TAS / CAS
TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

TAS 2024/A/11046 Tommaso Elettrico v. NADO Italia

ARBITRATION AWARD

issued by the

COURT OF ARBITRATION FOR SPORTS

gathered in the following composition:

Sole Referee: Ulrich **Haas,** Attorney at Law in Hamburg, Germany, and Professor in Zurich, Swiss

in the arbitration proceedings between

Tommaso Elettrico, Matera, Italy

Represented by Attorneys Salvatore Civale, Gianpaolo Rossini and Priscilla Bortolin, Nocera Lower, Italy

- Appellant -

and

NADO Italia, Rome, Italy

Represented by the Chief Prosecutor of the National Anti-Doping Office, Pierfilippo Laviani, Rome, Italy

- Resistant -

I. PARTY

1. Mr. Tommaso Elettrico (hereinafter also the “Appellant” or the “Athlete”) is a cyclist born on 19 September 1987. He is an athlete who at the time of the events was registered with the Sports Promotion Body ACSI - Association of Culture, Sport and Leisure Time.

2. The National Anti-Doping Prosecutor's Office (hereinafter also the "PNA"), established within the Italian National Anti-Doping Agency ("NADO Italia" or the "Respondent"), is the body exclusively responsible for carrying out all actions aimed at determining the liability of members or affiliates of Italian sports federations, associated sports disciplines, and sports promotion bodies who have engaged in conduct prohibited by the Anti-Doping Code (CSA), adopted by NADO Italia in compliance with the World Anti-Doping Code (WADA Code) and implemented by the aforementioned sports organizations. The PNA performs investigative and prosecution functions for the entire Italian sports system.

3. The Athlete and NADO Italia are also collectively referred to as the “Parties”.

II. FACTS OF THE DISPUTE

4. The following is a summary of the facts of the dispute based on the briefs filed by the Parties, as well as the related evidence, and the allegations made at the hearing. Additional factual circumstances, attributable to the sources indicated above, may be invoked when examining the merits of the dispute. It should be noted, however, that although the Sole Arbitrator has considered all the facts, evidence, and arguments, both factual and legal, submitted by the Parties, he will refer in this award only to those deemed necessary to clarify the grounds on which it is based.

5. The Athlete has been included in the NADO Italia Registered Testing Pool (“RTP”) since February 17, 2022.

6. On March 18, 2024, the PNA notified the Athlete of a violation of Article 2.3 of the CSA, in relation to Article 3.8 of the NADO Italia Technical Document for Controls and Investigations (“ISTI”). The Athlete was charged with having made 19 changes to the location and time of the ADAMS system slot between February 9, 2024, and March 3, 2024.

7. Following the complaint, the Athlete requested a hearing, which was granted by Chief Prosecutor Pierfilippo Laviani on March 20, 2024.

8. The PNA then referred the accused to the National Anti-Doping Tribunal (“TNA”) for the violation of Article 2.3 CSA (evasion, refusal or failure to present for the collection of the biological sample), requesting a 4-year disqualification, an additional fine of EUR 2,000.00 and an order to pay the legal costs.

9. By decision of 11 July 2024, and notified to the parties on 10 September 2024, the TNA

imposed on the Athlete a 4-year ban for violation of Article 2.5 CSA, an additional financial penalty of EUR 2,000.00, and an order to pay the costs of the proceedings.

10. On September 21, 2024, the Athlete appealed the TNA's decision. before the National Court of Anti-Doping Appeals ("CNAA").

11. On October 28, 2024, the hearing for the appeal took place before the CNAA, at the end of which the latter issued the following ruling ("Appealed Decision"):

> *"rejects the appeal lodged by Mr. Tommaso Elettrico against the decision adopted by the National Anti-Doping Tribunal on 4 April 2024, filed with the reasons and notified on 6 May 2024;*
>
> *in acceptance of the incidental appeal proposed by the National Anti-Doping Prosecutor's Office*
>
> *i. affirms the responsibility of Mr. Tommaso Elettrico for the violation of art. 2.3 CSA, and*
>
> *ii. confirms the contested decision in all other respects;*
>
> *condemns Mr. Tommaso Elettrico to pay the legal costs, set at EUR 500;*
>
> *provides that this decision be communicated to the interested party, to the National Anti-Doping Prosecutor's Office, to the World Anti-Doping Agency, to the Union Cycliste Internationale (UCI) and for information to the National Anti-Doping Tribunal as well as, as regards the operative part only, to ACSI and to the company to which he belonged at the time of the facts".*

12. The reasons for the Appealed Decision were notified to the parties on 11 November 2024 and can essentially be summarized as follows:

> *"27. The subject of this appeal is the Decision which, having reclassified the offense charged to the Athlete by the PNA, convicted him of violating art. 2.5 CSA, namely for having compromised the organization of a control against him, as ordered by the CCA, through a strategy that had effectively made it impossible to obtain knowledge of his whereabouts.*
>
> *...*
>
> *32. ... In other words, the subject of the proceedings is not so much the TNA's ruling, but directly the matter already decided at first instance. Therefore, if the Court finds that the TNA failed to correctly adjudicate, failed to address all the claims raised, failed to consider factual circumstances decisive for the resolution of the proceedings, or failed to adequately reason its judgment, it is not "forced" to merely annul the contested decision, but can, by reversing it, adjudicate the merits of the dispute de novo (and directly).*
>
> *...*
>
> *36. In light of the above, it is necessary to assess whether the conduct committed by the Athlete, as charged by the PNA, constitutes a violation of anti-doping regulations and therefore grounds a finding of liability. On this point, the TNA responded affirmatively, holding that the violation falls within the scope of Article 2.5 of the CSA.*
> *The PNA agrees with the finding of liability, but bases it on Article 2.3 of the CSA. The Athlete, however, denies any liability under both Articles 2.3 and 2.5 of the CSA.*
>
> *37. The Court notes, in fact, that Article 2.3 and Article 2.5 of the CSA contain provisions that overlap to some extent, where, as in the case charged to the Athlete, allegedly evasive behavior is relevant (i.e. one of the behaviors that fall within the category described in Article 2.3 of the CSA). Such a finding, in the anti-doping system, does not appear to be exceptional or to be the result of poor coordination between the rules: in fact, for example, even the (classic) category of the presence of a prohibited substance in*

An athlete's samples may coincide with those attributable to that athlete's use of the same material. Therefore, there is a need for coordination in interpretation in relation to the individual case being judged. The TNA was therefore right to address the issue and conduct an analysis of the specific case from this perspective. ...

