served;
 - d. This Decision is to not be made public; and
 - e. The ITF shall bear the costs of the arbitral proceedings and contribute an amount to the legal costs and other expenses incurred in connection with the proceedings of the Player.
60. According to the Player's Defence Brief, the Player seeks the following issues to be resolved:⁴⁷
- a. Whether the Player had satisfied on a balance of probabilities that the route of ingestion of the Prohibited Substance was through contamination from direct contacts with [REDACTED];
 - b. If the above is not accepted, whether the Player had submitted other evidence that proves that she did not take the Prohibited Substance intentionally; and
 - c. Whether the Player has satisfied this Tribunal that she bears No Fault or Negligence, or No Significant Fault or Negligence.
61. In essence, the arguments and evidence presented by the Player are sought to establish that she ingested the Prohibited Substance through her direct contact with [REDACTED]

⁴⁶ See paragraph 65 of the Defence Brief.

⁴⁷ See paragraph 15 of the Defence Brief.

██████████, and her conduct in totality ought to fall under the “No Fault or Negligence” or “No Significant Fault or Negligence” doctrine in order to eliminate or reduce her period of Ineligibility under the TADP; further and/or in the alternative, to establish that the Player did not consume stanozolol intentionally.

62. To establish “No Fault or Negligence” for the application of Article 10.4 of the TADP 2020,⁴⁸ and “No Significant Fault or Negligence” for the application of Article 10.2.3 of the TADP 2020,⁴⁹ the Player highlighted the following factors for the Tribunal to consider:

- a. The Player did not intend to use the Prohibited Substance, and did not know that having direct contact with ██████████ could lead to an AAF;
- b. The Player had no knowledge or awareness that ██████████ was using any substances, including the Prohibited Substance, and had no reason to suspect the same as he was employed by Ms. Anna Szymanska who has a negative attitude towards doping in sports and could not possibly cooperate with a person who uses such substances;
- c. The Player did not know it was medically possible to be contaminated with the Prohibited Substance by direct contact;
- d. There is an Expert Opinion which verified all possible scenarios;
- e. The manner in which ██████████ ingested the Prohibited Substance increases the likelihood of the Prohibited Substance entering the Player’s body through direct contact i.e., kissing;
- f. The Player tested all her supplements and products she was taking before the Sample was taken. None of them contained the Prohibited Substance;
- g. There is no other scenario for the source of the Prohibited Substance in the Player’s system, especially since the Player would not think of intentionally taking the

⁴⁸ See paragraph 43 of the Defence Brief.

⁴⁹ See paragraph 61 of the Defence Brief.

Prohibited Substance after she finally managed to stabilise her personal and professional situation after many years;

- h. The Player was fully aware that she could be subject to anti-doping controls in Istanbul, and, if she had knowingly used a banned substance, she simply would not have travelled to the Event;
- i. The Player has not received any considerable education and has little knowledge in the field of anti-doping in sports, and especially did not know that Prohibited Substances can be transferred by direct contact with users;
- j. The Player was using the same product for a considerable period and has not violated any Anti-Doping Rules;
- k. The Player is generally careful about what she ingests and is not cavalier about her anti-doping obligations;
- l. The Player's behaviour after the AAF is exemplary. She showed repentance and active cooperation, and spent large sums of money to verify possible sources;
- m. This is the Player's first Anti-Doping Rule Violation despite a long sport career; and
- n. The Player is aware that a potential ADRV could have a huge negative impact on her life and her professional career.

63. The Player also highlighted the principles of proportionality in her Defence, stipulating that eliminating any period of Ineligibility in the present case is just and proportionate, in accordance with jurisprudence.⁵⁰ Further, the Player states that the potential sanction has a huge impact on her life, *viz*, she remains temporarily suspended from December 2020, and she had to inform the Club of her "embarrassing situation of contact with a married person".⁵¹

64. In particular, to establish "No Significant Fault or Negligence" for the application of Article 10.2.3 of the TADP 2020, the Player highlighted that she had been diligent with regard to

⁵⁰ See paragraphs 47 to 51 of the Defence Brief.

⁵¹ See paragraph 52 of the Defence Brief.

the degree of risks, and her degree of Fault or Negligence is not significant in relation to the violated rule.⁵²

2. The ITF's Position

65. The ITF seeks the following relief:

- a. To find that the Player has committed an Anti-Doping Rule Violation under Article 2.1 of TADP 2020, in that a metabolite of stanozolol, an anabolic steroid prohibited at all times, was present in the Sample;
- b. To find that the Player has not met her burden to demonstrate that (a) her violation was not intentional within the meaning of Article 10.2.3 of TADP 2020 Article 10.2.3, or (b) that she bears No Fault for that violation within the meaning of Article 10.4 of the TADP 2020, and therefore impose a period of Ineligibility of four years;
- c. To fix the starting date of the period of Ineligibility at a date that is no earlier than 26 October 2020; and
- d. To make no order as to costs.

66. The ITF's overall position can be summarised as follow:

- a. There is a presumption according to the applicable rules that the Player ingested the Prohibited Substance intentionally, and it is the Player's burden to rebut the presumption that she ingested the Prohibited Substances not "intentionally" by adducing evidence that satisfies this Tribunal that it is more likely that her ingestion of the Prohibited Substance was not "intentional";⁵³
- b. The Player has not met her burden to demonstrate that her ADRV was not "intentional" within the meaning of Article 10.2.3 of the TADP 2020; and

⁵² See paragraphs 60 to 62 of the Defence Brief.

⁵³ See paragraph 3.5 of the ITF Answer.

c. The Player has not met her burden to demonstrate that she bears No Fault for that violation within the meaning of Article 10.4 of the TADP 2020.

67. With regards to the Player's hypothesis that the Prohibited Substance entered her system via her direct contact with [REDACTED], the ITF is of the position that the intimate contact hypothesis between the Player and [REDACTED] is not substantiated to the extent required to establish that the intimate contact with her sexual partner was more likely than not the cause of her positive test, as she is not able to meet the stringent requirements attached to evidence in accordance with jurisprudence i.e., "specific, objective and persuasive evidence" to substantiate the "more likely explanation", as follows:⁵⁴

- a. The lacking of evidence on the alleged affair between the Player and [REDACTED] [REDACTED] between late September 2020 and 27 October 2020;
- b. The lacking of evidence that [REDACTED] was taking the Prohibited Substance in the lead up to the Event i.e., 22 and 23 October 2020;
- c. The limited evidence that [REDACTED] was ingesting the Prohibited Substance in powder form by way of sublingual administration; and
- d. The lack of "concrete evidence" that the most likely scenario is that the Prohibited Substance [REDACTED] ingested somehow entered the Player's system.

68. To establish the above, the ITF challenged the oral factual evidence of the Player and her witnesses at the hearing on the following points:

- a. That the Player failed to exercise due diligence in her consumption of supplements i.e., she was consuming Alphamind V2 Ultimate Fat Burner, which was allegedly not

⁵⁴ See paragraphs 3.8 to 3.15 of the ITF Answer.

cleared from contamination of Prohibited Substances,⁵⁵ and there was no evidence that she had cleared the content of her lip filler prior to injection.⁵⁶

- b. That the Player was inconsistent in her evidence about her affair with [REDACTED] [REDACTED] when she allegedly had lip fillers and had sore lips during the relevant period.⁵⁷
- c. That there was no documentation or witnesses of her intimate relationship with [REDACTED] [REDACTED] i.e., no photographs, videos, messages, contact with friends about said relationship, receipts from restaurants.⁵⁸
- d. That [REDACTED] was inconsistent in his evidence about his affair with the Player i.e., he surprised the Player and chatted with her openly at the car park of her place on 23 October 2020,⁵⁹ and he drove the Player back to his family home on 27 October 2020,⁶⁰
- e. That there was inconsistent evidence on the circumstances surrounding [REDACTED] [REDACTED] sublingual consumption of stanozolol on 22 October 2020, at the Player's home.⁶¹
- f. That there was inconsistent evidence on the circumstances on which [REDACTED] [REDACTED] allegedly saw the affair on 27 October 2020.⁶²
- g. That it was questionable that [REDACTED] would give evidence on the Player's behalf, after allegedly witnessing her husband having an affair with the Player i.e., the reasons for [REDACTED] willingness to give evidence.⁶³
- h. That [REDACTED] has no documentary evidence of his prescription, purchase, or consumption of stanozolol.⁶⁴

⁵⁵ See pages 18 to 20 of Hearing Transcript Day One.

