



TAS / CAS

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

**Arbitration CAS 2023/A/10209 Alex Schwazer v. World Athletics (WA), award of 15 May 2024
(operative part of 15 March 2024)**

Panel: Mr André Brantjes (The Netherlands), President; Prof. Ulrich Haas (Germany); Mr Ken Lalo (Israel)

Athletics (race walking)

Doping (substantial assistance)

Expedited procedure

Request for bifurcation

Standing to be sued

Nature of an association's decision in a matter of substantial assistance

Assessment by CAS of the discretionary power of the association regarding substantial assistance applications

Issuing authority of the substantial application decision under Rule 10.7.1 (a) of the WA ADR

Importance of an athlete's anti-doping history in the assessment of a substantial assistance application

Athlete's cooperation throughout the substantial assistance

Costs and nature of the appealed decision

1. Under Article R52 (4) of the Code of Sports-related Arbitration (CAS Code), a request for an expedited procedure can only be implemented with the agreement of the parties. Similarly, CAS panels have no power to force a party to accept an expedited procedure.
2. The question whether to bifurcate proceedings in order to decide on a preliminary question is a procedural issue that is, in principle, governed in international arbitrations by Article 182 of the Swiss Private International Law Act (PILA). The CAS Code only deals with the question whether a CAS panel can bifurcate the proceedings in order to decide the preliminary question of its competence (Article R39, par. 5 of the CAS Code). It does not contain any provision on whether a CAS panel may bifurcate the proceedings in order to decide on other preliminary issues (be it on procedure or on the merits). In the absence of any specific provisions in the CAS Code, the CAS panel is entitled to apply the provisions and principles either directly or by reference to a law or rules of arbitration it deems fit. In accordance with Article 125 lit. a of the Swiss Code of Civil Procedure (CCP), a court may “[i]n order to simplify the proceedings [...] limit the proceedings to individual issues or prayers for relief”. This power of the court is directly connected to Article 237 CCP according to which a court “may issue an interim decision”. When exercising its discretion according to Article 125 lit. a CCP, a court will take into account whether limiting the procedure to certain preliminary questions allows for a (substantial) saving of time or costs. Such power is a particular aspect of the mandate of an arbitral tribunal to organize the arbitral proceedings.
3. The question of who has standing to be sued is a matter regarding the merits of the case. It refers to the party against whom an appellant must direct its claim in order to

be successful; in addition, a party has standing to be sued if it is personally obliged by the “disputed right” at stake, *i.e.* if said party has some stake in the dispute because something is sought against it. When deciding who is the proper party to defend an appealed decision, CAS panels proceed by an analysis of the interests involved and by taking into account the role assumed by the association in the specific case. In vertical disputes, the proper party to defend the decision, and thus, having standing to be sued is the association that has issued the decision.

4. Article 10.7.1 (a) of the World Athletics Anti-Doping Rules (WA ADR) which provides for the substantial assistance application indicates that there is no automatic right for an athlete who has provided assistance - even if substantial - to obtain a reduction, as it is a discretionary power for the decision-making body to assess whether the assistance is substantial and, if so, whether this assistance can justify, and in what proportion, obtaining a reduction. This discretion must be exercised on a case-by-case basis. Under Rule 10.7.1 of the WA ADR, CAS panels must assess (i) first, whether the assistance provided by the athlete is substantial or not; (ii) second, whether the provided substantial assistance can justify obtaining a suspension of the period of ineligibility; and (iii) third, the proportion of the suspension that should be granted. Furthermore, for an athlete to be able to assess whether the association exercised its discretionary power in a proper manner, the association shall state the grounds for its determination in its decision.
5. The freedom of an association to “govern” the relations with its members and their athletes, within the limits of the applicable rules, is widely recognized. This principle is far from excluding or limiting the power of a CAS panel to review the facts and the law involved in the dispute heard: it only means that a CAS panel would not easily “tinker” with a well-reasoned decision.
6. In accordance with Rule 10.7.1 (a) of the WA ADR, once a final decision on the sanctioning of an athlete’s anti-doping rule violation (ADRV) is taken, World Athletics may only suspend part of an athlete’s ineligibility period with the approval of World Anti-Doping Agency (WADA). In a case in which WADA would decide not to approve a substantial assistance application, World Athletics would have to issue a refusal decision in which it would refer to both Rule 10.7.1 (a) of the WA ADR and to WADA’s decision not to approve said athlete’s request. It remains however that such decision issued to the athlete would be the sole responsibility of WA.
7. It appears reasonable for an association to consider that if an athlete’s ADRV history is so serious, it would be contrary to the overriding interest of the fight against doping to grant to that athlete any suspension. *In casu*, an athlete currently serving an eight-year period of ineligibility, which was immediately preceded by a three-years and nine-months period of ineligibility justifies the conclusion that said athlete’s ADRV history is very serious.
8. It appears legitimate for the association to take into consideration an athlete’s cooperation throughout the substantial assistance process in its determination of

whether the assistance provided by the athlete can justify suspension of part of the athlete's ineligibility period. In fact, the athlete's full cooperation in the substantial assistance process is required in order for the assistance provided to qualify as substantial, under the definition of the term "substantial assistance" in the WA ADRV. Additionally, the WADA Guidelines for the 2021 International Standard for Result Management provide that *"no RMA [Results Managements Authority] should agree to suspend Consequences unless it is satisfied that the Athlete or other Person has provided a full and frank disclosure of all of the facts surrounding the ADRV committed by the Athlete or other Person"* and that *"the RMA should also be satisfied that the Athlete or other Person has provided a full and frank disclosure of all previous ADRVs"*.

9. It follows from the wording of Article R65 of the CAS Code that the conditions for an appeal to be free of costs is that it is directed against i) a decision which is ii) exclusively of a disciplinary nature iii) issued by an international federation or sports-body. Article R65 (second sentence) of the CAS Code also specifies that this provision does not apply to appeals *"related to sanctions imposed as a consequence of a dispute of an economic nature"*. A decision is disciplinary in nature if it imposes adverse effects to an individual in reaction to the latter's breach of rules and/or obligations. In the case of an appeal against a decision not to suspend part of an athlete's ineligibility period for substantial assistance, such decision is not of an exclusive disciplinary character, nor does it constitute a new disciplinary sanction. The nature of the substantial assistance decision does not have any sanctioning character as it is not intended to punish the athlete.

I. PARTIES

1. Mr Alex Schwazer is an Italian racewalker (the "Athlete"). He has won inter alia the gold medal in the 50 km race walking event at the 2008 Beijing Olympic Games. He is sanctioned with an eight-year period of ineligibility expiring on 7 July 2024.
2. World Athletics ("WA") is the international governing body of the sport of athletics, recognised as such by the International Olympic Committee. WA has its seat and headquarters in Monaco. It is a signatory to the World Anti-Doping Code, in compliance with which it has adopted a set of rules, namely the World Athletics Anti-Doping Rules (the "WA ADR"), to eradicate doping in athletics. It has also established the Athletics Integrity Unit (the "AIU"), which is charged with responsibility for the day-to-day administration of the WA ADR.
3. The Athlete and WA are jointly referred to as the "Parties".

II. FACTUAL BACKGROUND

4. The present appeal was initiated against WA's decision dated 10 November 2023 to dismiss the Athlete's application to suspend part of his period of ineligibility in accordance with Rule 10.7.1 (a) of the WA ADR. This provision enables athletes serving a period of ineligibility to apply for

the suspension of part of such period upon provision of substantial assistance in discovering or establishing other anti-doping rule violations.

5. Below is a summary of certain key facts and allegations drawn from the Parties' written submissions as well as the oral pleadings and evidence adduced at the hearing. Additional facts and allegations may be set out, where relevant, in later sections of this award (the "Award"), in particular in connection with the Panel's discussion of the merits of the case. The Panel has considered all of the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings. It nonetheless refers in this Award only to those submissions and evidence that it considers necessary to explain its reasoning and conclusions.

A. The underlying Anti-Doping Rule Violation

6. On the eve of the 2012 London Olympic Games on 30 July 2012, the Appellant deliberately evaded a doping control. When he was ultimately located and tested, his sample was positive for recombinant EPO. The Athlete was sanctioned with a period of ineligibility from 30 July 2012 to 29 January 2016, and a further period until 29 April 2016 for evading the doping control on 30 July 2012.
7. On 1 January 2016, namely towards the end of his period of ineligibility, the Athlete underwent an unannounced out-of-competition doping test. The initial screening did not reveal the presence of any prohibited substance. However, as a result of the analysis of other samples provided by the Athlete, the Athlete's urinary steroid profile was flagged as abnormal on 5 March 2016. Consequently, the Athlete's sample was re-analysed. The re-analysis revealed that it was consistent with the administration of exogenous androgenic anabolic steroids, which is a prohibited substance under the Prohibited List of the World Anti-Doping Agency ("WADA").
8. On 21 June 2016, the Athlete was notified of the Adverse Analytical Finding ("AAF") and requested the opening of the B Sample. The results of the analysis of the B sample confirmed the results of the A sample. On 8 July 2016, the IAAF (i.e. former WA) imposed a provisional suspension on the Athlete.
9. In view of the proximity of the Olympic Games in Rio de Janeiro, the Athlete brought the case directly to the CAS. On 11 August 2016, the CAS rendered an Award in the matter *CAS 2016/A/4707 Alex Schwazer v. IAAF, NADO Italia, FIDAL & WADA* (the "2016 CAS Award"), by which the CAS Panel dismissed the Athlete's appeal against the provisional suspension imposed on him following notification of the AAF. The Athlete was found to have committed a second Anti-Doping Rule Violation ("ADRV") and was sanctioned with an 8-year period of ineligibility. The CAS Award was not challenged by the Athlete.
10. Following publication of the CAS Award, the *Procura di Bolzano* opened criminal proceedings against Mr Schwazer, doping being a criminal offence under Italian law (*frode sportiva*).
11. On 20 November 2022, the public prosecutor decided that there was insufficient evidence to prove a charge of intentional doping to the requisite criminal standard, and therefore requested that the criminal proceedings be discontinued.

12. On 18 February 2021, the criminal proceedings against the Athlete were dismissed by the *Giudice per le indagini preliminari* (the “Bolzano Decision”). The Bolzano Decision was that, in essence, “with a high degree of rational credibility” the urine sample provided by the Athlete had been manipulated, suggesting that procedural fraud and other criminal offences under Italian law had been committed. All charges against the Athlete were dropped as it was found that he did not commit any crime.
13. On 6 April 2021 and following notification of the Bolzano Decision, the Athlete requested WADA and WA to allow him to return to competition.
14. On 15 April 2021, the Athlete, on the basis of the Bolzano Decision, sought the revision of the 2016 CAS Award in front of the Swiss Federal Tribunal (“SFT”) on the basis of Article 190a, para. 1 (b) of the Swiss Private International Law Act (“PILA”).
15. On 16 April 2021, WADA and WA rejected the Athlete’s request to allow him to return to competition considering that the case had been decided definitively in the 2016 CAS Award (the “Reinstatement Refusal”).
16. On 22 April 2021, WADA and WA issued a joint public statement explaining why the Bolzano Decision lacked any merit whatsoever.
17. On 29 April 2021, the Athlete appealed the Reinstatement Refusal before the CAS and sought provisional measures to allow him to return to competition in advance of the 2020 Tokyo Olympic Games. The CAS Court Office initiated an appeals procedure under reference *CAS 2021/A/7921 Alex Schwazer v. WA & WADA*.
18. On 6 May 2021, the Athlete’s request for provisional measures was rejected.
19. On 26 July 2021, the Athlete withdrew his appeal before the CAS in the matter *CAS 2021/A/7921 Alex Schwazer v. WA & WADA*.
20. On 28 September 2021, the SFT dismissed the Athlete’s recourse.