39. But the last-mentioned fact appears to be the determining factor in distinguishing between the two cases. In fact, art. 2.5 CSA and the related definition of 'Tampering' appear to emphasize (and consider illicit) behaviors that 'positively' interfere with any part of the doping control, aiming to influence its implementation and alter its execution. Such a situation can

This could occur, for example, through the insertion of false whereabouts information into ADAMS. This could lead to an athlete's liability for violation of Article 2.5 of the CSA, given that the sequence of false information provided by the athlete was deemed fraudulent and hindered the work of doping control officials. Conversely, the provision of formally correct information, but in a manner intended to achieve evasive effect, might not be considered tampering.

...

41. In this Court's opinion, the Athlete's liability must therefore be assessed with reference to Article 2.3 of the CSA, overcoming, from a substantive standpoint, the reclassification made by the TNA, as well as, from a procedural standpoint, the Athlete's objections, bringing the "debate" back to an accusation debated since the Indictment, for which the right to a defense was fully guaranteed. …

46. In particular, it should be noted that on 9 February 2024 between 10.23pm and 10.25pm the Athlete made a change in overnight accommodation from Matera (the location previously indicated as "Home" when compiling the whereabouts) to the Canary Islands (Spain) for the days from 9 to 16 February 2024. Based on a reading of the whereabouts information carried out prior to the change, the Athlete appeared to be in Matera for the entire period; after the change, the overnight stay in Matera was indicated again starting from 16 February 2024. However, on 16 February 2024 at 19:43 the Athlete moved the 'overnight accommodation' from Matera to the Canary Islands for 17 February 2024 only. Therefore, the indication of his presence in Matera starting from 18 February 2024 remained. However, on 18 February 2024, at 17:34, the Athlete further modified the 'overnight accommodation', indicating it in the Canary Islands, for the days from 18 to 22 February 2024. As with the previous changes, it was made clear that from 23 February 2024 he would spend the night in Matera (the location he originally entered). However, on 22 February 2024, between 9:03 PM and 9:04 PM, the Athlete changed the overnight accommodation to the Canary Islands for 23 and 24 February 2024, and again on 23 February at 8:31 PM, he changed the indication of Matera to that of the Canary Islands for 25 February 2024; on 26 February 2024 between 5:54 PM and 5:55 PM, he performed the same operation for 26, 27 and 28 February 2024; on 29 February 2024, he indicated Lonate Pozzolo (VA) for the same 29 February 2024; on 1 March 2024 he indicated Certaldo, and finally on 2 March 2024 he inserted Siena. In all these cases, the Athlete operated by modifying the previous indication of Matera as the place of 'overnight accommodation'.

Finally, on March 3, 2024, at 6:47 am, participation in the race in Siena was announced.

47. At the same time, and in accordance with the changes to the overnight accommodation, the Athlete also inserted changes to the locations and time slots for availability in ADAMS, moving them from time to time from Matera to the Canary Islands and then back to Italy, starting from 1 March 2024, with a change on 29 February 2024 first from Matera (the location indicated up to that point for availability) to Lonate Pozzolo (VA); and therefore of March 1, 2024 for a modified availability from Matera (from 06:00 to 07:00) to Certaldo (from 05:00 to 06:00), of March 2, 2024 for March 3, 2024 with a shift of the time slot from Matera (from 06:00 to 07:00) to Località Barontoli (Siena) from 05:00 to 06:00.

48. On the basis of these data it is clear that the continuous changes actually prevented

to the control bodies to carry out a sample at the expense of the Athlete. ...

49. We repeat. The foregoing has nothing to do with the formal correctness of the whereabouts changes or with the fact that the Athlete was abroad. Moreover, the evasive nature of a behavior is based precisely on formally impeccable behavior, but carried out for purposes other than those for which it is ordinarily intended. This is especially true considering that the reasons given by the Athlete to justify the repeated changes are scarcely credible...

50. The defensive arguments put forward by the Athlete are of no use against such a conclusion. In fact, it must be noted:

(i) as regards the explanations for the continuous changes, linked to the uncertainty of the day of return to Italy and the continuous decisions to extend the stay in the Canary Islands, that no document (such as a flight or hotel reservation and the respective modification) has been produced in the anti-doping procedure which indicates: (a) that the decision to travel to the Canary Islands was taken only on 9 February 2024, i.e. immediately before the first substitution of the indication of Matera with that of the Canary Islands as the place of overnight stay and availability; (b) that this original decision (with the respective reservations) was only for the period from 9 to 16 February 2024; (c) that it was subsequently repeatedly modified; and (d) that the decision to returning to Italy was assumed only on 29 February 2024, when the place of overnight stay and availability was taken to Lonate Pozzolo (VA);

(ii) as to the number of changes, listed as 19 in the Contestation, but from to be considered to a lesser extent, in light of the plurality of operations that each change implied that regardless of it (whether 19 or 7) the changes were likely to produce the effect of effectively preventing the control bodies from taking a sample from the Athlete;

