

**IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES OF  
WORLD ATHLETICS**

Before:

Joëlle Monlouis (Chair)  
Eduardo Amorim  
Tom Murray

**BETWEEN:**

**WORLD ATHLETICS**

**Anti-Doping Organisation**

and

**AHMED ABDELWAHED**

**Respondent**

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**DECISION OF THE DISCIPLINARY TRIBUNAL**

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**INTRODUCTION**

1. This Panel has been appointed to adjudicate a charge brought against Mr Ahmed Abdelwahed in respect of asserted Anti-Doping Rule Violations (“**ADRVs**”) in connection with (i) Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample and (ii) Use of a Prohibited Substance (i.e., Meldonium) within

**THE INDEPENDENT EXPERTS**

the meaning of Rules 2.1 and 2.2 of the 2021 World Athletics Anti-Doping Rules (effective 1 January 2021) ("**ADR**").

2. The Claimant, World Athletics ("**WA**"), is the International Federation governing the sport of Athletics worldwide. It has its registered seat in Monaco. It is represented in these proceedings by the Athletics Integrity Unit ("**AIU**") which has been delegated authority for results management and hearings on behalf of World Athletics pursuant to Rule 1.2.2 ADR.
3. The AIU was represented by Mr Nicolas Zbinden and Mr Adam Taylor, attorneys-at-law, Kellerhals Carrard, in these proceedings.
4. The Respondent, Mr Ahmed Abdelwahed (the "**Athlete**") is a 26-year-old Italian steeplechaser.
5. The Athlete was represented by Mr Borja Osés and Mr Toni Garcia, attorneys-at-law, Landaberea & Abogados, in these proceedings.

## **CHARGES**

6. Pursuant to the Notice of Allegation dated 7 September 2022 (the "**Notice of Allegation**"), the Athlete was informed by the AIU of potential ADRVs. The Notice of Allegation sets out the detailed facts and included the supporting documentation and evidence upon which the AIU intended to rely; it also set out the Consequences that the AIU was seeking, particularly a period of Ineligibility of four years pursuant to Rule 10.2 ADR, beginning on the date that the decision imposing potential consequences would be issued in this matter.
7. The Athlete was provisionally suspended from the date of the Notice of Allegation, i.e., 7 September 2022, in accordance with Rule 7.4.1 ADR.
8. Pursuant to the Notice of Charge dated 22 March 2023 (the "**Notice of Charge**"), the Athlete was charged by the AIU under Rule 2.1 and Rule 2.2 ADR in connection with (i) Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample and (ii) Use of a Prohibited Substance (i.e., Meldonium) (the "**Charge**"). The

Notice of Charge set out the detailed facts and included the supporting documentation and evidence upon which the AIU intended to rely; it also set out the Consequences that the AIU was seeking, particularly a period of Ineligibility of four years pursuant to Rule 10.2 ADR, beginning on the date that the decision imposing Consequences would be issued.

## **FACTUAL BACKGROUND**

### **A. The Event and Doping Control**

9. On 19 August 2022, the Athlete provided a urine Sample In-Competition at the European Athletics Championships in Munich, Germany (the “**Event**”), which was given code 10300381435 (the “**Sample**”).
10. On 6 September 2022, the World Anti-Doping Agency (“**WADA**”) accredited laboratory in Cologne, Germany reported the results of its analysis of the Sample, which revealed the presence of Meldonium (the “**Adverse Analytical Finding**”).
11. Meldonium is a Prohibited Substance under the WADA 2022 Prohibited List under the category S4.4: Metabolic Modulators. It is a Non-Specified Substance prohibited at all times.
12. On 7 September 2022, in accordance with Article 5.1.2.1 of the International Standard for Results Management (“**ISRM**”), the AIU issued the Athlete with a Notice of Allegation of ADRVs imposing a Provisional Suspension with immediate effect.

### **B. The Athlete’s reaction to the Charge**

13. On 11 September 2022, the Athlete wrote to the AIU stating that he had never used Meldonium and requesting an extension in order to have his supplements analyzed.

14. The Athlete made an inquiry at the same time regarding the cost of the B analysis and the Laboratory Documentation Package (“LDP”). The Athlete also confirmed that he was not appealing the Provisional Suspension.

