



Tribunal Arbitral du Sport  
Court of Arbitration for Sport  
Tribunal Arbitral del Deporte

## COURT OF ARBITRATION FOR SPORT (CAS)

Ad hoc Division – Games of the XXXIV Olympiad in Beijing

### APPLICATION

(to be completed in English)

#### 1. APPLICANT

Name: World Anti-Doping Agency .....

Address on site of the OG: N/A .....

Phone number on site of the OG: N/A .....

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Other means by which the Applicant can be reached: N/A .....

#### 2. PERSON REPRESENTING THE APPLICANT, IF ANY

Name: Nicolas Zbinden and Anton Sotir, Kellerhals Carrard & Ross Wenzel, General Counsel WADA .....

Address on site of the OG: N/A .....

Phone number on site of the OG: N/A .....

E-mail on site of the OG: [nicolas.zbinden@kellerhals-carrard.ch](mailto:nicolas.zbinden@kellerhals-carrard.ch); [anton.sotir@kellerhals-carrard.ch](mailto:anton.sotir@kellerhals-carrard.ch) .....

#### 3. RESPONDENT

Name: Russian Anti-Doping Agency (RUSADA) .....

Address on site of the OG: N/A .....

Phone number on site of the OG: N/A .....

E-mail on site of the OG: Valeriya.German@rusada.ru; Veronika.Loginova@rusada.ru

Name: Kamila Valieva (the "Athlete").....

Address on site of the OG: N/A .....

Phone number on site of the OG: N/A .....

E-mail on site of the OG<sup>1</sup>: [REDACTED] / [a.konokotin@olimpic.ru](mailto:a.konokotin@olimpic.ru) (Chef de Mission ROC).....

**4. OTHER PARTIES, IF ANY**

Since, depending on the circumstances, it may be necessary or desirable that the competent IF and/or NOC participate in the hearing, please specify their contact details.

**IF:** International Skating Union .....

Phone number on site of the OG: .....

E-mail on site of the OG: [schmid@isu.ch](mailto:schmid@isu.ch) .....

**NOC:** Russian Olympic Committee.....

Phone number on site of the OG: .....

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Are there any persons, organizations not named above who may, in your mind, be adversely affected by any decision which CAS may issue in this matter? In particular, are there any athletes or teams who may be affected? If so, please specify their details:

Name(s): International Olympic Committee .....

Contact person: Antonio Rigozzi (counsel) .....

Phone number on site of the OG: .....

E-mail on site of the OG: [antonio.rigozzi@lk-k.com](mailto:antonio.rigozzi@lk-k.com) .....

**5. DETAILS OF THE DECISION CHALLENGED, IF ANY**

Date of decision: 9 February 2022 (reasons still to be notified)

Decision made by: RUSADA Disciplinary Anti-Doping Committee.....

Attach a copy of the challenged decision to this application

<sup>1</sup> WADA understands that the Athlete was represented by Dr. Anna Kozmenko, Schellenberg Wittmer, at first instance. Email : [anna.kozmenko@swiegal.ch](mailto:anna.kozmenko@swiegal.ch)

## 6. JURISDICTION OF CAS

based on the arbitration clause inserted in the official entry form for the O.G.

based on another arbitration clause or agreement, namely:

1. The Athlete was subject to an in-competition doping control conducted by RUSADA on 25 December 2021 (the "**Doping Control**") (**Exhibit A01 and Exhibit A02**). The Doping Control was conducted on the occasion of the Russian National Figure Skating Championships which were held from 21 December to 26 December 2021 in St. Petersburg (**Exhibit A03 and Exhibit A04**).
2. The Athlete's urine sample collected at the Doping Control tested positive for trimetazidine. Trimetazidine is a non-specified prohibited substance banned at all times under category S4.4 (*Metabolic Modulators*) of the 2021 WADA Prohibited List (**Exhibit A05**).
3. The Adverse Analytical Finding ("**AAF**") was reported by the WADA-accredited laboratory in Stockholm on 7 February 2022 (**Exhibit A06**). The concentration of trimetazidine detected was estimated at 2.1 ng/mL (**Exhibit A07**).
4. RUSADA notified the AAF to the Athlete on 8 February 2022 and imposed a mandatory provisional suspension pursuant to art. 9.4.1 of the Russian Anti-Doping Rules (the "**Russian ADR**"; **Exhibit A08**).
5. A Provisional Hearing in respect of the provisional suspension took place before the RUSADA Disciplinary Anti-Doping Committee ("**DADC**") on 9 February 2022. Further to the Provisional Hearing, the DADC decided to lift the mandatory provisional suspension (the "**Appealed Decision**") (**Exhibit A09**).
6. The Appealed Decision was notified to WADA on 9 February 2022 (**Exhibit A09**).
7. Pursuant to art. 15.2 of the Russian ADR (**Exhibit A10**), a "*decision to impose or lift Provisional Suspension as a result of Provisional Hearings*" is an appealable decision.
8. Art. 15.2.1 of the Russian ADR provides that an appeal involving an International-Level Athlete is to be made exclusively to the CAS. The Russian ADR define International-Level Athletes as those athletes "*who compete in sports at the international level, as defined by the respective International Federation.*" The ISU Anti-Doping Rules (the "**ISU ADR**") define as International-Level Athletes *inter alia* those athletes who are "*part of the ISU Registered Testing Pool or the ISU Testing Pool*" (**Exhibit A11**). The Athlete is part of the ISU Testing Pool (**Exhibit A12**), and is therefore an International-Level