(iii) as regards the circumstance that the indication of an availability in Certaldo for 2 March 2023 between 5:00 and 6:00 was affected by a material error (since number 35 and not 37 of Via Trento was indicated), nothing changes to the above, and this is especially true since, despite the Athlete's objections, it appears that the DCO tried to contact him by telephone, finding the number unavailable;

(iv) as regards the large number of checks, all negative, undergone, including the one to which he was subjected after the tender of 3 March 2024, which are not relevant in the present proceedings, having as its object the contestation of an offence pursuant to art. 2.3 CSA;

(v) as regards the amateur nature of the sporting activity carried out by the Athlete (and regardless of his formal qualification as a 'Recreational Athlete'), the Athlete has considerable experience, so much so that his website (www.tommasoelettrico.it) indicates his participation in 367 "gran fondo" races with 186 podium finishes; and he also links his sporting activity to a commercial activity, through the 'shop' (teshop.it), managed by ASD Pedale Elettrico, founded by the Athlete, which can be reached via his website;

(vi) as to the 'sudden' nature of the decision to participate in the competition on 3 March 2024, in 'dissolution of a reserve' which occurred only a few hours before the indication in ADAMS, that it appears to be not very credible, also in consideration of (a) the 'approach march' to that competition (which due to its importance was undoubtedly desired by the Athlete), with a progression of travels which finally brought him to Siena, (b) of a registration dating back to

over time, according to a practice also reiterated at the hearing before this Court, and precisely for this reason (c) the possibility of indicating participation in ADAMS at the time of entering the data relating to the first quarter of 2024, i.e. well before 3 March 2024, unless cancelled for supervening reasons, and (d) the absence of any evidence regarding doubts relating to participation or the reasons for non-participation (despite already being in Siena).

51. … In fact, to hold a liability, it is necessary to prove that the operations carried out on the whereabouts were pre-arranged to evade a check.

52. In this regard, that is, for the purposes of establishing an intent to evade, the Court also notes that (i) it is not necessary for the Athlete to have known that a check had been ordered against him and (ii) that intent is capable of taking different forms. Therefore, in the face of a series of interventions on information availability that are objectively likely to create difficulties in location, it appears to this Court that in the case under examination there exists (at least) the recognition that such difficulties arose, and that therefore the Athlete had accepted. ...

55. In this regard, the Court also notes that the applicable provision for this offense is the same as that already applied by the TNA, which punishes with a 4-year disqualification the violation of both Articles 2.3 and 2.5 of the CSA (Article 11.3.1 of the CSA). This sanction, already imposed by the TNA (albeit for violation of Article 2.5 of the CSA), must also be confirmed with reference to Article 2.3 of the CSA. In fact, there are no grounds for reducing it pursuant to Article 11.3.1, as the case does not concern a 'Protected Person' or 'Recreational Athlete', nor do 'exceptional circumstances' exist. Specifically, a 'Recreational Athlete' cannot be considered a 'recreational athlete' if, like the Athlete, he or she is included in the RTP, as expressly stated in the relevant CSA definition (according to which an athlete who "has been included in the RTP or in another pool maintained by an International Federation, NADO Italia, or another National Anti-Doping Organization" cannot be considered a recreational athlete). Nor does it appear possible to apply reductions below the minimum based on general considerations of proportionality, which have already been addressed by the regulatory provision.

56. The Decision must therefore be modified in reaction to the alleged violation, but confirmed as to the extent of the disqualification, its effective date and the financial sanction".

III. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

13. On December 2, 2024, the Athlete appealed the Appealed Decision, filing a statement of appeal with the Court of Arbitration for Sport (the "CAS") pursuant to Articles R47 and R48 of the Italian Code of Arbitration in Sport (the "CAS Code"). In the statement of appeal, drafted in English, the Athlete named NADO Italia as the appellant. The Appellant also requested that the language of the proceedings be Italian, the appointment of a sole arbitrator, and a stay of the proceedings until the CAS rules on the request for legal assistance. Furthermore, the Athlete requested the CAS to order NADO Italia to produce his telephone records for March 2, 2024.

14. On 2 December 2024, the CAS confirmed receipt of the appeal and informed the parties that, in light of the Appellant's request for legal assistance, the proceedings would not commence until the Athletes' Commission of the International Council of Arbitration for Sport had decided on the Appellant's application.

Appellant. The letter also invited the Respondent to declare whether it accepted the Appellant's request to suspend the deadline pursuant to Article R51 of the TAS Code.

15. On December 5, 2024, the Respondent accepted the request to suspend the deadline pursuant to Article R51 of the CAS Code. The letter continued that, although it had not yet received the notice of appeal, the Respondent wished to emphasize that the Athlete was not an international-level athlete and that, therefore, the CAS did not have jurisdiction to hear the appeal. The Respondent therefore requested the President of the Appellate Division to dismiss the appeal for lack of jurisdiction.

16. On the same date, the CAS Secretariat suspended the deadline pursuant to Article R51 of the CAS Code pending the decision on the request for legal assistance and informed the parties that, at this stage and until the competent court for the case was established, no decision on the jurisdiction of the CAS would be taken.

17. On March 11, 2025, the CAS Secretariat set a deadline for the Appellant to submit its statement of appeal and, therefore, lifted the previously communicated suspension of the deadline with immediate effect. The letter invited the Respondent to submit its observations on the Appellant's request to submit the case to a sole arbitrator and to conduct the proceedings in Italian.

18. On March 15, 2025, the Appellant requested an extension of the deadline for filing of the appeal brief.

19. On 17 March 2025, the CAS Secretariat granted a seven-day extension of the deadline.

20. On 18 March 2025, the Respondent informed the CAS Secretariat that it agreed to the appointment of a sole arbitrator.

21. On the same date, the CAS Secretariat informed the parties of the adoption of Italian as the language of the proceedings.

22. On March 28, 2025, the Appellant requested a further extension of the deadline for filing the appeal brief.

23. On the same date, the CAS Secretariat confirmed the granting of a five-day extension of the deadline for filing the appeal brief.

