Arbitration CAS 2013/A/3050 World Anti-Doping Agency (WADA) v. Andrey Krylov & Fédération Internationale de Gymnastique (FIG), award of 10 June 2013

Panel: Prof. Luigi Fumagalli (Italy), President; Prof. Richard McLaren (Canada); Prof. Denis Oswald (Switzerland)

Gymnastics (tumbling)
Doping (methylhexaneamine; 4-phenylpiracetam)
Elimination or reduction of the period of ineligibility
Absence of intent to enhance sport performance
Negligence
Mitigating factors
Determination of the exact period of ineligibility

1. **In order to benefit from the reduction or elimination of the sanction for specified substances, the athlete has to provide corroborating evidence, in addition to his or her word, which establishes the absence of intent to enhance sport performance or mask the use of a performance enhancing substance. Such evidence has to be provided *"to the comfortable satisfaction"* of the hearing body, i.e. to a level greater than the mere balance of probabilities, but lower than proof beyond a reasonable doubt. For non-specified substances, on the other hand, the athlete has to establish, by balance of probabilities, that he bears No Significant Fault or Negligence, i.e. that his or her fault or negligence, when viewed in the totality of the circumstances, was not significant in relationship to the anti-doping rule violation. As a common condition for specified and non-specified substances, the athlete has to establish how the prohibited substance entered his or her body. Such evidence has to be given by the athlete by balance of probabilities, that is to say, that the occurrence of the circumstance on which it relies is more probable than its non-occurrence.**

2. **In connection with proving the absence of intent to enhance sport performance, (i) the evidentiary standard is higher than the mere balance of probabilities; (ii) the *"corroborating evidence"* cannot be limited to the athlete's words, and (iii) no *ex post* evaluations of the effect of the prohibited substance on the sporting performance are allowed.**

3. **An athlete is highly negligent when failing to consult a doctor, or even make any kind of control, before the use of a product he has bought. He is also negligent when using a product for a purpose for which it was not prescribed.**

4. **Ignorance of the anti-doping provisions, lack of precedents or unsupportive attitude and lack of involvement of the national federation in the discipline in which the athlete competes are not mitigating factors that can justify the application of a reduced**

sanction.

5. **Any period of provisional suspension is to be credited against the total period of ineligibility imposed. Also, any period of suspension imposed and already served on the basis of a previous disciplinary decision, even if subsequently set aside, is to be credited.**

1. BACKGROUND

1.1 THE PARTIES

1. The World Anti-Doping Agency (hereinafter referred to as "WADA" or the "Appellant") is a Swiss private-law foundation. Its seat is in Lausanne, Switzerland, and its headquarters are in Montreal, Canada. WADA was created in 1999 to promote, coordinate and monitor the fight against doping in sport in all its forms.

2. Mr Andrey Krylov (hereinafter referred to also as the "Athlete" or the "First Respondent") is an athlete, born on 14 November 1988, affiliated to the Russian Gymnastics Federation (hereinafter referred to as the "RGF"), which in turn is a member of the Fédération Internationale de Gymnastique (FIG).

3. The Fédération Internationale de Gymnastique (FIG) (hereinafter referred to as "FIG" or the "Second Respondent") is the official governing body for gymnastics in the world. Its objects include the co-ordination of the efforts for the safe and healthy physical and moral development in gymnastics and the practice of all sports activities relating to it, and the fight against all forms of doping.

4. The FIG and the Athlete are hereinafter jointly referred to as the "Respondents".

1.2 THE DISPUTE BETWEEN THE PARTIES

5. The circumstances stated below are a summary of the main relevant facts, as submitted by the parties in their written pleadings or in the evidence offered in the course of the proceedings. Additional facts may be set out, where relevant, in connection with the legal discussion which follows.

6. On 8 September 2012, the Athlete underwent an in-competition anti-doping control on the occasion of the Loulé World Cup (hereinafter also referred to as the "Event"), where he was competing in the discipline of tumbling.

7. The A sample provided by the Athlete at the Event, bearing the identification No. A2598058, was analyzed by the Laboratório de Análises de Dopagem of Lisbon, Portugal (hereinafter also referred to as the "Laboratory"), which is accredited by WADA.

8. On 28 September 2012, the Laboratory reported to FIG, the presence, in the A sample provided by the Athlete, of:

    i. methylhexaneamine (dimethylpentylamine), a prohibited substance appearing, as a specified stimulant, in class S.6 of the 2012 WADA list of prohibited substances (hereinafter also referred to as the "Prohibited List"); and

    ii. 4-phenylpiracetam (carphedon), a prohibited substance appearing, as a non-specified stimulant, in class S.6 of the Prohibited List.

9. On 1 October 2012, the FIG informed the RGF and the Athlete of the adverse analytical finding reported by the Laboratory (hereinafter referred to as the "Adverse Analytical Finding"). More specifically, the notification of the Adverse Analytical Finding was sent to the Athlete by registered mail to the Russian address he had indicated in the doping control form signed at the Event, and by email to the email address *"mmickey@yandex.ru"*. In addition, in the cover letter sent to the RGF, the FIG invited it to *"make sure that [the Athlete] is duly and immediately notified, that he understands the meaning of this correspondence and that you send us proof of this notification within 5 days"*.

10. In the same letter of 1 October 2012, the FIG informed the Athlete that he had been provisionally suspended from national and international competitions pursuant to Article 7.6 of the FIG Anti-Doping Rules, of the 14 May 2012 version (hereinafter referred to as the "FIG ADR"). In the same letter, the Athlete was informed *inter alia* of his right to have the B sample tested, of the disciplinary proceedings that could be commenced against him, and of the possibility he had to submit a written explanation.

11. On 3 October 2012, the RGF confirmed to the FIG *"that we have received and transferred … to Mr Andrey Krylov"* the notification of the Adverse Analytical Finding.

12. As a result of the foregoing, the Athlete provided the following *"Explanation"*, dated 1 October 2012:

    "On the discovery of prohibited substances in my doping tests, taken 05.09.12, I can explain the following:

    I had a meeting with doctor of our National team after receiving the warning letter from the FIG, I recognized that I used the forbidden drugs.

    It is not necessary to make B sample analysis. Please, cancel it.

    I fell myself bad one week before travel to the World Cup in Portugal because I caught cold, got some pain in gums and also I felt myself tired as I did a lot of mental work in my preparation to lessons in university.

    I went to Pharmacy and on advice of pharmacist I purchased the drug PHENOTROPIL and GERANIUM ESSENTIAL OIL. I had no time to get advice from my personal coach and sports doctor.

    The instruction to the drug FENOTROPIL indicate that in order to improve mental performance advised to take a dosage of 100-200 mg in the morning for 2 weeks, and states that athletes could take this drug (instructions included). I took the drug for 3 days at a dosage of 100 mg.

    I used GERANIUM ESSENTIAL OIL to rinse out my mouse [sic] and as applicator and I thought that

rinse and application is not forbidden to use for athletes.