Athlete within the meaning of the ISU ADR and Russian ADR. As such, the appeal must be made exclusively to the CAS.

9. WADA is one of the parties with a right of appeal to CAS pursuant to art. 15.2.3.1(f) of the Russian ADR.
10. In accordance with art. 15.2.3.4 of the Russian ADR, the time-limit for WADA to file an appeal is the later of "a) *Twenty-one (21) days from the expiry of the time for filing an appeal by other parties*" and "b) *Twenty-one (21) days after WADA's receipt of a complete file relating to the decision.*"
11. The dispute comes under the authority of the CAS Ad Hoc Division as (i) the Appealed Decision was rendered and notified to WADA within the period of the Beijing 2022 Olympic Winter Games and (ii) it is clearly connected with the Olympic Games; the Athlete has already competed in the Games and is scheduled to compete in further competitions as from 15 February 2022 (**Exhibit A13 and Exhibit A14**). Indeed, the CAS Ad Hoc Division at the Tokyo 2020 Olympic Games accepted jurisdiction in very similar circumstances where WADA (and World Athletics) appealed against a decision of the Swiss National Anti-Doping Organization to lift a mandatory provisional suspension (see CAS OG 20/06 & CAS OG 20/08).
12. Whereas the reasons for the Appealed Decision have still not been notified, the urgency of the situation requires that WADA file its appeal in any event. WADA must of course reserve its right to supplement this application, if necessary, after receiving the reasoned decision.

## 7. DETAILS OF THE APPLICATION

### Brief statement of facts and legal arguments:

13. As is clear from the hearing recording (**Exhibit A15**), the Athlete's explanation for the AAF on the occasion of the Provisional Hearing was that (i) her grandfather was a regular user of trimetazidine medication and (ii) she must have somehow been inadvertently exposed to that medication before the Doping Control. No specific scenario for the exposure was advanced.
14. In support of her explanation, the Athlete adduced (oral) witness evidence from her mother, a pre-recorded video message from her grandfather as well as (oral) expert evidence from Dr. Andrey Zhalinskii and Dr. Eduard Bezuglov.

15. The grandfather did not testify at the hearing. In his pre-recorded video (shot in a car), he claimed to use trimetazidine periodically when he suffered from 'attacks' and showed a packet of trimetazidine medication to the camera.<sup>2</sup>
16. The Athlete's mother testified that the grandfather would accompany the Athlete to training on a daily basis, take the Athlete home after training and stay with her until she (i.e. the mother) returned from work.
17. The position of the two scientific experts was, in essence, that the concentration in the Athlete's sample was compatible with contamination. The experts conceded however that the AAF was also compatible with the end of the excretion period after a full dose of trimetazidine.
18. Art 9.4.1 of the Russian ADR requires, in the following terms, that a provisional suspension be imposed immediately in the event of an AAF for a non-specified substance:

*"if an Adverse Analytical Finding or Adverse Passport Finding is received (upon completion of verification of an Adverse Passport Finding) which revealed the presence of a Prohibited Substance or the Use of a Prohibited Method not pertaining to a Specified Substance or Specified Method, including Team Sports, Provisional Suspension shall be imposed immediately after reviewing the Adverse Analytical Finding and providing the notification stipulated by Clause 9.2 hereof." [...]*

19. Art. 9.4.3 of the Russian ADR stipulates the criteria that must be met for a mandatory provisional suspension to be lifted, as follows:

*"Mandatory Provisional Suspension may be eliminated if an Athlete provides evidence that the violation was most likely caused by the Use of a Contaminated Product or pertains to a Substance of Abuse Use and proves the right to reduction of the period of Ineligibility pursuant to Clause 12.2.4.1 of the Rules. The decision not to eliminate mandatory Provisional*

<sup>2</sup> It appears that a photograph of the medication was made available to the DADC during the Provisional Hearing (Exhibit A16).