15. On 12 September 2022, the Athlete asked about the concentration of Meldonium found in the A Sample.

16. On the same day, 12 September 2022, the AIU:

- Provided the Athlete with the cost of the B analysis and of the A and/or B Sample LDP;
- Asked him to confirm by 14 September 2022 (i) whether he was requesting the B Sample analysis, and if so, to provide the name of the person that would attend and (ii) whether he was requesting just the A sample LDP or the A and B sample LDP;
- Agreed to suspend the Athlete’s deadline to provide an explanation in the meantime;
- Informed the Athlete that the estimated concentration of Meldonium in the A Sample was 155 ng/mL; and
- Noted that the Athlete was not challenging the Provisional Suspension and advised him that it had been published on the AIU website.

17. On 14 September 2022, the Athlete’s prior legal counsel, Mr Kai Hosse (“**Athlete’s Counsel**”) requested that the deadlines to provide an explanation and request the B Sample analysis and/or the LDP be suspended while they were having the Athlete’s supplements analyzed at the ‘Centro Regionale Antidoping "Alessandro Bertinaria", in Turin (the “Turin Laboratory”).

18. On the same day, 14 September 2022, the AIU wrote to the Athlete to:

- Grant an extension until 23 September 2022 to confirm his position in relation to the B Sample analysis and the LDP; and
- Provide by 19 September 2022 (i) details regarding each supplement the Athlete had used in the weeks prior to the doping control on 19 August 2022

(names, photos of packaging, account of use, ...) and (ii) confirm which supplement(s) had been sent to the Turin Laboratory.

19. On 19 September 2022, the Athlete sent to the AIU the following list of supplements accompanied with lot numbers and some indications on how he had used them:

- *“Comprese 'Mythoxan Forte' lotto n/a - scad. n/a (6x day)*
- *Comprese 'Melatonina Zinco Selenio' - lotto 21A055-F - scad. 01/2024 (1xday)*
- *Comprese 'Magnesio con Vitamine del Gruppo B' - lotto G28164 - scad. 02/2025 (1xday)*
- *Comprese 'SiderAL Forte' - lotto 0911 - scad. 04/2023 (1xday)*
- *Compressa 'ASPIRINA C' - lotto BT15U12/2 - scad. 11/2024 (1 time)”*

20. On 20 September 2022, upon request of the AIU, the Athlete confirmed that the five supplements referenced in his prior email had been sent to the Turin Laboratory for analysis.

21. On 23 September 2022, the Athlete confirmed his request (i) for the B Sample analysis, stating that he would be represented by Prof. Alberto Salomone (or his substitute) and (ii) for a copy of the A and B Sample LDP. The Athlete also stated that his supplements had not been analysed yet.

22. On 24 November 2022, the B Sample opening started in the presence of the Athlete's representative, Prof. Simone Cristoni, who then attended the B Sample confirmation procedure.

23. On 25 November 2022, the AIU informed the Athlete that the B Sample analysis had confirmed the finding in the A sample.

24. On 1 December 2022, the Athlete's Counsel wrote to the AIU to dispute the identification of Meldonium in the B Sample (based on Prof. Simone Cristoni's observations) and requesting the *“average MS/MS spectrum, obtained in the elution zone of the chromatographic peak, both in the standard and in sample B”*.

25. On 23 December 2022, the AIU provided the Athlete with the B Sample LDP and confirmed that:

- The Cologne Laboratory was not required to provide any other data or document not specifically required by the TD2022LDOC;
- Upon review of the B Sample LDP by the AIU scientific advisor, the AIU was satisfied that (i) the B Sample analysis was conducted by the Cologne Laboratory in accordance with the ISL and the WADA Technical Document TD2021IDCR, and that (ii) Meldonium was identified in the B Sample, confirming the finding in the A Sample;
- The Athlete had until 16 January 2023 to provide his explanation for the Adverse Analytical Finding, including the results of his analyses of the supplements.

26. On 16 January 2023, the Athlete provided his explanation for the Adverse Analytical Finding, which, in summary, set out that:

- He never used Meldonium;
- The amount of Meldonium found in his Sample is “*very low and incompatible (based on published scientific studies) with any intake of Meldonium for doping purposes*”, especially in light of his negative doping control on 30 July 2022;
- The analysis of his hair and pubic hair by the Turin Laboratory did not reveal the presence of Meldonium;
- The analysis of his supplements by the Turin Laboratory did not reveal the presence of Meldonium;
- The Meldonium found in his Sample was produced by biotransformation of a “*licit molecule contained in the product Mithoxan Forte*”, as demonstrated by Prof. Alberto Salomone.