⁵⁶ See pages 21 to 23 of Hearing Transcript Day One.

⁵⁷ See pages 23 to 24 of Hearing Transcript Day One.

⁵⁸ See pages 31 to 37, 88 to 93, 191 of Hearing Transcript Day One

⁵⁹ See pages 46 to 49, 99 to 103 of Hearing Transcript Day One.

⁶⁰ See pages 49 to 51 of Hearing Transcript Day One.

⁶¹ See pages 39 to 44, 95 to 97 of Hearing Transcript Day One.

⁶² See pages 51 to 52, 59 to 67, 107 to 118, 138 to 147 of Hearing Transcript Day One.

⁶³ See pages 68 to 70, 148 to 150, 160 of Hearing Transcript Day One.

⁶⁴ See pages 81 to 83, 135 to 136 of Hearing Transcript Day One.

- i. That [REDACTED] did not leave the trainer job with the tennis academy in order to end the affair with the Player. Instead, his messages with Anna Szymanska reflect other reasons.⁶⁵

69. With regards to the Player's argument that she did not take the Prohibited Substance "intentionally", the ITF submits that the Player's non-source evidence is not sufficient to rebut the presumption of intentional use.⁶⁶

- a. The Player's protestation of innocence and reliance on a clean anti-doping record cannot be given any material weight, in line with prevailing jurisprudence on the matter; and
- b. The Player's reliance on expert reports to assert that the Prohibited Substance entered her system in an unconscious and accidental manner remains unconvincing.

70. With regards to the Player's position on proportionality, the ITF maintains that the jurisprudence relied upon by the Player refers to ADRVs which have been found to not be intentional and the athletes in question bore No Fault or Negligence. Therefore, this jurisprudence is not relevant for the purposes of the present case.⁶⁷

VI. THE APPLICABLE LAW AND JURISDICTION

71. The jurisdiction of the Tribunal follows from Article 8.1 of the TADP. According thereto:

The following matters arising under this Programme will be submitted for determination by an Independent Tribunal in accordance with the Procedural Rules Governing Proceedings Before an Independent Tribunal, as amended from time to time:

⁶⁵ See Exhibit No. 20 of Defence Brief. See also pages 118 to 121, 168 to 170, 174 to 179 of Hearing Transcript Day One.

⁶⁶ See paragraphs 3.16 to 3.23 of the ITF Answer.

⁶⁷ See paragraphs 4.1 and 4.3 of the ITF Answer.

8.1.1 A charge that one or more Anti-Doping Rule Violations has been committed (and any issues relating to that charge). Where such charge is upheld, the Independent Tribunal will determine what Consequences (if any) should be imposed, in accordance with and pursuant to Articles 9 and 10.

72. This Tribunal notes that its jurisdiction has not been challenged by either of the Parties.

73. Pursuant to Article 3.2 of the Independent Tribunal Procedure Rules, this Tribunal is empowered to *“determine the dispute in accordance with the applicable ITF Rules and these Procedural Rules, with English law applying subsidiarily”*. This Tribunal agrees with the ITF that the TADP 2020 are applicable to the merits of this case. This follows from Article 1.5.2.2 of the TADP 2021 that reads as follows:

“Any case that is pending as of the Effective Date, and any case brought after the Effective Date based on an Anti-Doping Rule Violation that allegedly occurred prior to the Effective Date, will be governed by the substantive anti-doping rules in effect at the time the alleged Anti-Doping Rule Violation occurred, and not by the substantive anti-doping rules set out in this Programme (unless the hearing panel determines that the principle of lex mitior appropriately applies under the circumstances of the case) ...”

74. Since the alleged ADRV in question here was committed prior to the “Effective Date” (1.1.2021) within the above meaning, the case is governed by the substantive rules of the TDP 2020. However, when it comes to the procedural rules, Article 1.5.2.2 of the TADP 2021 rules as follows:

“...but the procedural aspects of the case will be governed by this Programme [TADP 2021]”.

75. The applicable substantive provisions in the TADP 2020 are as follows:

- *Article 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 3.5.*
- *Article 2.1.1 It is each Player's personal duty to ensure that no Prohibited Substance enters his/her body. A Player is responsible for any Prohibited Substance or any of its Metabolites or Markets found to be present in his/her Sample. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Player's part be demonstrated in order to establish an Anti-Doping Rule Violation has been committed under Article 2.1.*
- *Article 10.2.1 The period of Ineligibility shall be four years where:*
 - (a) The Anti-Doping Rule Violation involves a Prohibited Substance that is not a Specified Substance, unless the Participants establishes that the Anti-Doping Rule Violation was not intentional.*
- *Article 10.2.2 If Article 10.2.1 does not apply, the period of Ineligibility shall be two years, subject to potential reduction or suspension pursuant to Article 10.4, 10.5 or 10.6.*
- *Article 10.2.3 As used in Articles 10.2 and 10.3, the term "intentional" is meant to identify those Participants who cheat. The term, therefore, requires that the Participant engaged in conduct that he/she knew constituted an Anti-Doping Rule Violation or knew that there was a significant risk that the conduct must constitute or result in an Anti-Doping Rule violation and manifestly disregarded that risk. An Anti-Doping Rule Violation resulting from an Adverse Analytical Finding for a substance that is only prohibited In-Competition (a) shall be rebutted presumed to be not "intentional" if the substance is a Specified Substance and the Player can establish that it was Used Out-of-Competition; and (b) shall not be considered "intentional" if the Substance is not a Specified Substance and the Player can establish that it was Used Out-of-Competition in a context unrelated to sport performance.*
- *Article 10.4 Elimination of the Period of Ineligibility where there is No Fault or Negligence*

If a Participant establishes in an individual case that he/she bears No Fault or Negligence, then the otherwise applicable period of Ineligibility shall be eliminated.

- *Article 10.5.2 Application of No Significant Fault or Negligence beyond the Application of Article 10.5.1*

In an individual case where Article 10.5.1 is not applicable, if a Participant establishes that he/she bears No Significant Fault or Negligence, then (subject to further reduction or elimination as provided in Article 10.6) the otherwise applicable period of Ineligibility may be reduced based on the degree of Fault of the Participant, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise reduced period of Ineligibility is a lifetime, the reduced period under this Article may be no less than eight years.

- *Appendix One No Fault or Negligence The Player or other Person establishing that he/she did not know or suspect, and could not reasonably have known or suspected even with the utmost caution, that he/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 Player must also establish how the Prohibited Substance entered his/her system.*
- *Appendix One No Significant Fault or Negligence The Player or other Person establishing that his/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 Player must also establish how the Prohibited Substance entered his/her system.*

VII. MERITS

1. Overview

76. In light of the submissions of the Parties and the evidence presented before this Tribunal, the following issues of law and fact will be discussed:

- (i) Threshold issue: Was there an ADRV, pursuant Article 2.1 of the TADP 2020?

(ii) Main issue: If there was an ADRV, this Tribunal needs to determine the appropriate period of Ineligibility. In this context the Tribunal must assess whether the present situation falls under any situation(s) provided for under the TADP 2020 which would allow for the elimination or reduction of the period of Ineligibility, viz:-

- a. On a balance of probabilities, whether it is likely that stanozolol (Non-Specified Substance) entered the Player's system by "direct contact" with [REDACTED], therefore reducing the period of Ineligibility based on No Fault or Negligence or No Significant Fault or Negligence?⁶⁸
- b. In case the Player was not contaminated by "direct contact" with [REDACTED], whether, on a balance of probabilities, it is likely that the Player's consumption of stanozolol was unintentional, therefore reducing the period of Ineligibility to two years?⁶⁹

77. This Tribunal notes that, while there is a request for relief for the elimination or reduction of the period on Ineligibility under "No Fault or Negligence" and "No Significant Fault or Negligence", there is no request for relief in relation to the results from the Event, by either of the Parties, pursuant to Article 10.1 of the TADP 2020. The main relief in question is the period of Ineligibility which ought to be imposed on the Player, if any, pursuant to Article 10.2 of the TADP 2020.