In deciding on the punishment I kindly ask you to consider facts that this situation has occurred with me first time and there were no intension to improve my sports abilities using these drugs and I bought these drugs in the usual Pharmacy in Moscow, and the fact that all previously handed doping tests were negative".

13. On 3 October 2012, the FIG informed the RGF and the Athlete of the opening of disciplinary proceedings concerning the Adverse Analytical Finding. Such notification was sent to the Athlete by email to the email address "mmickey@yandex.ru".

14. On 4 October 2012, an email was sent to FIG from the address "Андрей [mmickey@yandex.ru]"[1] with two documents attached describing two pharmaceutical products: Geranium Essential Oil and Phenotropyl.

15. On 9 October 2012, the FIG informed the RGF and the Athlete that a hearing would be held on 7 November 2012. Again, this notification was sent to the Athlete by registered mail to the Russian address he had indicated in the doping control form signed at the Event, and by email to the email address "mmickey@yandex.ru".

16. On 11 October 2012, an email was sent to FIG from the address "Андрей [mmickey@yandex.ru]", indicating that *"I will be present at the hearing"*.

17. A hearing was held on 7 November 2012 before the Disciplinary Commission of FIG (hereinafter referred to as the "Disciplinary Commission"). The Athlete attended the hearing in person and explained his position as follows, as summarized by FIG:

"• *AK [Andrey Krylov] consulted his private doctor for headache and memory issues, he was prescribed with "nootropil" (a non-prohibited drug) on 10 July 2012 … . This drug was not available at the pharmacy and the pharmacist advised another one in replacement, which was phenotropyl. The phenotropyl instructions mention athletes can take the drug for up to 3 days. The sports physician was not present and therefore AK could not consult him, reason why he took the medication without the sports doctor's approval;*

• *AK understands it is his own responsibility;*

• *AK took the medication a few days before the Loulé World Cup due to the heavy university workload on him during that period – he didn't know it could contain a forbidden substance;*

• *AK doesn't usually take any drugs or medication;*

• *AK has been tested 4-5 times (twice at international events) in the last 5 years, and always resulted negative, except for this one;*

• *AK mentioned he hasn't received any education or training in anti-doping by his federation, nor the National Anti-Doping Organization (RUSADA). All he knows he found on the internet. Also, given the non-Olympic status of the discipline (Tumbling), Tumblers are not the priority of the national federation, and therefore do not receive a top-level education, nor support;*

[1] "Андрей" transliterates into "Andrey" from the Cyrillic alphabet.

- *AK mentioned he understands how difficult the situation is and that it is a very difficult moment for him in his life, he also believes he is the victim, together with his coach and the president of the federation. In future he will consider twice before doing something like this;*
- *AK highlights that the use of the substance could not help him improve his performance, since it was the worst performance he achieved recently …;*
- *AK is shocked that he was so negligent, and understands he committed a mistake".*

18. In a decision issued on 8 November 2012 (hereinafter referred to as the "Decision"), the Disciplinary Commission resolved:

"• *To cancel the results achieved by Mr. Andrey Krylov at the Loulé TRA/TUM World Cup, with the resulting consequences, points and prizes, and to readjust the ranking of the competition;*

- *To suspend Mr. Andrey Krylov for a period of 12 months from any sports activity as of the date of the provisional suspension date, from 1 October 2012 until 30 September 2013;*
- *To publish the decision of the FIG on the FIG Website and FIG Bulletin;*
- *To direct a part of the costs of the proceeding to be borne by the Russian Gymnastics Federation, fixed at CHF 3'000".*

19. In the Decision, the Disciplinary Commission preliminarily noted that:

"• *The finding of the analysis of the sample A2598058 is positive to S6. Stimulants methylhexaneamine (dimethylpentylamine) and 4-phenylpiracetam (carphedon) …;*

- *There is no apparent departure from the International Standards for Testing or the International Standard for Laboratories;*
- *The Gymnast did not ask for or previously had a TUE;*
- *On 1 October 2012, the Gymnast was provisionally suspended as per art. 7.6 of FIG ADR, as of the date the Gymnast was notified by FIG of the AAF …;*
- *By email dated 3 October 2012, the Gymnast did not require the B sample to be analyzed …;*
- *During the hearing, AK provided a prescription dated 10 July 2012 … and a medical certificate dated 23 July 2012 …;*
- *According to the WADA "2012 Prohibited List" which forms an integral part of the ADR and WADA Code, methylhexaneamine is a specified substance under art. 4.2.2 of the FIG ADR and art. 4.2.2 of WADA Code, while 4-phenylpiracetam is a non-specified substance;*
- *The Gymnast status following the provisional suspension in accordance with art. 10.10 of the ADR and 10.10 of the WADA Code;*
- *The ADR effective 1 January 2009 and reviewed 14 May 2012 and WADA Code effective as of 1 January 2009 apply".*

20. The Disciplinary Commission then reasoned its Decision as follows:

"• *The A sample was found positive to methylhexaneamine (dimethylpentylamine) and 4-phenylpiracetam*

(carphedon) (S6. Stimulants);

- *AK could establish how the prohibited substance entered his body;*
- *AK mentioned he never received any education or training on anti-doping matters by his federation nor RUSADA. The FIG-DC is of the opinion that the Federation is responsible for educating its gymnasts and therefore also bear responsibility in this case;*
- *All previous doping tests were negative, until this occurrence, and since 2007 AK has ranked in the top-3 of all international competitions in which he participated;*
- *These substances did not help him improve his performance, since the result obtained at the Loulé WC was the worst he achieved;*
- *Tumbling does not receive the same support and involvement from the national federation compared to other gymnastics Olympic disciplines".*

21. On 13 November 2012, the Decision was sent, *inter alia*, to the RGF, the Athlete (at the address "mmickey@yandex.ru") and WADA. On 4 December 2012 and 17 December 2012, FIG forwarded to WADA additional documents concerning the case of the Athlete.

2. THE ARBITRAL PROCEEDINGS

2.1 THE CAS PROCEEDINGS

22. On 7 January 2013, WADA filed a statement of appeal, with 6 exhibits, with the Court of Arbitration for Sport (hereinafter also referred to as the "CAS"), pursuant to Article R48 of the Code of Sports-related Arbitration (hereinafter also referred to as the "Code"), to challenge the Decision.

23. In its statement of appeal, the Appellant indicated the RGF's address as the address of the Athlete and nominated Prof. Richard H. McLaren as arbitrator.

24. On 9 January 2013, the CAS Court Office forwarded the statement of appeal to the Respondents, to the addresses indicated by the Appellant.

25. On 16 January 2013, the Appellant filed its appeal brief, pursuant to Article R51 of the Code, together with 6 exhibits, which included a *"Statement"* signed by Dr. Olivier Rabin, Science Director of WADA.

