CAS 2023/A/10022 Carina Horn v. World Athletics – Athletics Integrity Unit

ARBITRAL AWARD

rendered by

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Ms Carine Dupeyron, Attorney-at-Law in Paris, France

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

Mr Romano F. Subiotto KC, Avocat in Brussels, Belgium, and Solicitor-Advocate in London, United Kingdom

in the arbitration between

Ms Carina Horn, South Africa

Represented by Mr Sanjay Patel and Mr Elliott Cook, 4 Pump Court, London, United Kingdom, and by Ms Disa Greaves and Mr Adam Flacks, LK Law LLP, London, United Kingdom

-Appellant-

and

World Athletics – Athletics Integrity Unit, Monaco

Represented by Ms Louise Reilly and Mr Nicolas Zbinden, Kellerhals Carrard, Lausanne, Switzerland

-Respondent-

I. THE PARTIES

1. Ms Carina Horn (the "Athlete" or the "Appellant") is a 35-year-old South African professional sprinter, former African champion and eight-time national champion.

2. World Athletics – Athletics Integrity Unit (the "AIU" or the "Respondent") is the International Federation governing the sport of Athletics worldwide and is seated in Monaco. The AIU has specifically been delegated full authority by World Athletics to oversee the sport's integrity issues.

3. The Appellant and the Respondent are referred individually as a "Party" and collectively as the "Parties".

II. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the Parties' written submissions and evidence. Additional facts and allegations found in the Parties' written submissions and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

5. The dispute arises out of the implementation by the AIU (on behalf of World Athletics) of a decision taken by a body that is not a Signatory to the code of the World Anti-Doping Agency (respectively "WADA" and the "WADA Code"), in accordance with Rule 17.3 of the World Athletics Anti-Doping Rules ("WA ADR").

6. The Athlete appeals the AIU's decision dated 2 August 2023 to implement the resolution of the Director of Physical Activity and Sports of the Basque Government (the "Basque Director") dated 13 March 2023, which found the Athlete to have committed a breach of the anti-doping rule under Article 23.1 of the Basque Law 12/2012 (the "Basque Law") as a result of the presence of clenbuterol in her in-competition urine samples taken on 18 June 2022 in Ordizia, Spain, whilst competing at the VI Gran Premio Ordizia – Jose Antonio Peña International Meeting on 18 June 2022 (the "Basque Competition").

7. In this regard, the Basque Director imposed on the Athlete a period of ineligibility of six years starting from 13 March 2023, and the annulment of her results obtained at the Basque Competition under Article 24 of the Basque Law.

8. The specific facts of the case are as follows.

9. On 18 June 2022, Ms Horn attended the Basque Competition, during which the Basque Anti-Doping Agency ("BADA") subjected Ms Horn to an anti-doping control for purposes of the competition.

10. On 6 July 2022, BADA informed the Athlete that the urine sample she gave (the "A Sample") resulted in an Atypical Analytical Finding ("ATF") and confirmed the presence of clenbuterol, a prohibited substance, in a concentration lower than 5 ng/mL. BADA thus requested Ms Horn, in compliance with the Technical Document of the WADA-AMA TL23 ("Letter TL23"), to provide by 12 July 2022 "*the allegations and evidence that* [the Ahtlete deems] *appropriate to prove that the presence of a Clenbuterol concentration of less than 5 ng/mL may be due to the use of contaminated meat,*" which she had suggested could have been the source of her ATF. This date was later postponed to 26 July 2022 by BADA.

11. On 26 July 2022, the Athlete sent BADA a letter indicating that:

- BADA had not complied with the WADA Stakeholder Notice Regarding Potential Meat Contamination Cases of 1 June 2021 (the "Stakeholder Notice") under which a further urine sample must be taken;
- Ms Horn lacked the necessary funds to conduct thorough investigations;
- Of the venues that provided information on the countries of origin of the meat products consumed by the Athlete, none confirmed that they originated from China, Guatemala or Mexico (where clenbuterol is used as a growth promoter for livestock);
- Not all venues and suppliers have been responsive or cooperative regarding the origin of their products; it therefore remains possible that Ms Horn consumed clenbuterol contaminated meat; and
- Illegal clenbuterol contamination cannot be ruled out in other countries where the Athlete consumed meat.

12. On 29 July 2022, BADA informed the Athlete that the allegations and evidence she provided "*did not conclusively prove that the concentration of Clenbuterol could be due to the consumption of contaminated meat*", and that consequently her ATF "*is now considered an Adverse Analytical Finding*" ("AAF").

13. On 8 August 2022, the Athlete sent BADA another letter indicating that:

- BADA failed to comply with the Stakeholder Notice by converting the sample into an AAF without conducting the required investigation;

- Ms Horn requested that its other urine sample (the "B Sample") be analysed; and

- Ms Horn sent additional and updated information regarding the meat consumed prior to the collection of the A Sample which did not indicate that the products consumed originated from China, Mexico or Guatemala.

14. On 9 August 2022, the Basque Government's Director of Physical Activity and Sports (the "Basque Director") adopted a resolution (the "Suspension Resolution") and found that "[t]*he athlete provided a series of allegations and evidence that does not conclusively prove that the Clenbuterol concentration – lower than 5ng/mL – could be due to the use of contaminated meat*". Ms Horn was therefore provisionally suspended from obtaining a licence and participating in sports competitions for a maximum period of six months.

15. On 19 August 2022, BADA informed the Athlete that the B Sample would be analysed on 6 September 2022.

16. On 23 August 2022, the Athlete wrote to the Basque Director and BADA to question the Basque Director's authority to adopt the Suspension Resolution. The Athlete further alleged that BADA failed to conduct any investigations despite the requirement under the Stakeholder Notice. She finally objected to (i) her A Sample AAF qualification and (ii) her provisional suspension.

17. On 24 August 2024, BADA responded, challenging the allegations made by the Athlete *inter alia* on its authority and the AAF.

18. On 7 September 2022, the results of the B sample analysis confirmed those of the A Sample and a concentration of clenbuterol of less than 5ng/mL

19. On 12 September 2022, the Athlete appealed the Suspension Resolution (of 9 August 2022) on the basis that BADA "*failed to conduct the mandatory investigative process required by the Stakeholder Notice*" considering that "*the agency has the burden of investigating*".

20. On 16 September 2022, the Basque Director adopted a second resolution (the "Disciplinary Resolution") initiating disciplinary proceedings against Ms Horn for the alleged breach of anti-doping rules. The Disciplinary Resolution further offered Ms Horn "*a period of fifteen days to provide as many allegations, documents or*

information as [she deems] *appropriate and to request the opening of a period of evidence and to propose the means of proof* [she considers] *appropriate*".