B. The Substantial Assistance Process

21. On 17 July 2021, the Athlete reported information regarding an anti-doping rule violation committed by V. via the online portal of WADA (the “Substantial Assistance Application”) as well as to the AIU by email. V. is a former [...] athlete who had been sanctioned with a lifetime period of ineligibility. The Athlete alleged that V. was employed [...] by the [...] Athletics Federation despite his lifetime period of ineligibility.
22. On 16 November 2021, the Athlete provided the AIU with a witness statement to substantiate his Substantial Assistance Application.
23. On 22 November 2021, the AIU acknowledged receipt of the witness statement and requested further clarification from the Athlete.

24. On 1 December 2021, the Athlete provided the requested clarifications to the AIU.
25. On 19 January 2022, upon the Athlete's request, the AIU informed the Athlete that it was reviewing the information provided by the Athlete.
26. On 16 March 2022, the Athlete enquired again the AIU about the progress of his Substantial Assistance Application.
27. On 17 March 2022, the AIU informed the Athlete that, whilst it is under no obligation to provide updates of its investigation into the information provided by the Athlete, it was content to report that having interviewed V. concerning matters raised by the Athlete and having sought corroborating information from third parties, it was now seeking to interview V. a further time.
28. On 7 June 2022, the Athlete provided further information to the AIU.
29. On 23 June 2022, the AIU acknowledged receipt of the additional information filed by the Athlete and informed the Athlete that it anticipated undertaking in person interviews of third parties at the World Athletics Championships in Oregon in the course of July 2022.
30. On 27 September 2022, the AIU issued V. a notice of charge for several breaches of the prohibition on participation during his lifetime ban.
31. On 4 October 2022, V. returned a signed admission and acceptance of consequences form confirming that he admitted to violating the prohibition on participation during ineligibility as set out in the notice of charge.
32. On 11 November 2022, the Athlete again enquired about the progress on his Substantial Assistance Application.
33. On 17 November 2022, the AIU informed the Athlete that he would be invited for a meeting within the following month.
34. On 19 December 2022, a meeting was held between the AIU and the Athlete. During that meeting, the AIU requested the Athlete to formulate a proposal as to the suspension of his period of ineligibility.
35. On 17 January 2023, the Athlete requested the suspension of 50% of his period of ineligibility.
36. On 2 March 2023, the AIU informed the Athlete that it would require the authorization of WADA as per Rule 10.7.1 (a) of the WA ADR.
37. On 30 March 2023, WADA received the Substantial Assistance Application.
38. On 28 April 2023, WADA requested additional information from the Athlete.
39. On 10 May 2023, the Athlete replied to WADA objecting to some of the requested additional information and requesting further clarifications from WADA.

40. On 19 May 2023, WADA replied to the Athlete providing the requested clarifications.
41. On 26 May 2023, the AIU confirmed to the Athlete that although it had formed the view that the Athlete had provided substantial assistance (within the meaning of the term in the WA ADR), WADA, from which it had requested approval, is free to determine the necessary steps to reach a determination in that respect in the exercise of its sole discretion.
42. On 5 June 2023, the Athlete provided further comments on WADA's request for additional information and its clarifications.
43. On 14 July 2023, the Athlete provided his final reply to WADA's request for additional information.
44. On 27 July 2023, WADA requested the Athlete to provide clarification regarding the breach of confidentiality resulting from the publication of an article in the Italian newspaper *Gazzetta dello Sport* on 16 July 2023 regarding the Athlete's ongoing substantial assistance process.
45. On 4 August 2023, the Athlete provided his comments regarding the alleged breach of his duty of confidentiality resulting from the publication of the said article in the press.
46. On 8 August 2023, WADA replied to the Athlete regarding his comments on the alleged breach of confidentiality.
47. On 10 August 2023, WADA provided its comments to the Athlete's reply dated 14 July 2023.
48. On 12 August 2023, the Athlete personally provided his comments to WADA's letter dated 10 August 2023.
49. On 5 October 2023, the Athlete provided further comments and documents to WADA in answer to WADA's letter dated 10 August 2023.
50. On 6 November 2023, WADA informed WA that it did not approve the Athlete's Substantial Assistance Application.
51. On 10 November 2023, WA denied the Athlete's Substantial Assistance Application (the "Decision"). The Decision provided as follows:

"Dear Mr Seamer,

We refer to your letter dated 17 January 2023 requesting that the AIU suspend Mr Schwazer's period of Ineligibility in accordance with Rule 10.7.1 (a) of the [WA ADR].

As set out in the e-mail from Mr. Jackson on 2 March 2023, Rule 10.7.1 (a) of the [WA ADR] provides that the AIU may only suspend a part of the otherwise applicable Consequences Imposed upon Mr Schwazer with the approval of WADA, and the AIU has sought WADA's approval accordingly.

Please find enclosed correspondence from WADA confirming that, having reviewed the matter, WADA does not approve any suspension of the eight-year period of Ineligibility that Mr Schwazer is currently serving.

Considering WADA's position, Mr Schwazer's application cannot proceed and is therefore denied.

As stated in the WADA correspondence, Mr Schwazer had a right of appeal to CAS in accordance with Rule 13.2 of the [WA ADR] (together with those organisations that are copied on this correspondence)".

52. WA attached to the Decision the correspondence received from WADA dated 6 November 2023 expressing WADA's decision not to approve any suspension of the Athlete's period of ineligibility. The reasoning of WADA's decision is, in essence, as follows:

"[...] In this case, the Athlete has provided open-source materials establishing that a former Belarusian athlete who had been sanctioned with a lifetime period of ineligibility, [V.], was employed [...] by the [...] Federation. [V.] subsequently admitted to having violated the prohibition against participation during his ineligibility and accepted that he was banned for life.

Even assuming that this information qualifies for Substantial Assistance, WADA considers, for the reasons set out below, that the Athlete should not receive any suspension of his period of ineligibility.

WADA recalls in particular that Substantial Assistance is a discretionary remedy. Indeed, this is clear from the wording of Code Article 10.6.1.1:

*"An Anti-Doping Organization with results management responsibility for an antidoping rule violation **may** (...), prior to a final appellate decision under Article 13 or the expiration of the time to appeal, suspend a part of the period of Ineligibility imposed in an individual case where the Athlete or other Person has provided Substantial Assistance (...)" (emphasis added)*

The CAS has confirmed that there is no "automatic right" to a suspension of the otherwise applicable consequences on the basis of Substantial Assistance, even if the conditions set forth by the Code are met:

When assistance is provided, "the hearing body or the CAS may reduce the period of ineligibility (...)". Therefore, there is no automatic right for the athlete who has provided assistance — even substantial — to receive this reduction, but a discretionary power for the decision-making body to assess whether the assistance is substantial and, if so, whether this assistance may justify, and to what extent, the granting of a reduction. Therefore, this discretion must be exercised on a case-specific basis.

WADA does not consider that a discretion to suspend any portion of the Athlete's period of Ineligibility should be exercised in this case. Without limitation, WADA notes that:

- a. *The Athlete's own ADRVs are in themselves so serious as to not warrant any suspension of his period of ineligibility under Substantial Assistance. As evidenced by the below, the Athlete has repeatedly violated the anti-doping rules throughout his career:*
- *On 30 July 2012, the Athlete attempted to subvert the doping control process and committed an ADRV under Article 2.3 of the 2009 World Anti-Doping Code;*

- *On the same date, the Athlete returned an adverse analytical finding for recombinant erythropoietin, a potent prohibited substance, which he admitted having repeatedly injected himself with in the spring and summer of 2012;*
 - *The Athlete admitted to having repeatedly used testosterone, a non-specified anabolic agent, in 2011;*
 - *On 1 January 2016, the Athlete returned an adverse analytical finding for testosterone. This violation was found by the CAS to constitute an intentional violation and sanctioned with a period of ineligibility. The Athlete has, to this day, not provided any credible explanation for the presence of this non-specified anabolic agent in his body.*
- b. The Athlete, as well as certain of his entourage and representatives, have made public comments that World Athletics and/or the Cologne Laboratory and/or WADA (respectively their staff members) were involved in a conspiracy to manipulate the urine sample collected on 1 January 2016 so that it would test positive. These public statements, which are devoid of any truth, have the potential to undermine the credibility and reputation of these three organizations and to cause significant damage to the fight against doping.*
- c. WADA also notes that the Athlete has not been fully transparent and cooperative throughout his Substantial Assistance application. By way of example:*
- *The Athlete did not specifically address a number of the requests made by WADA relating to how he discovered [V.]’s breach of ineligibility.*
 - *Despite numerous requests, the Athlete has failed to provide WADA with the originals of all pictures that he provided to the AIU.*
 - *The Athlete also failed to provide WADA with documents related to his previous anti-doping rule violations in Italy; he apparently chose to do this because a lawyer affiliated to NADO-Italia, who happens to sit on WADA’s Legal Expert Advisory Group, had access to those documents.*
 - *The Athlete has admitted to intentionally breach the confidentiality of the results management process in connection with his Substantial Assistance application, with the specific objective of putting pressure on World Athletics and WADA during the course of their respective assessment of his applications. This is not only a breach of the confidentiality requirements under the applicable rules, but could potentially even amount to a tampering violation.*

[...] It bears recalling that the suspension of a period of ineligibility for Substantial Assistance is a discretionary remedy that is intended to reward athletes and other persons who have made a positive contribution to the fight against doping. Whereas the Athlete did bring to the attention of the AIU a breach of ineligibility (which ultimately led to no new sanction), any possible benefit to the fight against doping has been significantly outweighed by the damage caused by his repeated ADRVs and the above-mentioned allegations of a conspiracy against him implicating the AIU, the Cologne Laboratory and WADA.

[...] Therefore, for the above-mentioned reasons, and based on the elements established in the file, WADA does not approve any suspension of the eight-year period of ineligibility that the Athlete is currently serving.

[...] Pursuant to Code Article 10.6.1.1, because the time to appeal the decision sanctioning the Athlete has expired, the AIU may only suspend a part of the consequences imposed on the Athlete with the approval of WADA. Since WADA does not approve any suspension of the Athlete's period of ineligibility, we trust that the AIU will now draft and issue its decision denying the Athlete's Substantial Assistance request.

[...] This decision of the AIU will be appealable in accordance with Code article 13.2 and shall be notified to all parties with a right of appeal. [...]