26. The appeal brief also contained a request that *"the Athlete produce (i) a legible copy of the prescription of nootropil dated 10 July 2012 … and (ii) evidence of the date on which the Athlete travelled to Portugal"* to compete at the Event.

27. On 17 January 2013, the CAS Court Office forwarded the appeal brief to the Respondents' addresses indicated by the Appellant in the statement of appeal. In the cover letter, the Athlete

was invited to advise, within a short deadline, the CAS Court Office whether he was willing to produce voluntarily the documentation requested by WADA in the appeal brief.

28. In a letter dated 21 January 2013, the FIG informed the CAS of its appointment of Prof. Denis Oswald as arbitrator.

29. On 22 January 2013, the FIG transmitted to the CAS Court Office a letter from the Trampoline Federation of Russia as follows:

"We agree with your proposal to have Mr. Denis Oswald as arbitrator at the court WADA vs FIG concerning Andrey Krylov's doping-test case. This answer was discussed and agreed with Andrey Krylov".

30. On 7 February 2013, the Second Respondent submitted its answer pursuant to Article R55 of the Code.

31. In a letter dated 14 February 2013, the CAS Court Office noted that the First Respondent had not filed any answer and had not replied to the invitation to state his position on the Appellant's request contained in the appeal brief (§ 26 above).

32. On 19 February 2013, the Appellant indicated its preference for the dispute to be decided on the basis of the file.

33. By communication dated 20 February 2013, the CAS Court Office informed the parties, on behalf of the President of the CAS Appeals Arbitration Division, that the Panel had been constituted as follows: Prof. Luigi Fumagalli, President of the Panel; Prof. Richard McLaren and Prof. Denis Oswald, arbitrators.

34. On 21 February 2013, the Second Respondent informed the Panel that it agreed that the matter be decided on the basis of the written submissions and that it preferred not to hold a hearing.

35. On 1 March 2013, the CAS Court Office, writing on behalf of the Panel:

i. requested the Second Respondent, pursuant to Article R57 of the Code, to provide CAS with a copy of the complete case file concerning the disciplinary proceedings brought against the Athlete;

ii. requested the First Respondent *"or his representative"*, pursuant to Articles R57 and R44.3 of the Code, to confirm receipt of all the appeal documentation, and to indicate whether the Athlete preferred that a hearing be held or that the matter be decided on the papers. Such letter was sent to the First Respondent by DHL to the Moscow address indicated by the Appellant in the statement of appeal and by email to the addresses "rusgymnastics@mail.ru", being the email address provided by the Appellant, and "office@trampoline.ru", i.e., the address from which the communication dated 22 January 2013 (§ 29 above) came from.

36. On 1 March 2013, the Second Respondent lodged with CAS a copy of the complete case file concerning the Athlete.

37. On 7 March 2013, the CAS Court Office received from the email address "Андрей

[mmickey@yandex.ru]" the following message:

"Hello, my name is Andrey Krylov, I will not attend. And will only documents that I provided".

38. In a letter of 8 March 2013, sent also by email to the address "mmickey@yandex.ru", the CAS Court Office noted the First Respondent's preference that the dispute be decided without a hearing. At the same time, the First Respondent was requested to confirm that he had received all the appeal documentation in this case.

39. On 20 March 2013, the CAS Court Office, acting upon the Panel's instructions, invited the RGF to provide the CAS with a document signed by the Athlete confirming that he had received all the arbitration papers. Such request was reiterated on 5 April 2013. Both communications were sent also by email to the address "mmickey@yandex.ru".

40. On 8 April 2013, the CAS Court Office received an email from the address "Андрей [mmickey@yandex.ru]" as follows: *"pÿonfirms"*. The Panel understands this word to be a misspelling for *"confirms"*. Attached to the email, in fact, were copies, signed by the Athlete, of the CAS Court Office letters of 5 April 2013 requesting confirmation of receipt.

41. As a result, in a letter of 18 April 2013, the CAS Court Office informed the parties that the Panel was satisfied that the First Respondent had received all the arbitration papers in connection with this appeal.

42. On 22 May 2013, the CAS Court Office, on behalf of the President of the Panel, issued an order of procedure (hereinafter referred to as the "Order of Procedure"). The Order of Procedure was signed by the Appellant and the Second Respondent.

43. With notification issued on 22 May 2013, the CAS Court Office informed the parties that, after consulting them, the Panel had considered itself sufficiently well informed and had decided, pursuant to Article R57, second paragraph of the Code, to issue an award on the basis of the parties' written submissions only.

2.2 THE POSITION OF THE PARTIES

44. The following outline of the parties' positions is illustrative only and does not necessarily comprise every contention put forward by the parties. The Panel, indeed, has carefully considered all the submissions made by the parties, even if there is no specific reference to those submissions in the following summary.

A. The Position of the Appellant

45. WADA requests the Panel to rule as follows:

"1) The appeal of WADA is admissible.

2) The decision rendered by the FIG Disciplinary Commission in the matter of Mr Andrey Krylov on 8 November 2012 is set aside.

3) Mr Andrey Krylov is sanctioned with a two year-period of ineligibility starting on the date on which the CAS award enters into force. Any period of ineligibility, whether imposed on, or voluntarily accepted by, the Athlete before the entry into force of such award, shall be credited against the total period of ineligibility to be served (article 10.9 FIG ADR).

4) All competitive individual results obtained by Mr Andrey Krylov from 8 September 2012 through the commencement of the applicable period of ineligibility (including his results [at] the Competition) shall be annulled (articles 9 and 10.8 FIG ADR).

5) WADA is granted an award for costs".

46. In its submissions, in other words, the Appellant criticizes the Decision, which it asks the Panel to set aside and to replace it with a new decision sanctioning the First Respondent for a longer period. For such purposes, the Appellant makes submissions, *inter alia*, concerning the anti-doping rule violation committed by the Athlete and the sanction to be imposed.

47. In support of its requests, the Appellant, in fact, preliminarily notes that the Athlete did not challenge the Adverse Analytical Finding; he did not request the analysis of the B sample; and he did not deny the presence of the two prohibited stimulants (a specified and a non-specified substance) in the context of the FIG disciplinary proceedings. As a result, the anti-doping rule violation contemplated by Article 2.1 FIG ADR (presence of a prohibited substance) is established.

48. The Appellant requests that the anti-doping rule violation committed by the Athlete be sanctioned with the standard two year ineligibility period in accordance with Article 10.2 FIG ADR, as the conditions for its reduction under Article 10.4 and/or 10.5.2 FIG ADR are not met: the Athlete did not bring satisfactory evidence on how the prohibited substances entered his body; no convincing argument has been advanced with respect to any lack of significant fault or negligence. On the other hand, the Appellant notes that the First Respondent has not pleaded a "no fault or negligence" case under Article 10.5.1 FIG ADR.