21. On 5 October 2022, the Athlete requested the Basque Director to dismiss the disciplinary proceedings initiated against her on the basis of (i) the Athlete's 12 September 2022 pending appeal of the Suspension Resolution, and (ii) BADA's alleged failures to conduct the required investigations under the Stakeholder Notice.

22. On 6 February 2023, the Minister of Culture and Language Policy of the Basque Government dismissed Ms Horn's appeal of the Suspension Resolution.

23. On 7 February 2023, the Investigator responsible for the Basque disciplinary proceedings suggested a sanction of ineligibility of six years (the "Proposed Resolution") and held that BADA "*cannot be required to carry out specific enquiries and investigations*", but instead that "*it is up to the Athlete, on the basis of the documentation and information provided by her, to establish – and thus: prove or demonstrate – that the use of contaminated* [meat] *may indeed be the reason for the finding of clenbuterol in the concentration detected by the anti-doping laboratory*".

24. On 22 February 2023, the Athlete requested to dismiss the Proposed Resolution on the grounds that (i) the burden of proof did not lie with Ms Horn at the stage of the ATF, (ii) BADA "*has misunderstood what was required to comply with the obligation to carry out an investigation as required by the Stakeholder Notice*" and (iii) BADA failed to carry out an investigation as required by the Stakeholder Notice. The Athlete alternatively suggested that, should a sanction be imposed on Ms Horn, the six-year suspension should be limited to six months as she did not ingest clenbuterol intentionally.

25. On 13 March 2023, the Basque Director issued a resolution (the "Basque Resolution") adopting the Proposed Resolution. The Basque Director held that "*the athlete has not been able to sufficiently and reasonably prove that the finding of clenbuterol in her body was due to the possible use of contaminated meat*". The Athlete was therefore considered to have committed an anti-doping offence and sanctioned to a ban of six years to (a) obtain a federation license, and (b) participate to any WADA-signatory organised competition, as well as with (c) the annulment of her results from the Basque Competition.

26. On 11 April 2023, the Athlete appealed the Basque Resolution on the following grounds:

- BADA did not comply with its obligations to investigate under the Stakeholder Notice;

- BADA failed to address, respond or engage with the Athlete's complaints;
- The Athlete did not intentionally ingest clenbuterol; and
- The six-year ban is excessive and should not have been more than four years.

27. On 14 July 2023, Ms Horn's appeal against the Basque Resolution was dismissed by the Basque Minister of Culture and Language Policy.

28. On 2 August 2023, the AIU informed the Athlete of the implementation of the Basque Resolution (the "Implementation Decision"). The Implementation Decision is the appealed decision in this case.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

29. On 27 September 2023, the Appellant filed her Statement of Appeal against the Implementation Decision (the "Statement of Appeal") under Rule 13 of the WA ADR and requested to (i) set-aside the Implementation Decision, (ii) reverse the AAF and reinstate the ATF, or alternatively (iii) reduce the six-year ban to four years.

30. The Appellant appointed David Philips, KC, as arbitrator.

31. On 6 October 2023, the Appellant filed her Appeal Brief (the "Appeal Brief").

32. On 10 October 2023, the CAS Court of Office informed the Appellant that it would not initiate an appeal procedure on the basis of Article R49 of the CAS Code of Sports-related Arbitration ("CAS Code") which provides that "[t]*he 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*". Considering that the Implementation Decision was notified to the Appellant on 4 August 2023, and that the Statement of Appeal was filed on 27 September 2023, the CAS Court Office noted that the appeal was submitted after the expiry of the one-month deadline set in Rule 13.6.1 of the WA ADR.

33. On the same day, the Appellant requested that the CAS Court Office reverse its decision not to initiate the appeal procedure, holding that pursuant to an agreement with World Athletics and under Rule 13.6.1(b) of the WA ADR, the deadline to file an appeal would expire 30 days after the receipt of the case file, which was provided only on 1 September 2023. Hence, having filed her Statement of Appeal on 27 September 2023, the Appellant filed it within the relevant deadline, i.e., before 1 October 2023.

34. On 11 October 2023, the CAS Court of Office took note of the agreement between the Appellant and World Athletics regarding the deadline to file an appeal against the Implementation Decision and reversed its decision not to entertain the appeal procedure.

35. On 12 October 2023, the CAS Court of Office acknowledged receipt of both the Statement of Appeal filed on 27 September 2023 as well as of the Appeal Brief filed on 6 October 2023 and informed the Parties that, pursuant to Article S20 of the CAS Code, the present arbitration had been assigned to the Appeals Arbitration Division of the CAS and would therefore be dealt with according to Articles R47 *et seq.* of the CAS Code.

36. On 19 October 2023, the Respondent nominated Mr Romano Subiotto KC.

37. On 21 December 2023, the Respondent informed the CAS Court Office that it did not consider a hearing nor a case management conference necessary.

38. On 27 December 2023, the Appellant informed the CAS Court Office that it did not consider a case management conference to be necessary but requested a hearing.

39. On 5 February 2024, the CAS Court Office sent the Parties Mr David Phillips KC's "Arbitrators' Acceptance and Statement of Independence" form following his appointment by the Appellant. The CAS Court Office added an additional remark from Mr Philips informing the Parties that he had known the Appellant's firm for many years and had been instructed by it from time to time. Mr Philips further stated that he was currently instructed by the firm in a potential litigation but that he was not actively involved in that litigation's conduct.

40. On the same day, the Respondent requested further information from Mr Philips regarding his disclosure and specifically (i) the number of years he had known the Appellant's firm, (ii) the number of times he had been instructed by it during that period, and (iii) if he would accept instructions from the firm in the future. The Respondent finally requested that its deadline to challenge Mr Philips's appointment be suspended until he provided the requested information.

41. On 6 February 2024, the CAS Court Office took note of the Respondent's requests and suspended the deadline for the Respondent to file an eventual challenge as from 5 February 2024.

42. On 8 February 2024, the CAS Court Office forwarded Mr Philips's comments and further information. Mr Philips held that (i) he did not have any recollection of how long he had known the Appellant's firm. He however noted that he had known one of

the partners since 2007 when he previously was at another firm; (ii) he had been instructed by the firm on four occasions (in 2019, 2021, 2022 and 2023); and (iii) he had no ongoing relation with the firm but he did not exclude that the firm might seek to instruct him in the future. Mr Philips further informed the Parties that he would willingly withdraw if either Party had any objection to his appointment.