*Suspension based on the Athlete's statement on the Use of a Contaminated Product may not be appealed." (emphasis added)*

20. The grounds for lifting a mandatory provisional suspension are therefore limited and narrow. That is for good reason. Allowing athletes that have tested positive for non-specified substances to participate in competitions pending the final adjudication of their case would risk negatively affecting the sporting integrity of those competitions. This is all the more the case as the default position under art. 10.10 of the World Anti-Doping Code<sup>3</sup> (and art. 12.10 of the Russian ADR) is that, once the anti-doping rule violation is established, all the competitive results of the Athlete after the date of the violation shall be disqualified.
21. As trimetazidine is not a Substance of Abuse, the only basis in the applicable rules to lift the mandatory provisional suspension is if the Athlete demonstrates that the violation is likely to have involved a Contaminated Product.
22. A Contaminated Product is defined in the Russian ADR as a "*product that contains a Prohibited Substance that is not disclosed on the product label or in information available in a reasonable Internet search.*"
23. The first (and fundamental) point to make is that the Athlete's explanation does not involve a Contaminated Product. It involves some form of exposure to a medication that contained trimetazidine as an ingredient. The Athlete declared the following three products on her Doping Control Form at the Doping Control: L-carnitine, supradyn and hypoxen<sup>4</sup>. She has not sought to argue that any of these products was a Contaminated Product. Therefore, the Athlete necessarily cannot meet the criteria to have her (mandatory) provisional suspension lifted.
24. In any event, the Athlete is required to demonstrate that it is 'most likely' that her anti-doping rule violation was caused by a Contaminated Product. At a minimum, this requires the Athlete to demonstrate that her explanation of the source of the trimetazidine is more likely than not.

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<sup>3</sup> See **Exhibit A17**.

<sup>4</sup> When questioned at the Provisional Hearing as to why the Athlete was taking hypoxen, the Athlete's mother responded that the Athlete took it to treat 'heart variations'. Trimetazidine is also used to treat heart-related conditions (see [Trimetazidine | European Medicines Agency \(europa.eu\)](https://www.ema.europa.eu/en/medicines/humans/CTX/trimetazidine)).

25. As set out by the panel in CAS 2014/A/3820 WADA v. Damar Robinson & JADCO case: *"In order to establish the origin of a Prohibited Substance by the required balance of probability, an athlete must provide **actual evidence** as opposed to mere speculation"* (emphasis added by the panel).<sup>5</sup>
26. It is clear from the consistent case law of the CAS that the fact that an explanation is possible is not sufficient:
- a. As noted by the Panel in CAS 2020/A/6978 Iannone v. FIM & 7068 WADA v. FIM & Iannone (para. 162), *"possible" is not the same as probable. All things which do not defy the law of science are in one sense possible. However, it was for [the athlete] to prove that his meat contamination scenario is more likely than not. And in the Panel's view, he has failed to do so at every critical stage of his submission.*"
  - b. The Panel in the CAS OG 16/25 WADA v. Yadav & NADA *"found the sabotage(s) theory possible, but not probable and certainly not grounded in real evidence".* Ultimately, *"the nature and quality of the defensive evidence put forward by the athlete, in light of all the facts established, must be such that it leaves the tribunal actually satisfied (albeit not comfortably so) that the athlete's defence is more likely than not [to be] true".*
27. Moreover, it is not sufficient for an athlete to simply identify a potential source. An athlete must also demonstrate that the source could have caused the specifics of the adverse finding:
- a. In the case CAS 2010/A/2277 La Barbera v. IWAS, the Panel considered that *"Mr La Barbera did not supply any actual evidence of the specific circumstances in which the unintentional ingestion of the Prohibited Substance would have occurred. Mr La Barbera does in particular neither bring any scientific evidence that would explain how the Prohibited Substance could still be found in his system one week after the end of the dogs' treatment, nor whether such a potential ingestion through his biting his nails could result in the level of substance found in his body. As a result, the Panel finds that Mr La Barbera's explanations lack corroborating evidence and prove unsatisfactory, thereby failing the balance of probability test."*<sup>6</sup>
  - b. In CAS 2017/A/5139 WADA v. CBF & Da Costa, the Sole Arbitrator (Romano Subiotto QC) found that the Androgel that was medically prescribed to the athlete

<sup>5</sup> CAS 2014/A/3820 WADA v. Damar Robinson & JADCO, para. 80.