49. At the same time, however, the Appellant notes that the Athlete's sample revealed the presence of two prohibited stimulants. The sanction should be based on the violation carrying the more severe sanction (Article 10.7.4 FIG ADR), since WADA accepts that the Adverse Analytical Finding, even though relating to two distinct substances, is to be treated as showing only a single anti-doping rule violation. In any case, it is the Appellant's submission that both violations, when taken in isolation, warrant the imposition of the standard sanction of two years' ineligibility.

50. The Appellant examines the factors indicated by the First Respondent before the FIG disciplinary bodies to justify a reduction of the sanction, as follows:

"• *The fact that the Athlete's previous tests have been negative is relevant only in the sense that this case will be treated as a first anti-doping rule violation. If the Athlete had a previous violation, the level of sanctions would be significantly more severe under article 10.7 FIG ADR.*

- *The fact that the Athlete is experiencing a difficult moment in his life is both unsubstantiated and irrelevant. It is certainly not an exceptional circumstance for the purposes of article 10.5.2. … .*
- *WADA does not understand the Athlete's contention that he, his coach and the President of the Russian Gymnastic Federation are victims. If this is an allusion to some form of sabotage, it is wholly unsubstantiated and also at odds with the Athlete's own explanations of how the prohibited substances entered his system. If the Athlete is a victim at all, then only of his own significant negligence.*
- *The prohibited substances are both stimulants which are clearly capable of enhancing athletic performance. Methylhexaneamine is an ingredient used in many nutritional supplements designed to improve sport performance … . The Athlete's Statement encloses descriptions of geranium oil and phenotropil; these descriptions describe the former as increasing "mental and physical activity" and the latter as improving "concentration and alertness" and "exercise capacity" and "raising the pain threshold". Finally, the prohibited stimulants in the Athlete's sample were detected in concentrations which would have enhanced the Athlete's athletic performance … .*
- *The instructions of phenotropil do state that, in order to improve performance, athletes should take 100mg to 200mg for three days (as opposed to two weeks for non-athletes). However, this statement does not imply that phenotropil does not contain a prohibited substance. Indeed, athletes could use phenotropil provided that they left sufficient time for the carphedon to exit their system prior to any competition. In any event, the Athlete does not appear to contend that he consulted the instructions appended to the Athlete's Statement prior to ingestion.*
- *A lack of anti-doping education cannot per se constitute an exceptional circumstance for the purposes of article 10.5.2 FIG ADR. Furthermore, the Athlete … was nearly twenty four years old at the time of the doping control. He is an elite athlete – gold medallist at the trampoline world championships in 2007 – and has been subject to previous doping controls. In these circumstances, it is disingenuous to claim (or imply) such a complete ignorance of anti-doping matters as to justify a blind consumption of non-prescribed medication. In any event, any such claim is bound to fail".*

51. In light of the foregoing, the Appellant submits, as indicated, that the conditions for the reduction of the standard sanction according to Article 10.4 are not met and that there are no exceptional circumstances which would allow the Athlete to benefit from a reduction of a period of ineligibility under 10.5.2.FIG ADR, since the Athlete failed to establish on the balance of probabilities the origin of both the prohibited substances found in his sample. Despite the short half-life of the stimulants, in fact, the concentrations of the stimulants found in the Athlete's system are high and in both cases incompatible with the explanations given by the Athlete.

52. In addition, the Appellant underlines that the Athlete took few (or no) precautionary measures to prevent his ingestion of the prohibited substances. With respect to 4-phenylpiracetam (carphedon), in particular, the Athlete decided to substitute a different medication for the one which had been prescribed to him (nootropil) and he did this without checking the pharmacist's recommendation with a medical doctor or undertaking his own research. In addition, even a rudimentary Internet search would have revealed that "phenotropil" contained a banned substance. In other words, the Athlete failed in his personal duty to ensure that no prohibited substances entered his system. Furthermore, the Athlete failed to declare either phenotropil or geranium oil on his doping control form.

53. Finally, the Appellant emphasizes that the multiple prohibited substances detected constitutes a reason not to reduce the Athlete's sanction below the standard two years period for a first violation.

B. The Position of the Respondents

i. The Position of the First Respondent

54. The Athlete did not submit any answer to the appeal filed by WADA. In an email of 7 March 2013 (§ 37 above), he simply referred to the documents on file. The Panel understands such indication as a reference to the submissions made in the course of the FIG disciplinary proceedings (§§ 12 and 17 above).

ii. The Position of the Second Respondent

55. In its answer dated 7 February 2013, the FIG confirmed its support of the Decision, found to be *"balanced, fair and appropriate when considering the particular circumstances of Mr Krylov's case"*, and expressed its view that *"the fair judgment and the sense of proportion of the FIG Disciplinary Commission should be respected"*.

56. More specifically, the FIG underlined that the Disciplinary Commission carefully evaluated the evidence presented by the Athlete and found some of the arguments credible. More precisely, the following circumstances were considered to have a mitigating impact on the length of the period of ineligibility:

"- The fact that the athlete was able to establish how the prohibited substance entered his body;

- The fact that the athlete never received any education or training on anti-doping matters by his federation or RUSADA which cannot shift the full responsibility to a young gymnast;

- The fact that the athlete was regularly tested negative;

- The fact that the substances identified had no impact on his sporting performance;

- The fact that already a 12 months period of ineligibility is a very severe sanction compared to the relatively short duration of a sports career in gymnastics and especially in trampoline".

57. In addition, the FIG indicated that the CAS should take into consideration that the Athlete accepted his responsibility, that he consulted a sports doctor but was given another medication when the prescribed drug was not available, that he did not take recourse to *"fancy legal defence arguments"* which would have increased the costs and duration of the proceedings, and that this was indeed a case of individual negligence.

58. At the same time, the FIG underlined that *"there must be a difference when sanctioning a trampoline gymnast compared to a professional athlete like, e.g., a cyclist, tennis player or runner"*, and that the otherwise applicable sanction must be reduced. However, the FIG eventually left it to the Panel to determine the appropriate reduction of the sanction under the specific circumstances.

3. LEGAL ANALYSIS

3.1 JURISDICTION

59. The jurisdiction of CAS is not disputed by the Second Respondent and has been confirmed by the signature of the Order of Procedure. The CAS jurisdiction has not been disputed by the Athlete, who, although not filing any answer in these proceedings, requested, in an email to CAS of 7 March 2013 (§ 37 above), that his case be examined on the basis of the documents provided, i.e. in the merits.

60. The CAS jurisdiction is, in any case, contemplated by Article 13 ["*Appeals*"] of the FIG ADR as follows:

"13.1 Decisions Subject to Appeal

Decisions made under these Anti-Doping Rules may be appealed as set forth below in Article 13.2 through 13.4 or as otherwise provided in these Anti-Doping Rules, after exhaustion of the internal appeal process. (…)

13.1.1 WADA Not Required to Exhaust Internal Remedies

Where WADA has a right to appeal under Article 13 and no other party has appealed a final decision within the FIG or its National Federation's process, WADA may appeal such decision directly to CAS without having to exhaust other remedies in the FIG or its National Federation's process.