43. On 9 February 2024, the Respondent raised doubts as to Mr Philips' independence and/or impartiality in view of the four recent instructions and therefore objected to his appointment.

44. On 12 February 2024, the CAS Court Office informed the Parties that Mr Philips decided to withdraw from the proceedings. The CAS Court Office therefore requested the Appellant to nominate another arbitrator by 19 February 2024.

45. On 15 February 2024, the Appellant nominated Prof. Dr. Ulrich Haas as arbitrator.

46. On 7 March 2024, the CAS Court Office informed the Parties that, pursuant to Article R54 of the CAS Code, the Panel was now constituted of Ms Carine Dupeyron as President, Prof. Dr. Ulrich Haas and Mr Romano F. Subiotto KC, as Arbitrators.

47. On 16 April 2024, after consulting the Parties on the proposals made by the Panel for a hearing, the CAS Court Office called the Parties to appear at the hearing on 13 June 2024.

48. On 29 May 2024, the Appellant and the Respondent provided the CAS Court Office with the list of individuals that would attend the 13 June 2024 hearing.

49. On 10 June 2024, the CAS Court Office forwarded the Procedural Order issued on behalf of the President of the Panel to the Parties, for their signatures.

50. On 12 June 2024, the CAS Court Office acknowledged receipt of the Parties' correspondences of 11 June 2024 enclosing the respective signed Orders of Procedure.

51. The hearing was held on 13 June 2024, by visio-conference. The participants were:

For the Appellant:

- Ms Carina Horn
- Mr Sanjay Patel KC, Counsel
- Mr Elliott Cook, Counsel

- Mr Adam Flacks, Solicitor
- Ms Disa Greaves, Solicitor

For the Respondent

- Ms Louise Reilly, Counsel
- Mr Tony Jackson, AIU Deputy Head of Case Management

52. The Panel was present and assisted by Ms Andrea Sherpa-Zimmermann, CAS Counsel.

53. At the beginning of the hearing, the Parties confirmed they had no objections against the Panel deciding this case, nor its constitution.

54. The Parties made submissions in support of their respective cases and answered some questions posed by the Panel. The Appellant was also heard.

55. At the end of the hearing, the Parties explicitly confirmed that their right to be heard and equal treatment were fully respected.

IV. THE PARTIES' ARGUMENTS

56. The Panel has taken into consideration all the Parties' written submissions and has weighed the arguments made by the Parties in the light of all the evidence presented. The Panel sets out below a concise summary of the Parties' positions relevant to its decision, which does not attempt to be an exhaustive account of all the evidence and arguments put forward before her but only of the most relevant factual and legal arguments. When necessary, other factual and legal arguments will be described in the decision section of this Award.

A. Summary of the Appellant's arguments

57. The Appellant relies on the following grounds in support of its appeal against the Implementation Decision:

- the AIU failed to undertake a comparison between the WADA Code and the Basque Anti-Doping Law;
- the Basque Anti-Doping Law is inconsistent with the WADA Code;

- the BADA failed to comply with the Stakeholder Notice; and

- the sanction is disproportionately severe.

58. These grounds are detailed below.

1. The first ground: the AIU's failure to undertake a comparison between the WADA Code and the Basque Anti-Doping Law

59. The Appellant firstly submits that the AIU's Implementation Decision should be set aside because it violates Rule 17.3 of the WA ADR pursuant to which "[a]*n anti-doping decision by a body that is not a Signatory to the World Anti-Doping Code must be implemented by World Athletics, the Integrity Unit and Members, if the Integrity Unit finds that the decision purports to be within the authority of that body and the anti-doping rules of that body are otherwise consistent with the Code*". (emphasis added)

60. According to the Appellant, despite this requirement, the AIU failed to compare the Basque Anti-Doping Law to the WADA Code to ensure that the former was consistent with the latter before taking the decision to implement the Basque Resolution.

61. Specifically, the AIU compared only articles 22 and 24bis of the Basque Law to the WADA Code, without even providing any analysis nor quoting the WADA Code provisions that are the subject of the comparison. AIU also omitted to mention what is not in the Basque Law but contained in the WADA Code: in particular, AIU failed to refer to Letter TL/23 and the Stakeholder Notice, which are WADA technical documents and would clarify whether the Basque Law and the WADA Code treat cases of clenbuterol ingestion in a like manner.

62. Moreover, the Appellant points out that the AIU compared the WADA Code with the amended version of the Basque Law against Doping in Sport of the Autonomous Community of the Basque Country dated 29 December 2022 (the "New Basque Law"), which was not applicable to the current case at the time of the Athlete's ATF on 18 June 2022. Instead, according to the Appellant, the comparison should have been made with the Basque Law in its revised version of 13 June 2018 (the "Applicable Basque Law"). The Appellant therefore contends that this demonstrates that the AIU failed to fulfil its comparative obligation under Rule 17.3 of the WA ADR.

63. On that basis, the Appellant requests that the Implementation Decision be set aside.

2. The second ground: the inconsistency of the Applicable Basque Law with the WADA Code

64. The Appellant holds that a proper comparison of the Applicable Basque Law with the WADA Code would have demonstrated the former's inconsistency with the latter, particularly because it did not incorporate the International Standard for Results Management (the "ISRM") or any relevant WADA Technical Documents.

65. This oversight is crucial, as these documents are essential for handling ATFs, especially those involving substances like clenbuterol, as the ISRM obliges the responsible Results Management Authority ("RMA") to conduct a "required investigation" where an initial review does not reveal an applicable Therapeutic Use Exemption ("TUE") or an ingestion through a permitted route. The Technical Documents implementing the ISRM specify the mandatory procedures for substances like clenbuterol, including a required investigation if its presence in urine is below 5 ng/mL, which should determine if meat contamination is the cause.

66. Moreover, the New Basque Law demonstrates that the Applicable Basque Law diverged from the WADA Code's standards. In this regard, the Appellant refers to Articles 1.8, 13.16, 24 bis 1 of the New Basque Law that reveal that the amendments made to the Basque Law have been made in order to ensure the New Basque Law is consistent with the WADA Code. For instance, Article 24 bis 1 of the Applicable Basque Law is inconsistent with the WADA Code's requirements for second violations.

67. In any event, even if the New Basque Law were the applicable law and/or the law under which the Basque Resolution was made, AIU failed to properly interpret and implement it.