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

53. On 11 December 2023, the Athlete filed with the Court of Arbitration for Sport (the "CAS") an appeal against WA with respect to the Decision and submitted a Statement of Appeal pursuant to Article R48 of the Code of Sports-related Arbitration (2023 edition) (the "CAS Code"). In his Statement of Appeal, the Athlete designated WA as respondent, and WADA, the National Anti-Doping Organisation Italia ("NADO Italia") and the *Federazione Italiana di Atletica Leggera* ("FIDAL") as "Interested Parties". Finally, the Athlete nominated Prof. Dr Ulrich Haas, Attorney-at-Law in Hamburg, Germany and Professor in Zurich, Switzerland, as arbitrator, and requested his appeal to be decided following an expedited procedure with an operative part issued "*within the end of February*" 2024.
54. On 12 December 2023, the CAS Court Office informed the Parties that the present arbitration proceedings had been assigned to the Appeals Arbitration Division of the CAS. The CAS Court Office noted that the Athlete's appeal was directed against WA only since the Statement of Appeal was not formally directed against WADA, NADO Italia and FIDAL who had not been designated as respondents in the Athlete's Statement of Appeal but only as "*interested parties*", a role which is not recognized under the CAS Code. The CAS Court Office further took note of the Athlete's request for an expedited procedure and invited WA to indicate whether it agreed with the Appellant's request. Finally, the CAS Court Office invited the Athlete to file his Appeal Brief within the prescribed time limit and informed the Parties that the costs of the present arbitration proceedings were to be paid by the Parties, in accordance with Article R64.2 of the CAS Code.
55. On the same day, the CAS Court Office informed WADA, NADO Italia and FIDAL that the Athlete had filed a Statement of Appeal against WA and that they had been designated as "*interested parties*".
56. On 13 December 2023, the Athlete submitted that these proceedings were of exclusively disciplinary nature and, as such, subject to Article R65 of the CAS Code and free of costs.
57. On 18 December 2023, WA noted that WADA was not included by the Athlete as a respondent, despite the fact that the Decision was effectively rendered by WADA. WA argued that WADA's legal interests would be affected by the Athlete's requests and that WADA should therefore have been included as a respondent. WA requested the CAS Court Office that the issue of WA's standing to be sued alone in the present matter be decided upon on a preliminary basis by way of bifurcation (the "Request for Bifurcation"). WA further informed the CAS Court Office that it did not agree with the Athlete's request that the present proceedings be expedited.

58. On 19 December 2023, the CAS Court Office informed the Parties that the present proceedings were subject to costs in accordance with Article R64 of the CAS Code and that, if the Athlete so requested, the Panel would make a determination in this respect. In particular, the CAS Court Office informed the Parties as follows:

“As a matter of fact, Mr Schwazer has not been subjected to any sanction as a result of the decision currently under appeal. The disciplinary sanction affecting the Appellant stems from CAS 2016/A/4707, which was, indeed, an appeal “against decisions which are exclusively of a disciplinary nature and which are rendered by an international federation or sports-body” in accordance with Article R65 of the Code.

In the present case, as a matter of fact, the Athlete’s “disciplinary status” has remained unaltered with respect to the sanction already imposed on him: it is undisputable that the denial of his request for suspension does not constitute a new disciplinary sanction against him.

It is noted that in the context of CAS 2020/A/7921, where the Athlete was seeking to overturn the decision of World Athletics and WADA denying his reinstatement following the findings of [the Bolzano Decision], the Athlete paid the totality of the procedural costs without raising any objection regarding the application of Article R64 of the Code. In that instance as well, as a matter of fact, Mr Schwazer’s “disciplinary status” remained unchanged by the appealed decision.

Similar to a reinstatement decision, a decision concerning “substantial assistance” and the potential reduction in ineligibility it may entail does not, per se, constitute a disciplinary matter. Therefore, this case should be considered as predominantly concerning eligibility, and not as a disciplinary matter, for which reason it does not fall under Article R65 of the Code.

As a consequence, it is confirmed that the present procedure shall be subject to costs”.

59. On the same day, WADA informed the CAS Court Office that it requested its deadline to intervene pursuant to Article R41.3 of the CAS Code be suspended pending determination of the matters set out in WA’s letter dated 18 December 2023.
60. On 21 December 2023, within the prescribed time limit, the Athlete filed his Appeal Brief with the CAS Court Office.
61. On the same day, the CAS Court Office invited the Parties to comment on WADA’s request to suspend its time limit to intervene pursuant to Article R41.3 of the CAS Code and invited WA to file its Answer.
62. On the same day, WA requested the CAS Court Office that its deadline for filing its Answer be suspended pending a decision on the Request for Bifurcation and dismissal of the appeal for WA’s lack of standing to be sued alone. Moreover, WA nominated Mr Ken E. Lalo, Attorney-at-Law in Gan-Yoshiyya, Israel, as arbitrator.
63. On 22 December 2023, the CAS Court Office invited the Athlete to comment on WA’s request for suspension of the time limit to file the Answer and suspended such time limit until further notice.

64. On the same day, the Athlete stated that the CAS Court Office's invitation made to WADA to indicate whether or not it wished to intervene in the present proceedings constituted an "*abnormal measure*" since WADA was already a party to the present proceedings; in addition, the Athlete requested the CAS Court Office to reject WA's Request for Bifurcation and to dismiss the appeal for lack of standing to be sued alone as well as WADA's request for suspension of its time limit to intervene.
65. On the same day, the CAS Court Office reiterated to the Athlete that, unless the Panel once constituted decides otherwise, WADA was not considered a formal party to the present proceedings and, as a result, the CAS Court Office's request made to WADA to indicate whether it wished to intervene in the present proceedings or not, was not an "*abnormal measure*".
66. On 11 January 2024, the CAS Court Office informed the Parties and WADA that the Division President had decided that the time limit for the possible intervention of WADA as well as the time limit to file the Answer were suspended until further notice.
67. On 24 January 2024, the CAS Court Office informed the Parties that the Panel appointed to decide the present procedure was constituted as follows:

President: Mr André Brantjes, Attorney-at-Law in Amsterdam, the Netherlands.

Arbitrators: Prof. Dr Ulrich Haas, Professor in Zurich, Switzerland and Attorney-at-Law in Hamburg, Germany.

M. Ken E. Lalo, Attorney-at-Law in Gan-Yoshiyya, Israel.

The CAS Court Office further informed the Parties that Ms Stéphanie De Dycker, CAS Clerk, would assist the Panel in the present matter.

68. On 29 January 2024, the CAS Court Office informed the Parties and WADA that the Panel had decided to reject WA's Request for Bifurcation and that its decision as well as the issue of WA's standing to be sued alone would be determined in the Award. The CAS Court Office also informed the Parties and WADA that WA's time limit to file its Answer and WADA's time limit to inform whether it intended to intervene in the present proceedings resumed with immediate effect. The CAS Court Office further requested the Athlete, on behalf of the Panel, to provide detailed clarification in support of his request for an operative part to be notified by 1 March 2024.
69. On 30 January 2024, WADA informed the CAS Court Office that it "*w[ould] not intervene in these proceedings as a party but reserve[d] all its rights*".
70. On 31 January 2024, the Athlete provided further clarifications in support of his request for an operative part to be notified by 1 March 2024.
71. On 1 February 2024, the CAS Court Office invited WA to comment on the Athlete's submission in support of his request for a decision to be issued by 1 March 2024, and consulted the Parties on a possible hearing date. In addition, the Panel informed the Parties that, without

prejudice to the question of whether WA has standing to be sued alone, it would not consider WADA as a respondent in the present proceedings.

72. On 6 February 2024, the CAS Court Office informed the Parties that they were called to appear at the hearing in the present proceedings, which would be held by videoconference on 27 February 2024 and invited the Parties to communicate the list of the persons attending the hearing as well as their contact details.
73. On 19 February 2024, WA filed its Answer with the CAS Court Office. In its Answer, WA requested Athlete's Exhibits 8, 9 and 12 to be removed from the record since these exhibits contain "*without prejudice*" correspondence between WA and the Athlete's legal representative. In the event the Panel would decide not to remove the concerned exhibits from the record, WA requested leave to "*produce all of the 'without prejudice' correspondence it engaged in with the Athlete*".
74. On 21 February 2024, the Parties separately communicated to the CAS Court Office the list of persons attending the hearing as well as their contact details.
75. On 22 February 2024, the CAS Court Office informed the Parties that the Panel rejected the Respondent's request to exclude from the file Exhibits 8, 9 and 12, and that, since the Athlete had not objected to WA's alternative request, WA was granted a short deadline to "*produce all of the 'without prejudice' correspondence it engaged in with the Athlete*". In addition, the CAS Court Office issued a tentative hearing schedule for the Parties to comment.
76. On 22 February 2024, the CAS Court Office issued an order of procedure (the "Order of Procedure") in the present matter and requested the Parties to return a completed and signed copy, which the Parties did on 23 February 2024.
77. On 23 February 2024, within the provided time limit, WA also filed additional "*without prejudice*" correspondence between the Athlete and WA.
78. On 26 February 2024, upon comments from the Parties, the CAS Court Office issued a finalised hearing schedule.
79. On 27 February 2024, a hearing was held in the present matter by videoconference. In addition to the members of the Panel, Ms Stéphanie De Dycker, CAS Clerk, and Mr Giovanni Maria Fares, CAS Counsel, the following persons attended the hearing:

For the Athlete: Mr Alex Schwazer, Athlete

Ms Maria Laura Guardamagna, counsel

Mr Massimiliano Valcada, counsel

Mr Gerhard Brandstätter, counsel

Mr Thomas Tiefenbrunner, counsel

Mr Alessandro Cerruti, interpreter

For WA: Ms Louise Reilly, counsel

Mr Tony Jackson, AIU Deputy Head of Case Management

Ms Annalisa Cherubino, AIU Case Management Coordinator

80. At the outset of the hearing, the Parties declared that they had no objections as to the constitution of the Panel.
81. At the hearing, the Parties were given full opportunity to present their case, submit their arguments and answer the questions from the Panel. The Athlete also had the opportunity to make a statement.
82. At the end of the hearing, the Parties confirmed that they were satisfied with the procedure throughout the hearing, and that their right to be heard had been fully respected.

IV. THE PARTIES' SUBMISSIONS AND REQUESTS FOR RELIEF

83. The aim of this section of the Award is to provide a summary of the Parties' main arguments rather than a comprehensive list thereof. Additional elements of the Parties' claims may be discussed in subsequent sections of the Award. As stated above, the Panel reiterates that in deciding upon the Parties' claims it has carefully considered all the submissions made and all the evidence adduced by the Parties, whether or not expressly referred to in this section of the Award or in the discussion that follows.

A. The Athlete

84. In its Appeal Brief, the Athlete requested the following relief:

"i. To declare that the present appeal proceeding falls under R.65 CAS Code

ii. To expedite the proceedings as per the following calendar:

- *a hearing to be held within 30 January 2024 and*
- *the operative part of the Award to be issued within eight (8) days of the hearing.*

In any case to issue a decision which grants effective and efficient access to justice within a reasonable time.

iii. The Appeal of Alex Schwazer is admissible.

iv. The AIU's Decision issued on 10 November 2023 is set aside.

v. Alex Schwazer is found to have provided substantial assistance and thus he is worthy of an ineligibility period suspension.

vi. The remaining ineligibility period Alex Schwazer is currently serving (scheduled to expire on 7 July 2024) is suspended in its totality (meaning to say less than 10% of Mr Schwazer period of ineligibility), or, in alternative, is reduced or suspended in the measure that the Honourable Panel would deem fair and equal in view of the Olympic Games Paris 2024 qualification and, accordingly, Alex Schwazer is declared eligible to compete.

vi. World Athletics is condemned to pay Alex Schwazer legal and other costs related to the proceeding”.