13.2 Appeals from Decisions Regarding Anti-Doping Rule Violations, Consequences, and Provisional Suspensions

A decision that an anti-doping rule violation was committed, a decision imposing Consequences for an anti-doping rule violation … may be appealed exclusively as provided in this Article 13.2. (…)

13.2.1 Appeals Involving International-Level Gymnasts

In cases arising from competition in an International Event or in cases involving International-Level Gymnasts, the decision of the FIG Appeal Tribunal may be appealed exclusively to CAS in accordance with the provisions applicable before such court.

(…)

13.2.3 Persons Entitled to Appeal

In cases under Article 13.2.1, the following parties shall have the right to appeal to CAS: (…) (e) WADA.

(…)

13.6 Time for Filing Appeals

The time to file an appeal to CAS shall be twenty-one (21) days from the date of receipt of the decision

by the appealing party. …

The above notwithstanding, the filing deadline for an appeal or intervention filed by WADA shall be the later of:

(a) Twenty-one (21) days after the last day on which any other party in the case could have appealed, or

(b) Twenty-one (21) days after WADA's receipt of the complete file relating to the decision".

61. In light of the foregoing, in accordance with Article R47 of the Code, the CAS has jurisdiction to hear WADA's appeal against FIG and the Athlete.

3.2 APPEAL PROCEEDINGS

62. As these proceedings involve an appeal against a decision rendered by an international federation (FIG) regarding an international level athlete in doping related proceedings, brought on the basis of rules providing for an appeal to the CAS, they are considered and treated as appeal arbitration proceedings of international nature in a disciplinary matter, in the meaning and for the purposes of the Code.

3.3 ADMISSIBILITY OF THE APPEAL

63. The statement of appeal was filed within the deadline set in Article 13.6 FIG ADR. No further recourse against the Decision is available to the Appellant within the structure of FIG: according to Article 13.1.1 FIG ADR, in fact, failing an appeal within the FIG's system brought by another subject, WADA has the right to appeal the Decision directly to CAS, without having to exhaust other remedies in the FIG's process. Accordingly, the appeal is admissible.

3.4 DEFAULT OF APPEARANCE

64. According to Article R55 of the Code, *"if the Respondent fails to submit its response …, the Panel may nevertheless proceed with the arbitration and deliver an award"*.

65. In this respect, the Panel is satisfied that all communications in this arbitration intended for the First Respondent reached him, and that his failure to enter any answer is the result of his choice and not of lack of notice. The Panel in fact notes that communications for the Athlete were sent to the email address "mmickey@yandex.ru", which was used in the course of the FIG disciplinary proceedings (§§ 9, 13, 15 and 21 above) and which the Athlete himself used for communication with FIG (§§ 14 and 16 above) and the CAS (§ 37 above). In addition, by means of the mentioned email address, on 8 April 2013 (§ 40 above), the Athlete confirmed receipt of all the arbitration papers, by returning also signed copies of the CAS letters requesting such

confirmation. This Panel, therefore, could proceed with the arbitration and may issue this award, having given the Athlete the opportunity to be heard.

3.5 SCOPE OF THE PANEL'S REVIEW

66. According to Article R57 of the Code,

"the Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance…".

3.6 APPLICABLE LAW

67. The law applicable in the present arbitration is identified by the Panel in accordance with Article R58 of the Code.

68. Pursuant to Article R58 of the Code, the Panel is required to decide the dispute:

"… according to the applicable regulations and 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 application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

69. As a result of the foregoing, the Panel considers the FIG rules and regulations, and chiefly the FIG ADR, to be the applicable regulations chosen by the parties for the purposes of Article R58 of the Code, and that Swiss law applies subsidiarily.

70. The provisions set in the FIG ADR which are relevant in this arbitration include the following:

Article 2 Anti-Doping Rule Violations

Gymnasts and other Persons shall be responsible for knowing what constitutes an anti-doping rule violation and the substances and methods which have been included on the Prohibited List.

The following constitute anti-doping rule violations:

2.1 The presence of a Prohibited Substance or its Metabolites or Markers in a Gymnast's Sample

2.1.1 It is each Gymnast's personal duty to ensure that no Prohibited Substance enters his or her body. Gymnasts are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Gymnast's part be demonstrated in order to establish an anti-doping violation under Article 2.1.

2.1.2 Sufficient proof of an anti-doping rule violation under Article 2.1 is established by either of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Gymnast's A Sample where the Gymnast waives analysis of the B Sample and the B Sample is not analyzed; or, where the Gymnast's B Sample is analyzed and the analysis of the Gymnast Sample confirms

the presence of the Prohibited Substance or its Metabolites or Markers found in the Gymnast Sample.

2.1.3 *Excepting those substances for which a quantitative threshold is specifically identified in the Prohibited List, the presence of any quantity of a Prohibited Substance or its Metabolites or Markers in a Gymnast's Sample shall constitute an anti-doping rule violation.*

Article 3 Proof of Doping

3.1 *Burdens and Standards of Proof*

FIG and its National Federations shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether FIG or its National Federation has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Rules place the burden of proof upon the Gymnast or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability, except as provided in Articles 10.4 and 10.6, where the Gymnast must satisfy a higher burden of proof.

Article 10 Sanctions on Individuals

10.1 *Disqualification of Results in Event during which an Anti-Doping Rule Violation Occurs*

An Anti-Doping Rule violation occurring during or in connection with an Event may lead to Disqualification of all of the Gymnast's individual results obtained in that Event with all consequences, including forfeiture of all medals, points and prizes, except as provided in Article 10.1.1.

10.2 *Ineligibility for Presence, Use or Attempted Use, or Possession of Prohibited Substances and Prohibited Methods*

The period of Ineligibility imposed for a violation of Article 2.1 (Presence of Prohibited Substance or its Metabolites or Markers), … shall be as follows, unless the conditions for eliminating or reducing the period of Ineligibility, as provided in Articles 10.4 and 10.5, or the conditions for increasing the period of Ineligibility, as provided in Article 10.6, are met:

First violation: Two (2) years' Ineligibility.

10.4 *Elimination or Reduction of the Period of Ineligibility for Specified Substances under Specific Circumstances*

Where a Gymnast or other Person can establish how a Specified Substance entered his or her body or came into his or her possession and that such Specified Substance was not intended to enhance the Gymnast's sport performance or mask the use of a performance-enhancing substance, the period of Ineligibility found in Article 10.2 shall be replaced with the following:

First violation: At a minimum, a reprimand and no period of Ineligibility from future Events, and at a maximum, two (2) years of Ineligibility.