<sup>6</sup> CAS 2010/A/2277 La Barbera v. IWAS, para. 4.27.

could not have caused the T/E ratio (taking into account the last time that the athlete claimed to have used the gel before the positive doping control) and could not therefore explain the adverse analytical finding.<sup>7</sup>

c. In CAS 2017/A/5260 WADA v. SAIDS & Demarte Pena as well as CAS 2017/A/5369 WADA v. SAIDS & Gordon Gilbert, the Sole Arbitrator (Professor Luigi Fumagalli) found that, although the athletes had demonstrated that they were taking supplements contaminated with the relevant prohibited substance(s), the level of the contamination was not sufficient to have caused the positive IRMS result and the alteration of the athletes' steroidal profile.<sup>8</sup>

28. Against this jurisprudential background, it is clear that the Athlete has not come close to demonstrating that her explanation is 'most likely':

a. First, there is no independent and/or documentary evidence that the Athlete's grandfather used trimetazidine. The only evidence of that fact is the testimony of the Athlete's mother and a pre-recorded (thirty-second) video of the grandfather. There is, without limitation, no proof of purchase, no underlying medical records, and no prescription.

b. Second, no specific scenario has been proffered by the Athlete as to how and when the Athlete was exposed to her grandfather's medication. As a result, there is no scientific evidence as to whether the specifics of the AAF (in particular the concentration of trimetazidine) are compatible with that scenario.

29. In conclusion, the only applicable basis to lift the Athlete's mandatory provisional suspension would be if she could demonstrate that the violation was caused by a Contaminated Product. Even taking her explanation as read, there is no Contaminated Product involved. For that reason alone, the provisional suspension cannot be lifted. In any event, the Athlete falls well short of establishing that her grandfather's medication was the source of the trimetazidine. There is inadequate evidence that her grandfather was even using trimetazidine; in any event, no specific scenario has been advanced and substantiated as a likely explanation for the specific analytical result.

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<sup>7</sup> CAS 2017/A/5139 WADA v. CBF & Da Costa, para. 108 *et seq.*

<sup>8</sup> See, in particular, CAS 2017/A/5260 WADA v. SAIDS & Demarte Pena, para. 160; CAS 2017/A/5369 WADA v. SAIDS & Gordon Gilbert, para. 155.



30. WADA reserves the right to call Dr. Olivier Rabin and/or Professor Martial Saugy to provide expert testimony with respect to the pharmacokinetics of trimetazidine and, in particular, the data provided by a manufacturer of trimetazidine at **Exhibit A18**.

**Relief requested:**

WADA hereby requests the following relief:

1. The Appealed Decision (i.e. the decision of the Disciplinary Anti-Doping Committee dated 9 February 2022 in the matter of Kamila Valieva) is set aside; and
2. A provisional suspension is imposed on Kamila Valieva with immediate effect.

**SECTIONS 8 AND 9 ARE OPTIONAL; COMPLETE ONLY IF YOU REQUEST A STAY OR OTHER EXTREMELY URGENT INTERIM RELIEF**

**8. APPLICATION FOR A STAY OF THE EXECUTION OF THE DECISION CHALLENGED**

If stay applied for, state reasons for such application:

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**9. APPLICATION FOR OTHER EXTREMELY URGENT PRELIMINARY RELIEF**

If preliminary relief applied for, state reasons for such application:

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## 10. ATTACHMENTS TO THIS APPLICATION

The decision being challenged [ X ]

Document containing arbitration clause [ X ]

Power of attorney [ X ]

Applicable Rules/regulations [ X ]

Other:

- Exhibit A00 - Power of Attorney
- Exhibit A01 - Doping Control Form
- Exhibit A02 - ADAMS Testing History
- Exhibit A03 - Wikipedia page of 2022 Russian Figure Skating Championships (2022 Russian Figure Skating Championships - Wikipedia)
- Exhibit A04 - Athletes Whereabouts extracts for December 2021
- Exhibit A05 - WADA Prohibited List 2021
- Exhibit A06 - Test Report
- Exhibit A07 - Letter dated 8 February 2022 from the Stockholm Laboratory
- Exhibit A08 - Notification by RUSADA dated 8 February 2022
- Exhibit A09 - Appealed Decision dated 9 February 2022
- Exhibit A10 - Russian ADR
- Exhibit A11 - ISU ADR
- Exhibit A12 - ISU Registered Testing Pool & Testing Pool 2021/2022
- Exhibit A13 - Figure Skating – Olympic Schedule & Results (Figure Skating - Olympic Schedule & Results | Beijing 2022)
- Exhibit A14 - Entry list for the Women Single Skating (as of 3 February 2022)
- Exhibit A15 - Recording of the first instance hearing
- Exhibit A16 - Photograph of the medication made available during the Provisional Hearing
- Exhibit A17 - World Anti-Doping Code
- Exhibit A18 - Trimetazidine manufacturer data from 10 February 2022

**11. ADDITIONAL COMMENTS, IF ANY**

WADA understands that the Athlete is scheduled to compete in the Women Single Skating – Short Program event on 15 February 2022. It is therefore important that a decision in this matter can be rendered on or before 14 February 2021.

As set out above, WADA reserves its right to file further submissions, if necessary, after receiving the reasons for the Appealed Decision.

Lausanne, 11 February 2022

\_\_\_\_\_  
signature of the Applicant

Alternatively:

\_\_\_\_\_  
signature of Applicant's  
counsel or other representative

(attach power of attorney)