85. The Athlete’s submissions, in essence, may be summarized as follows:

- The Athlete correctly directed his appeal against WA only. For his appeal to proceed, the Athlete does not need to direct his appeal against WADA (in addition to WA). The Decision concerning the status of the Athlete is the Decision rendered by WA (not WADA) and WADA’s decision was never directly notified to the Athlete. The Athlete indicated WADA as “interested party” because it is a third party with an interest in the proceedings. Moreover, the Athlete does not make any request against WADA. In addition, upon receiving a copy of the Statement of Appeal, WADA was put in the same position to defend itself as WA, and it chose not to intervene.
- The Athlete provided substantial assistance within the meaning of the WA ADR:
 - the Athlete disclosed in a signed written statement all information he possessed regarding V.’s violation of disqualified status and prohibited association under the WA ADR. WADA considered, in August 2021, that the documentation provided by the Athlete was suitable to open an investigation, and AIU carried out such investigation in the following months.
 - The Athlete fully cooperated in the investigation involving V. and assiduously tried to answer and revert to all WADA’s requests (even those asked with a clearly dilatory intent).
 - Based on the information provided by the Athlete, a doping investigation related to the violation of Rule 2.10 of the WA ADR was carried out and V. confessed, which sufficiently demonstrates that the information provided by the Athlete was indeed credible and comprised an important part of an initiated case.
- With respect to the criteria for the determination of the extent of the suspension of the ineligibility period:
 - V.’s ADRV qualifies as serious since by persisting to perform his sport duties despite his lifelong ineligibility he caused an immediate, visible and profound discredit to the world sports community; in addition, his behaviour exposed a number of athletes and other licensees to the violation of Rule 2.10 of the WA ADR, which prohibits association with persons serving a period of ineligibility.
 - The Athlete’s ADRV is the result of a positive test for testosterone following the re-examination of a previously negative urine sample; the Athlete also recalls that the criminal charges for doping in Italy had been dropped against him. In such

context, the fact that the Athlete always defended himself against this charge and always refused to confess having doped is not an impeding factor in granting the suspension of the ineligibility period.

- The significance of the substantial assistance provided by the Athlete is blatant: the information he provided concerned multiple violations committed by V. and also involved, indirectly, a considerable number of individuals with whom V. was in extremely close sport-relationship. In addition, V. is a high-level [...] who collaborates with highest-level athletes.
- The requested suspension is of less than 10% of the period of ineligibility.
- WADA's letter attached to the Decision invokes unfounded justifications for denying the Athlete's Substantial Assistance Application:
 - The reference to the ADRVs committed in 2011-2012 by the Athlete is not relevant for the present proceedings; with respect to the disputed ADRV of 2016, WADA should have taken into account in the evaluation of the Athlete's Substantial Assistance Application the fact that according to the Bolzano Decision, the urine sample had been intentionally manipulated, which resulted in the criminal proceedings instituted against the Athlete being dismissed.
 - The fact that the Athlete publicly defended his position is not a criterion for denying his Substantial Assistance Application as per Rule 10.7.1 (a) of the WA ADR. Moreover, the fact that the Athlete exercised his right of defence in a trial where he was accused of a doping crime cannot negatively impact the assessment of his Substantial Assistance Application.
 - Some of the justifications contained in WADA's letter attached to the Decision are not specific enough and are also unfounded since the Athlete repeatedly responded to WADA on the origin of the pictures provided, on the source of the information he revealed and provided all the requested documents to WADA.
 - Finally, the Athlete did not breach any duty of confidentiality since he did not provide any sensitive information to the press, nor did he commit any tampering violation since he did not put any pressure on the sports organisations deputed to evaluate his Substantial Assistance Application.

B. World Athletics

86. In its Answer, WA requested the following relief:

- “(i) The appeal of Alex Schwazer is found to be inadmissible, or in the alternative is dismissed.*
- (ii) The arbitration costs shall be borne by Alex Schwazer.*
- (iii) World Athletics is granted a contribution to its legal and other costs”.*

87. WA's submissions, in essence, may be summarized as follows:

- The Athlete failed to identify the proper respondents in this matter. It is the Athlete's responsibility to identify the respondents for his appeal to proceed. In the present case, the Athlete should have included WADA as respondent, since it was WADA's *animus decidendi* that disposed of the matter, not that of WA: the Decision makes clear that a suspension for Substantial Assistance is only possible with the approval of WADA and that since WADA did not approve any suspension in this case, the application could not proceed. Without WADA as a respondent, WADA's non-approval is equally binding on this CAS panel as it was on WA.
- The Athlete never challenged the fact that WADA was only informed of the proceedings with a right to intervene but was never included as a party in the proceedings.
- Suspension for Substantial Assistance is subject to the double discretion of both WADA and WA (provided that WADA approves the application). In the present matter, the Athlete is challenging WADA's exercise of discretion. However, as confirmed by CAS case law, there is no right to a suspension of sanction for Substantial Assistance, which is characterized as a "*mesure de clémence*".
- WADA exercised its discretion in a reasonable and proper manner. WADA's clear grounds for its refusal of the Athlete's Substantial Assistance Application are set out in its letter dated 6 November 2023: it relied on (a) the Athlete's history of ADRVs, (b) his public statements which were devoid of any truth and had the potential to cause damage to the fight against doping, and (c) the Athlete's lack of cooperation and transparency in the substantial assistance process.

V. JURISDICTION

88. Article R47 of the CAS Code provides as follows:

"An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body. [...]"

89. Rule 13.2 of the WA ADR provides as follows:

"The following decisions may be appealed exclusively as provided in Rules 13.2 to 13.7: [...] a decision to suspend (or not suspend) Consequences or to reinstate (or not reinstate) Consequences under Rule 10.7.1; [...]"

13.2.1 In cases involving International-Level Athletes or arising from Persons participating in an International Competition, the decision may be appealed exclusively to CAS. [...]"

13.2.2 In cases under Rule 13.2.1, the following parties will have the right to appeal to CAS: (i) the Athlete or other Person who is the subject of the decision being appealed; [...]”.

90. There is no doubt that the Athlete qualifies as an “international-level athlete” within the meaning of the WA ADR, and that, the Decision qualifies as “a decision to [...] not suspend Consequences under Rule 10.7.1”. As a result, the CAS holds jurisdiction to decide on the present matter brought by the Athlete. By signing the Order of Procedure, the Parties have confirmed that the CAS has jurisdiction to decide the appeal at issue in the present proceedings.

VI. ADMISSIBILITY

91. Article R49 of the CAS Code provides as follows:

“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties. [...]”.

92. Rule 13.6.1 of the WA ADR provides as follows:

“(a) The time to file an appeal to the CAS will be thirty (30) days from the date of receipt of the reasoned decision by the appealing party. Where the appellant is a party other than World Athletics or WADA, to be a valid filing under this Rule 13.6.1, a copy of the appeal must be filed on the same day with World Athletics”.

93. The Statement of Appeal was filed by the Athlete on 11 December 2023, i.e. within the time limit of 30 days of receipt of the Decision. The Panel notes that the further conditions set out under Article R48 of the CAS Code and Rule 13.6.1 of the WA ADR are also met.
94. The Panel therefore finds that the present appeal is admissible.

VII. APPLICABLE LAW

95. Article R58 of the CAS Code provides as follows:

“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

96. The Panel notes that the Decision was rendered following a procedure that was initiated under the WA ADR. It follows, and the Parties agree, that WA ADR apply to the merits of the present appeals proceedings. Since the Substantial Assistance process was initiated in 2021, the Panel

considers that the WA ADR (2021 edition) (also referred to as “WA ADR”) applies to the present matter. To the extent that the WA ADR do not rule on a specific issue, the Panel finds that Monegasque law applies subsidiarily.

VIII. PROCEDURAL ISSUES

97. The Panel shall examine in this section some preliminary issues of a procedural nature.

A. Expedited Procedure

98. First, the Panel recalls that, in his Statement of Appeal, the Athlete requested the present proceedings to be expedited under Article R52 (4) of the CAS Code. On 18 December 2023, WA informed the CAS Court Office that it did not accept the Athlete’s request that the proceedings be expedited. Following WA’s refusal, the CAS Court Office informed the Parties that in accordance with Article R52(4) of the CAS Code, the present proceedings were not expedited.

99. In his Appeal Brief, filed on 21 December 2023, the Athlete nevertheless requested the Panel to find that the present matter be decided upon in an expedited manner even if WA did not consent to an expedited procedure as per Article R52 (4) of the CAS Code. The Athlete contended that he has a right to obtain a useful decision within a reasonable time. However, if the Panel were to decide to accept his appeal and suspend his period of ineligibility only after 1 March 2024, it would be difficult for the Athlete to try to qualify for the Paris 2024 Olympics. The Athlete further noted that he is not to blame for such situation as the AIU took more than two years to issue a negative decision on his Substantial Assistance Application. WA did not answer on this specific point.

100. The Panel confirms that, under Article R52 (4) of the CAS Code, a request for an expedited procedure can only be implemented with the agreement of the Parties. Similarly, the Panel has no power to force a party to accept an expedited procedure. Hence, the Panel has no other choice than to reiterate that the present proceedings are not expedited under Article R52 (4) of the CAS Code.

101. The Panel nonetheless duly took into account the Athlete’s desire for a quick decision, because a late decision would effectively deprive him of the opportunity to qualify for and participate in the 2024 Paris Olympics. With this in mind, the Panel facilitated the holding of a hearing on an expedited basis. Furthermore, as set forth below, the Panel also took into account the Athlete’s urgency for a quick resolution of the matter at hand in dismissing WA’s application for a bifurcation of the proceedings.

B. WA’s request for bifurcation

102. Second, the Panel shall explain here its decision to reject WA’s Request for Bifurcation. On 18 December 2023, WA filed a Request for Bifurcation of the procedure and requested that the Panel render a Preliminary Award on the issue of standing of the Appellant to bring a claim

against WA before the CAS without WADA being a formal party to the proceedings. WA explained that, in accordance with CAS case law, the organisation that renders the appealed decision, i.e. disposed of the matter, has standing to be sued and is the proper respondent on appeal, and that the Panel should refuse to render an award if such award would have effects on the legal interests of a non-party – *in casu* WADA’s right of approval as provided under Rule 10.7.1 of the WA ADR.

103. On 22 December 2023, the Athlete objected to WA’s Request for Bifurcation arguing that the Decision was rendered by WA (not WADA) and that WA referred to WADA’s letter dated 6 November 2023 as forming the grounds of its own Decision. In addition, since the Statement of Appeal and Appeal Brief – in which the Athlete had qualified WADA as an “interested party” – had been notified to WADA also, WADA’s legal interests are secured. The Athlete therefore considers that any different conclusion would constitute excessive formalism that would run counter to the requirement of securing a practical and effective right.