68. Although Article 13.16 of the New Basque Law suggests incorporation of key WADA documents like Letter TL/23 and the Stakeholder Notice, BADA and the Basque Government disregarded the steps listed in Section B of the Stakeholder Notice. In particular, they did not follow the mandatory investigative procedures for clenbuterol ATFs in accordance with the Letter TL/23 and the Stakeholder Notice, thus failing to discharge the burden of proof as provided in Article 13.13 of the New Basque Law, which provides that "*the burden of proving that an anti-doping rule violation has occurred will fall on the anti-doping body*". This inconsistency is further highlighted by the Basque authorities' stance in the Basque Resolution, according to which the athlete must prove meat contamination as the cause of clenbuterol presence, rather than BADA conducting its own required investigations, as required by Letter TL/23 and the Stakeholder Notice.

69. In other words, the BADA had the burden to prove an ADRV, while the processes required to be followed, and evidence gathered by BADA to discharge that burden, is different in cases involving clenbuterol at or less than 5 ng/mL, which set a higher threshold than simply relying on a positive Sample. As such, if the interpretation given to the New Basque Law by the relevant Basque Authorities is such that the burden of proof was on Ms Horn, and BADA was not required to undertake its own investigations, then the New Basque Law is materially inconsistent with the WADA Code.

70. The Appellant therefore concludes that the AIU should have identified the Applicable Basque Law's inconsistency with the WADA Code and that it had no power to implement the Basque Resolution under Rule 17.3 of the WA ADR.

71. As a result, the Appellant requests that the Implementation Decision be reversed, and the ATF reinstated.

3. The BADA's failure to comply with the Stakeholder Notice

72. The Appellant argues that BADA has committed three major failures in complying with Letter TL23 and the Stakeholder Notice.

(i) Failure to apply the correct burden of proof

73. The Appellant considers that BADA incorrectly asserted that the burden of proof lied on the Athlete in the case of an ATF involving a concentration of 5 ng/mL of clenbuterol or less, contrary to Article 3.1 of the WADA Code, which states that the "*Anti-Doping Organization shall have the burden of establishing that an anti-doping rule violation has occurred*".

74. The Appellant therefore holds that the burden of proof shifts onto the athlete only after there has been an AAF, and that an ATF should only be converted into an AAF after the mandatory investigative steps listed in Section B of the Stakeholder Notice have been undertaken by the relevant authority, here BADA.

75. The Appellant thus contends that in this case, BADA failed to comply with the Stakeholder Notice by converting the ATF into an AAF *without* complying with its investigative obligations.

(ii) The misunderstanding regarding the mandatory requirement to comply with investigative steps in Section B of the Stakeholder Notice

76. The Appellant argues that BADA erroneously stated that compliance with the investigative steps in Section B of the Stakeholder Notice was optional and that the "*criteria set by the WADA-AMA are merely indicative*".

77. The Appellant argues that Section B of the Stakeholder Notice precisely requires that the Regulating Authority "*shall*" take the specified investigative steps, making the latter prescriptive rather than merely indicative, as erroneously suggested by BADA. These steps must therefore be complied with according to the Appellant before converting an ATF into an AAF.

78. Furthermore, the Appellant contends that the tenth step under Section B of the Stakeholder Notice quoted by the Basque Resolution is incorrectly interpreted. This step provides that "*the above is not intended to be an exhaustive list of possibly relevant investigative steps*" and that "*all potentially relevant lines of inquiry and* [...] *relevant facts and circumstances*" should be considered. According to the Appellant, this means that Steps 1 to 9 are mandatory and must be followed, and that any other investigative steps that are potentially relevant may also be pursued, without being mandatory.

79. Moreover, according to the Appellant, this erroneous interpretation is not consistent with the Basque Government's actions in CAS 2011/A/2384 & CAS 2011/A/2386. This case also involved a finding of clenbuterol in a high-profile athlete, where extensive investigations of meat contamination were conducted. This discrepancy highlights a bias of the Basque Government against a less high-profile and less well-resourced athlete, which is regrettable.

(iii) The failure to conduct an investigation into the possibility of meat contaminated with clenbuterol

80. In practice, BADA disregarded the mandatory steps provided in Section B of the Stakeholder Notice, essential for determining the source of clenbuterol at the ATF stage and failed to actively investigate, relying instead on the Athlete's limited capability to provide evidence. However, under the Stakeholder Notice and Article 5.2.1 of the ISRM, an ATF cannot be converted to an AAF only "*once the investigation is completed*".

81. Specifically, here, the Appellant conducted a step-by-step analysis of what BADA was compelled – and failed – to do, as follows:

- First step: BADA completed a basic review for any TUE or deviations from International Standards listed in step 1;

- Second step: BADA did not collect a follow-up urine sample, which could give an indication as to the likelihood of contaminated meat being the source of the clenbuterol. BADA clearly deviated from the guidelines, ignoring repeated requests from the Athlete, and providing no explanation for this non-compliance;

- Third step: there is no evidence BADA reviewed the Appellant's steroid biological passport or previous testing history to identify any abnormalities that could corroborate either the doping or meat contamination hypothesis;

- Fourth step: BADA determined the Athlete's whereabouts prior to the sample collection;

- Firth step: while BADA contacted the Athlete and received information about the circumstances of the ATF and specifically about the countries she was located in the days leading up to the collection of the Sample and whether she ate meat products in the 72 hours prior to the collection of the sample, BADA failed to conduct the required interview;

- Sixth step: no investigation was carried out into the origins of the meat consumed by the Athlete. Instead, the Athlete contacted the venues at which she ate and relayed the information obtained to BADA, with BADA failing to use the provided information to pursue further investigation. Although the limited investigations conducted by the Athlete did not suggest that any venues or suppliers had used meat of origin susceptible to contamination, this is not conclusive of the origin of the products. Many of the venues did not respond or otherwise refused to provide the information. The missing information was more likely to have been obtained by BADA;

- Seventh step: BADA neglected to gather comprehensive details about the meat source, ignoring the Athlete's own efforts to determine the meat's origin and failing to leverage their authority for a more thorough investigation;

- Eighth step: there was no attempt by BADA to determine regulations or best practices related to livestock treatment in the country of origin of the meat consumed by Ms Horn due to their lack of investigation into the meat's source;

- Ninth step: BADA did not evaluate whether the urinary concentration of clenbuterol matched the meat consumption described by the Athlete, ignoring the

timing and excretion properties of the substance that could support the contamination hypothesis;

- Tenth step: BADA did not pursue all potentially relevant lines of inquiry, directly contradicting their obligation to consider all relevant facts and circumstances, which is further corroborated by the fact that they did not consider the investigative steps mandatory.