2. Burden of Proof and Standard of proof

78. This Tribunal is guided by past jurisprudence on the respective issues, in particular, the quality of evidence to establish the various issues of law and facts. This Tribunal is minded of the ITF's position that the standard of evidence tendered has to be persuasive, specific, objective, and concrete (*WADA v. Abdelrahman*⁷⁰). This Tribunal is also minded of the ITF's positions on the following areas of law:-⁷¹

⁶⁸ See arts. 10.5 and 10.6 of TADP 2020.

⁶⁹ See arts. 10.2.1 and 10.2.2 of TADP 2020.

⁷⁰ CAS 2017/A/5036 *WADA v. Abdelrahman* (ITF AB Tab-20)

⁷¹ See paragraph 3.9 of the ITF's Answer.

- a. The Tribunal must be satisfied that the claim is “more likely than not” to be true (*Guerrero v. FIFA*,⁷² *WADA v. Yadav*,⁷³ *WADA v. Daiders*⁷⁴);
- b. There is a stringent requirement to offer “*persuasive evidence*” that the explanation offered by the Player is more likely than not to be correct, by providing “*specific, objective and persuasive evidence*” and “*concrete evidence*” (*WADA v. Abdelrahman*⁷⁵);
- c. Through expert evidence, the Player must show that the ingestion of the alleged source product in the amount(s) and at the time(s) specified would have produced the concentration of the substance that was subsequently found in her Sample (*WADA v. Stanic & Swiss Olympic Association*⁷⁶);
- d. A hypothesis as to source that is not verified by clear and competent evidence is insufficient to meet this stringent standard (*Meca-Medina v FINA*⁷⁷, *WADA v. Robinson & JADCO*,⁷⁸ *La Barbera v. IWAS*⁷⁹); and
- e. Should there be a gap in scientific knowledge and that it is not known whether a particular proposition is true or not, and therefore the hypothesis as to source remains unverified, the benefit of the doubt goes against the Player, because it is the Player that bears the burden of proof on this point (*Scott v. ITF*⁸⁰).

3. Threshold Issue: Was there an ADRV?

79. It is agreed between the Parties, including the Player, that there was an ADRV pursuant to Article 2.1 of the TADP 2020. The ADRV is found pursuant to the presence of metabolites of stanozolol in the Player’s Sample during the Event (In-Competition), which is not a Specified Substance.

⁷² CAS 2018/A/5546 *Guerrero v. FIFA* [ITF Authority Bundle (**AB**) Tab-13].

⁷³ CAS OG 16/25 *WADA v. Yadav & NADA* (ITF AB Tab-14).

⁷⁴ CAS 2014/A/3615 *WADA v. Daiders, Daiders & FIM* (ITF AB Tab-15).

⁷⁵ CAS 2017/A/5036 *WADA v. Abdelrahman* (ITF AB Tab-20)

⁷⁶ CAS 2006/A/1130 *WADA v. Stanic & Swiss Olympic Association* (ITF AB Tab-9).

⁷⁷ CAS 99/A/234, 99/A/235 *Meca-Medina v. FIFA* (ITF AB Tab-26).

⁷⁸ CAS 2014/A/3820 *WADA v. Robinson & JADCO* (ITF AB Tab-27).

⁷⁹ CAS 2010/A/2277 *La Barbera v. IWAS* (ITF AB Tab-28).

⁸⁰ CAS 2018/A/5768 *Scott v. ITF* (ITF AB Tab-6).

4. Main Issue: The appropriate Period of Ineligibility

80. The starting point to determine the appropriate Period of Ineligibility is Article 10.2.1 of the TADP 2020 that provides for a period of Ineligibility of 4 years.

81. The outstanding inquiry is whether the instant case falls under any of the situation(s) considered by the TADP 2020 to eliminate or reduce the period of Ineligibility, of which the burden of proof lies on the Player, pursuant to Article 10.2.1(a) of the TADP 2020.

a) *The Kissing-Theory*

82. The Player has put forth a scenario according to which the stanozolol was transferred to her via “direct contact” or transmission of saliva with [REDACTED] (the “kissing theory”). While the Player has submitted jurisprudence on “direct contact” and transmission through sex, this theory was not followed through in the oral evidence and hearing submissions.

83. The “kissing theory” is not novel in the jurisprudence of sports anti-doping. The *locus classicus* case of *ITF v Gasquet*⁸¹ in 2009 put forth this “kissing theory”, wherein the panel therein had found that “*it is more likely than not that the [p]layer’s contamination with cocaine resulted from kissing Pamela*”, and that “*even if the [p]layer exercised the utmost caution, he could not have been aware of the consequences of kissing a girl who he had met in a totally unsuspecting environment*”. This case was referred to as precedent by the Player.⁸²

84. When analysing the kissing theory put forth by the Player, this Tribunal finds the ITF’s framework of sub-issues helpful, viz-

⁸¹ CAS 2009/A/1926, 1930 *ITF v Richard Gasquet* (award of 17 December 2009).

⁸² See Exhibit 21 of Defence Brief.

- i. On a balance of probabilities, was the Player having an affair or relationship, and therefore had “direct contact” with [REDACTED] during material time in October 2020?
- ii. On a balance of probabilities, was [REDACTED] consuming stanozolol during material time in October 2020?
- iii. On a balance of probabilities, was [REDACTED] consuming stanozolol during material time in October 2020 by sublingual method?
- iv. On a balance of probabilities, did the alleged “direct contact” with [REDACTED] [REDACTED] during material time in October 2020, cause the Player’s AAF?

b) The affair of the Player

85. On the issue of the Player’s affair or relationship with [REDACTED], the Player had submitted written and oral evidence, as well as written and oral evidence by [REDACTED] and [REDACTED]. All of them had testified to the said affair which had allegedly occurred sometime in October 2020.
86. The Panel notes that there is no contemporaneous evidence for the Player’s relationship with [REDACTED]. There are no photographs, telephone calls, text or WhatsApp messages, receipts from restaurants, Instagram exchanges etc. The Player even declared that she did not have [REDACTED] phone number. The Panel further notes that the Player did not tell anybody about her relationship with [REDACTED] and it also appears that nobody else (other than [REDACTED]) saw [REDACTED] and the Player having an affair or even having suspicions in this regard. The above clearly follows from the ITF’s questioning to the Player during the hearing:

“LOUISE REILLY: Okay. Do you have any photographs of you with [REDACTED] during your affair?”

ANASTASIA SHOSHYNA: No, I didn't take any photos because I didn't pay too much weight in terms of having future in that relationship because [REDACTED] was married, he was a married man.

LOUISE REILLY: So even though you had this intense period of an affair, which you described as was particularly intense for two weeks towards the end of October, you didn't take a single photograph either of him or a selfie of the two of you together?

ANASTASIA SHOSHYNA: No, because for me it was a pure fling; my focus was on my career and that's it.

LOUISE REILLY: Did you send [REDACTED] any text messages during your affair?

ANASTASIA SHOSHYNA: [REDACTED] forbade me from doing that because he was married and there was no need for that because each day we were seeing each other at the courts.

LOUISE REILLY: So you didn't send him a single text message, a message on Instagram, email, any form of contact during your intense affair?

ANASTASIA SHOSHYNA: No, because as I said, I treated this as a pure fling and after my event in Turkey, the affair actually ended.

LOUISE REILLY: Did you ever phone [REDACTED] during your affair?

ANASTASIA SHOSHYNA: No.

LOUISE REILLY: Did you have his phone number?

ANASTASIA SHOSHYNA: No as well.

LOUISE REILLY: So your evidence is you're having an affair with [REDACTED], this was a passionate affair which was particularly intense for two weeks but you didn't even have his phone number?

ANASTASIA SHOSHYNA: No, because he hasn't given me one for safety.

LOUISE REILLY: How did you arrange to meet [REDACTED]?

ANASTASIA SHOSHYNA: During the activities and training. As I said, we saw each other each day and we arranged meet ups from that.

LOUISE REILLY: So how -- just describe -- so you arrange your meet ups at the training facility?

...

ANASTASIA SHOSHYNA: Yes.

LOUISE REILLY: So what would happen if one of you was delayed or there was a change of plan?

ANASTASIA SHOSHYNA: There was no expectations whatsoever as we saw each other at the facilities and we were going together and no-one was expecting anything from one to another.