104. As a starting point, the Panel notes that the question whether to bifurcate proceedings in order to decide on a preliminary question is a procedural issue that is, in principle, governed in international arbitrations by Article 182 of the PILA. The CAS Code, to which both Parties submitted, only deals with the question whether a Panel can bifurcate the proceedings in order to decide the preliminary question of its competence (Article R39, par. 5 of the CAS Code). It does not contain any provision on whether a Panel may bifurcate the proceedings in order to decide on other preliminary issues (be it on procedure or on the merits).

105. In the absence of any specific provisions in the CAS Code, the Panel is entitled – according to Article 182 (2) PILA – to apply the provisions and principles either directly or by reference to a law or rules of arbitration it deems fit. The Panel is inspired by Article 125 lit. a of the Swiss Code of Civil Procedure (“CCP”). According thereto a court may “[i]n order to simplify the proceedings...limit the proceedings to individual issues or prayers for relief”. This power of the court is directly connected to Article 237 CCP according to which a court “may issue an interim decision” (KUKO-ZPO/WEBER, 3rd ed. 2021, Article 125 no. 3; see CAS 2019/A/6294, paras 63 et seq. and the references mentioned). When exercising its discretion according to Article 125 lit. a CCP, a court will take into account whether limiting the procedure to certain preliminary questions allows for a (substantial) saving of time or costs (CPC-HALDY, 2nd ed. 2019, Article 125 no. 5). The view held here that an arbitral tribunal is entitled to issue decisions on preliminary questions is also backed by the legal literature according to which in the absence of an agreement by the parties, the panel is vested with the power to issue interim or final awards. Such power is a particular aspect of the mandate of an arbitral tribunal to organize the arbitral proceedings (POUDRET/BESSON, Comparative Law of International Arbitration, 2nd ed. 2007, no. 725).

106. In the present matter, as already explained, the Athlete’s request for an expedited procedure was denied in accordance with Article R52 of the CAS Code following WA’s refusal to submit to such expedited procedure. As already explained, the Panel informed the Parties that it was nevertheless ready to accommodate – as much as possible and without any guarantee – the Athlete’s request for a decision to be issued before 1 March 2024 in order to secure as much as possible his chances to qualify for the Paris 2024 Olympics in case the Panel were to accept his

appeal. In this context, if the Panel were to accept the Request for Bifurcation, regardless of its decision on the bifurcated issue, the Athlete's appeal would be largely moot, as a decision on the merits (in case WA's objection to its standing to be sued alone were dismissed) would effectively deprive the Athlete of the opportunity to qualify for and participate in the 2024 Paris Olympics. In the Panel's view, it follows from the principle of procedural efficiency, and to avoid a situation of "justice delayed is justice denied", that the issue of WA's standing to be sued alone, i.e. in the absence of WADA as a party, shall in the present case be decided upon together with the merits of the matter in the Award.

C. WA's request for the removal of documents from the file

107. Third, in its Answer, WA requested Athlete's Exhibits 8, 9 and 12 to be removed from the record since these exhibits contain "*without prejudice*" correspondence between WA and the Athlete's legal representative. In the event the Panel would decide not to remove the concerned exhibits from the record, WA requested leave to produce all of the "*without prejudice*" correspondence it engaged in with the Athlete.
108. The Athlete submitted that the correspondence that WA asked to be removed from the record was used to issue the Decision and that its removal would cause a severe prejudice to the Athlete's right of defense. Moreover, the use of '*without prejudice*' does not automatically qualify all communications made alongside as privileged and the correspondence at stake was not exchanged between lawyers but between a lawyer and WA. Finally, the Athlete noted that WA itself also submitted "*strictly private and confidential*" correspondence under Exhibits R 8, 9 and 10. In addition, the Athlete did not oppose WA's filing of "*without prejudice*" correspondence.
109. On 22 February 2024, the CAS Court Office informed the Parties that the Panel had decided to dismiss WA's request to remove the Athlete's Exhibits 8, 9 and 12 from the record and, since the Athlete did not oppose WA's alternative request, allowed WA a short deadline to file the "*without prejudice*" correspondence it engaged in with the Athlete it sees fit. The Panel considered that since these exhibits are relevant documents for the case and WA also submitted "*strictly private and confidential*" correspondence under exhibits R 8, 9 and 10 to its Answer, there was no reason to remove exhibits 8, 9 and 12 of the record. Similarly, since the Athlete did not oppose, there was no reason for the Panel not to accept the filing of additional "*without prejudice*" correspondence related to the same matter.

IX. MERITS

110. In light of the submissions of the Parties, the Panel shall answer the following questions:
 - (a) Does WA have standing to be sued in the absence of WADA as a party?
 - (b) Is the Decision legally valid based on the applicable level of CAS' scrutiny?

A. WA's Standing to be Sued Alone

111. The Appellant contends that WA is the sole respondent in the present appeal, since only WA's decision was directly notified to him. The fact that WA is required to request WADA's approval before being able to accept the Athlete's Substantial Assistance Application and the fact that WA relied on WADA's disapproval to dismiss the Athlete's Substantial Assistance Application does not affect WA's standing to be sued alone in the present appeal.
112. WA in turn submits that, without WADA being a respondent, this CAS Panel is bound by WADA's decision not to approve the Substantial Assistance Application. The Decision makes it clear that a suspension for substantial assistance is only possible with the approval of WADA and that the Athlete's application could not proceed as a result of WADA's disapproval of the Substantial Assistance Application. WA therefore submits that the Appellant should have named WADA as an additional respondent in the present appeal, and that his failure to do so should necessarily lead the Panel to the conclusion that the present appeal be dismissed.
113. The Panel starts its examination by recalling that, according to settled CAS jurisprudence, the question of who has standing to be sued is a matter regarding the merits of the case implying that if WA's standing to be sued is denied, then the appeal must be dismissed (see MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, Commentary, Cases and Materials, under R48, no. 65; see also ATF 126 III 59; CAS 2020/A/7356, para. 63; CAS 2020/A/6694; CAS 2020/A/6922, para. 95; CAS 2016/A/4602; CAS 2015/A/4131, para 95; CAS 2009/A/1869; CAS 2008/A/1639, no. 26; CAS 2007/A/1329 & 1330).
114. The issue of standing to be sued refers to the party against whom an appellant must direct its claim in order to be successful; in addition, a party has standing to be sued if it is personally obliged by the "disputed right" at stake, i.e. if said party has some stake in the dispute because something is sought against it (CAS 2020/A/6922, para. 96; CAS 2022/A/8225, para. 75; CAS 2007/A/1329 & 1330, para. 27; CAS 2008/A/1620, para. 4.1; CAS 2007/1367, para. 37; and CAS 2012/A/3032 para. 42; see also see MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, Commentary, Cases and Materials, under R48, no. 65; HAAS U., Standing to Appeal and Standing to be sued, in: International Sport Arbitration, Bern 2018, p. 53-88, para. 1 with reference to other CAS jurisprudence).
115. CAS panels have also repeatedly decided that *"the question of standing to be sued [...] must be resolved on the basis of a weighting of the interests of the persons affected by said decision. The question, thus, is who [...] is best suited to represent and defend the will expressed by the organ of the association"* (CAS 2016/A/4787 para. 109; CAS 2015/A/3910, para. 138, endorsed by CAS 2016/A/4602, paras. 81 ff.; see also CAS 2021/A/8225, para. 76-77). It follows that when deciding who is the proper party to defend an appealed decision, CAS panels proceed by an analysis of the interests involved and by taking into account the role assumed by the association in the specific case (CAS 2020/A/7356, para. 64).
116. In order to assess who is/are the proper respondent(s) in the present matter, the Panel shall verify who is to take the responsibility for the decision under appeal.
117. The Panel first notes that the present appeal is directed against the Decision, and that the

Decision was issued by WA. Moreover, the Decision, that was rendered in a disciplinary or eligibility context, was issued in a “vertical dispute”. As a result, “*it is an undisputed principle that the proper party to defend the decision, and thus, having standing to be sued is the association that has issued the decision*” (HAAS U., Standing to Appeal and Standing to be sued, in: International Sport Arbitration, Bern 2018, p. 76-77, para. 43). Therefore, the Panel *prima facie* concludes the natural respondent in the present case is WA only.

118. The delicate issue in the present matter, however, is that the Decision was taken *per relationem*, i.e. on the exclusive and sole basis of the letter dated 6 November 2023 that WADA sent to WA and in which WADA exposes its decision – as well as its reasoning – not to approve the Athlete’s Substantial Assistance Application, as provided under Rule 10.7.1 (a) of the WA ADR. The relevant part of this provision states as follows:

“After an appellate decision under Rule 13 or the expiration of time to appeal, the Integrity Unit may only suspend a part of the otherwise applicable Consequences with the approval of WADA”.

119. Hence, following this provision, if WADA does not approve an athlete’s request for suspension based on substantial assistance, WA is required to dismiss it. This is exactly what occurred in the present case: WADA disapproved the Athlete’s Substantial Assistance Application on 6 November 2023, which led WA to dismiss the Substantial Assistance Application on 10 November 2023, with no other explanation than WADA’s disapproval of such application.
120. For the Panel to assess the impact of this specific characteristic of the present matter on the issue of standing, it is necessary to investigate the various elements before it, starting with the applicable WA ADR. Under Rule 13.2 of the WA ADR, the Decision is “*a decision to suspend (or not suspend) Consequences or to reinstate (or not reinstate) Consequences under Rule 10.7.1*” and therefore is appealable before the CAS. The Panel however notes that the WA ADR do not detail against whom an athlete needs to direct its appeal in the specific context where WADA has taken a preliminary decision in the lead up of the WA’s final decision.
121. The WA ADR – in line with the World Anti-Doping Code (“WADC”) – do not provide for other scenarios where an athlete may seek to challenge a preliminary question decided by WADA in the lead up to a final decision of a federation. In the rare situation where the WA ADR (or the WADC) do so, WADA’s participation within the dispute between an athlete and his/her federation is expressly provided for and organised. This is the case under Article 3.2.1 of the WA ADR, which states as follows:

“Analytical methods or Decision Limits that have been approved by WADA after consultation within the relevant scientific community or that have been the subject of peer review are presumed to be scientifically valid. Any Athlete or other Person seeking to challenge whether the conditions for such presumption have been met or to rebut this presumption of scientific validity will, as a condition precedent to any such challenge, first notify WADA of the challenge and the basis of the challenge. The initial hearing body, appellate body or CAS may also (on its own initiative) inform WADA of any such challenge. Within ten days of WADA’s receipt of such notice and the case file related to such challenge, WADA will also have the right to intervene as a party, appear as amicus curiae or otherwise provide evidence”.

122. The fact that the WA ADR do not provide or organise WADA’s participation in the context of

an appeal against a decision under Rule 10.7.1 (a) of the WA ADR is, in the Panel's view, a further indicator that WADA did not consider itself as a proper respondent in such context.