82. The Appellant concludes that steps 2, 6, 7, 8, 9 and 10 of the Stakeholder Notice were certainly not complied with by BADA, while it is unclear whether steps 3 and 5 were complied with.

83. These investigative failures led to the Appellant being unfairly sanctioned with a six-year period of ineligibility and the disqualification of her competition results. This demonstrates a material unfairness caused by BADA's non-compliance with the Stakeholder Notice. The Panel is therefore invited to reverse the AAF, reinstate the ATF, and overturn the AIU's Implementation Decision.

4. Fourth ground: the sanction was disproportionately severe

84. The Appellant contends that the six-year ineligibility sanction is disproportionately severe were the Panel to find that the Implementation Decision complies with Rule 17.3 of the WA ADR.

85. Article 24.1 of the Basque Law provides for a federative license suspension period of two to four years for very serious infringements, including the presence of a prohibited substance. Further, Article 28.4(a) provides for a two-year suspension if the athlete proves non-intentionality. These provisions align with the ADR and the WADA Code regarding sanctions.

86. Indeed, under Rule 10.2.1 of the WA ADR, the ineligibility period for non-Specified Substances like clenbuterol should be four years *unless* non-intentionality can be proven in accordance with the definition in Article 10.2.3, which could reduce the sanction to two years, also in accordance with the above-cited Article 28.4(a).

87. The Appellant recalls that the definitions of "intentional" under both the Rule 10.2.3 of the WA ADR and Article 28.5 of the Applicable Basque Law involve engaging in conduct with significant risk awareness and disregarding that risk.

88. Here the Appellant invites the Tribunal to apply the Lawson test as affirmed by the awards in CAS 2019/A/6313, CAS 2020/A/7579 and CAS 2020/A/7580, which assesses evidence starting with scientific facts and then considering whether the

credibility factor confirms the emerging conclusion. The Lawson Test was used in Jack in support of a two-part question, whether, on the balance of probability, the athlete could disprove "*(a) culpable intent or (b) recklessness*".

89. The Appellant further asserts that when "*the totality of the evidence* [is considered] *through the prism of common sense*", it should be considered to have discharged the burden on her by the balance of probability.

90. The Appellant specifically states in this regard that:

- the concentration of clenbuterol was low in both the A Sample and B Sample (below 5ng/mL);
- she had consumed large quantities of different meats in the 72 hours prior to the collection of her A Sample;
- she made her best efforts to investigate the origin of the food she consumed in view of her limited means;
- if the investigations had been pursued by BADA, some of the meat products she consumed may have shown to be contaminated; and
- she has no history of testing positive for clenbuterol, whether before or after the A Sample was taken on 18 June 2022.

91. Moreover, the Appellant contends that there is no requirement for an athlete to establish the specific source of contamination to demonstrate that the ingestion of a prohibited substance was not intentional. The Athlete refers to an article co-authored by a member of the WADA Code 2021 Drafting Team ("The Article"), "*Breaking down the process for determining a basic sanction under the 2015 World Anti-Doping Code*". The Article has specified two main categories of violations that are considered non-intentional, *i.e.* violations for which the origin of the substance is established, and the athlete's behavior is characterized by gross negligence, and violations for which the athlete cannot establish the origin of the substance yet can sufficiently establish that the violation was not intentional. The Appellant falls under the second category where the substance's origin is unclear, but sufficient facts demonstrate non-intentionality, such as the Athlete's diligent but fruitless efforts to determine the clenbuterol source.

92. On the standard of proof, the Appellant holds that the general rule under Article 3.1 of the WADA Code is that it is the athlete's burden to establish that the anti-doping rule violation was not intentional "*by a balance of probability*".

93. In this regard, the Appellant asserts that for an athlete to benefit from the performance-enhancing effect of clenbuterol, the substance would need to be administered once or twice a day for a long-term period as established in *Decision 2019/03 Badminton World Federation v Ratchanok Intanon.*

94. In the present case, the Athlete's sporadic and low concentration findings suggest inadvertent ingestion, not a pattern of intentional use. To prove this, the Appellant refers to her last sample of 13 April 2022 prior to the A Sample which shows no evidence of clenbuterol, as well as to her subsequent samples which do not also show the presence of the prohibited substance.

95. For these reasons, the Appellant considers that the ingestion was not intentional and that a maximum period of ineligibility of two years should be imposed for this anti-doping rule violation.

96. Then considering that the Appellant has already served a period of ineligibility of two years for a previous anti-doping rule violation which the AIU accepted was not intentional, the Appellant suggests that if the Panel were to consider that the Appellant has, on the balance of probabilities, demonstrated that her consumption of clenbuterol was unintentional, then the total period of ineligibility should be four years under both Article 24bis (i) or (ii) of the New Basque Law, as well as Rule 10.9.1(a)ii)(aa) or (bb) of the WA ADR.

B. The Appellant's request for relief

97. The Appellant therefore requests the Panel to rule as follows:

"the Implementation Decision dated 2 August 2023 taken by the AIU is set aside; and

the AAF is reversed and the ATF is reinstated; or

Alternatively, a more moderate sanction of four years is imposed".

C. Summary of the Respondent's arguments

98. In its Answer Brief, the Respondent submits that the Appellant's arguments are misguided and must be rejected.

99. The Respondent firstly concurs that pursuant to Rule 17.3 of the WA ADR, the Basque public authorities are not signatories to the WADA Code, and consequently, that the AIU had to assess whether the Basque Law, upon which the Basque Resolution was taken, was consistent with the WADA Code.

100. In this regard, the Respondent outlines the analysis it conducted during its review of the Basque Law to determine the latter's consistency with the WADA Code. In doing so, the Respondent responds altogether to the first and the second ground raised by the Appellant.

1. The Respondent's defenses on the first and second grounds raised by the Appellant: the alleged failure of BADA to undertake a comparison and inconsistency between the Applicable Basque Law and the WADA Code

101. As to whether the AIU conducted a comparison between the WADA Code and the Basque Law, the Respondent explains that certain provisions of the Basque Law were so evidently consistent with the WADA Code that it did not find it necessary to provide a detailed analysis thereof in its Implementation Decision.

102. The Respondent then agrees that the New Basque Law of 28 December 2022 is not applicable to these proceedings considering that the ADRV had been committed on 18 June 2022. The Respondent however states that the translations of the provisions contained in the New Basque Law were used in the Implementation Decision essentially because they are often clearer than those contained in the Applicable Basque Law, which remained the applicable legal standard.

103. On the merits, to justify that the Applicable Basque Law's provisions were consistent with the WADA Code, the Respondent sets out and compares in a table the relevant provisions of the Applicable Basque Law, the New Basque Law, the WADA Code, and the AIU's analysis.