LOUISE REILLY: So your evidence, Ms Shoshyna, is that you don't have a single piece of documentary evidence? You've no messages, you've no email, you've no photos, you've no receipts from the restaurant to show or to support your position that you had an affair with [REDACTED]?

...

LOUISE REILLY: Just staying with any kind of evidence, Ms Shoshyna, did you tell any of your friends about your affair with [REDACTED]? Did you send your best friend any messages talking about the affair?

ANASTASIA SHOSHYNA: No, I haven't and I'm quite a solitary person in Poland because all my family is in Ukraine.

LOUISE REILLY: Okay so just so I understand, Ms Shoshyna, your evidence today is that you don't have any text message, phone calls, Instagram exchanges with [REDACTED]. You didn't even have his phone number and the reason you didn't have his phone number was because he was so scared of being caught, is that correct?

ANASTASIA SHOSHYNA: Yes, this was affair without any future, and I was only purely focusing on sport.⁸³

87. The Panel finds the above unusual. When queried about this, both the Player and [REDACTED] clarified that [REDACTED] was concerned about his wife ([REDACTED]) finding out about the said affair, and was therefore careful about not leaving any evidence or trail behind. Furthermore, they declared that there was no need for messages, since they saw each other regularly at the training facility. However, these explanations are difficult to reconcile with the fact that [REDACTED] on 23 October surprised the Player when sending her off to the Event. The relevant parts of the hearing transcript read as follows:

⁸³ See pages 32 to 38 of Hearing Transcript Day One.

“LOUISE REILLY: And the next day, Ms Shoshyna, you went to Turkey, so you went to Istanbul in Turkey on 23 October, isn't that correct?”

ANASTASIA SHOSHYNA: At 1.00 pm, I had a flight there.

LOUISE REILLY: Before you left for the airport, [REDACTED] surprised you?

ANASTASIA SHOSHYNA: Yes, he came to my block of flats.

LOUISE REILLY: Okay and this was a surprise visit, is that right?

ANASTASIA SHOSHYNA: Yes.

LOUISE REILLY: So you're waiting outside your apartment for a taxi and that's where he surprised you, is that correct?

ANASTASIA SHOSHYNA: Yes.

LOUISE REILLY: Then I think you said in the second supplemental answers that you stood outside talking and kissing for 15 to 20 minutes, is that correct?

ANASTASIA SHOSHYNA: Yes, that was even maybe shorter at the time; I was waiting for a taxi and I needed to prior to departure, I have departure at 10.30.

LOUISE REILLY: Okay, so you were both standing outside talking and kissing for a period of time, you say in your answers, was 15 to 20 minutes, but might have been slightly shorter, is that correct?

ANASTASIA SHOSHYNA: Yes.

LOUISE REILLY: So, although [REDACTED], you tell us, was so nervous about being caught that he did not give you his phone number, he was comfortable standing outside talking and kissing you for 15 to 20 minutes, is that what you want us to believe?

ANASTASIA SHOSHYNA: Yes, because if you look at the layout of the block, it's actually shielded from other property, so there's like a courtyard inside.

ANASTASIA SHOSHYNA: For me, it wasn't stressful, [REDACTED] was the one who had to be careful with respect to that.

LOUISE REILLY: I understand. So is your evidence then you're waiting for a taxi in a courtyard, an inner courtyard?

ANASTASIA SHOSHYNA: Yes, there's a street, a district, a street there."⁸⁴

88. Furthermore, the Tribunal notes that [REDACTED] recalled this incident differently:

"LOUISE REILLY: Okay, so you're standing outside with Ms Shoshyna and we've been told that you were standing there for between 15 and 20 minutes talking and kissing, is that right?"

[REDACTED]: No, no, it was very short meeting because the taxi was waiting for Anastasia so -- ... She was in a rush to get her flight.

LOUISE REILLY: So how long do you think your meeting was?"

[REDACTED]: I think roughly about five or seven minutes long.

LOUISE REILLY: So for that period of five to seven minutes, you were standing outside chatting and kissing, is that correct?"

[REDACTED]: The kiss lasted a few seconds and the rest was a conversation. ... So first we had a chat and the kiss was before she got into the taxi.

LOUISE REILLY: Considering [REDACTED] you're so nervous about being caught by your wife, did you feel comfortable standing outside kissing Ms Shoshyna?"

[REDACTED]: No, not at all, because my wife was with her kids at home.

LOUISE REILLY: But you were nervous about other people seeing you?"

[REDACTED]: Warszawa is not a village that has 10,000 inhabitants, it's a 3 million city, so I don't care what other people would think."⁸⁵

89. [REDACTED] concern about his wife ([REDACTED]) finding out about the said affair is also difficult to reconcile with the lack of "care" of [REDACTED] when bringing the Player back to his family home on 27 October 2020. The relevant parts of the hearing transcript read as follows:

⁸⁴ See pages 46 to 49 of Hearing Transcript Day One.

⁸⁵ See pages 101 to 103 of Hearing Transcript Day One.

“LOUISE REILLY: And the next day you went to the training centre and you saw [REDACTED] there, is that correct?”

ANASTASIA SHOSHYNA: Yes, because I had a meeting after the event in order to discuss the tournament and Anna Szymanska and [REDACTED] was present during that meeting.

...

LOUISE REILLY: Yes, you say that [REDACTED] invited you back to his family home because his wife and children had left, is that correct?”

ANASTASIA SHOSHYNA: Yes, we drove by his car after the meeting there.

LOUISE REILLY: So again, your evidence is that [REDACTED] was so concerned about getting caught that he wouldn't give you his phone number yet he drove you in his car to his family home for the purpose of having sex, is that what you want us to believe?”

ANASTASIA SHOSHYNA: Yes, it was his decision. His wife and the children were not there because they left and he was convinced for that.”⁸⁶

90. This is all the more striking considering that a lot of people could have seen them together when entering [REDACTED] apartment:

“THE CHAIR: So what kind of building is that? Is that a big apartment building or is that a single flat? I mean what - where does he live? -I mean can you describe this a little bit

ANASTASIA SHOSHYNA: It's a typical apartment complex and he lived on the fifth floor, as far as I remember.

THE CHAIR: How many people would be living there? Would there be 20 apartments, 50 apartments, 100 apartments? What kind of building is that?”

ANASTASIA SHOSHYNA: It's quite a big building and it has a few staircases so it's hard for me to say how many of them.

...

THE CHAIR: To make it a little easier, so you said he lives on the fifth floor, how many floors did the building have?”

⁸⁶ See pages 50 to 51 of Hearing Transcript Day One.

ANASTASIA SHOSHYNA: *I'm unable to say; I was there just once.*

THE CHAIR: *So was he living on the top floor or was there other floors above?*

ANASTASIA SHOSHYNA: *According to my recollection, I think there were floors above.*

THE CHAIR: *Okay, so you parked the car in front of the apartment building, is that correct?*

ANASTASIA SHOSHYNA: *Yes.*

THE CHAIR: *Okay, then he goes to the entry of the apartment, he opens the door.*

...

ANASTASIA SHOSHYNA: *Yes.*

ANASTASIA SHOSHYNA: *Yes. We got inside of the building and we took a lift and we got to the fifth floor.”⁸⁷*

91. What is even more, there was no reason to drive to [REDACTED] apartment, because according to both of them they did and could of course meet at her apartment with no danger of being caught.

“LOUISE REILLY: Why did you take the risk of bringing Ms Shoshyna back to your apartment when you could easily have gone to her apartment?

[REDACTED]: *So we had been a few times at her apartment and I thought that there wouldn't be any risk because my wife was supposed to return on Wednesday.*

LOUISE REILLY: *Okay, so you were so concerned about your wife catching you that you didn't give Ms Shoshyna your phone number, yet you took the risk of taking her to your family home?*

[REDACTED]: *So there was no need for that because we saw each other from Monday to Friday every day and I know that phone communication is the first reason why betrayals come to light.”⁸⁸*

92. [REDACTED] is the only witness that “observed” the affair between her husband and the Player and gave evidence that she caught the two of them on the 27 October

⁸⁷ See pages 56 to 59 of Hearing Transcript Day One.

⁸⁸ See page 118 of Hearing Transcript Day One.

2020, when she returned home early from a visit to her parents with the children. However, there are inconsistencies with respect to the event occurring on that day when comparing the various testimonies:

93. [REDACTED] version of events on that day was as follows:⁸⁹

“LOUISE REILLY: So you don’t remember exactly what time but it’s sometime between 1.00 pm and 4.00 pm you arrived at your apartment. Can you just describe coming in the apartment door and what happened next please?”