24. On April 2, 2025, the Athlete filed his appeal brief pursuant to Article R51 of the TAS Code.

25. On the same date, the CAS Secretariat invited the Respondent to file a reply pursuant to Article R55(1) of the CAS Code.

26. On April 4, 2025, the Respondent requested an extension of the deadline for filing of the replica memory.

27. On 8 April 2025, the Secretary of the CAS confirmed the extension of the deadline for filing the reply brief.

28. On 5 May 2025, the Respondent filed its reply, in which it raised the (renewed) jurisdictional objection and requested that the question of jurisdiction be dealt with as a preliminary matter.

29. On the same date, the CAS Secretariat invited the Appellant to provide observations on the jurisdictional objection and the possible “bifurcation” of the proceedings by 15 May 2025. The letter also informed the Parties that the Arbitral Tribunal called upon to rule on the dispute in question was composed as follows:

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30. On 13 May 2025, the Appellant requested an extension of the seven-day deadline to submit observations on the jurisdictional objection and the question of a possible bifurcation.

31. On the same date, the CAS Secretariat confirmed the extension of the deadline.

32. On 22 May 2025, the Appellant filed his observations on the jurisdictional objection and requested the CAS to reject the request for bifurcation of the procedure.

33. On 11 June 2025, the CAS Secretariat informed the parties that the Sole Arbitrator was available for a hearing in person in Rome on 23 and 24 July 2025. In the letter, the CAS Secretariat also communicated to the parties the Sole Arbitrator's decision to reject the request for bifurcation of the procedure.

34. On June 16, 2025, the Respondent confirmed her availability for these dates.

35. On the same date, the Appellant informed the CAS Secretariat that, due to previous commitments, he was not available for the hearing on either 23 or 24 July 2025.

36. On 1 July 2025, the CAS Secretariat proposed new dates for the hearing in Rome.

37. On 2 July 2025, the Respondent informed the CAS Secretariat that NADO Italia was available for the period from 1st to 4th September 2025.

38. On the same date, the Appellant confirmed his availability for the hearing in Rome on 3 and 4 September 2025.

39. On 8 July 2025, the CAS Secretariat informed the Parties that the hearing would be held on 4 September 2025 (the "Hearing") at the premises of the Italian Arbitration Association ("AIA"). The letter also invited the Parties to communicate to the CAS by 17 July 2025 the names of all participants in the hearing.

40. On July 14, 2025, the Appellant and the Respondent communicated the list of participants for the hearing.

41. On September 1, 2025, the CAS Secretariat sent the Order of Procedure to the Parties. In the same letter, the CAS Secretariat informed the Parties that the Hearing would begin at 10:30 a.m. and that the Sole Arbitrator deemed it appropriate to invite the Parties to omit the usual opening statements and proceed directly to the main arguments (45 minutes for each Party), followed by any replies (10 minutes per Party). The letter also specified that the Appellant's request for the production of documents was rejected for the reasons set out in the Award.

42. On 1 September 2025, the Athlete transmitted the Procedural Order to the CAS Secretariat, together with its signature.

43. On 3 September 2025, the PNA transmitted the Procedural Order to the CAS Secretariat, together with its signature.

44. On September 4, 2025, the hearing was held in Rome at 10:30 a.m. before the Sole Arbitrator, assisted by the CAS Advisor, Attorney Giovanni Maria Fares, to discuss the dispute. The following attended the hearing:

For the Appellant:

Mr. Thomas Elettrico;
Attorney Salvatore Civale;
Attorney Priscilla Bortolin,
Lawyer Gianpaolo Rossini;
Attorney Roberto Terenzio.

For the Respondent:

Chief Prosecutor of the PNA Pierfilippo Laviani;
Ms. Stefania Terenzio (Head of the PNA Office);
Ms. Barbara Isola (PNA Official).

45. The Parties did not raise any objections to the constitution of the Arbitration Panel, nor did they raise any other procedural objections. During the hearing, the Appellant renounced his argument that the Appealed Decision was void due to the change in the legal classification of the charge (see below, IV. A. c).

The Sole Arbitrator is therefore no longer required to express an opinion on this matter in his decision.

46. At the end of the proceedings, the Parties expressly confirmed that their right to be heard had been respected. During the hearing, the Parties also waived their right to hear expert testimony.

47. On 8 September 2025, the Sole Arbitrator informed the Parties that he would not hold into account the issues relating to the Appellant's biological passport and the related procedure and that, for this reason, there was no need to invite the Appellant to express his opinion on this matter (for further details see paragraph VII. B.).

IV. THE THESES AND REQUESTS OF THE PARTIES

48. What follows is only a summary exposition of the main allegations of the Parties, based on the briefs filed and the defence arguments. presented at the hearing, for the sole purpose of illustrating the respective positions. For this reason, it does not claim to be fully exhaustive. The Sole Arbitrator, however, has carefully considered each of the Parties' allegations, even if they are not directly mentioned in this award.