104. The Respondent claims that the six provisions it compared were all consistent with the WADA Code:

- For Article 13.12 of the Basque Law, the Respondent states that (i) both versions are consistent with Article 2.1.2 of the WADA Code and that (ii) it prefers the translation set out in the New Basque Law;

- For Article 13.13, the Respondent states that (i) both versions are consistent with Article 3.1 of the WADA Code and that (ii) the amendment of the New Basque Law is not material;

- For Article 24bis, the Respondent states that (i) both versions are consistent with Article 10.9.1 of the WADA Code and that (ii) although the anti-doping rule violation was committed on 18 June 2022, the Basque Resolution was issued on 13 March 2023, after the New Basque Law came into effect. The Athlete was

therefore given the benefit of a more flexible sanctioning regime for repeated violations;

- For Article 28.4, the Respondent states that (i) both versions are consistent with Article 10.2.1 of the WADA Code, (ii) it prefers the translation set out in the New Basque Law and that (iii) the period of ineligibility for an intentional violation that did not involve a specified substance is four years;

- For Article 30, the Respondent states that (i) both versions are consistent with Article 10.10 of the WADA Code, (ii) Article 30.1 has never been amended since the Basque Law came into effect in 2012, and that (iii) it prefers the translation set out in the New Basque law; and

- For Article 31, the Respondent states that (i) both versions are consistent with Article 10.14 of the WADA Code, (ii) Article 31.1 has never been amended since the Basque Law came into effect in 2012, and (iii) it preferred the translation set out in the New Basque law.

105. The Respondent concludes that the Applicable Basque Law is consistent with the WADA Code in all material aspects.

2. The Respondent's defenses on the third ground raised by the Appellant: the alleged BADA's failure to comply with the Stakeholder Notice

106. The Respondent submits that the Athlete's concerns about the investigation conducted by the Basque authorities are not relevant to whether the Basque Resolution should be implemented under Article 17.3 of the WA ADR. Such issues pertain to the merits of the case and not to implementation issues. If the Athlete wanted to challenge the merits, she should have appealed to the High Court of the Basque Country as outlined in the Basque Resolution. Nonetheless, the AIU addresses these arguments to ensure completeness.

107. Letter TL23 and the Stakeholder Notice describe the procedures for handling cases of potential meat contamination with clenbuterol, setting out a non-exhaustive list of '*possibly relevant investigative steps*' to be undertaken by the RMA. The Applicable Basque Law, particularly in Article 28.1 and Article 13.16, aligns with these guidelines by mandating adherence to WADA's standards in doping control and results management.

108. The Basque Resolution noted that the Athlete's sample had clenbuterol at a concentration below 5 ng/mL, necessitating an investigation into possible meat contamination. However, the Basque Resolution indicates that the Athlete failed to

conclusively prove that meat contamination was the source. Extensive evidence was submitted by the Athlete, including a list of venues attended, correspondence with venues, bank statements, and photographic evidence, yet this was not deemed sufficient to establish the source of clenbuterol.

109. Moreover, the Respondent contests the Athlete's claim that "[n]*o effort was made by the Basque Authorities* [...] *to comply with the contents of Letter TL/23 or the Stakeholder Notice*" and that ''[a]*ccording to BADA and the Basque Government, and to Ms Horn's understanding, the Basque Law did not require such an investigation at the time*".

110. The Respondent refers specifically to a letter dated 24 August 2022, where BADA indicated that (i) its doping controls were carried out in compliance with the International Standards and Technical Documents, (ii) it informed the Athlete's lawyer about the investigation process, (iii) the Athlete had not been able to prove that the consumption of clenbuterol contaminated meat was the origin of the presence the substance in her body, (iv) the ATF would be converted into an AAF, and (v) that BADA could not be required to investigate the origin of the food consumed by the Athlete over several days or weeks.

111. The Respondents criticize the Athlete's stance that BADA should have proven how her sample was contaminated, on the basis that such a position runs against the basic legal principle that the party relying on facts it alleges bears the burden of proving those facts. It would also be quite astonishing, for BADA to have to prove how the Athlete ingested a prohibited substance.

112. This is, in any event, contrary to the Stakeholder Notice which provides that "[t]*he Athlete's explanation and any evidence tendered as corroboration (e.g. food diaries, food menus, restaurant or grocery store purchase receipts, credit card statements, dining partners, social media, etc.) should be carefully evaluated*", i.e., that it is for the Appellant to tender any evidence to corroborate her story of meat contamination.

113. The Respondent thus concludes that the Appellant's arguments in relation to the apparent lack of an investigation are entirely without merit and must dismissed.

3. The Respondent's defenses on the fourth ground: the alleged disproportionality of the sanction

114. Regarding the alleged severity of the six-year ineligibility sanction, the Respondent firstly submits that the proportionality of the sanction goes to the merits, which, again, is outside the scope of the present proceedings, and that the appropriate forum for said claim is the High Court of the Basque Country.

115. The Respondent however points out that the six-year sanction was the lowest of the possible sanctions for a second ADRV, considering that Article 24bis of the Applicable Basque Law provided for an eight-year ineligibility period, which was subsequently reduced by two years under Article 24bis of the New Basque Law.

116. Overall, the Respondent concludes that it has implemented the decision of a non-signatory, as it is required to do so under Rule 17 of the WA ADR. The Athlete should not be permitted to relitigate her case through her challenge of the Implementation Decision.

D. Respondent's request for relief

117. The Respondent requests the Arbitral Panel as follows:

"1. The Implementation Decision of the AIU dated 28 July 2023 is confirmed.

2. The Appeal of Ms Carina Horn is dismissed.

3. The arbitration costs (if any) shall be borne by Ms Carina Horn.

4. World Athletics is granted a significant contribution to its legal and other costs."

V. JURISDICTION

118. Jurisdiction stems directly from Rule 13.2.1 of the WA ADR which provides that "*In cases involving International-Level Athletes or arising from Persons participating in an International Competition, the decision may be appealed exclusively to CAS*".

119. In light of the above, the Arbitral Panel is satisfied that the jurisdiction of the CAS is established. The Arbitral Panel further notes that jurisdiction has not been contested by the Parties.

VI. ADMISSBILITY

120. The time limit for submitting the Statement of Appeal is 30 days from receipt of the decision appealed against pursuant to Article R49 of the CAS Code and Rule13.6.1 of the WA ADR.