27. On 18 January 2023, the AIU asked that Prof. Salomone clarify which “*licit molecule contained in the product Mithoxan Forte*” he believed to have caused the Adverse Analytical Finding, and that he provides all the analytical data on which he based his report by 24 January 2023.

28. On 24 January 2023, the Athlete's Counsel provided the AIU with a reply statement from Prof. Salomone stating, inter alia, that it was impossible to identify the molecule in question and providing some details regarding the analytical procedure. The analytical results reported for all supplements and the supplement analysis worksheet were also provided.

## PROCEDURE BEFORE THE DISCIPLINARY TRIBUNAL

29. On 5 April 2023, the Athlete requested a hearing before the Disciplinary Tribunal on an expedited basis.

30. On 28 April 2023, the Chair of the Disciplinary Tribunal, Mr Charles Hollander KC, appointed Ms Joëlle Monlouis to chair the Panel.

31. On 5 May 2023, the draft directions agreed upon by Parties was agreed upon by the Chair of this Panel, as follows:

- *“By 5pm (BST) on 15 May 2023, the AIU shall submit a brief with arguments on all issues that World Athletics wishes to raise at the hearing and written witness statements from each fact and/or expert witness that the AIU intends to call at the hearing, setting out the evidence that World Athletics wishes the Disciplinary Tribunal to hear from the witness, and enclosing copies of the documents that the AIU intends to introduce at the hearing;*
- *By 5pm (BST) on 29 May 2023, the Athlete shall submit an answer brief, addressing the AIU's arguments and setting out any arguments on the issues that the Athlete wishes to raise at the hearing, as well as written witness statements from the Athlete and/or from each other witness (fact and/or expert) that the Athlete intends to call at the hearing, setting out the evidence that the Athlete wishes the Disciplinary Tribunal to hear from the witness, and enclosing copies of the documents that the Athlete intends to introduce at the hearing;*
- *By 5pm (BST) on 19 June 2023, the AIU may submit a reply brief, responding to the Athlete's answer brief and producing any rebuttal witness statements and/or documents;*
- *A hearing to be set in the period 27 June – 7 July 2023 (subject to Panel members and witnesses' availabilities).*
- *Each party shall have liberty to apply (on notice) to vary these Directions.”*

32. On 15 May 2023, the AIU filed its brief (the “**Brief**”).

33. On 29 May 2023, the Athlete submitted his answer brief which included two interim requests (the “**Answer Brief**”).

34. On 19 June 2023, the AIU submitted its reply brief (the “**Reply Brief**”).

35. On 23 June 2023, two additional Panel Members were appointed to sit alongside the Chair, namely Mr Eduardo Amorim and Mr Tom Murray.

36. On 17 July 2023, the Panel convened by video conference and by exchange of electronic correspondence to deliberate on the two separate interim requests submitted by the Athlete.

37. In previous correspondence with the AIU in December 2022, the Athlete requested the production of additional evidence from WADA’s laboratory in Cologne. Having not obtained the reports from the AIU, the Athlete made a formal request to the Chair in his Answer Brief. The elements of this first request are set out in paragraph 48 of the Athlete’s Answer Brief and are outlined below. The Athlete requested that the evidence be provided before the hearing set to take place on Thursday 20 July 2023.

38. In view of the date of the hearing and the outstanding request for evidence, the Athlete filed a second request to postpone the hearing on 17 July 2023.

39. On 18 July 2023, the Panel, having taken full consideration of the requests submitted by the Athlete, therefore directed:

1. *“the request at paragraph 48.1 of the Athlete’s Answer Brief for a “report containing the full scan spectrum and product ion spectrum of the analysis of the Athlete’s B sample” is to be complied with by World Athletics and WADA’s Laboratory. In the interest of transparency, the Athlete should be provided with the opportunity to review any and all pre-existing evidence derived through the testing process.*

- 1.1. *World Athletics shall make an immediate request for this report to be obtained from WADA’s laboratory in Cologne and produced by no later than 20 July 2023.*

1.2. *By no later than 9am CEST on 21 July 2023, the AIU shall send the report by email to Sport Resolutions and to opposing counsel.*

2. *the request at paragraph 48.2 of the Athlete's Answer Brief for a "report containing the results of a clinical study to be performed by the WADA's laboratory of Cologne analysing samples of volunteers who have taken Mythoxan Forte in order to compare these results with the Athlete's sample collected on 19 August 2022" is denied.*