123. The Panel further notes that, based on Rule 1.1.2 of the WA ADR, “[t]hese *Anti-Doping Rules* must be interpreted as an independent and autonomous text and not by reference to the existing law or statutes of any Signatory or government”. As a result, the Panel is prevented from falling back on Swiss law, Monegasque law or apply general legal principles.

124. Absent any national legal framework to consult in order to determine the proper defendant in this appeal procedure, the Panel turns to other sources of information in order to assess who is – according to the WA ADR – the proper defendant of the decision in dispute. This is also in line with CAS jurisprudence. In CAS 2015/A/3910 (no. 138) the Panel applied the following criteria to determine the appropriate defendant:

“[...] the Panel holds that [...] the question of standing to be sued [...] must be resolved on the basis of a weighting of interest of the persons affected by said decision. The question thus is who is best suited to represent and to defend the will expressed by the organ of the association”.

125. In the context of the balancing exercise, the Panel holds it appropriate to take also into account the understanding of the stakeholders at the time the decision in question was issued. Neither the Decision nor WADA's letter attached thereto indicate that an appeal must be lodged against WA and WADA. In its Decision, WA equivocally stated that “*Mr Schwazer has a right of appeal to CAS in accordance with Rule 13.2 of the Rules (together with the organisations that are copied on this correspondence)*” [i.e. NADO Italia and WADA]. In its letter dated 6 November 2023, WADA in turn stated that “*This decision of the AIU will be appealable in accordance with Code article 13.2 and shall be notified to all parties with a right of appeal*”. Quite the contrary. WADA's letter rather provides an indication that WADA considered that it should only be notified of WA's decision based on its right to appeal. In the Panel's view, contrary to WA's contention, there is thus no indication that the Athlete should have included WADA as respondent.

126. Finally, the Panel also notes that CAS panels have repeatedly confirmed that “*no order for relief can be granted which affects the rights and legitimate interests of absent third parties*” (CAS 2020/A/7061, para. 125; CAS 2019/A/6334, par. 57; CAS 2020/A/6713). The Panel indeed notes that nothing is sought against WADA and the Award will have no direct implication whatsoever on WADA.

127. That said, despite the above indicators, the Panel, for the reasons exposed hereafter, considers that the question whether WA has standing to be sued in the present proceedings in the absence of WADA as respondent will not change the outcome of the present procedure and, therefore, does not necessarily need to be answered.

B. The applicable Level of Scrutiny by the CAS and Application to the Case at hand

(a) The Position of the Parties

128. The Appellant submits that, based on CAS case law, this Panel is allowed to set aside the

Decision because it is the result of an abusive exercise of discretionary power by WA and WADA. In the Athlete's view, the justifications contained in WADA's letter are not legally valid reasons for dismissing his application and/or are factually wrong. With respect to (a) in WADA's letter dated 6 November 2023, the Athlete submits that only the seriousness of his 2016 ADRV shall be taken into consideration for the assessment of his Substantial Assistance Application, not earlier ADRVs, and that the Bolzano Decision should have been taken into account. With respect to (b) in WADA's letter dated 6 November 2023, the Athlete contends that he merely exercised his right to defend himself as well as his freedom of speech and that the exercise of his rights in good faith cannot legitimately support a dismissal of his Substantial Assistance Application. Finally, with respect to (c) of WADA's letter of 6 November 2023, the Athlete notes that he provided the requested additional information and that he did not disclose any sensitive information to the press. In addition, the Athlete contends that this Panel has the power to issue a new decision replacing the Decision in case of abuse of discretionary power or otherwise unreasonable exercise of discretion. The Athlete submits that the Panel should find that he provided substantial assistance and that the balance between the seriousness of his ADRV and the significance of the substantial assistance he provided to WA should lead the Panel to decide that the remaining period of his ineligibility period be entirely suspended.

129. WA in turn submits that, as confirmed by CAS case law, there is no right to a suspension of sanction for substantial assistance, which is characterized as a “*mesure de clémence*”, and that, in any event, WADA exercised its discretion in a reasonable and proper manner, the grounds for its decision being stated in a clear manner in its letter dated 6 November 2023 attached to the Decision.

(b) *The Position of the Panel*

(i) The Level of Scrutiny Exercised by the CAS

130. The provision at the centre of the dispute is Rule 10.7.1 (a) of the WA ADR, which provides as follows:

“10.7.1 Substantial Assistance in discovering or establishing violations

- (a) Prior to an appellate decision under Rule 13 or the expiration of the time to appeal, the Integrity Unit may suspend a part of the Consequences (other than Disqualification and mandatory Public Disclosure) imposed in an individual case where the Athlete or other Person has provided Substantial Assistance to an Anti-Doping Organisation, criminal authority or professional disciplinary body that results in: (i) the Anti-Doping Organisation discovering or bringing forward an anti-doping rule violation by another Person; or (ii) a criminal or disciplinary body discovering or bringing forward a criminal offence or the breach of professional rules committed by another Person and the information provided by the Person providing Substantial Assistance is made available to the Integrity Unit or other Anti-Doping Organisation with Results Management responsibility; or (iii) WADA initiating a proceeding against a Signatory, WADA-accredited laboratory, or Athlete passport management unit (as defined in the International Standard for Laboratories) for non-compliance with the Code, International Standards or Technical Documents; or (iv) a criminal or disciplinary body bringing forward a criminal offence or the breach of professional or sport rules arising out of a sport integrity violation other than doping (provided*

that, for this point (iv) to apply, the Integrity Unit must have first obtained WADA's approval). After an appellate decision under Rule 13 or the expiration of time to appeal, the Integrity Unit may only suspend a part of the otherwise applicable Consequences with the approval of WADA.

The extent to which the otherwise applicable period of Ineligibility may be suspended will be based on the seriousness of the anti-doping rule violation committed by the Athlete or other Person and the significance of the Substantial Assistance provided by the Athlete or other Person to the effort to eliminate doping in sport, non-compliance with the World Anti-Doping Code, and/or sport integrity violations. No more than three quarters of the otherwise applicable period of Ineligibility may be suspended. If the otherwise applicable period of Ineligibility is a lifetime, the non-suspended period under this Rule must be no less than eight years. For purposes of this paragraph, the otherwise applicable period of Ineligibility will not include any period of Ineligibility that could be added under Rule 10.9.3(b)” [emphasis from the author].

131. The Panel notes that in the context of the present matter, the Substantial Assistance Application was filed after the 2016 CAS Award was rendered; as a result, in accordance with the second sentence of Rule 10.7.1 (a), WA may only suspend a part of the Athlete’s ineligibility period with the approval of WADA.

132. The Panel also examined whether the comment to Rule 10.7.1 of the WA ADR – which, in accordance with Rule 1.1.2 of the WA ADR, is “*used as an aid to the interpretation of these Anti-Doping Rules*” – is of any avail in the present matter. The Comment provides as follows:

“Comment to Rule 10.7.1: The cooperation of Athletes, Athlete Support Personnel and other Persons who acknowledge their mistakes and are willing to bring other anti-doping rule violations to light is important to clean sport. Where the Integrity Unit declines to exercise the discretion conferred on it by Rule 10.7.1, and the matter comes before a hearing panel under Rule 8 or an appeal panel under Rule 13, the hearing panel/ appeal panel (as applicable) may exercise such discretion if the conditions of Rule 10.7.1(a) are satisfied and the panel sees fit. Alternatively, the hearing panel/ appeal panel may consider a submission that the Integrity Unit, in exercising its discretion under Rule 10.7.1, should have suspended a greater part of the Consequences” [emphasis from the author].

133. In the Panel’s view, the second sentence of this Comment, which allows a CAS panel to exercise discretion on a request based on Rule 10.7.1 of the WA ADR, does not apply in the present matter. This sentence indeed allows a CAS panel to substitute for AIU’s discretion in cases where WADA did exercise its discretion, which appears not to be the case in the present matter since in the present matter WADA decided not to approve the Athlete’s Substantial Assistance Application. As a result, the Comment to Rule 10.7.1 does not appear to be of any assistance in the determination of the level of scrutiny exercised by this Panel.

134. The Panel then considered the CAS case law regarding substantial assistance cases. The nature of an association’s decision in a matter of substantial assistance was defined as follows by a CAS panel:

“[i]l n’y a donc pas un droit automatique pour l’athlète qui a fourni une aide – même substantielle – à obtenir cette réduction, mais un pouvoir discrétionnaire pour l’instance de décision, d’apprécier si l’aide est substantielle et, si elle l’est, si cette aide peut justifier et dans quelle proportion, l’obtention d’une réduction. C’est donc en

fonction de chaque cas d'espèce que ce pouvoir d'appréciation doit s'exercer. [...] Il n'y a pas un droit à obtenir une réduction, mais un pouvoir discrétionnaire de l'accorder ou de ne pas l'accorder, même en présence d'une aide substantielle. Mais il importe alors de justifier que ce refus n'est pas entaché d'une erreur manifeste d'appréciation, soit en raison des circonstances particulières du cas d'espèce (attitude particulièrement équivoque de l'athlète par exemple), soit en raison d'un intérêt supérieur de la lutte contre le dopage (l'infraction commise par l'athlète apparaît tellement grave qu'il ne serait pas concevable de le faire bénéficier de mesures de clémence) (TAS 2007/A/1368 para. 28-29).

[Free Translation: “[t]here is therefore no automatic right for an athlete who has provided assistance - even if substantial - to obtain a reduction, but a discretionary power for the decision-making body to assess whether the assistance is substantial and, if so, whether this assistance can justify, and in what proportion, obtaining a reduction. This discretion must be exercised on a case-by-case basis. [...] There is no right to obtain a reduction, but rather a discretionary power to grant or withhold it, even in the presence of substantial assistance. However, it is important to justify that this refusal is not vitiated by a manifest error of assessment, either because of the particular circumstances of the case (a particularly equivocal attitude on the part of the athlete, for example), or because of an overriding interest in the fight against doping (the offence committed by the athlete appears so serious that it would be inconceivable to grant him leniency)”.

135. More recent CAS panels also repeatedly confirmed that “[i]n the determination of such reduction, the disciplinary body enjoys a discretionary power (TAS 2007/A/1368, at § 98). [...]” (CAS 2009/A/1817 & 1844, para. 67-68; see also CAS 2017/A/5000 para. 53; CAS 2021/A/8296, para. 88).
136. Similarly, in the matter CAS 2016/A/4772, which was rendered in a different context but still concerned a CAS panel’s exercise of power of review over an association’s decision made in the exercise of its discretion, the CAS panel similarly found that “*courts should not lightly exercise their power of review over the association’s decisions made in the exercise of such discretion, especially in cases in which sports governing bodies have special expertise and experience in relation to their respective sport*” and that “*appeals may still be permitted on the ground that the decision was arbitrary, grossly disproportionate, irrational or perverse or otherwise outside of the margin of discretion, or taken in bad faith or without the due process rights provided to the athlete*” (CAS 2016/A/4772, para. 101-102). In the Panel’s view, a decision fulfilling any of the above criterion would be the expression of the authority’s abuse of discretionary power.
137. The Panel agrees with the view expressed in the above-mentioned cases and sees no reason to deviate from it in the context of the present matter. The Panel highlights that an association’s discretionary power under Rule 10.7.1 of the WA ADR (or any equivalent provision) is threefold. It relates to the issue of (i) first, whether the assistance provided by the athlete is substantial or not; (ii) second, whether the provided substantial assistance can justify obtaining a suspension of the period of ineligibility; and (iii) third, the proportion of the suspension that should be granted. Furthermore, for an athlete to be able to assess whether the association exercised its discretionary power in a proper manner, the association shall state the grounds for its determination in its decision.
138. This Panel’s deference to WA’s decision on the matter, as expressed in the Decision, is furthermore in line with a recognition of the freedom of an association to “govern” the relations with its members and their athletes, obviously within the limits of the applicable rules. This

principle is, however, far from excluding or limiting the power of a CAS Panel to review the facts and the law involved in the dispute heard (pursuant to Article R57 of the CAS Code): it only means that a CAS Panel would not easily “tinker” with a well-reasoned decision (CAS 2021/A/8296 para. 89 and the references included therein).