121. The Implementation Decision was notified to the Appellant on 2 August 2023. The case file was received on 1 September 2023 by the Appellant. The Parties agreed to

extend the deadline to file the appeal until 1 October 2023, i.e. 30 days after the receipt of the case file. The Statement of Appeal was filed by the Appellant on 27 September 2023; hence within the agreed extended deadline pursuant to Rule 13.6.1 (b).

122. The appeal complied with all other requirements of Article R48 of the CAS Code.

123. It follows that the appeal is admissible.

VII. APPLICABLE LAW

124. 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 the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision."

125. It follows from the above that the "applicable regulations" within the above meaning are the WA ADR. The Panel further notes that Article 13.7.5 of the WA ADR provides as follows:

"In all CAS appeals involving World Athletics, the governing law shall be Monegasque law and the appeal shall be conducted in English, unless the parties agree otherwise".

126. Therefore, the Panel will apply the WA ADR primarily and Monegasque law subsidiarily.

VIII. DECISION ON THE MERITS

127. At the outset, the Panel recalls that this appeal is directed at the Implementation Decision, i.e. it shall focus on whether the Respondent has properly implemented the Basque Resolution, in accordance with Article 17.3 of the WA ADR. The latter provision reads as follows:

"An anti-doping decision by a body that is not a Signatory to the World Anti-Doping Code must be implemented by World Athletics, the Integrity Unit and Members, if the Integrity Unit finds that the decision purports to be within the authority of that body and the anti-doping rules of that body are otherwise consistent with the Code."

128. The comment to this provision reads as follows:

"*Where the decision of a body that has not accepted the Code is in some respects Code compliant and in other respects not Code compliant,* World Athletics, *the Integrity Unit* and *Member Federations should attempt to apply the decision in harmony with the principles of the Code. For example, if in a process consistent with the Code, a non-Signatory has found an Athlete to have committed an anti-doping rule violation on account of the presence of a Prohibited Substance in the Athlete's body but the period of Ineligibility applied is shorter than the period provided for in the Code, then World Athletics, the Integrity Unit* and *Member Federations should recognise the finding of an anti-doping rule violation and the Athlete's National Anti-Doping Organisation should conduct a hearing consistent with Rule 8 to determine whether the longer period of Ineligibility provided in the Code should be imposed. World Athletics' or other Signatory's implementation of a decision, or their decision not to implement a decision under Rule 17.3, is appealable under Rule 13.*"

129. It is not in dispute between the Parties that the Basque Director is not a Signatory to the WADA Code and that the Basque Director acted within its authority. However, what is in dispute between the Parties is whether the anti-doping rules applied by the Basque Director are consistent with the WADA Code.

A. The first and second grounds: the Respondent's duty to investigate consistency between the Applicable Basque Law and WADA Code and the consistency between these legal standards

130. As recalled in the section dedicated to the Parties' submissions, the Appellant argues that the AIU failed to compare the Basque Law to the WADA Code, despite its obligation to ensure its consistency. Moreover, the Appellant notes that when going through its limited comparison, the Respondent referred to the inapplicable New Basque Law (of 2022) instead of the relevant Basque Law (of 2012, updated in 2018).

131. The Appellant then pursues its reasoning stating that the AUI failed to look at what was missing in the Applicable Basque Law and was present in the WADA Code. That comparison, had it been conducted, would have shown that the Applicable Basque Law (contrary to the New Basque Law) does not refer to the ISRM and the Stakeholder Notice. It would have concluded that the Applicable Basque Law is inconsistent with the WADA Code also on the question of the burden of proof. This should have prevented the AIU from taking the Implementation Decision.

132. Those errors for the Appellant suffice to set aside the Implementation Decision.

133. The Respondent concurs with the necessity to compare the Applicable Basque Law with the WADA Code to ensure consistency and entitle the AUI to take the

Implementation Decision. However, it disagrees with the Appellant's conclusion. It points to four paragraphs of the Implementation Decision comparing the applicable legal standards, stating that this was sufficient and that other similarities were so patent that they did not deserve additional developments.

134. As to the alleged confusion between the Applicable and the New Basque Laws, the Respondent agrees with the Appellant about which law applies but it explains that there are no material differences and that, there has been simply a preference for using the better translations of the New Basque Law in the Implementation Decision, without consequences.

135. The Panel has reviewed the existing obligation to compare the legal standards applied by the concerned non-signatory authority and the WADA Code, as requested in Article 17.3 of the WA ADR, and the analysis performed by the AIU in the Implementation Decision. The Panel is of the view that the AUI has complied with this obligation to ensure their consistency, and that the Implementation Decision provides sufficient explanations to credibly support its conclusion that the Applicable Basque Law was consistent with WADA Code.

136. Specifically, the Implementation Decision recalls in a dedicated section entitled "*A. Consistency with the WADA Code*," the language of the Basque Law, which explicit purpose is to "*harmonise Basque anti-doping legislation with the principles proclaimed in the [WADA Code].*" Then, the Implementation Decision analyses several provisions of the Basque Law and compares them with similar provisions of the WADA Code on the questions at stake in this case:

- On athletes' liability, the Implementation Decision highlights that Article 22 of the Basque Law imposes strict liability on athletes and provides that "*the criteria set forth in the Word Anti-Doping Code shall be followed in determining the Athlete's responsibility*";

- On the establishment and proof of a violation, the relevant provisions of the Basque Law are cited, and while the Implementation Decision does not explicitly compare them with their equivalents in the WADA Code, this is clearly the case;

- On sanctions, the relevant articles are quoted and the Implementation Decision concludes that the article dedicated to repeated violations is "*substantively consistent with Article 10.9.1.1 of the WADA Code, which deals with multiple violations.*"

137. Hence, while the comparison has not been absolutely systematic and done on a word by word basis, which is not required in any event, the Panel concurs with the

conclusion of the BADA that the Basque Law is "*consistent with the WADA Code in all its material aspects*".

138. To respond to the question of the absence of any reference to the Technical Documents (here, the Letter TL23 and the Stakeholder Notice) in the Applicable Basque Law, whereas explicit references were made in its 2022 updated version at Article 13.16, the Panel notes that such an absence does not *per se* amount to an inconsistency. This is all the more the case here that the Basque Resolution which was implemented does refer to the Stakeholder Notice as having been considered and to the necessity to conduct an investigation in the event of an atypical analytical finding.

139. Regarding the use of the translations of the New Basque Law, which the Panel and the Parties agree is not applicable, the Panel finds this practice awkward and confusing but concurs with the Respondent that they are no material differences between the relevant sections of the Applicable Basque Law and the New Basque Law for the purpose of this case. This use of translations therefore could not have been a source of misinterpretation of the applicable rules, and therefore be a reason for setting aside the Implementation Decision.