2.1. *As outlined in the Athlete's Answer Brief, "[a]ccording to the International Bar Association Rules on Evidence, the party seeking such production shall demonstrate that such documents are likely to exist...". The Athlete has failed to provide any evidence indicating that such a study has already taken place and therefore, that such results already exist. The Panel therefore finds this to be an extraordinary request.*

3. *the hearing fixed for Thursday 20 July 2023 is vacated.*

3.1. *By no later than 1 August 2023, the Parties will serve dates of availability for the resumption of the hearing. A hearing date shall be set, by the Panel, in the period of 22 and 25 August 2023."*

40. On 1 August 2023, pursuant to paragraph 3.1 of the Directions issued on 18 July 2023, the AIU has set out the following in relation to their availability for the hearing on the matter of WA v Abdelwahed:

*"Unfortunately, the AIU is unavailable for a hearing in this case on 24 or 25 August 2023 as it falls during the 2023 Budapest World Athletics Championships (which will take place from 19 to 27 August 2023) and the AIU will be involved in various urgent disciplinary and other matters during the course of the competition.*

*Having checked with our witnesses, the AIU could be available for a hearing the week prior, on 17 August 2023. Alternatively, I can confirm that the AIU and all its witnesses/experts have good availabilities in September (in particular the first half of it)."*

41. Counsel for the Athlete provided the following in response:

*"Unfortunately, the Athlete's witnesses will not be available on 17 August 2023 for a hearing.*

*In relation to the possibility of holding a hearing in September, our availability in that month is very limited. In any case, this party would be available for a hearing on 8 September 2023.”*

42. The same day, the Panel informed the Parties that it would be available to hear this matter on Friday 8 September 2023.

43. On 2 August 2023, the AIU notified the Panel that one of their witnesses was unavailable on Friday 8 September 2023. So, they proposed some alternative dates.

44. On 7 September 2023, the Parties and the Panel members confirmed availability for the hearing will be conducted on 8 November 2023 via video conference.

45. On 31 October 2023, the AIU submitted the Hearing Bundle.

## **JURISDICTION AND APPLICABLE RULES**

### A. Jurisdiction

46. The Athlete is an international athlete who is bound by Rule 1.4.4 ADR.

47. There was no dispute as to jurisdiction in this case, and both parties accepted that the ADR applied.

### B. Applicable rules

48. Rule 2 ADR specifies the circumstances and conduct that constitute ADRVs, including Rule 2.1 ADR, which specifies that the Presence of a Prohibited Substance or its Metabolites or Markers is an ADRV:

#### ***“2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample***

*2.1.1 It is each Athlete’s personal duty to ensure that no Prohibited Substance enters their body. Athletes are responsible for any Prohibited Substance, or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary to demonstrate intent, Fault,*

*Negligence or knowing Use on the Athlete's part in order to establish a Rule 2.1 anti-doping rule violation. [...]*

49. Rule 2.2 ADR provides that the Use of a Prohibited Substance is an ADRV:

***"2.2 Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method***

*2.2.1 It is the Athlete's personal duty to ensure that no Prohibited Substance enters his body and that no Prohibited Method is Used. Accordingly, it is not necessary that intent, Fault, Negligence, or knowing Use on the Athlete's part be demonstrated in order to establish an Anti-Doping Rule Violation for Use of a Prohibited Substance or a Prohibited Method. [...]"*

50. Rule 3.1 ADR provides that the AIU (on behalf of WA) has the burden of establishing that an ADRV has been committed to the comfortable satisfaction of the Panel:

***"3.1 Burdens and Standards of Proof***

*The Integrity Unit or other Anti-Doping Organisation will have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof will be whether the Integrity Unit or other Anti-Doping Organisation has established an antidoping rule violation to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation that has been made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules place the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, except as provided in Rules 3.2.4 and 3.2.5, the standard of proof will be by a balance of probability."*

51. According to Rules 9 and 10.1 ADR, an ADRV shall lead to the disqualification of an Athlete's results in applicable competitions:

***"9. Automatic Disqualification of Individual Results***

*An anti-doping rule violation in connection with an In-Competition test automatically leads to Disqualification of the Athlete's individual results obtained in that Event, with all resulting consequences, including forfeiture of any medals, titles, awards, points and prize and appearance money. In addition, further results obtained by the Athlete in other Events may be Disqualified, in accordance with Rule 10.1 (same Competition) and/or Rule 10.8 (subsequent Competitions).*

[...]