[REDACTED]: I was holding by her hand one of my daughters and the other was in the pram. ... Because the little one was one and a half years old so I had to use that buggy, a trolley for her. ... So I pulled out the keys and I opened the door. ... So I saw some of the belongings in the hallway and I had a feeling that something was not right so I took the children into the living room. ... So I pulled out my phone because I’ve got some cartoons on the phone, so I wanted to occupy them with something because I had a feeling that something was ... That my husband is not alone in the bedroom. ... When I turned around I only saw a girl running out. ... And because I’m a very calm person I did not want to argue in front of the children.

LOUISE REILLY: So what happens next?

[REDACTED]: So the children went, I took them into their own room.”

94. The Player’s version of the same event was as follows:⁹⁰

“THE CHAIR: In the bed, okay, and then you hear that the front door is opening or how did you realise something is wrong? I mean did the wife all of a sudden appear in the bedroom or did you hear somebody opening the apartment?”

ANASTASIA SHOSHYNA: I heard someone getting in and then I saw her and I took my stuff and I left.

⁸⁹ See pages 139 to 141 of Hearing Transcript Day One.

⁹⁰ See pages 61 to 64 of Hearing Transcript Day One.

THE CHAIR: What I'm wondering, why would the wife go straight to the bedroom? Did she know you were in there?

ANASTASIA SHOSHYNA: It's a small flat, she could have seen the shoes.

THE CHAIR: Okay so you left your shoes at the entrance and then you went to the bedroom, is that correct?

ANASTASIA SHOSHYNA: Yes.

THE CHAIR: Then she comes in with the two kids, so the kids see you standing there with their father, is that correct?

ANASTASIA SHOSHYNA: Yes.

THE CHAIR: Did the kids say something? They see their father with another woman, did the kids say anything?

ANASTASIA SHOSHYNA: It's hard for me to talk about this because it's very embarrassing for me. The children were very little so maybe they didn't know.

THE CHAIR: What do you mean by very little?

ANASTASIA SHOSHYNA: He's got two daughters, I can't say exactly their age, but it's two and five years old.

THE CHAIR: So they're walking next to the mother, okay. So she opens the bedroom door, were you still in bed when she opened the bedroom or were you already standing?

ANASTASIA SHOSHYNA: I was standing. ... Because the doors were opening.

THE CHAIR: Okay. So you were standing, so you said the wife didn't say a word, yeah? The kids didn't say a word, did [REDACTED] say anything?

ANASTASIA SHOSHYNA: As I mentioned, everyone was shocked by the whole event. I took my shoes and things and I left that place."

95. The Tribunal also struggles as to the motivation for [REDACTED] to give evidence on behalf of the Player, after the Player had an affair with her husband. The Player's explanation for this, is as follows:⁹¹

⁹¹ See pages 68 to 70 of Hearing Transcript Day One.

“CHAIR: And stay there, okay. Now, I could imagine that the wife was not super pleased seeing you having an affair with her husband and you describe also the situation as I mean rather hostile, yeah, nobody shouting but complete silence, very awkward.

...

THE CHAIR: Would that be a correct description?

ANASTASIA SHOSHYNA: Yes.

THE CHAIR: It's rather nice of her to give testimony in your favour, isn't it?

...

THE CHAIR: It's, I would say, a very gracious trait of the wife to give testimony in favour of Ms Shoshyna, wouldn't it?

ANASTASIA SHOSHYNA: I don't know why she decided to do so.

THE CHAIR: It's interesting because she told her husband, "I don't want you to meet the player anymore, you have to finish your job, you have to disappear", and then I mean she's telling that to her husband and then, nevertheless, she would provide a testimony for you.

ANASTASIA SHOSHYNA: I don't know why she decided to do so, so much time has gone by and this actually impacts on my coaching team as well and the workers.

THE CHAIR: Yeah, but I mean did you thank her? Isn't that incredible, I mean you hurt her feelings a lot and nevertheless, she is so gracious and gives testimony for you. Did you go to her and say, "Look, thank you very much for doing this, for helping me. Why do you do this?" Isn't that an unusual situation?

ANASTASIA SHOSHYNA: I had no direct contact because it was all done via Krzysztof and my coaching team but after the case is over, obviously I'm planning to thank her for that.”

96. [REDACTED] gave the following explanation:⁹²

“LOUISE REILLY: And were you angry with Ms Shoshyna?

[REDACTED]: I wouldn't like to say what I could have done to her in that particular moment.

⁹² See pages 148 to 150 of Hearing Transcript Day One.

LOUISE REILLY: Okay, so the suggestion is you were very angry with Ms Shoshyna at that moment, is that correct?

██████████: Yes.

LOUISE REILLY: So why did you make this statement and why are you giving evidence today to support Ms Shoshyna?

██████████: Anna, I give evidence because Anna Szymanska asked me to do so.

LOUISE REILLY: Is she a friend of yours?

██████████: We met whilst we were both working at ██████████, it's a fitness club.

LOUISE REILLY: Okay, so you're a former colleague then of Anna Szymanska, that you both worked together at ██████████, is that correct?

██████████: I was working as a sales manager at ██████████. ... And personal trainers have very good relationships with sales managers because that way they can get clients for training. ... So she was my colleague but not a friend. I'm a type of a person who doesn't have a huge circle of friends and is not friends with many people."

97. Ms. Anna Szymańska, on the contrary explained as follows:⁹³

"ANNA SZYMANSKA: That was is May/June time, I think it was more likely June because I had this conversation after speaking to Anastasia and ██████████.

THE CHAIR: Okay. I guess that was a rather difficult conversation, was it?

ANNA SZYMANSKA: Very difficult.

...

THE CHAIR: So she's not a friend of yours? Now you need to explain. So I thought ██████████ are friends.

ANNA SZYMANSKA: She's my acquaintance, I don't have friends among females.

THE CHAIR: Okay. Now you said the conversation was difficult between you and ██████████ and rather obvious because ██████████ was completely mad at Ms Shoshyna.

ANNA SZYMANSKA: She was angry at Anastasia, I'm not surprised.

⁹³ See pages 173 to 179 of Hearing Transcript Day One.

THE CHAIR: No, no absolutely not surprised. So, I mean it's not obvious she appears as a witness in these proceedings, so how did you convince her?

ANNA SZYMANSKA: So because I managed to find work for her husband and for the fact it impacts on our training team and it wasn't my --I wasn't at fault in any of that. ... I wanted her simply to do this for me.

...

THE CHAIR: You are angry with [REDACTED], okay. His wife is angry on Anastasia, okay. Now you meet the wife, so again, how do you get her -- I mean everybody being angry at everybody, how did you manage to get her into these proceedings and testify?

ANNA SZYMANSKA: I was counting on the fact, on that emotions will subside and for me, very important was to clean the team's reputation.

THE CHAIR: I understand your incentive, I understand your incentive but I have difficulties in understanding [REDACTED] motives, you know? So why would she help the player?

ANNA SZYMANSKA: I think that it was [REDACTED] fault mainly so maybe she wanted to help her husband somehow. ... And I wanted to get confirmation from her whether this affair actually took place because, at the very beginning, I was very doubtful.

...

THE CHAIR: The thing is, we've asked the wife said she would not have known what she would have done to Anastasia if she would have said and was like, "I would have killed her on the spot", and now she's testifying in favour of Anastasia and we just tried to understand how you managed this.

ANNA SZYMANSKA: I think that the main factor was the timelapse because it's been two years and emotions have subsided. If that was immediately after the fact, I don't think that it would be possible.

THE CHAIR: We had the opportunity, of course, to listen to [REDACTED], okay, and the impression rather was there was still lots of emotions there.

ANNA SZYMANSKA: So it's such a bad event, I think it's going to affect her into the future. So, she might re-experience this trauma again.

THE CHAIR: My final question, why she did this, why she testifies here, she said she wanted to help you, not her husband, she wanted to help you. Now, you say you don't have friends and she's

not a friend of yours, so can you understand why she wants to help you if you're not a friend of hers?