139. The Panel therefore finds that it should refrain from reviewing too lightly an association’s decision made in the exercise of its discretion like the decisions rendered under Rule 10.7.1. of the WA ADR. The Panel shall limit its review to the question of whether the Decision at stake is reasoned and whether the reasons stated therein are not vitiated by a manifest error of assessment or are otherwise the expression of the authority’s abuse of power.

(ii) *Application to the Decision*

140. Before delving into the review of the Decision based on the above-mentioned principles, the Panel shall make some preliminary remarks.
141. First, the Panel shall address the issue of the burden of proof. Following the principle “*actori incumbit probatio*” which is applicable in CAS arbitration, any party wishing to prevail with respect to a disputed issue must discharge its “burden of proof”, *i.e.* it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue.
142. In light of the foregoing, the Panel notes that the Athlete has the burden to give evidence of the facts on which his claim has been based. The Athlete is seeking to establish that the Decision was wrong; it is therefore for the Athlete to convince the Panel in that respect.
143. Second, the Panel also notes that the Decision rendered under Rule 10.7.1 of the WA ADR is the expression of the discretionary power of WA. The Panel of course notes that, in accordance with Rule 10.7.1 (a) of the WA ADR, once a final decision on the sanctioning of an athlete’s ADRV is taken, WA may only suspend part of an athlete’s ineligibility period with the approval of WADA. Hence, since WADA decided not to approve the Substantial Assistance Application, WA issued the Decision in which it referred to Rule 10.7.1 (a) of the WA ADR and to WADA’s decision not to approve the Athlete’s request. It remains however that the Decision that was issued to the Athlete is the sole responsibility of WA.
144. Third, the Panel shall base its scrutiny on the grounds that are contained in the Decision. Unexpressed grounds cannot be considered. However, this does not mean that the Panel cannot consider the grounds that were included in WADA’s letter dated 6 November 2023. Since the Decision expressly refers to WADA’s letter of 6 November 2023, a copy of which is attached to the Decision, when examining the Decision, the Panel is led to indirectly examine the grounds which WADA referred to in its letter dated 6 November 2023.
145. The Panel starts its examination by recalling that, in the context of Rule 10.7.1 of the WA ADR, WADA – and, in case of WADA’s approval, WA – indeed has the authority to assess on a case-by-case basis (i) whether the assistance provided by the Athlete is substantial and, if so, (ii) whether this assistance can justify obtaining a suspension of the Athlete’s ineligibility period

and finally, if so, (iii) in what proportion. There is thus no automatic right for the Athlete to obtain the requested suspension even if the conditions provided in the WA ADR are fulfilled. Considering the above-mentioned CAS case law on the review of discretionary decisions, the Panel's review in the context of the present appeal proceedings is limited to verifying whether the Decision is vitiated by a manifest error of assessment or is otherwise the expression of WA's (or WADA's) abuse of power.

146. The Panel will now go through the arguments put forward by the Athlete and assess the Decision based on the above.

➤ **The Athlete's ADRVs**

147. WADA's letter dated 6 November 2023, under subsection (a), states as follows:

- “a. The Athlete's own ADRVs are in themselves so serious as to not warrant any suspension of his period of ineligibility under Substantial Assistance. As evidenced by the below, the Athlete has repeatedly violated the anti-doping rules throughout his career:*
- On 30 July 2012, the Athlete attempted to subvert the doping control process and committed an ADRV under Article 2.3 of the 2009 World Anti-Doping Code;*
 - On the same date, the Athlete returned an adverse analytical finding for recombinant erythropoietin, a potent prohibited substance, which he admitted having repeatedly injected himself with in the spring and summer of 2012;*
 - The Athlete admitted to having repeatedly used testosterone, a non-specified anabolic agent, in 2011;*
 - On 1 January 2016, the Athlete returned an adverse analytical finding for testosterone. This violation was found by the CAS to constitute an intentional violation and sanctioned with a period of ineligibility. The Athlete has, to this day, not provided any credible explanation for the presence of this non-specified anabolic agent in his body”.*

148. The Athlete argued with respect to the reasoning under subsection (a) of WADA's letter dated 6 November 2023 that WA (i) wrongly considered the information regarding the Athlete's anti-doping rule violations occurred in 2011/2012, and (ii) failed to take into consideration the fact that, in the Bolzano Decision, it was decided that the Athlete did not commit the offence of doping in 2016.

149. As to the first point, the Panel notes that a CAS panel already decided with respect to another athlete that *“the WADA Substantial Assistance Decision concerns the Appellant's Second ADRV and it is therefore the seriousness of the Second ADRV that is relevant in this case. It therefore follows that the Appellant's First ADRV is of no pertinence to the case at hand”* (CAS 2017/A/5000, para. 55).

150. The Athlete argued that based on the above case law, only the seriousness of the ADRV that relates to the sanction for which the suspension is requested is relevant for the purpose of a request for suspension for substantial assistance.

151. The Panel first notes that the cited case law does not directly concern the association's discretionary decision of whether the athlete's assistance *can justify* obtaining a suspension or not, but rather the assessment - under the second paragraph of (the equivalent provision to) Rule 10.7.1 (a) of the WA ADR - of the *extent* of the suspension that is already considered as justified. The WADA letter dated 6 November 2023 makes it indeed clear that in the present case "[e]ven assuming that this information qualifies for Substantial Assistance, WADA considers, for the reasons set out below, that the Athlete should not receive any suspension of his period of ineligibility".
152. In the Panel's view, it appears only reasonable for an association to consider – as was stated in the above-mentioned CAS matter TAS 2007/A/1368 – that if an athlete's ADRV history is so serious, it would be contrary to the overriding interest of the fight against doping to grant to that athlete any suspension. Similarly, the WADA Guidelines for the 2021 International Standard for Result Management also provide that "*the RMA [i.e. the Results Management Authority] should also be satisfied that the Athlete or other Person has provided a full and frank disclosure of all previous ADRVs*" (WADA Guidelines for the 2021 International Standard for Result Management, p. 108).
153. The Panel therefore finds that, in the context of the present matter, the consideration that "*an athlete's own ADRVs are in themselves so serious as to not warrant any suspension of his period of ineligibility under Substantial Assistance*" is not the expression of an abuse of power or a manifest error of assessment.
154. Indeed, noting that the Athlete is currently serving an eight-year period of ineligibility, which was immediately preceded by a three-years and nine-months period of ineligibility, the Panel considers the conclusion justified that the Athlete's ADRV history is very serious.
155. As to the second point, the Panel cannot follow the Athlete when he argues that the Bolzano Decision must be taken into consideration in the evaluation of his past conduct. The Panel is obviously not bound by the Bolzano Decision which concerns criminal proceedings that were conducted by criminal courts in Italy under the Italian Penal Code. Moreover, the Athlete's request for revision of the 2016 CAS Award, under Article 190a, para. 1 (b) of the PILA, was dismissed by the SFT in 2021. As a result, there is clearly no ground for concluding that not taking into consideration the Bolzano Decision is a manifest error of assessment or otherwise demonstrates an abuse of discretionary power on WA's (or WADA's) side.

➤ **The Athlete's Alleged Lack of Cooperation**

156. WADA's letter dated 6 November 2023 provides under subsection (c), as follows:
 - "c. WADA also notes that the Athlete has not been fully transparent and cooperative throughout his Substantial Assistance application. By way of example:
 - The Athlete did not specifically address a number of the requests made by WADA relating to how he discovered [V.]'s breach of ineligibility.

- *Despite numerous requests, the Athlete has failed to provide WADA with the originals of all pictures that he provided to the AIU.*
 - *The Athlete also failed to provide WADA with documents related to his previous anti-doping rule violations in Italy; he apparently chose to do this because a lawyer affiliated to NADO-Italia, who happens to sit on WADA's Legal Expert Advisory Group, had access to those documents.*
 - *The Athlete has admitted to intentionally breach the confidentiality of the results management process in connection with his Substantial Assistance application, with the specific objective of putting pressure on World Athletics and WADA during the course of their respective assessment of his applications. This is not only a breach of the confidentiality requirements under the applicable rules, but could potentially even amount to a tampering violation”.*
157. The Athlete argues that WADA’s statement is too generic and that, in any event, he replied to all the requests made by WADA in the course of the substantial assistance process. The Athlete also contended that he did not breach any duty of confidentiality since no sensitive information was provided to the media nor did he commit any tampering violation since he did not put any pressure on WA and WADA.
158. In the Panel’s view, it appears only legitimate for WA (and WADA) to take into consideration the Athlete’s cooperation throughout the substantial assistance process in its determination of whether the assistance provided by the Athlete can justify suspension of part of the Athlete’s ineligibility period. In fact, the Athlete’s full cooperation in the substantial assistance process is required in order for the assistance provided to qualify as substantial, under the definition of the term “substantial assistance” in the WA ADR. The Panel has carefully reviewed the exchange of correspondence between the Athlete, WA and WADA and came to the conclusion that there is no proof of a manifest error of assessment nor otherwise abuse of discretionary power on WA’s (or WADA’s) side. The record rather shows, for instance, that the Athlete provided only basic information on his previous ADRVs and that he refused to provide further information relating to the source of the information provided.
159. In particular, with respect to the information relating to the Athlete’s previous ADRVs, the Panel notes that the WADA Guidelines for the 2021 International Standard for Result Management provide that “*no RMA should agree to suspend Consequences unless it is satisfied that the Athlete or other Person has provided a full and frank disclosure of all of the facts surrounding the ADRV committed by the Athlete or other Person*” and that “*the RMA should also be satisfied that the Athlete or other Person has provided a full and frank disclosure of all previous ADRVs*” (WADA Guidelines for the 2021 International Standard for Result Management, p. 108).
160. With respect to the Athlete’s breach of confidentiality, the Panel notes that according to Article 4.1 of the 2021 International Standard for Result Management, “[s]ave for disclosures, including Public Disclosure, that are required or permitted under Code Article 14 or this International Standard, all processes and procedures related to Results Management are confidential”. Moreover, the Athlete accepted that he revealed elements regarding his ongoing substantial assistance process (for instance, the fact that WADA requested additional information on 28 April 2023) to the media, in particular to the *Gazzetta dello Sport* in July 2023, which is indeed contrary to the above provision.