**10.1 Disqualification of individual results in the Competition during or in connection with which an Anti-Doping Rule Violation occurs**

*10.1.1 Subject to Rule 10.1.2, an anti-doping rule violation occurring during or in connection with a Competition shall lead to Disqualification of all the Athlete's individual results obtained in that Competition, with all resulting consequences for the Athlete, including forfeiture of any medals, titles, awards, points and prize and appearance money."*

52. Rule 10.2 ADR provides the sanction to be imposed for ADRVs under Rule 2.1 and Rule 2.2 ADR is (as applicable):

**"10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method**

*The period of Ineligibility for a violation of Rule 2.1, Rule 2.2 or Rule 2.6 will be as follows, subject to potential elimination, reduction or suspension pursuant to Rules 10.5, 10.6 and/or 10.7:*

*10.2.1 Save when Rule 10.2.4 applies, the period of Ineligibility will be four years where:*

*10.2.1.1 The anti-doping rule violation does not involve a Specified Substance or a Specified Method, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional. [...]"*

53. Rule 10.4 ADR specifies that, where Aggravating Circumstances are present, then the period of Ineligibility may be increased by a period of up to two (2) years depending on the seriousness of the violation(s) and the nature of the Aggravating Circumstances, unless the Athlete can establish that he did not knowingly commit the ADRVs:

**"10.4 Aggravating Circumstances that may increase the period of Ineligibility.**

*If the Integrity Unit or other prosecuting authority establishes in an individual case involving an anti-doping rule violation other than violations under Rule 2.7 (Trafficking or Attempted Trafficking), Rule 2.8 (Administration or Attempted Administration), Rule 2.9 (Complicity or Attempted Complicity) or Rule 2.11 (Acts by an Athlete or other Person to discourage or retaliate against reporting) that Aggravating Circumstances are present which justify the imposition of a period of Ineligibility greater than the standard sanction, then the period of Ineligibility otherwise applicable will be increased by an additional period of Ineligibility of up to two (2) years depending on the*

seriousness of the violation and the nature of the Aggravating Circumstances, unless the Athlete or other Person can establish that they did not knowingly commit the antidoping rule violation.”

54. Aggravating Circumstances are defined in the Rules as follows:

**“Aggravating Circumstances:** *Circumstances involving, or actions by, an Athlete or other Person that may justify the imposition of a period of Ineligibility greater than the standard sanction. Such circumstances and actions include, but are not limited to: the Athlete or other Person Used or Possessed multiple Prohibited Substances or Prohibited Methods, Used or Possessed a Prohibited Substance or Prohibited Method on multiple occasions or committed multiple other anti-doping rule violations; a normal individual would be likely to enjoy the performance enhancing effects of the anti-doping rule violation(s) beyond the otherwise applicable period of Ineligibility; the Athlete or other Person engaged in deceptive or obstructive conduct to avoid the detection or adjudication of an anti-doping rule violation; or the Athlete or other Person engaged in Tampering during Results Management. For the avoidance of doubt, the examples of circumstances and conduct described herein are not exclusive and other similar circumstances or conduct may also justify the imposition of a longer period of Ineligibility.”*

55. Rule 10.6 ADR allows for the reduction of the period of Ineligibility based on No Significant Fault or Negligence in certain circumstances:

**“10.6 Reduction of the period of Ineligibility based on No Significant Fault or Negligence**

*10.6.1 Reduction of sanctions in particular circumstances for violations of Rule 2.1, 2.2, or 2.6*

*All reductions under Rule 10.6.1 are mutually exclusive and not cumulative.*

*(a) Specified Substances or Specified Methods*

*Where the anti-doping rule violation involves a Specified Substance (other than a Substance of Abuse) or Specified Method, and the Athlete or other Person can establish that they bear No Significant Fault or Negligence for the anti-doping rule violation(s) alleged against them, then the period of Ineligibility will be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two (2) years of Ineligibility, depending on the Athlete’s or other Person’s degree of Fault.*

*(b) Contaminated Products*

*In cases where the Athlete or other Person can establish both No Significant Fault or Negligence for the anti-doping rule violation(s) alleged against them and that the Prohibited Substance (other than a Substance of Abuse) came from*

*a Contaminated Product, then the period of Ineligibility will be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years Ineligibility, depending on the Athlete's or other Person's degree of Fault.*

[...]