A. The Appellant

49. In the appeal brief, the Athlete requested that the following conclusions be accepted:

> *"to declare admissible the appeal filed by Mr. Tommaso Elettrico against NADO Italia Antidoping, thus confirming its jurisdiction to decide the dispute; …*
>
> *a) Accept the appeal and annul the Appellate Decision issued by the National Court of Anti-Doping Appeals (CNA) – NADO Italia Antidoping ref. 13/2024, on 28 October 2024 and notified with the reasons on 11 November 2024, and therefore not to consider the same to be binding on the Appellant; b)*
>
> *Alternatively, completely reform the appealed Decision, as the Appellant's conduct cannot be considered intentional but, at most, negligent or culpable and therefore reduce the disqualification for a period of time, starting from the date of precautionary suspension of 11 July 2024, equal to - alternatively, on the basis of the compliant case law of the TAS-CAS to: - 4 (four) months, or that determined at the discretion of the Most Illustrious Sole Arbitrator - in any case not exceeding 8 (eight) months - if the Appellant's conduct is deemed to be of a minor nature; or;*
>
> *- 12 (twelve) months, or the period determined at the discretion of the Sole Arbitrator – in any case not exceeding 16 (sixteen) months - if the Appellant's conduct is deemed to be of a normal nature; or*
>
> *- 20 (twenty) months, or the period determined at the discretion of the Sole Arbitrator – in any case not exceeding 24 (twenty-four) months – if the Appellant's conduct is deemed to be significant or considerable. c) In the*
>
> *further alternative, pursuant to art. 11.3.1 CSA letter (i) apply the sanction of 2 (two) years by virtue of the unintentional nature of the conduct. d) In a graduated*
>
> *manner, consider the sanction applied by the CNA disproportionate and impose a lower sanction considered equitable; e) In*
>
> *any case, order the Respondent to bear the full costs of these arbitration proceedings, as well as the legal fees and expenses incurred in relation to this Appeal, in an amount to be determined at the discretion of the Sole Arbitrator; f) Grant any other*
>
> *relief or order that he deems reasonable and appropriate to the case in question".*

50. The Athlete uses the following arguments to support his conclusions:

a) The Athlete asserts the jurisdiction of the TAS:

- In this regard the Appellant refers to Article 18.2.3 CSA (similarly to what is provided in Article 13.2.1 of the WADA Code);

- The Appellant must be considered an internationally recognized athlete given his track record. The Athlete won the 2018 UCI Gran Fondo World Champion title and has participated in numerous international races, such as the Maratona delle Dolomiti, GF Strade Bianche, and GF Nove Colli. Furthermore, as of February 17, 2022, the Athlete has been included in the national RTP with the obligation to use the ADAMS platform, making him the only Italian athlete registered with a sports promotion organization to be included in the aforementioned NADO Italia list;

- Article 18.2.2 CSA (which corresponds to Article 13.2.3.2 WADA Code), deals with cases involving non-international athletes.
The article is composed of two parts. The first concerns second-instance appeals at the national level, and the second concerns appeals to the CAS against decisions issued by the second-instance court at the national level. This second part provides that such an appeal may also be filed by a series of entities listed therein, thus ensuring that both the entities listed in the first part of the provision and those listed in the second part are considered to be included;

- A different interpretation of the rule would entail a violation of the right to defense, to adversarial proceedings and to equality between the parties.

- The CNAA "procedural rules" do not expressly provide that the Athlete cannot appeal the Appealed Decision:

b) The applicable law, in the Athlete's opinion, are the CSA Rules, the Results Management Procedure Rules (“PGR”) and the WADA Code.

c) The Appellant claims that the Appealed Decision is null and void:

- On 4 April 2024, the PNA referred the Athlete to the TNA for violation of CSA Article 2.3, requesting a 4-year Ineligibility under CSA Article 11.3.1;

- On 10 September 2024, the Athlete learned that he had been disqualified under Article 2.5 CSA, following the requalification of the dispute by the TNA;

- With its ruling of November 9, 2023 (Case C-175/22), the Court of Justice of the European Union addressed the issue of the different treatment of the right of defense under national legal systems when a factual or legal charge is changed. According to this decision, the judge may give the act a legal definition different from that stated in the charge, provided that the crime does not exceed its jurisdiction and is not attributed to the jurisdiction of a different court. However, if the judge finds that the act is different from that described in the original appeal, it must order the documents returned to the prosecution;

- It is clear from this decision that any change in the legal classification of the charge, whether it affects the constituent elements of the act or not, even if it entails a less severe penalty, must be promptly communicated to the accused before the decision, to allow him to effectively prepare his defense, present observations and formulate investigative requests;

- In light of European Union law, *"there is no reason to distinguish between changes to the charges relating to the constituent elements of the act and changes to their legal classification. In any case, the same rights of defense must be guaranteed."*

- Unfortunately, despite the incorrect application of the rules applicable to the case at hand by the TNA, the CNAA decided to proceed with a full review of the merits of the case submitted to it, not limited to a mere assessment of the legitimacy of the contested decision.

d) The Athlete has not violated Article 2.5 CSA:

- The ISTI does not impose any restrictions on changing the location of availability, nor on the use of the terms 'time slot' and 'overnight accommodation'. A different interpretation of the applicable law would impose an absurd limit.
unjustified and unacceptable restriction on an athlete's movements and freedom of movement;

- In this case, the Athlete communicated in detail every single
Change in availability on the ADAMS platform. Furthermore, the Athlete has fully complied with the CSA regulations, which do not place *"limits on slot changes but only establishes the Athlete's responsibility if the indicated time slot is not available in the specified location for that time slot on that day";*

- As regards the changes (19) in the period from 9 February 2024 to 3 March
2024, the Athlete provides the following details:

  o The change in availability communicated on 9 February 2024 for checks from 10 February to 17 February 2024 was made one day earlier;

  o The change in availability communicated on 16 February 2024 for checks from 18 February to 23 February 2024 was made two days earlier;

  o The change in availability communicated on 22 February 2024 for checks from 24 February to 26 February 2024 was made two days earlier;

  o The change of availability communicated on 26 February 2024 for the checks from 27 February to 29 February 2024 was made one day
  Before;

  o The change of availability communicated on 29 February 2024 for the

checks from 1 March 2024 were done one day earlier;

- o The change in availability communicated on 1 March 2024 for the checks from March 2 were done one day earlier;
- o The change in availability communicated on March 2, 2024 for checks starting from March 3, 2024 was made one day earlier.