To justify any elimination or reduction, the Gymnast or other Person must produce corroborating evidence in addition to his or her word which establishes to the comfortable satisfaction of the FIG Disciplinary Commission and/or FIG Appeal Tribunal the absence of intent to enhance sport performance or mask the use of a performance enhancing substance. The Gymnast or other Person's degree of fault shall be the criterion considered in assessing any reduction of the period of Ineligibility.

10.5 Elimination or Reduction of Period of Ineligibility Based on Exceptional Circumstances

10.5.1 No Fault or Negligence

If a Gymnast establishes in an individual case that he or she bears No Fault or Negligence, the otherwise applicable period of Ineligibility shall be eliminated. When a Prohibited Substance or its Markers or Metabolites is detected in a Gymnast's Sample in violation of Article 2.1 (presence of Prohibited Substance), the Gymnast must also establish how the Prohibited Substance entered his or her system in order to have the period of Ineligibility eliminated. In the event this Article is applied and the period of Ineligibility otherwise applicable is eliminated, the anti-doping rule violation shall not be considered a violation for the limited purpose of determining the period of Ineligibility for multiple violations under Article 10.7.

10.5.2 No Significant Fault or Negligence

If a Gymnast or other Person establishes in an individual case that he or she bears No Significant Fault or Negligence, then the period of Ineligibility may be reduced, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this section may be no less than 8 years.

When a Prohibited Substance or its Markers or Metabolites is detected in a Gymnast's Sample in violation of Article 2.1 (Presence of Prohibited Substance or its Metabolites or Markers), the Gymnast must also establish how the Prohibited Substance entered his or her system in order to have the period of Ineligibility reduced.

10.7.4 Additional Rules for Certain Potential Multiple Violations

For purposes of imposing sanctions under Article 10.7, an anti-doping rule violation will only be considered a second violation if the FIG (or its National Federation) can establish that the Gymnast or other Person committed the second anti-doping rule violation after the Gymnast or other Person received notice pursuant to Article 7 (Results Management), or after FIG (or its National Federation) made reasonable efforts to give notice, of the first anti-doping rule violation; if the FIG (or its National Federation) cannot establish this, the violations shall be considered together as one single first violation, and the sanction imposed shall be based on the violation that carries the more severe sanction; however, the occurrence of multiple violations may be considered as a factor in determining Aggravating Circumstances (Article 10.6).

10.8 Disqualification of Results in Competitions Subsequent to Sample Collection or Commission of an Anti-Doping Rule Violation

In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9 (Automatic Disqualification of Individual Results), all other competitive results obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting consequences including forfeiture of any medals, points and prizes.

10.9 Commencement of Ineligibility Period

Except as provided below, the period of Ineligibility shall start on the date of the hearing decision providing for Ineligibility or, if the hearing is waived, on the date Ineligibility is accepted or otherwise imposed.

10.9.3 If a Provisional Suspension is imposed and respected by the Gymnast, then the Gymnast shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed.

3.7 THE DISPUTE

71. In accordance with the relief requested by the Appellant, the object of the dispute is the Decision, and more exactly, the measure of the sanction it imposed on the Athlete. The Decision, indeed, (i) found that the anti-doping rule violation described by Article 2.1 FIG ADR was committed by the Athlete, and (ii) imposed on the Athlete, the sanction of the suspension for 12 months from any sporting activity, as well as the disqualification of the results achieved at the Event. WADA does not agree with the Decision and seeks from this Panel, an award replacing it and imposing a period of ineligibility of two years and the disqualification of all the individual competitive results obtained by the Athlete from the date of the Event through the commencement of the applicable period of ineligibility. No other appeal has been brought against the Decision.

72. As a result of the foregoing, the finding that the Athlete is responsible for the anti-doping rule violation contemplated by Article 2.1 FIG ADR [*"Presence of a Prohibited Substance"*] is final. Indeed, the Athlete did not challenge the Adverse Analytical Finding: on the contrary, he admitted the use of the prohibited substances and did not seek the analysis of the B sample (declaration of 1 October 2012, § 12 above: *"I had a meeting with doctor of our National team after receiving the warning letter from the FIG, I recognized that I used the forbidden drugs. It is not necessary to make B sample analysis. Please, cancel it"*). He only submitted, in the course of the FIG disciplinary proceedings, that a number of circumstances must be taken into account for the purposes of the determination of the applicable sanction.

73. In the absence of any submission by the Athlete in this arbitration, the Panel shall consider in respect of the dispute, not only the reasons adduced by WADA in support of the appeal and the reasons offered by FIG to defend the Decision, but also the contentions made by the Athlete in the course of the disciplinary proceedings that led to the Decision.

74. Preliminarily, however, the Panel remarks that the Adverse Analytical Finding, on the basis of which the anti-doping rule violation was found, refers to two distinct prohibited substances (methylhexaneamine and 4-phenylpiracetam) (§ 8 above), the detection of each one justifying the conclusion that a violation had occurred. At the same time, the Panel remarks that WADA concedes in its appeal that the presence in the Athlete's sample of two prohibited substances is to be considered as one single violation in accordance with Article 10.7.4 FIG ADR. However, under such provision, *"the sanction imposed shall be based on the violation that carries the more severe sanction"*.

75. Article 10.2 FIG ADR provides, for a first anti-doping rule violation under Article 2.1 FIG ADR, the sanction of two years' ineligibility: this is indeed the sanction which WADA requests this Panel to impose. However, the period of ineligibility may be eliminated or reduced on the basis of Articles 10.4 [*"Elimination or Reduction of the Period of Ineligibility for Specified Substances under Specific Circumstances"*], 10.5.1 [*"No Fault or Negligence"*] or 10.5.2 [*"No Significant Fault or Negligence"*] FIG ADR.

76. The Panel notes indeed that the Athlete made no submission with respect to Article 10.5.1 FIG ADR and the conditions for its application.

77. The questions before this Panel, therefore, concern only the applicability of Articles 10.4 and 10.5.2 FIG ADR, and the possibility to reduce under them the otherwise applicable period of ineligibility. Indeed, of the two prohibited substances found in the Athlete's sample, one (methylhexaneamine) was a specified substance, eligible to fall within the scope of application of Article 10.4 FIG ADR, the other (4-phenylpiracetam) was a non-specified substance, for which the sanction could be reduced under Article 10.5.2 FIG ADR.

78. Under both provisions, in fact, if the conditions therein indicated are satisfied, the period of ineligibility (2 years) contemplated by Article 10.2 FIG ADR can be replaced by a shorter one or even eliminated. Under Article 10.4, the otherwise applicable period of ineligibility can be replaced by a sanction ranging from a simple reprimand and no ineligibility (minimum sanction) to a period of ineligibility of two years (maximum sanction). Under Article 10.5.2, the otherwise applicable period of ineligibility can be reduced to its one-half.