140. Overall, the Panel finds the comparison table communicated by the Respondent convincing as to the similarities between the various Basque Laws and the consistency of their relevant sections with the WADA Code, and highlights that the Basque Resolution appear to have followed the material principles of the WADA Code, thereby washing away any concern that the proper rules would not have been applied.

B. The third ground: BADA's alleged failures to conduct an investigation

141. The Appellant argues that BADA has committed three major breaches of the Letter TL23 and the Stakeholder Notice, which it was compelled to follow: it has failed to apply the correct burden of proof, it has ignored the investigation steps mandated in the Stakeholder Notice and therefore it erroneously failed to investigate the source of the contamination of the Athlete, wrongly relying on the Athlete's limited means to provide evidence.

142. As a preliminary and dispositive comment, the Respondent notes that whether BADA properly conducted an investigation is irrelevant to the question of whether the Respondent rightly implemented the Basque Resolution. Had the Athlete intended to challenge the merits of her case, she should have lodged an appeal before the High Court of the Basque Country, which she did not do. The Panel is aware that access to justice is regulated differently in the Basque Law and the WADA Code. The Panel is also aware that – in the abstract – recourse to arbitration and the CAS more

particularly might have advantages over recourse to state courts and the appeal mechanism provided for by the Basque Law. However, the Panel also notes that the Appellant did not take issue with the differing rules on access to justice and, therefore, is not prepared to deviate from the principle enshrined in Article 17.3 WA ADR not to re-examine the merits of the case.

143. For the sake of completeness, the Respondent then refutes the Appellant's arguments on the burden of proof, recalling that the Stakeholder Notice invited for the examination of the Athlete's evidence to explain the source of the AAF, which took place, but that her evidence was deemed insufficient. The Respondent also denies that the Basque Authorities had a duty to investigate the source of the contamination, which rests on the Athlete.

144. The Panel recalls that the question put before it is whether the conditions set forth in Article 17.3 of the WA ADR are satisfied, i.e. (i) whether the BADA had the authority to issue the Basque Resolution, and (ii) whether the Basque Law is consistent with the WADA Code, thereby allowing the Respondent to take the Implementation Decision.

145. The Panel first agrees that the arguments brought forward by the Appellant on the compliance of the investigation that was conducted by BADA with the Letter TL23 and the Stakeholder Notice belong to the merits of the case. Accordingly, these questions should have been brought before the jurisdiction competent to hear an appeal on the merits of the Basque Resolution.

146. Second, the Panel has also considered whether there would be an inconsistency between the approach on the burden of proof in the Applicable Basque Law and in the WADA Code, which could then give rise to an argument of inconsistency between these two legal standards, and could, in such case, give rise to an argument that the Implementation Decision should not have been adopted. However, this avenue must be rejected.

147. Whether in Article 3.13 of the Applicable Basque Law or in Article 3.1 of the WADA Code, it is crystal-clear that the Anti-Doping Organization has the burden of establishing an anti-doping rule violation. The review of the Basque Resolution does not support the Appellant's allegation that the Basque Director adopted a different application of this rule on the burden of proof, shifting it on the Athlete. The fact that the Athlete has the opportunity to bring evidence to prove that the ATF (or the AAF) is not characterized – which is what is stated in the Basque Resolution – has nothing to do with a shifting of the burden of proving an anti-doping rule violation at the outset.

148. The Appellant's arguments in that respect are therefore rejected.

C. The fourth ground: the disproportionality of the sanction

149. The Appellant contends that the six-year ineligibility sanction is disproportionately severe, based on a non-intentional consumption of clenbuterol under the definition of Rule 10.2.3 of the WA ADR, and applying the relevant balance of probability standard of proof. The Appellant recalls that having already served a period of ineligibility of two years for a previous anti-doping rule violation which the AIU accepted was not intentional, then she should be trusted that this consumption was again non-intentional, and the total period of ineligibility should be four years.

150. In contrast, the Respondent submits that the proportionality of the sanction goes to the merits, which is outside the scope of the present proceedings, and that the appropriate forum for said claim is the High Court of the Basque Country. In any event, for the Respondent, the six-year sanction was the lowest of the possible sanctions.

151. For the sake of precaution, the Panel reviewed the provisions of the Applicable Basque Law and the WADA Code on sanctions for a second anti-doping rule violation and concludes that they are consistent.

152. Having proceeded to that verification, the Panel considers that the question of the proportionality of the sanction is outside of the scope of this appeal, which is based solely on whether the AUI was entitled to take the Implementation Decision, in consideration of the criteria set in article 17.3 of the WA ADR.

IX. COSTS

153. Article R65.1 of the CAS Code provides:

> "*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.*"

154. Article R65.2 of the CAS Code provides:

> "*Subject to Articles R65.2, para. 2 and R65.4, the proceedings shall be free. The fees and costs of the arbitrators, calculated in accordance with the CAS fee scale, together with the costs of CAS are borne by CAS. [...]*"

155. Article R65.3 of the CAS Code provides:

"*Each party shall pay for the costs of its own witnesses, experts and interpreters. In the arbitral award 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 the outcome of the proceedings, as well as the conduct and financial resources of the parties.*"

156. Pursuant to Articles R65.1 and R65.2 of the Code, the present proceedings shall be free. The fees and costs of the arbitrators, calculated in accordance with the CAS fee scale, together with the costs of CAS are borne by CAS.

157. Pursuant to Article R65.3 of the CAS Code, and in consideration of the outcome of the proceedings, the Panel rules that the Appellant shall contribute the sums of CHF 2,000 (two thousand Swiss Francs) towards the costs and expenses incurred by the Respondent in this matter.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Ms Carina Horn on 27 September 2023 against the Implementation Decision is dismissed

2. The Implementation Decision is upheld.

3. The present proceedings shall be free, except for the CAS Court Office fee, which was paid by the Appellant and is retained by the Court of Arbitration for Sport.

4. Mrs Carina Horn is ordered to pay to World Athletics a total amount of CHF 2,000 (two thousand Swiss Francs) as contribution towards the expenses in connection with this arbitration proceeding.

5. All other motions or prayers for relief are dismissed.

Seat of Arbitration: Lausanne, Switzerland.

Date: 4 December 2024

THE COURT OF ARBITRATION FOR SPORT

Ms Carine Dupeyron
President of the Panel

Prof. Dr. Ulrich Haas
Arbitrator

Mr Romano F. Subiotto KC
Arbitrator