*(c) Protected Persons or Recreational Athletes*

*Where the anti-doping rule violation not involving a Substance of Abuse is committed by a Protected Person or Recreational Athlete, and the Protected Person or Recreational Athlete can establish No Significant Fault or Negligence for the anti-doping rule violation(s) alleged against him or her, then the period of Ineligibility will be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two (2) years' Ineligibility, depending on the Protected Person or Recreational Athlete's degree of Fault."*

56. With respect to the costs of proceedings, Rule 10.12.1 ADR provides:

*"10.12.1 Where an Athlete or other Person is found to have committed an anti-doping rule violation or other breach of these Anti-Doping Rules, the Disciplinary Tribunal or CAS (or, in cases where Rule 8.5.6 applies, the Integrity Unit), taking into account the proportionality principle, may require the Athlete or other Person to reimburse World Athletics for the costs that it has incurred in bringing the case, irrespective of any other Consequences that may or may not be imposed.*

## **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 Panel. The following summary of the Parties' positions is illustrative and does not necessarily comprise each contention put forward by the Parties. The Panel, however, has carefully considered all of the submissions made by the Parties, even if no explicit reference is made in what immediately follows:

A. The Athlete position:

58. The Athlete argued that he did not take Meldonium intentionally and he identified the supplement Mythoxan Forte as the cause of his Adverse Analytical Finding via a biotransformation process demonstrated by Prof. Salomone and Prof. Cristoni.

59. The relief sought by the Athlete in his Answer Brief was as follows:

- “1. Order WADA’s laboratory of Cologne, through World Athletics, to produce the evidence requested in the current Answer Brief before the date of the hearing.*
- 2. Reject World Athletics’ request for relief contained in the World Athletics’ Brief dated 15 May 2023.*
- 3. Declare the Athlete has committed no anti-doping rule violation and, consequently, lift the provisional suspension imposed on him.”*

60. According to the Athlete’s Answer Brief, the Athlete seeks the following issues to be pointed out:

- The concentration of Meldonium found in his sample cannot result from the frequent use of a product containing that substance;
- Evidence is available to rebut WADA’s laboratory results;
- Refusal by World Athletics to produce the evidence requested by the Athlete breaches his rights of defence.

B. The AIU position:

61. The AIU considered that as there is no challenge to the WADA-accredited laboratory testing process and as *“the B-Sample has confirmed the A-sample, that is automatically sufficient proof of a Rule 2.1 ADRV for the Presence of Meldonium, as made clear by Rule 2.1.2 ADR.”*

62. The AIU rejected the Athlete’s position:

- First, the AIU noted that the Athlete *“is accepting that his supplement was empty of Meldonium”*. It is not a contamination case.
- Secondly, the biotransformation theory of an unidentified component of Mithoxan Forte into Meldonium is problematic and denied as follows:

*“67.1 The Athlete’s biotransformation theory is unspecific and highly unlikely. [...] Furthermore, the AIU notes that since Meldonium has been included on the WADA Prohibited List on 1 January 2016, over 7 years ago, it stands to reason that if such biotransformation had occurred, it would have already been identified [...].*

*67.2 Prof. Salomone relies on a volunteer study of someone (who was not the Athlete) taking Mithoxan Forte, to show how such a biotransformation*

*scenario might have occurred” [in a non-WADA-accredited testing laboratory.]*

*67.3 [...] Prof. Saugy has addressed the evidence of Prof. Salomone in his two expert reports, and he explains how Meldonium was not in fact identified within the volunteer sample, as it did not meet the requirements of TD2021IDCR, including both the chromatographic criteria and the mass spectrometric criteria. [...]*

*67.4 Prof. Saugy also explains how the investigative process followed by Prof. Salomone to suggest the identification of Meldonium in the volunteer’s urine is a process that: (a) has been described without the key chromatographic data having been provided; and (b) would never be adopted or accepted by any competent laboratory in order to identify the presence of Meldonium. [...]*

*68. Therefore, given the deficiencies in the theory of Prof. Salomone, and given that the Athlete has failed to establish that his Adverse Analytical Finding was caused by a biotransformation of an unknown component of his supplement into Meldonium, World Athletics maintains that there are no grounds to conclude anything other than that the ADRVs have been established and that the mandatory starting-point period of Ineligibility of 4 years must be imposed”.*