79. As said, however, in order to benefit from the reduction or elimination of the sanction, an athlete has to demonstrate that a number of conditions are satisfied:

    i. as a common condition under both rules, the athlete has to establish how the prohibited substance entered his or her body. Such evidence has to be given by the athlete by balance of probabilities (Article 3.1 FIG ADR), that is to say that the occurrence of the circumstance on which it relies is more probable than its non-occurrence;

    ii. under Article 10.4 FIG ADR, then, the athlete has to provide corroborating evidence, in addition to his or her word, which establishes the absence of intent to enhance sport performance or mask the use of a performance enhancing substance. Such evidence has to be provided *"to the comfortable satisfaction"* of the hearing body (Article 10.4, third paragraph FIG ADR), i.e. to a level greater than the mere balance of probabilities, but lower than proof beyond a reasonable doubt (Article 3.1 FIG ADR);

    iii. under Article 10.5.2, on the other hand, the athlete has to establish, by balance of probabilities, that he bears No Significant Fault or Negligence, i.e. that his or her fault or negligence, when viewed in the totality of the circumstances, was not significant in relationship to the anti-doping rule violation.

80. On the basis of the foregoing, the Panel holds that the standard sanction of two years' ineligibility, as claimed by WADA, should be applied to the Athlete: such consequence would follow the detection of each of the substances found in the Athlete's sample, since the

conditions for the reduction of the sanction in respect of both of them are not satisfied. Indeed, even in the case (which does not occur in the present dispute) the Athlete would have established the conditions for a reduced sanction with respect to only one of the substances, and not for the other, the more severe, standard sanction should apply, pursuant to Article 10.7.4 FIG ADR.

81. The Panel finds in fact, contrary to the Decision, that the Athlete has not established how the prohibited substances entered his body.

82. The Athlete, in that respect, refers to some pharmaceutical products, Phenotropil and Geranium Essential Oil he had bought in a Moscow pharmacy, as the cause for the detection in his sample of 4-phenylpiracetam and methylhexaneamine respectively. More specifically, he explains that he used Phenotropil to treat a cold at the dosage of 100 mg for 3 days one week before his travel to Portugal for the Event. He also used Geranium Essential Oil to rinse his mouth and by application to his skin.

83. Such explanations are disputed by WADA.

84. The Appellant's submissions are supported by the statement of Dr. Rabin, which remained unchallenged in this arbitration. The Panel finds them to be convincing.

85. With respect to 4-phenylpiracetam, Dr. Rabin explained that, *"taking into account the short half-life of Phenotropil, reported at 3-5 hours, it is not considered pharmacologically possible that a concentration as high as 9 ug/mL remains in a sample 9 days after the last intake"*. Therefore, the explanation given by the Athlete fails, as a matter of probability it is highly unlikely that such an explanation explains how 4-phenylpiracetam entered his body.

86. The Panel reaches the same conclusion with respect to methylhexaneamine, the presence of which in the Athlete's sample is justified by the Athlete as a consequence of mouth rinsing and cutaneous absorption following the use of Geranium Essential Oil. In its respect, Dr. Rabin explains that:

    i. from a medical standpoint, the use of Geranium Essential Oil as a mouth rinse to treat a cold seems *"somewhat odd"*, since *"there is no scientific evidence that geranium oil addresses general cold symptoms"*;

    ii. *"according to the more recent scientific literature, geranium oil does not contain methylhexaneamine"*;

    iii. even assuming that *"the geranium oil contained normal concentration"* of methylhexaneamine, *"the concentration detected in the Athlete's sample appears still incompatible with the use he describes i.e. mouth rinsing and application to skin"*.

87. Therefore, the explanation given by the Athlete fails to establish on a balance of probabilities, how methylhexaneamine entered his body. As Dr. Rabin states, the urinary concentration found in the Athlete's sample is more likely linked to the intake of the substance shortly before the sample collection.

88. The finding that the Athlete failed to demonstrate how both prohibited substances entered his

body would in itself be sufficient for this Panel to justify the conclusion that the first condition for the reduction under Article 10.4 FIG ADR (with respect to methylhexaneamine) and/or under Article 10.5.2 FIG ADR (with respect to 4-phenylpiracetam) of the standard sanction for the anti-doping rule violation (§ 79(i) above) he committed is not met. Therefore, the two years' ineligibility sanction applies.

89. The Panel, however, notes for the avoidance of any doubt, that the other conditions which must be met for the Athlete to benefit from a milder sanction (§ 79(ii) and (iii) above) are likewise not satisfied.

90. With respect to methylhexaneamine, indeed, under Article 10.4 FIG ADR, the Athlete would have to prove "absence of intent" to enhance sport performance. In this connection, the Panel underlines (i) that the evidentiary standard set by Article 10.4 FIG ADR is higher than the mere balance of probabilities, (ii) that the *"corroborating evidence"* cannot be limited to the Athlete's words, and (iii) that no *ex post* evaluations of the effect of the prohibited substance on the sporting performance are allowed.

91. On such basis, the Panel cannot accept the Athlete's unsubstantiated contention and the Decision's finding, based only on his words, that methylhexaneamine did not help his performance, because at the Event the Athlete achieved his worst results in recent times. On the other hand, the Panel notes the unchallenged statements submitted by Dr. Rabin, who explains that the reason adduced by the Athlete (treat a cold) for the use of the pharmaceutical products at the origin of the Adverse Analytical Finding cannot be maintained: more specifically, the use of Geranium Essential Oil to treat a cold *"seems somewhat odd"*. Indeed, the therapeutical indications for Geranium Essential Oil (filed by the Athlete with the FIG during the disciplinary proceedings: § 14 above, the use of which allegedly caused the Adverse Analytical Finding for methylhexaneamine) do not support the Athlete's contention, as they indicate, *inter alia*, that the product *"balances the psycho-emotional state, reduces anxiety and depression, improves mood, eliminates anxiety, increases mental and physical activity, helps concentration … reduces stress"*: in other words, it has a direct influence on sporting performance. As a result, the Panel concludes that the Athlete has not brought evidence sufficient to establish, to the Panel's comfortable satisfaction, "absence of intent" to enhance his sport performance.

92. With respect to 4-phenylpiracetam, on the other hand, under Article 10.5.2 FIG ADR, the Athlete would have to give evidence that his fault or negligence was not significant.

93. The issue whether an athlete's negligence is "significant" has been much discussed in the CAS jurisprudence (e.g., in the cases CAS 2005/A/847; CAS 2008/A/1489 & 1510; CAS 2006/A/1025; CAS 2005/A/830; CAS 2005/A/951; CAS 2004/A/690; CAS OG 04/003), which underlined that a period of ineligibility can be reduced based on no significant fault or negligence only in cases where the circumstances are truly exceptional and not in the vast majority of cases.