- Any change in availability compared to those entered in the quarter requires the mandatory modification of at least two entries ('Timeslot' and 'Overnight' Accommodation'), compared to the six items present on the platform screen, and these two fields must necessarily coincide;
- The changes in availability appear to be only 7, and not 19 as reported from the PNA;
- The Athlete had already made similar changes in the past in relation to his trip to Colombia, without however there being any dispute from the PNA;
- The Athlete never knew he had to undergo doping tests Out of competition. Therefore, he had no interest or intention to tamper, including with respect to the day following the March 2, 2024, test, when he competed in a competition after which he was subjected to a doping control, which resulted in a negative result. The Athlete was never approached by any NADO commissioner during his stay in Tenerife. Italy;
- The obligation to enter travel on a quarterly basis cannot prevent the Athlete from having an "unforeseen" event and changing his plans.
- The Athlete did not simulate travel between different locations in different countries while he was already in the places indicated in the changes:
  - o The Athlete has communicated his move from Matera to the Canary Islands from 10 February 2024 to 29 February 2024, with subsequent communications to extend your stay;
  - o The appearance of the Matera entry in the modified slots is due to the fact that this wording appears by “default” on the ADAMS platform following the change of slot and overnight, Matera being the habitual residence address entered by the Athlete;
- Regarding the change made for the Strade Bianche competition in Siena, the Athlete entered his participation in the event only after being certain he could participate. At the end of this race, the Athlete underwent a doping test with a negative result.

e) The Athlete has not violated Article 2.3 CSA:

- The amateur nature of the Athlete must be taken into account;
- The conduct of 'evasion' cannot be considered integrated as the interpretation made on the reading of the inserted data cannot be considered valid

nell'ADAMS;

- Clarity is also needed regarding the March 2, 2024, control in Certaldo (Florence). A careful review of the current emergency situation and in light of the previous sports anti-doping regulations have shown no intentional violation by the Athlete. On March 1, 2024, the Athlete updated the 'Timeslot' and 'Overnight Accommodation' entries on the ADAMS platform for March 2, 2024. On this occasion, the Athlete made a transcription error by entering the house number as 35 instead of 37. No telephone calls were received by the assigned Doping Control Officer ("DCO") during the indicated times;

- The Athlete's good faith is confirmed by the fact that he was regularly subjected to an anti-doping test following the competition;

- If the phone calls were believed to have been made to the Athlete while the phone was turned off, the DCO could have contacted him later. It is unclear why no calls were made during the disputed period, and in any case on March 2, 2024, to perform the check.
  Surprise. An alleged phone call that appears to have been turned off cannot be used as sufficient evidence to hold an athlete guilty of tampering with a doping control.

f) The required level of proof has not been achieved:

  The required standard of proof is higher than a simple assessment of probabilities but lower than the exclusion of all reasonable doubt;

- The PNA lacks any concrete indication of any evidence that could support the alleged violations.

g) The Athlete acted without fault or without significant fault or negligence:

- It was impossible for the Appellant to be aware of and, therefore, to evade the anti-doping control scheduled for him;

- It is possible to take into consideration the TAS Award (2019/A/6443 & 6593) and apply it by analogy to the specific case in relation to the impossibility of knowing and/or suspecting the anti-doping control.

h) In any case, the Athlete's conduct cannot be considered intentional, but at most negligent or negligent. To assess the degree of negligence, the Sole Referee must evaluate all the peculiarities and circumstances of the specific case. Objective and subjective elements must be considered:

- In relation to the objective element, the Athlete has carried out all the conducts in order to avoid personal liability, promptly communicating all of your movements;

- In relation to the subjective element, it must be considered that the Athlete is an amateur athlete, who has not violated the anti-doping regulations, who has made himself immediately available to provide clarifications before the PNA, which promptly updated its position in ADAMS, which tried to

to protect their rights in all national and international venues, with significant financial outlay and that he had no interest in evading doping controls;

i) If gross negligence is deemed to exist, a sanction of 20 months and in any case no more than 24 months is required.

B. The Resistant

51. In its Response, NADO Italia requested that the following conclusions be accepted:

"a) bifurcate the procedure so as to allow the Arbitral Body to issue a preliminary ruling on the lack of jurisdiction of the CAS to adjudicate on the appeal between the Athlete and NADO Italia against the Appealed Decision; …

b) reject the appeal in its entirety as unfounded in fact and law and confirm the Appealed Decision; …

c) charge [the Athlete], *pursuant to art. R64.5 of the TAS Code, the costs, fees and charges incurred by NADO Italia".*

52. In support of the requests made to the CAS, NADO Italia puts forward the following arguments:

a) Context

The PNA carries out investigative and prosecution functions for the entire Italian sports system, reporting members or affiliates to the TNA judging body and representing NADO Italia before the CNAA.

On March 7 and 8, 2024, the Doping Control Committee ("CCA") transmitted information to the PNA showing repeated anomalies in the Athlete's management of whereabouts information. The documentation showed that the Athlete had made 19 changes to the ADAMS system, relating to both his availability time slot and overnight accommodation, between February 9 and March 3, 2024. b) The Athlete is a national-level athlete.

The PNA contests the jurisdiction of the CAS arguing that:

- The Athlete is not internationally ranked, but nationally ranked. Before the TNA and the CNAA, the Athlete maintained that he was a recreational athlete. In his appeal brief, the Athlete now maintains that he is an internationally ranked athlete;

The concept of a national-level athlete is defined in the CSA. According to this definition, a national-level athlete is defined as one included in the national RTP register. The Athlete has been registered in the national RTP register since February 17, 2022. The Athlete's contradictory position regarding his status violates the principle of *venire contra factum proprium.*

and is incompatible with CSA regulations;

c) Since the Athlete is at national level, he/she does not have the right to appeal to the CAS according to Article 18 CSA, Article 18 of the PGR of NADO Italia and Article 8.9 of the Procedural Rules of the CNAA:

- The Athlete did not raise any objections to jurisdiction before the CNAA;