63. The relief sought by AIU in its Brief is as follows:

- *“That the Tribunal has jurisdiction over the present matter;*
- *That the Athlete has committed ADRVs pursuant to Rule 2.1 (Presence) and Rule 2.2 (Use) ADR;*
- *That the Athlete must serve a period of Ineligibility of four (4) years for the ADRVs based on Rule 10.2.1 ADR commencing on the date of the Tribunal’s award;*
- *That the Athlete be given credit for the period of Provisional Suspension served from 7 September 2022 until the date of the Tribunal’s award, as set against the period of Ineligibility imposed for the ADRVs, provided that the Provisional Suspension has been effectively served by the Athlete;*
- *That all the Athlete’s results obtained at 2022 European Championships and since 19 August 2022 be disqualified pursuant to Rules 9, 10.1 and 10.10 ADR with all resulting consequences including the forfeiture of any titles, awards, medals, points and prize and appearance money; and*
- *World Athletics is granted an order for costs pursuant to Rule 10.12.1 ADR.”*

## HEARING

64. A hearing by video conference took place before this Panel on 8 November 2023. The AIU was represented by Mr Adam Taylor (of Kellerhals-Carrard, Lausanne, Switzerland) and the Athlete was represented by Mr Borja Osés and Mr Toni Garcia

(of Landaberea & Abogados, Zamudio, Spain). The Panel is most grateful to both representatives for their co-operation and their very professional contributions.

65. The proceedings were conducted in English. The Athlete, who does not speak English, had an interpreter. The proceedings were organised and recorded by the Disciplinary Tribunal Secretariat, Sport Resolutions. We are grateful for their effective administrative and technical support.

66. The Panel heard oral evidence from Prof. Salomone, Prof. Cristoni, Prof. Saugy, Prof. Thevis, and the Athlete himself.

67. Prof. Salomone is a Forensic Toxicologist, Associate at the University of Turin and the Laboratory Supervisor at the *Centro Regionale e di Tossicologia A. Bertinaria*. He considers that the origin of the positive result “*seems to be the biotransformation into Meldonium of a licit molecule contained in the product Mithoxan Forte*”.

68. However, Prof. Salomone explained the following:

- It was the first time they had run an analysis on Meldonium in his laboratory;
- The analysis products were open, not sealed, and were brought to him in person by the Athlete;
- Prof. Salomone confirmed that the Volunteer’s urine sample and the reference specimen for Meldonium at 1ng/ml were not analysed in the same analytical batch. He admitted that this methodology was not what the WADA technical document required, and that the laboratory where he performed his analysis works differently than WADA’s accredited laboratories. According to the professor, “[they] *try to produce data that may cast doubts [...] or offer plausible explanations [...].*”
- He did not know how the biotransformation worked because it was outside of his expertise.

69. Prof. Cristoni is a Researcher with a Phd in molecular medicine, CEO of Ion Source & Biotechnology SRL, Milan, Italy. He co-authored an undated report called “Mildronate false positivity caused by biotransformation?” and considered that the

biotransformation process evoked by Prof. Salomone was scientifically possible. Prof. Cristoni did not provide evidence of such transformation in connection with his findings or related to the present matter.

70. Prof. Cristoni further explained:

- His article was neither published in any scientific publication nor peer reviewed.
- He has no anti-doping experience, only toxicology experience.
- He admitted several errors relating to the third case study mentioned within his article and declared those to be “*typos*”. Those “*typos*” included the following:
  - o he was not the author of the third case study, like the second case study where he was the author, even though the article presents the third case study in such a way as to suggest that it was an experiment done by him.
  - o The third case study actually just presents the results of Prof. Salomone’s investigation that were already before the Panel, but the article does not mention this at all and reads as if the third case study is a second, separate investigation with a different methodology.

71. Prof. Saugy is the former Director of Research & Expertise in Anti-Doping Sciences (“**REDS**”), and the former Director of the WADA accredited Laboratory in Lausanne, Switzerland.

72. Prof. Saugy considered the following:

- All accredited laboratories comply with the WADA technical documents.
- Identification criteria imposed by the WADA technical document are mandatory to identify a substance,
- Prof. Salomone and Cristoni failed to identify Meldonium in the Volunteer’s urine in their case study.
- He mainly agreed with Prof. Salomone within the assumption of an occasional or single intake. But there is another hypothesis that was not indicated, and which is possible: multiple use of very small doses.