94. On this basis, contrary to the Athlete's indication, the Panel notes that, as Dr. Rabin explained, the consumption of Phenotropil (i.e., the product containing the non-specified prohibited stimulant) to treat a cold at the end of August 2012 has nothing to do with the condition for

which a prescription was made in July 2012: therefore, the Athlete was negligent in using a product for a purpose for which it was not prescribed. In addition, the Panel notes that the Athlete decided to purchase, on the simple advice of a pharmacist, a product different from the one which had originally been prescribed by a doctor: in failing to consult a doctor, or even make any kind of control, before the use of the product he had bought, the Athlete was highly negligent. He therefore should bear the consequences of his negligence.

95. At the same time, the Panel notes that the explanations offered in the Decision, and/or mentioned in the Athlete's submissions in the FIG disciplinary proceedings, to justify the application of a sanction lower than the standard one (§§ 17 and 20 above) are irrelevant and cannot be accepted:

    i. the Athlete *"never received any education or training on anti-doping matters by his federation"*, which should *"therefore also bear responsibility in this case"*: this assumption is totally unsubstantiated and irrelevant, not only because ignorance of the law is no excuse, but also because the Athlete was, in his discipline, a high level competitor, who had undergone other anti-doping tests in his career. In other words, he should have known what his responsibilities were;

    ii. *"all previous doping tests were negative"*: lack of precedents is not contemplated by the applicable rules to be a mitigating factor. Indeed, Article 10.2 FIG ADR sanctions with a period of ineligibility of two years the <u>first</u> anti-doping rule violation under Article 2.1 FIG ADR, and its reduction is possible only under the specific circumstances therein indicated (set by Articles, 10.4, 10.5.1 and 10.5.2 FIG ADR), the occurrence of which has been denied in this award;

    iii. *"tumbling"*, i.e. the discipline in which the Athlete competes, *"does not receive the same support and involvement from the national federation compared to other gymnastics Olympic disciplines"*: the circumstances is immaterial, since the attitude of a national federation cannot justify any anti-doping rule violation committed by an athlete, who is personally responsible to make sure that no prohibited substance enters his/her body;

    iv. *"it is a very difficult moment for him in his life, he also believes he is the victim, together with his coach and the president of the federation"*: this explanation is not supported by any additional explanation and can hardly be understood by the Panel.

96. In the same way, the Panel cannot accept the additional indications offered by FIG in its letter of 7 February 2013 to this Panel (§§ 56-58 above), that *"a 12 months period of ineligibility is a very severe sanction compared to the relatively short duration of a sports career in gymnastics and especially in trampoline"*, and that *"there must be a difference when sanctioning a trampoline gymnast compared to a professional athlete like, e.g., a cyclist, tennis player or runner"*. The rules applicable in gymnastics, approved by the same federation which invokes the peculiarities of the sport, are clear and follow a standardized process, based on the WADA Anti-Doping Code, adopted, according to its Preamble, *"to ensure harmonized, coordinated and effective anti-doping programs"*, the legality of which is not disputed in this arbitration. There is no room under those rules, therefore, for differentiated treatment of gymnasts as compared to athletes competing in different sports: the anti-doping rule violation contemplated by Article 2.1 FIG ADR is to be sanctioned with the two years' ineligibility set by Article 10.2, failing any of the circumstances allowing its reduction.

97. As a result, the Panel finds that the sanction to be applied to the Athlete for his anti-doping rule violation is a period of ineligibility of two years. The Decision, which held otherwise, is to be set aside.

98. The question that arises, then, relates to the starting moment of the ineligibility period imposed by this award on the Athlete.

99. The rule applicable for the determination of the starting moment of the ineligibility period is to be found in Article 10.9 FIG ADR, which for that purpose refers to *"the date of the hearing decision providing for Ineligibility"*.

100. The starting moment of the suspension is therefore – as requested by WADA – the day this award is communicated to the parties (on the point CAS 2009/A/1870, § 128; CAS 2010/A/2062, § 54; CAS 2011/A/2515, §§ 81-84): the Decision, in fact, is set aside and ineligibility is imposed by this Panel.

101. However, pursuant to Article 10.9.3 FIG ADR, and as confirmed by the Appellant in its request for relief, any period of provisional suspension is to be credited against the total period of ineligibility imposed.

102. In any case, in the determination of the exact period of ineligibility that the Athlete has yet to serve of the two years hereby imposed, account is to be taken of the period already served pursuant to the Decision. Even though the Decision is set aside, the fact remains that the Athlete was not eligible to compete under it because of the finding of his commission of an anti-doping rule violation: it would be unfair not to give him credit for that period. The fact that such prior period was not served as a provisional suspension is no impediment to that conclusion. The Panel, in fact, remarks that Article 10.9.3 FIG ADR, while providing for the obligation to give credit for periods of provisional suspension, does not exclude (but logically requires) credit for the periods of suspension imposed and served on the basis of "final" disciplinary decisions subsequently set aside. As a result, credit is to be given to the Athlete for any period of suspension (whether provisional or based on the Decision) he had served prior to the starting date of the ineligibility imposed by this award.

103. The final point concerns disqualification. WADA, in fact, requests that the Athlete's individual results between 8 September 2012 and the date of the CAS award be disqualified.

104. Under Article 10.8 FIG ADR, all competitive results obtained from the date an anti-doping rule violation occurred, through the commencement of any provisional suspension or ineligibility period, shall, unless fairness requires otherwise, be disqualified with all of the resulting consequences including forfeiture of any medals, points and prizes.

105. No justification was indeed offered by the Respondents to justify that fairness requires that the results in the competitions subsequent to the sample collection are not disqualified. Therefore, the Panel concludes that all competitive individual results obtained by the Athlete from 8 September 2012 (the date of the positive test) through the commencement of the period of ineligibility shall be disqualified, with all resulting consequences, including forfeiture of any

medals, points and prizes.

3.8 CONCLUSION

106. In light of the foregoing, the Panel holds that the appeal brought by WADA against the Decision is to be upheld. The Decision is to be set aside; and the Athlete, having committed an anti-doping rule violation under Article 2.1 FIG ADR, is sanctioned, in accordance with Article 10.2 FIG ADR, with a period of ineligibility of two years, starting on the date of this award, with credit given for any period of suspension at that time already served. All individual competitive results obtained by the Athlete from 8 September 2012 (the date of the positive test) through the commencement of the period of ineligibility shall be disqualified, with all resulting consequences, including forfeiture of any medals, points and prizes.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by the World Anti-Doping Agency (WADA) on 7 January 2013 against the decision taken by the Disciplinary Commission of the Fédération Internationale de Gymnastique (FIG) on 8 November 2012 is upheld.

2. The decision taken by the Disciplinary Commission of the Fédération Internationale de Gymnastique (FIG) on 8 November 2012 is set aside.

3. A suspension of 2 (two) years is imposed on Mr Andrey Krylov commencing on the date of this award, with credit given for any period of suspension at that time already served.

4. All individual competitive results obtained by Mr Andrey Krylov from 8 September 2012 through the commencement of the period of ineligibility shall be disqualified with all resulting consequences, including forfeiture of any medals, points and prizes.

(…)

7. All other prayers for relief are dismissed.