161. In light of the above considerations, the Panel finds that the Athlete did not demonstrate that by concluding that “*the Athlete has not been fully transparent and cooperative throughout his substantial assistance application*”, WA (or WADA) committed a manifest error of assessment nor otherwise abused of its discretionary power.

➤ **The Athlete’s Public Statements**

162. WADA’s letter dated 6 November 2023 provides under subsection (b), as follows:

“b. The Athlete, as well as certain of his entourage and representatives, have made public comments that World Athletics and/or the Cologne Laboratory and/or WADA (respectively their staff members) were involved in a conspiracy to manipulate the urine sample collected on 1 January 2016 so that it would test positive. These public statements, which are devoid of any truth, have the potential to undermine the credibility and reputation of these three organizations and to cause significant damage to the fight against doping”.

163. The Athlete argued with respect to the reasoning under subsection (b) of WADA’s letter dated 6 November 2023 that the fact of an athlete making public statements is not a criterion provided under Rule 10.7.1 (a) of the WA ADR and that the above statement in WADA’s letter – besides not being sufficiently precise so as to allow the Athlete to defend himself – also refers to statements made by persons other than the Athlete which should not be taken into account for his Substantial Assistance Application. Finally, the Athlete contends that by reporting publicly on the Bolzano Decision, he merely exercised his freedom of speech.
164. The Panel first notes that WADA indicated in its letter dated 6 November 2023, that the Athlete’s public statements on his case were essentially contained in a Netflix series, Italian media articles and even in a book of the Athlete’s trainer. In addition, WADA specified that the comments concerned the allegation that “*World Athletics and/or the Cologne Laboratory and/or WADA (respectively their staff members) were involved in a conspiracy to manipulate the urine sample collected on 1 January 2016 so that it would test positive*”. In the Panel’s view, there is no doubt that WADA sufficiently identified the Athlete’s alleged offensive conduct, which allowed the Athlete to defend himself in the framework of the present proceedings.
165. Second, the Panel recalls that when deciding whether the assistance provided by an athlete *can justify* suspension of part of his/her ineligibility period, the concerned association exercises a discretionary power, which is not dictated by specific criteria expressly provided for in the applicable rules.
166. The Panel, however, finds that the mere fact of an athlete exercising his/her right of defense should not as such prevent an athlete from obtaining a suspension for substantial assistance. Similarly, public comments made by persons other than the athlete who are not acting as representatives of the latter, should not as such prevent an athlete from obtaining a suspension for substantial assistance.
167. Despite the above, in the context of the present matter especially considering the Panel’s assessment of the other grounds for the Decision, the Panel is of the view that there are not

enough elements on the record to conclude that the Decision is the result of an abuse of discretionary power or a manifest error of assessment on the side of WA or WADA.

➤ **The Value of the Assistance Provided**

168. In paragraph 11 of its letter dated 6 November 2023, WADA also stated as follows:

“[...] It bears recalling that the suspension of a period of ineligibility for Substantial Assistance is a discretionary remedy that is intended to reward athletes and other persons who have made a positive contribution to the fight against doping. Whereas the Athlete did bring to the attention of the AIU a breach of ineligibility (which ultimately led to no new sanction), any possible benefit to the fight against doping has been significantly outweighed by the damage caused by his repeated ADRVs and the above-mentioned allegations of a conspiracy against him implicating the AIU, the Cologne Laboratory and WADA”.

169. In this respect, the Athlete generally argued that the assistance he provided to AIU and WADA was substantial as it led to the opening of an investigation by the AIU and the confession by V. The Athlete also indicated that the information he provided not only concerned multiple violations committed by V. but also involved indirectly a considerable number of individuals with whom V. was in extremely close sport-relationship; and that V. is a high-level [...] who collaborates with highest-level athletes.

170. The Panel notes that, in paragraph 11 of its letter, WADA still addresses the issue of whether the assistance provided by the Athlete *can justify* the granting of any suspension to the Athlete, which the Panel recalls is a discretionary decision. The Panel shall therefore not enter the examination of the significance of the substantial assistance provided by the Athlete, which rather serves the assessment of the *extent* of the suspension an athlete would deserve.

171. The Panel notes that nothing prevents WA (or WADA) from taking into account - among the other factors provided in the letter dated 6 November 2023 - the fact that the information gathered constituted “open-source materials” and that the breach of ineligibility “ultimately led to no new sanction”. In the Panel’s view, it even appears reasonable to take those factors into account in order to balance the possible benefit for the fight against doping with the damage caused by the Athlete’s repeated ADRVs. The Panel therefore finds that the Athlete did not demonstrate that WA (or WADA) committed a manifest error of assessment or otherwise abused its discretionary power.

➤ **Abnormal Delays in the Substantial Assistance Process**

172. The Athlete also argued that it took more than two years for the Athlete to receive a decision on his Substantial Assistance Application and that, by delaying the substantial assistance process, in particular by making dilatory requests for additional information, WA and WADA abused their discretionary power.

173. The Panel indeed notes that the Athlete initially reported to WADA information regarding V. on 17 July 2021, as well as to the AIU by email. After a long investigation by the AIU (for which the Athlete also provided additional information on 7 June 2022), on 4 October 2022, V.

admitted to violating the prohibition on participation during ineligibility. On 17 January 2023, upon WA's invitation to do so, the Athlete formally requested 50% suspension of his ineligibility period based on the assistance provided in the matter regarding V. It is only on 30 March 2023 that WADA received a request to approve the Athlete's Substantial Assistance Application. On 28 April 2023, WADA requested additional information from the Athlete, which triggered various exchanges of correspondence between the Athlete and WADA. It is thus more than two years after the initial report, i.e. on 6 November 2023, that WADA issued its decision not to approve the Athlete's Substantial Assistance Application, and that WA issued to the Athlete its decision denying the Substantial Assistance Application on 10 November 2023.

174. The Panel notes – and both Parties accept – that the substantial assistance process was abnormally long in the case of the Athlete. The Panel however also notes that the Athlete never brought a claim in view of forcing WA and WADA to render a decision on his Substantial Assistance Application while the process was still ongoing. Moreover, the record shows that during the substantial assistance process, the Athlete and WADA had numerous exchanges of views, in particular on additional requested information.
175. The Athlete argued that WADA's request for additional information was purely dilatory. In the Panel's view, nothing prevents WADA from reviewing the matter in the process of making its own determination on whether or not it should approve a suspension request for substantial assistance. WA and WADA thus have the discretionary power to reasonably determine the steps they wish to take to reach determination under Rule 10.7.1 (a) of the WA ADR.
176. In addition, in the Panel's view, the Athlete did not demonstrate that WADA's request for additional information on 28 April 2023 was the expression of an abuse of discretionary power. It is evident from the review of the correspondence between the Athlete and WADA as well as the grounds stated in WADA's letter dated 6 November 2023 that the additional requested information enabled WADA to reach determination on the Athlete's Substantial Assistance Application. Considering the Panel's assessment of WADA's grounds for denying the Athlete's Substantial Assistance Application, the Panel is of the view that there is no proof on record that WADA's request for additional information was the expression of an abuse of discretionary power or the result of a manifest error of assessment.

C. Conclusion

177. In light of the above considerations, the Panel finds that the Decision, which relies on the grounds exposed in WADA's letter dated 6 November 2023, is not the result of a manifest error of assessment or abuse of discretionary power. As a result, the Panel finds that the Decision shall be confirmed and the Athlete's appeal dismissed.
178. In light of the above conclusion, the Panel does not need to further address the Athlete's arguments relating to the extent of the suspension he requests, and that all other submissions are dismissed.

X. COSTS

179. The Athlete contends that the present procedure falls under Article R65 of the CAS Code since it is directed against a decision of the AIU that is competent in disciplinary matters, and under Rule 10 of the WA ADR which is entitled “*Further sanctions on Individuals*”. WA, in turn, argued that Article R65 of the CAS Code does not apply since the Decision did not impose a sanction on the Athlete, but rather only decided on suspension of part of that existing sanction. In light of the objection by the Athlete, the Panel shall, in accordance with Article R65 of the CAS Code, make a determination on this issue.
180. Article R65.1 of the CAS Code provides as follows:

“This Article R65 applies to appeals against decisions which are exclusively of a disciplinary nature and which are rendered by an international federation or sports-body. It is not applicable to appeals against decisions related to sanctions imposed as a consequence of a dispute of an economic nature. In case of objection by any party concerning the application of Article R64 instead of R65, the CAS Court Office may request that the arbitration costs be paid in advance pursuant to Article R64.2 pending a decision by the Panel on the issue”.
181. It follows from the wording of Article R65 of the CAS Code that the conditions for an appeal to be free of costs is that it is directed against i) a decision which is ii) of exclusively of a disciplinary nature iii) issued by an international federation or sports-body.
182. The second sentence of Article R65 of the CAS Code also specifies that this provision does not apply to appeals “*related to **sanctions** imposed as a consequence of a dispute of an economic nature*” (emphasis added).
183. The use of the word “sanction(s)” makes it clear that the object of the appeal must be a disciplinary sanction.
184. While it is undisputed that the Decision was issued by an international federation or sports-body, the Panel does not consider that the present dispute is of an exclusive disciplinary character. In the Panel’s view, the object of the present appeal is not to define the disciplinary sanction which is to be imposed on the Athlete. This was the object of the Athlete’s case in the matter *CAS 2016/A/4707 Alex Schwazer v. IAAF, NADO Italia, FIDAL & WADA*, which was definitively decided upon in the 2016 CAS Award. The present appeals proceedings are directed against the decision not to suspend part of the Athlete’s ineligibility period for substantial assistance; as such, the Decision did not modify the disciplinary sanction imposed upon the Athlete under the 2016 CAS Award; nor does it constitute a new disciplinary sanction against him.
185. It is true that the provision in question here (Article 10.7.1 of the WA ADR) deals with “sanctions”. However, whether a decision qualifies as a sanction is not a matter of wording, but of contents. A decision is disciplinary in nature if it imposes adverse effects to an individual in reaction to the latter’s breach of rules and/or obligations. No breach of rules/obligations is in dispute here. The decision not to suspend part of the existing period of ineligibility of the Appellant is not aimed at sanctioning an illicit behaviour of the Athlete. The nature of the substantial assistance decision rendered in the present case, does not have any sanctioning

character as it is not intended to punish the Appellant.

186. The appealed decision at stake is rather dealing with an issue of eligibility: the Athlete who is ineligible to compete by virtue of the 2016 CAS Award, is seeking to become eligible to compete again by filing a substantial assistance request.
187. In view of the above, the Panel finds that the present matter does not qualify as “*exclusively of a disciplinary nature*” within the meaning of Article R65 of the CAS Code. The present proceedings are therefore governed by Article R64 of the CAS Code.
188. Article R64.1 of the CAS Code provides as follows:

“In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties”.

189. (...).

190. (...).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Alex Schwazer on 11 December 2023 against World Athletics with respect to the decision rendered by the Athletics Integrity Unit on 10 November 2023 is dismissed.
2. The decision rendered by the Athletics Integrity Unit on 10 November 2023 is confirmed.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.