- He was shocked that Prof. Salomone was not credited in case study n°3 because this aforementioned case study is presented as an additional case study while it is not.
- The tolerance is too wide, the amount of 59 fragment is too elevated and the difference is too significant to allow Prof. Salomone to say that this fragment is typical for Meldonium.

73. Prof. Thevis is a Forensic Chemist and Director of the Cologne laboratory.

74. Prof. Thevis stated the following:

- Accurate mass isolated for this specific ion is very sensitive because of its unique composition;
- If you broaden the accurate mass interval too much, you will capture biological noise that will lead to other products which are not Meldonium;
- The difference between his experience and Prof. Salomone's mass spectrometry experience is considerable.

75. The Athlete had testimony that:

- He never had any issue of doping in any sort.
- He is part of the NATO Program.
- When he was informed of the results, he immediately contacted the Federation and asked to analyse his supplements.
- He contacted the laboratory of Prof. Salomone which is the only one of its type in Italy. As Prof. Salomone was abroad at this time, he found another expert, Prof. Cristoni, who is indicated as a specialist on Spectrometry on the Internet.
- He cooperated at every stage with WA.
- He cannot explain to himself what happened because he does not know.
- During this period, he was sponsored by the company that produced Mythoxan Forte. He was the only athlete sponsored by the company. The Athlete confirmed that he received the product direct from the company that commercialized Mythoxan Forte.

- He contacted the aforementioned company, and they indicated that there was flexibility in the composition of Mythoxan Forte and that it was not illegal to make modification in the composition of the product.
- The Athlete indicated that other athletes also use Mythoxan Forte, but, to his knowledge, there is only one elite athlete who used it.
- He admitted that the other user of Mythoxan Forte should also be at risk for testing positive.
- He added that he understood that it was also related to bacteria in the body as explained to him by Prof. Cristoni.

A. The Findings of the Panel

76. The Panel noted that it is agreed between the Parties that there were ARDVs pursuant to Rule 2.1 and 2.2 ADR.
77. The ARDVs were found pursuant to the presence of Meldonium in the Athlete sample during the Event.
78. According to Rule 10 ADR, the Athlete bears the burden of proof for the hypothesis that would qualify for the elimination or reduction in sanction relating to the biotransformation process.
79. The Panel notes that in the case at hand there is lack of convincing evidence on the theory of biotransformation.
80. Based on all of the above, the Panel is not prepared to draw any conclusions neither from Prof. Salomone's report nor from Prof. Cristoni in favour of the Athlete's claim that the presence of the Prohibited Substance was caused by a biotransformation of unspecified components of the supplement Mythoxan Forte.
81. In such circumstances, we understand that the Athlete did not demonstrate any convincing evidence supporting the biotransformation theory.
82. The Panel also notes that the Athlete was unable to establish that he had no Fault or Negligence for the ADRV.

**AWARD**

83. We therefore make the following Award:

- a. The Panel has jurisdiction over the present matter.
- b. The Athlete has committed Anti-Doping Rule Violations pursuant to Rule 2.1 and 2.2 of the World Athletics Anti-Doping Rules.
- c. The Athlete must serve a period of Ineligibility of four (4) years for the ADRVs based on Rule 10.2.1 ADR commencing on the date of this award.
- d. The Athlete is to be given credit for the period of Provisional Suspension served from 7 September 2022 until the date of this award, as set against the period of Ineligibility imposed for the ADRVs, provided that the Provisional Suspension has been effectively served by the Athlete.
- e. All the Athlete's results obtained at 2022 European Championships and since 19 August 2022 be disqualified pursuant to Rules 9, 10.1 and 10.10 ADR with all resulting consequences including the forfeiture of any titles, awards, medals, points and prize and appearance money.
- f. There is no order to costs.

## **RIGHT OF APPEAL**

84. This decision may be appealed to the Court of Arbitration for Sport ("**CAS**"), located at Palais de Beaulieu, Av. Des Bergières 10, CH-1004 Lausanne, Switzerland (procedures@tas-cas.org), in accordance with Article 13 ADR and its relevant subsection(s).

85. In accordance with Rule 13.6 ADR, the deadline for filing an appeal with CAS is 30 days from receipt of this decision.



**Joëlle Monlouis (Chair)**



**Eduardo Amorim**



**Tom Murray**

London, UK  
5 December 2023

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