- The Athlete is relying on CSA rules that have been out of effect for years. The Athlete's Statement of Appeal refers to rules that were in effect in 2020, well before the adoption of the 2021 WADA Code and the related International Standard on Results Management ("ISRM");

- The relevant provisions of the CSA for this case are the following: Article 18.2.1, 18.2.2 and 18.2.3.2. The aforementioned provisions merely reflect the content of Article 13.2.3.2 of the WADA Code;

- The Respondent also refers to Article 9.1.1 letter e ISRM which provides that "[t]he *decision shall indicate whether the Athlete is an International-Level-Athlete for the purposes of the appeal route under Code Article 13. The decision shall then set out the appropriate appeal route* ….". In the Appealed Decision, the CNAA expressly indicated that the decision could be appealed *"to the … CAS pursuant to Articles 4.4. and 8.9 of the Anti-Doping Appeals Body Procedural Rules, by WADA, by …, competent International Federation, the International Olympic Committee or the International Paralympic Committee";*

- Article 8.9 of the CNAA Procedural Rules similarly provides that *"WADA, the International Olympic Committee, the International Paralympic Committee, and the relevant International Federation shall also have the right to appeal the appeal decision to the CAS."* The article does not mention the Athlete, his/her National Anti-Doping Organization (NADO), or the PNA;

- In light of the above, only the World Anti-Doping Agency ("WADA"), the International Olympic Committee ("IOC"), the Paralympic Committee International ("CIP") and the competent international federation may appeal to the CAS for decisions of the CNAA.

d) Regarding the reclassification of the conduct (from Article 2.5 to Article 2.3 of the CSA): it must be considered that the provision originally contested by the PNA is not invalid, but has been correctly applied. The CNAA legitimately amended the charge:

- It should be noted that the PNA immediately charged the Athlete with the violation of Article 2.3 CSA;

- The legal classification given by the TNA was incorrect and the CNAA, a second-level body, rightly placed the conduct within the correct regulatory framework of Article 2.3 CSA;

- By doing so, the CNAA accepted the PNA's cross-appeal. By doing so

thus, the CNAA applied Article 8.5 of its Procedural Rules which provides that “[i]n the *event that the Appellate Body … assesses the findings of the first instance proceedings differently, in fact or in law, it reforms the contested decision in whole or in part, deciding on the merits”.*

e) In the case in question, it is not a question of the abstract admissibility of changes made to the ADAMS system, but of their instrumental nature and the evident elusiveness of the Athlete's behaviour as a whole:

- The athlete made 19 changes to the ADAMS system in a few days, splitting a continuous 20-day stay in the Canary Islands into an artificial sequence. The athlete alternated locations (Matera/ Canary Islands) to confuse controllers. This strategy created uncertainty, hindering control planning and violating the purpose of the Whereabouts system;

- It is not enough to formally comply with the update deadlines.
Rather, the Athlete is required to ensure the consistency and truthfulness of the information entered, and cannot invoke alleged system automatisms to justify an opaque and fragmented management of his/her Whereabouts;

- The purpose of the Whereabouts system is to ensure a certain and continuous availability window.
Each update, however technically
admitted, must respect the principles of transparency, traceability and cooperation.
The Athlete violated these principles by continuously alternating information for evasive purposes, thus preventing his effective location;

- Furthermore, the "Strade Bianche" race was entered into the system only one hour before the start, in violation of transparency rules. Athletes are required to indicate all sporting events in which they intend to participate well in advance. The purpose of this rule is to enable out-of-competition checks during the crucial preparation phase for the event.

- In this specific case, it is clear that the Athlete's participation in the "Strade Bianche" race had already been decided well in advance, as demonstrated by the registration completed by February 18, 2024. The obligation to indicate participation in this sporting event in the ADAMS system therefore existed from that moment;

The fact that the control took place after the race had concluded does not change anything regarding the violation of the obligations, as long as the in-competition control is not able to replace the out-of-competition control in terms of deterrent capacity and sporting relevance;

- The other justifications provided by the Athlete are also irrelevant, in particular
uncertainty about participation or from established practices in the amateur circuit.
The obligation of transparency and cooperation is also fully applicable to amateur events.

d) The conduct appears purposeful, repetitive, and systematic. The behavior demonstrates evasive intent, not simple errors. The distorted use of available information

it is incompatible with good faith:

- The Athlete's conduct as a whole must be characterized as behavior intended to prevent an out-of-competition test from being carried out;

- Article 2.3 CSA does not require proof of explicit refusal, as refusal is a different conduct. In fact, circumvention occurs when the Athlete's conduct substantially impedes the implementation of the control.
anti-doping;

- Any conduct that prevents the possibility of monitoring athletes at any stage of their preparation – even if not classified as formal refusal – constitutes a violation of Article 2.3 CSA.

e) On the burden of proof: the required standard of proof is that of "comfortable satisfaction," which is fully met according to the PNA. The Athlete's justification (technical problems, good faith, confusion) lacks objective evidence.

f) In parallel to this proceeding, the Athlete was sanctioned in a second proceeding for anomalies in the biological passport (article 2.2 CSA), with a further 4-year disqualification (2028–2032), strengthening the hypothesis of wilful misconduct.

g) The Respondent opposes the Appellant's request to produce the DCO's telephone records relating to the telephone number 3286910732 as of 2 March 2024.

This request is superfluous because (i) there is documentation in the file of screenshots relating to the calls made by the DCO to the number entered in the Whereabouts (3286910732), which occurred at 5:55 and 5:58 am; (ii) the DCO had no obligation to call, since it is clear that the Athlete had indicated an untruthful address, which fits perfectly with the intention of not being found.

V. JURISDICTION OF THE TAS

53. Article R47 of the TAS Code provides as follows:

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

Free translation: An appeal against a decision of a federation, association or sports body may be lodged with the CAS if the statutes or regulations of that body so provide, or if the parties have entered into a specific arbitration agreement, and if the appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body.