ANNA SZYMANSKA: When I was referring to friendship, I meant more a close friendship that you see each other each day and have coffee. I asked ██████ for support, for her to support me. ... And we spoke as well. She has a huge respect for me and my position and so ██████ in that situation, was at fault and because of that, she is negatively impacted. So this is what we were talking about as well."

98. Based on all of the above, in particular that, in principle, there is no contemporaneous evidence about the relationship between the Player and ██████, the inconsistencies in the evidence and also the lack of a plausible explanation why ██████ would provide evidence in favour of the Player, the Tribunal is not convinced on a balance of probabilities that there was an affair at the relevant time. This clearly distinguishes the case from the CAS case of *ITF v Gasquet*, relied upon by the Player.

c) ██████ alleged consumption of stanozolol during material time in October 2020

99. In relation of the consumption of stanozolol by ██████ this Tribunal notes that no one (other than his wife and the Player) could give direct evidence of ██████ consumption, and possession, of stanozolol. The Player submitted a photograph of a bottle labelled Biotab Winstrol 20 milligram stanozolol, but there is no evidence on file to connect this with ██████.⁹⁴ ██████ was not able to produce any contemporaneous documents on his purchase of stanozolol i.e., receipts or prescription. The only documents before this Tribunal on ██████ consumption of stanozolol are a photograph of the stanozolol, and his testimony that he regularly takes stanozolol.

100. The Player has submitted an analysis report of ██████ urine sample that was performed on 6 July 2021. The analysis was conducted by the company Lab4Tox,

⁹⁴ See Exhibit 19 of Defence Brief.

for which Mr. Andrzej Kwaśnica is the owner.⁹⁵ The report of this analysis shows the detection of stanozolol and its metabolites of >50ng/ml.⁹⁶ The ITF and Prof. Ayotte challenges the processes and chain of custody pertaining to the urine sample, which was not conducted at the same standards as those done by WADA-accredited laboratories. Further, Prof. Ayotte challenges the credibility of the said urine report dated 6 July 2021, given that the said urine analysis detected substances which are not expected or possible to be found in a urine sample. An extract of Prof. Ayotte's Report is reproduced below:⁹⁷

"The Lab4Tox report as presented, casts doubt on the reliability of the test conducted on Mr. H's sample. Although the report states that the testing was done for several anabolic steroids and metabolites, the substances listed are not consistent with urine analysis.

- i) Most substances listed on the report are not expected to be found in a urine test. These are steroid esters, which are derivatives of testosterone for example⁴ that are found in preparations (which appears to be Lab4Tox main expertise);*
- ii) Testosterone propionate should not be found in a urine sample;"*

101. Prof. Ayotte's challenges with respect to the chain of custody and the substances found in the sample have remained unchallenged by the Player. Thus, in view of the above the Panel is not prepared to accept on a balance of probabilities that [REDACTED] is or was a regular user of stanozolol.

d) [REDACTED] alleged consumption of stanozolol during material time by sublingual method

102. On the issue of the consumption of stanozolol sublingually by [REDACTED], this Tribunal is once again faced with limited and nominal direct evidence on this issue i.e., only [REDACTED] is able to give any clear evidence that he takes stanozolol sublingually. [REDACTED] was only able to give secondary and indirect evidence that [REDACTED] told her that he was taking stanozolol sublingually. The only

⁹⁵ See Exhibit 18 of Defence Brief.

⁹⁶ See Exhibit 18 of Defence Brief.

⁹⁷ See page 3 of Tab-26 of ITF Document Bundle.

evidence [REDACTED] provided was a medical prescription from his doctor on a medication he is taking because [REDACTED],⁹⁸ as well as an unverified video highlighting the benefits of taking stanozolol sublingually,⁹⁹ which [REDACTED] has claimed he had not seen.¹⁰⁰

103. Another inconsistency is that – according to [REDACTED] – he was aware that the Player was not allowed to take Prohibited Substances. At the hearing he said as follows:

“I’m aware that top sportspeople mustn’t take any substance whatsoever.”¹⁰¹

104. So [REDACTED] was aware that Ms Shoshyna could not take stanozolol. Under these circumstances it appears highly unlikely that [REDACTED] would pour powder under his tongue to dissolve, and shortly after kiss the Player intensely. This is even more so considering that in his evidence he told the Tribunal that it takes about five minutes for the powder to dissolve.

“LOUISE REILLY But you told us, [REDACTED], that it takes five minutes for the powder to dissolve and you kissed Ms Shoshyna goodbye five or ten minutes after taking the powder.

[REDACTED]: So it wasn't directly after taking that, it was more ten minutes prior to going on a training session.

LOUISE REILLY: That's what you told me a few moments ago. I have a note that five or ten minutes after you took the Stanozolol, you kissed her.

[REDACTED]: Yes, this is the same what I said because I took Stanozolol, five minutes passed and then five minutes passed without a kiss and I had a kiss and I went on my training session.”¹⁰²

⁹⁸ See Exhibit 20 of Defence Brief.

⁹⁹ See Tab-30 of ITF Document Bundle.

¹⁰⁰ See pages 83 to 84 of Hearing Transcript Day One.

¹⁰¹ See page 104 of the Hearing Transcript Day One.

¹⁰² See pages 106 to 107 of the Hearing Transcript Day One

105. The Tribunal – on a balance of probabilities – is not prepared to accept this.

e) *The “direct contact” between the Player and ██████████*

106. The Tribunal then turns to the question of the alleged “direct contact” with ██████████ during material time in October 2020 that caused the Player’s AAF. The Tribunal first notes some factual inconsistencies.

107. The Player had lip fillers on 10 October 2020 and told the Tribunal that her lips were sore and swollen for five days after the treatment and that she was advised not to engage in intimate contact while her lips were sore.¹⁰³ This period falls within the time frame, in which – according to the Player – her affair with ██████████ had become more intense. When ██████████ was asked the question, he told the Tribunal he knew nothing about the Player having sore or sensitive lips and that this was not discussed.¹⁰⁴

108. For the rest, the question of the contamination of the Player through kissing was a matter to be determined on the balance of probabilities, arising out of expert evidence. The standard of proof here is clear – more likely than not, and therefore just highlighting the sheer *possibility* of transmission is insufficient to cross the threshold to satisfy this Tribunal that it was more likely than not that stanozolol was transmitted through saliva or kissing.

The Expert Opinions on Urine Analyses

109. The two experts on urine analysis which were examined orally at the hearing are Dr. Douwe de Boer and Prof. Christine Ayotte, in correspondence to their expert reports submitted by the Player and the ITF, respectively. The main objective of the expert opinion of the urine analysis of the Player is to exclude the scenario of intentional use of stanozolol and to show that contamination through personal contact was possible.

¹⁰³ See pages 23 to 24 of Hearing Transcript Day One.

¹⁰⁴ See pages 88 of Hearing Transcript Day One.

110. In the expert report of Dr de Boer dated 23 May 2021, there was a general qualitative interpretation of metabolic profile of stanozolol, which included a distinction between the stanozolol metabolites which *could* make a distinction between short-term exposure and long-term exposure of the said substance i.e., if only long-term metabolites were identified, long-term exposure to the said substance may be assumed. However, if short-term metabolites are also identified, short-term exposure cannot be excluded.¹⁰⁵ Dr de Boer concluded that given the presence of both long-term and short-term metabolites of stanozolol in the Sample, *“it cannot be excluded that the athlete non-intentionally has been administered a dosage during ‘short-term’ exposure”*.¹⁰⁶
111. Prof. Ayotte objected to Dr. de Boer’s positions on the main ground that the study of “short”, “mid” and “long-term” metabolites was presented in the context of selecting metabolites that could improve detection periods, not to determine elimination profiles or patterns from which a doping scenario could be extrapolated.¹⁰⁷ In fact, Prof. Ayotte noted that the prolonged detection period for certain metabolites have been useful to detect the administration of the said substance for doping controls.¹⁰⁸ Further, Prof. Ayotte disagreed with Dr. de Boer’s classification of metabolites which are “short-term”, “mid-term” or “long-term”.¹⁰⁹
112. At the second part of the hearing, it was submitted to Dr. de Boer by counsel of the ITF that he had apparently changed his opinion about the nature of the stanozolol metabolites found in the Sample, from a combination of some short-term metabolites and long-term metabolites, to all long-term metabolites.¹¹⁰ However, it was explained by Dr. de Boer, and also supported by Prof. Ayotte’s testimony that there is no agreement as to the classifications and definitions of “short-term”, “mid-term” and “long-term” metabolites.¹¹¹

¹⁰⁵ See pages 9 to 11 of Exhibit 12 of Defence Brief.

¹⁰⁶ See pages 13 to 14 of Exhibit 12 of Defence Brief.

¹⁰⁷ See pages 4 to 6 of Tab-26 of ITF Document Bundle.

¹⁰⁸ See pages 7 to 8 of Tab-26 of ITF Document Bundle.

¹⁰⁹ See page 15 of Hearing Transcript Day Two.

¹¹⁰ See pages 29 to 33 of Hearing Transcript Day Two.

¹¹¹ See pages 33 to 34 of Hearing Transcript Day Two.

113. Prof. Ayotte also questioned why Dr. de Boer failed to conduct an experiment mimicking the Player's contamination scenario i.e., an excretion study. Instead, he preferred to conclude in his expert report that the urinary levels of metabolites in the Sample is unknown. There were some discussions at the hearing on the ethical considerations and resources required for the said experiment,¹¹² as well as the feasibility and factors that would be involved.¹¹³

114. Further, Prof. Ayotte opined that Dr. de Boer failed to consider the specific gravity (dilution of 1,010) of the Sample and attempted to relate the low metabolite levels to the high volume of urine (10ml) used for analysis.¹¹⁴

115. Prof. Ayotte also repeatedly questioned Dr. de Boer's use of other research publications, which are based on different methods of detection i.e., LC-MS/MS or GC-MS/MS.¹¹⁵ While Dr. de Boer admitted to the different methods at oral evidence, he also admitted to the shortcomings of his method of comparison.¹¹⁶

116. Dr. de Boer also opined that the Player could have been exposed to "*several tens to some hundreds micrograms of stanozolol*" through the personal contact of kissing i.e., one hundred microgram represent 2% of the dosage of 5mg of stanozolol, while five hundred microgram represents 10% of the same dosage. Dr. de Boer also commented that non-intentional exposure of 2% might be "realistic" after oral administration of stanozolol.¹¹⁷

The Findings of the Tribunal

117. The expert witnesses before this Tribunal are largely in agreement that *intentionality* cannot be established by scientific evidence. Dr. de Boer had endeavoured to interpret the type and quantity of stanozolol metabolites in the Sample to show that "*it could not be*

¹¹² See pages 37 to 40 of Hearing Transcript Day Two.

¹¹³ See pages 41 to 44, 53 to 56 of Hearing Transcript Day Two.

¹¹⁴ See page 4 of Tab-26 of ITF Document Bundle. See also pages 40 to 42 of Hearing Transcript Day Two.

¹¹⁵ See page 4 of Tab-26 of ITF Document Bundle. See also pages 15 to 16, 18 of Hearing Transcript Day Two.

¹¹⁶ See pages 14 to 15 of Hearing Transcript Day Two.

¹¹⁷ See page 13 of Exhibit 12 of Defence Brief.

*excluded that the [Player] non-intentionally has been administered a dosage during 'short-term' exposure".*¹¹⁸ He had done so by making a distinction between the stanozolol metabolites which *could* make a distinction between short-term exposure and long-term exposure of the said substance i.e., if only long-term metabolites were identified, long-term exposure to the said substance may be assumed. However, if short-term metabolites are also identified, short-term exposure cannot be excluded.¹¹⁹ Dr. de Boer concluded that given the presence of both long-term and short-term metabolites of stanozolol in the Sample, *"it cannot be excluded that the athlete non-intentionally has been administered a dosage during 'short-term' exposure"*.

118. Putting aside Prof. Ayotte's extensive doubts over Dr. de Boer's position (which is also well noted), this Tribunal highlights that Dr. de Boer's position reflected in his expert report and more particularly at the hearing was not that the Player's version of events was more likely than not. An extract of his expert report reproduced below, he states as follows:

*"vi. Based on the personal circumstances of Mrs Shoshyna and just 3 days before the respective urine sample collection at Istanbul, it showed that she had direct contact with a person, who admitted retrospectively to have taken STANOZOLOL orally. As saliva of persons are contaminated with orally administered steroids, this way the scenario of non-intentional and passive intake of STANOZOLOL through kissing becomes **very likely**;"*
[emphasis added]

119. At the hearing Dr. de Boer's then explained his position as follows:¹²⁰

"DR DE BOER: I think that it is still likely, and it depends also on, I think, the hair analysis is also important, because I understood afterwards that the hair analysis was performed.

¹¹⁸ See pages 13 to 14 of Exhibit 12 of Defence Brief.

¹¹⁹ See pages 9 to 11 of Exhibit 12 of Defence Brief.

¹²⁰ See pages 60 to 61 of Hearing Transcript Day Two.

And then if you take that into account, I think you have to take into account all the evidence, and **then I still think that it is likely to be true.**

THE CHAIR: Okay. Likely? The question is more likely than not. So the question is digital. You may want to say, I don't want to answer this. But likelihood could be -- to put it in numbers could be 10%, could be 20%, something could be likely, but the question here on item 27 is, is it more likely than not? I think that is the question.

DR DE BOER: More likely. Well, **I still would like to stay with my first answer.**
[emphasis added]

120. When being pushed further whether the AAF was more likely than not caused by direct contact i.e., kissing, Dr. de Boer only presented a conservative and cautious answer:

“DR DE BOER: I think that there is a lot of uncertainty, in that sense, you cannot exclude the possibility that the story of the player is true. And then there is a considerable uncertainty that you cannot express that in a number. The only way to tackle it, it was suggested by Professor Ayotte, was to perform an excretion study.”¹²¹

f) Conclusion

121. On the totality of the evidence and submissions made by the Parties, this Tribunal concludes that it is not satisfied that it was *more likely than not* that stanozolol was transmitted through direct contact or transfer of saliva between the Player and [REDACTED]. In particular, the Tribunal:

- a. Is not convinced on a balance of probabilities that there was an affair between the Player and [REDACTED] during material time in October 2020;
- b. Finds that there is insufficient evidence to show that [REDACTED] was consuming stanozolol, or consuming stanozolol sublingually;

¹²¹ See pages 61 to 62 of Hearing Transcript Day Two.

- c. Is not persuaded on a balance of probability that there was direct contact by saliva between the Player and [REDACTED], especially on 22 October 2020 and 23 October 2020;
- d. The Tribunal is also not persuaded of Dr. de Boer's opinion that a distinction can be made between the stanozolol metabolites which *could* therein make a distinction between short-term exposure and long-term exposure of the said substance i.e., if only long-term metabolites were identified, long-term exposure to the said substance may be assumed. Dr. de Boer's interesting interpretation of the metabolites were met with clear and insurmountable limitations from the differing methods and studies.

g) The Alleged Lack of Intention on the Part of the Player

122. It is the Player's alternative claim for this Tribunal to find that the Player had consumed stanozolol unintentionally, therefore reducing her period of Ineligibility from four (4) years to two (2) years under Articles 10.2.1 and 10.2.2 of the TADP 2020.

123. Pursuant to Article 10.2.1.1 of the TADP 2020, there is a presumption of intention on the part of the Player in the Presence of metabolites of stanozolol in her system. It is the Player's burden to disprove 'intention' and satisfy this Tribunal that it is *more likely than not* that her ingestion of stanozolol was not intentional.

h) The Legal Framework

124. The literal reading of Article 10.2.3 of the TADP 2020 requires the Player to disprove that she engaged in a conduct that she "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". This means that the Player must not just have not known that her action constituted an ADRV, she must also have not known that there was a significant risk.

125. In order to prove lack of intention, under Articles 10.2.1 to 10.2.3 of the TADP 2020 (similar provisions in the WADA Code), the wording does not expressly require a need for the athlete to identify the source of the Prohibited Substance, and how it entered the athlete's system. Unlike the provisions for the degree of Fault i.e., No Significant Fault or Negligence, and No Fault or Negligence, there is no inclusion of the phrase "*the Player must also establish how the Prohibited Substance entered his/her system*". It was the clear intention by the drafter of the relevant sports anti-doping code to exclude the need to "establish how the Prohibited Substance entered [the athlete's] system" for cases pertaining to rebutting the presumption of intention.

l) The Evidence

126. The Player particularly relies on the expert opinion by Prof. Kintz on the hair analysis to show that she did not act intentionally.

The Expert Opinions on the Hair Analysis

127. The two experts on hair analysis which were examined orally on the 2nd day of the hearing are Prof. Pascal Kintz and Prof. Christine Ayotte, in correspondence to their expert reports submitted by the Player and the ITF, respectively. The main objective of the expert opinion of the hair analysis of the Player is to exclude long-term abuse of stanozolol by the Player which – according to the Player – indicates a lack of intention.

128. Prof. Kintz's expert report dated 7 January 2022 stated, amongst others, that the hair specimen tested was negative for stanozolol, which does not support long-term abuse of stanozolol, but also included that the minimal detectable dose of stanozolol in hair is unknown.¹²² At the oral hearing, Prof. Kintz also buttressed his position that anabolic steroids like stanozolol are only effective when taken regularly over a long period, as the lack of detectable stanozolol in the hair specimen would support the absence of long-term abuse.¹²³ Prof. Kintz, nonetheless, also admitted that there was insufficient research on

¹²² See Player's Written Submission dated 10 January 2022. See also Exhibit 1 of Player's Written Submission dated 10 January 2022.

¹²³ See pages 71 to 73 of Hearing Transcript Day Two.

the quantity of stanozolol which needs to be consumed, in order for it to be shown in a hair specimen.¹²⁴

129. Prof. Ayotte challenged the chain of custody of the said hair specimen received by Prof. Kintz. Furthermore, she pointed to Prof. Kintz's conclusion that the minimum dose of stanozolol to be detectable in hair is unknown.¹²⁵ Prof. Kintz mentioned, at the hearing, that there is no strict protocol for hair specimens to be collected although there are certain rules to adhere to in order to ensure that the hair specimen collected is intact.¹²⁶

130. With regards to the minimum detectable dose of stanozolol in hair, Prof. Kintz admitted at the hearing that it is possible that the level of stanozolol consumed is so low that it is not detected or detectable in the hair specimen, as the equipment presently used in his laboratory, which are the same as those in WADA-accredited laboratories, are not sensitive enough in its analytical capabilities.¹²⁷ Prof. Kintz is, nevertheless, confident that with the chemical structure of stanozolol and existing literature on animal testing, more than five or six exposures to stanozolol would show up on the hair specimen.¹²⁸

131. The Panel notes that there was no further evidence tendered by the Player or her counsel on the chain of custody of the hair specimen which was allegedly retrieved from the Player, and allegedly sent by courier to Prof. Kintz.

The Findings of the Tribunal

132. Prof. Kintz in his report was only able to conclude that there was "no long-term abuse of stanozolol", and the use of anabolic steroids like stanozolol is only effective when taken regularly over a long period. The lack of detectable stanozolol in the hair specimen of the

¹²⁴ See pages 74 to 76 of Hearing Transcript Day Two.

¹²⁵ See page 2 of Tab-26 of ITF Document Bundle.

¹²⁶ See page 70 of Hearing Transcript Day Two.

¹²⁷ See pages 74 to 75 of Hearing Transcript Day Two.

¹²⁸ See pages 76 of Hearing Transcript Day Two.

Player thus – according to Prof. Kintz – supports the conclusion that any consumption by the Player must have been unintentional.¹²⁹

133. The Tribunal notes that in the case at hand there is a lack of evidence on the chain of custody of the hair specimen and the process of hair specimen collection. Even if there is no strict requirement for hair specimen to be collected in a particular manner, there was no factual evidence provided by the Player on how she allegedly collected and sent the said specimen to Prof. Kintz. Even after the multiple objections to the reliability of the hair specimen by Prof. Ayotte, there was no further request made by the Player's counsel to re-examine the Player or any other witnesses to satisfy this Tribunal that the hair specimen was collected from the Player and transported to Prof. Kintz in an acceptable manner.

134. Furthermore, Prof. Kintz candidly admitted at the hearing that it is unknown how much stanozolol needs to be ingested and in what frequency in order to show up in hair, since there are no studies to that effect. Prof. Ayotte's closing remarks were that neither the amounts of stanozolol found in the Player's urine nor the hair analysis performed by Prof. Kintz exclude any other scenario (including intentional doping).

135. Based on all of the the above, the Tribunal is not prepared to draw any conclusions from Prof. Kintz's report in favour of the Player.

The starting date of the Period of Ineligibility

136. The ITF has submitted that these proceedings have lasted for a long time and that the delays incurred should not be attributed to the Player. The ITF submits that, therefore, the starting date for any Period of Ineligibility should be the date of Sample collection, i.e. 26 October 2020. The Player agreed with these submissions.

¹²⁹ See pages 71 to 73 of Hearing Transcript Day Two.

Public Disclosure of Decision

137. The rules pertaining to the public disclosure of this Decision are found in Articles 8.6.1 and 8.6.2 of the TADP 2021. They are the same as the ones contained in the TADP 2020:

“8.6.1. Where the Independent Tribunal determines that an Anti-Doping Rule Violation has been committed, the decision may be Publicly Disclosed immediately. If the decision is not appealed, or is upheld on appeal, the decision (if not previously Publicly Disclosed) must be Publicly Disclosed within 20 days of the expiry of the appeal deadline or the appeal decision (as applicable). However, this mandatory Public Disclosure will not apply where the Player or other Person who has been found to have committed an Anti-Doping Rule Violation is a Protected Person, Minor, or Recreational Athlete. Any Public Reporting in a case involving a Protected Person, Minor, or Recreational Athlete is optional and must be proportionate to the facts and circumstances of the case.

8.6.2. Where the Independent Tribunal has determined that an Anti-Doping Rule Violation has not been committed, the decision will not be Publicly Disclosed unless the Player or other Person consents to such disclosure. Where the Player or other Person does not so consent, a summary of the decision may be published, provided that what is disclosed does not identify the Player or other Person.”

138. Given the nature of this case, and that the Player is neither a Protected Person, Minor, or Recreational Athlete, it stands that this Decision is required by the TADP 2021 to be publicly disclosed.

139. This Tribunal, nevertheless, understands that given the sensitivity of this matter and the factual matrix, there may be the need to tactfully redact elements of this Decision. The Parties are invited to make respective redaction requests to the Chair of this Tribunal, if they so wish.

VIII. ORDER

140. In light of the foregoing, we make the following Order:

- a. The Tribunal has jurisdiction to decide this dispute;
- b. The Player has committed an Anti-Doping Rule Violation under Article 2.1 of the TADP 2020;
- c. The Player's claim is dismissed, in *toto*, and the Player's period of Ineligibility shall stand at four (4) years;
- d. The starting date of the Period of Ineligibility shall be 26 October 2020 and ending at 11:59pm on 25 October 2024.
- e. In accordance with Articles 13.2.3 and 13.8.1 of TADP 2021, this decision may be appealed to the Court of Arbitration for Sport within 21 days of receipt of the decision, save for WADA, for whom Article 13.8.1.3 TADP 2021 applies.

IX. COSTS

141. This Tribunal notes that the Player is seeking for the ITF to bear the costs of the arbitral proceedings and contribute an amount to the legal costs and other expenses incurred in connection with the proceedings of the Player.

142. Pursuant to Article 8.5.3 of the TADP 2021 (governing the procedural rules of this proceeding), the ITF will pay the costs of convening this Tribunal and of staging the hearing, subject to any costs-shifting order that this Tribunal may make further to Article 8.5.4 of the TADP 2021.

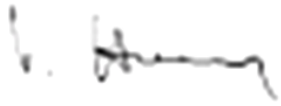
143. Pursuant to Article 8.5.4 of the TADP 2021, this Tribunal has the power to make a costs order against any party, where it is proportionate to do so.

144. Pursuant to the above, this Tribunal makes no orders as to costs.

X. RIGHT OF APPEAL

145. This decision may be appealed to the Court of Arbitration for Sport (“CAS”), located at Palais de Beaulieu, Av. Vergières 10, CH-1004 Lausanne, Switzerland (procedures@tas-cas.org), in accordance with Article 13.2.3 of the TADP 2021.

146. In accordance with Article 13.8 of the TADP 2021, Parties shall have 21 days from receipt of this decision to lodge an appeal with the CAS.



Prof. Dr. Ulrich Haas

On behalf of the Tribunal

17 June 2022

London, UK

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