54. Article 18.2.3.2 of the CSA provides as follows:

"In the cases referred to in Article 18.2.2, the following parties shall have the right to appeal to the National Anti-Doping Appeals Court: (a) the Athlete or other Person who is the subject of the appealed decision; (b) the PNA; (c) the relevant International Federation; (d)

NADO Italia and the National Anti-Doping Organization of the Person's country of residence or of the countries of which he or she is a citizen or from which he or she holds a license, if different from NADO Italia; (e) the International Olympic Committee or International Paralympic Committee, as applicable, where the decision may have an impact on the Olympic or Paralympic Games, including decisions regarding the right to participate in the Olympic or Paralympic Games; and (f) WADA.

In the cases referred to in Article 18.2.2, WADA, the International Olympic Committee, the International Paralympic Committee and the International Federation concerned shall ***also*** have *the right to appeal decisions of the National Anti-Doping Court of Appeal to the CAS"* (bold and underline added).

55. Article 18.2.3.2 CSA implements Article 13.2.3.2 of the WADA Code.

The latter provides as follows:

"In cases under Article 13.2.2, the parties having the right to appeal to the appellate body shall be as provided in the National Anti-Doping Organization's rules but, at a minimum, shall include the following parties: (a) the Athlete or other Person who is the subject of the decision being appealed; (b) the other party to the case in which the decision was rendered; (c) the relevant International Federation; (d) the National Anti-Doping Organization of the Person's country of residence or countries where the Person is a national or license holder; (e) the International Olympic Committee or International Paralympic Committee, as applicable, where the decision may have an effect in relation to the Olympic Games or Paralympic Games, including decisions affecting eligibility for the Olympic Games or Paralympic Games, and (f) WADA. For cases under Article 13.2.2, WADA, the International Olympic Committee, the International Paralympic Committee, and the relevant International Federation shall ***also*** *have the right to appeal to CAS with respect to the decision of the appellate body …"* (grassetto e sottolineatura aggiunti).

56. Comparing the two provisions, it is clear that they coincide in principle. The only difference is that Article 18 of the CSA divides Article 13.2.3.2 of the WADA Code into two paragraphs.

57. The interpretation of this provision is controversial in the TAS jurisprudence.
The interpretative dispute revolves around the term "also." In some cases, this term is interpreted to mean that, in addition to the parties to the appeal proceedings, WADA, the IOC, the CIP, or the competent international sports federation also have the right to appeal to the CAS. This right to appeal to the CAS should be extended to these "international" sports organizations even if they were not parties to the proceedings in the previous instance. According to this interpretation, the term "also" should therefore express the fact that, in addition to the parties to the proceedings before the CNAA, "also" these "international actors in the fight against doping" are authorized to appeal the national final decision before the CAS.

58. According to another point of view, however, the term "also" should simply express the fact that the aforementioned "international actors" not only have the right to challenge the first-instance decision before the national court of appeal, but "also" the decision of the national court of appeal before the CAS.

59. Both interpretations pose problems. Following the first opinion would result in unequal treatment between national-level and international-level athletes. National-level athletes would have two avenues of appeal (to the national appeal court and to the CAS), while international-level athletes
they would have only one possibility of appeal, that is to the CAS (cf. Article 13.2.3.1 WADA Code or Article 18.2.3.1 CSA).

60. Even if the second opinion were followed, there would be unequal treatment, since in this case the anti-doping organizations – considered as a whole –
would have two avenues of appeal (to the national court of appeal and to the CAS), while the affected athlete at national level would have only one (to the national court of appeal).

61. The Sole Arbitrator believes that, even on the basis of a literal interpretation, there are many elements in favor of the first opinion. In this sense, the CAS ruled and affirmed the following in TAS proceeding 2022/A/9319 (no. 87):

> *"Secondly, Article 18.2.3.2 CSA provides that against the decision of the National Court of Appeal*
>
> > *'WADA, the International Olympic Committee, the International Paralympic Committee and the International Federation concerned will also have the right to appeal to CAS.'*
>
> *From the word "also" it is clear that, in addition to the above, the parties to the proceedings in question also have this right to appeal to the CAS against the decision of the National Anti-Doping Court of Appeal (in this sense TAS 2019/A/6295, no. 38 ss)".*

62. The TAS award 2019/A/6295, referred to in the above-mentioned judgment, states as follows (no. 38 ff):

> *"In addition to what has just been noted, and in application of the principle of harmonization reported in the preamble to the NSA and declared above, reference must also be made to Article 13.2.3 of the WADA Code, which provides, among other things, that:*
>
> > *'In cases* [di appello riguardanti atleti di livello non internazionale], *the parties having the right to appeal to the national-level appeal body shall be as provided in the National Anti-Doping Organization's rules but, at a minimum, shall include the following parties: (a) the Athlete or other Person who is the subject of the decision being appealed; (b) the other party to the case in which the decision was rendered; (c) the relevant International Federation; (d) the National Anti-Doping Organization of the Person's country of residence; (e) the International Olympic Committee or International Paralympic Committee, as applicable, where the decision may have an effect in relation to the Olympic Games or Paralympic Games, including decisions affecting eligibility for the Olympic Games or Paralympic Games, and (f) WADA. For cases under Article 13.2.2* [ovvero casi di appello riguardanti atleti di livello non internazionale], *WADA, the International Olympic Committee, the International Paralympic Committee, and the relevant International Federation shall* ***also*** *have the right to appeal to CAS with respect to the decision of the national level appeal body.*
>
> > *Any party filing an appeal shall be entitled to assistance from CAS to obtain all relevant information from the Anti-Doping Organization whose decision is being appealed and the information shall be provided if CAS so directs"* (grassetto e sottolineatura aggiunta).

The aforementioned provision, which concerns cases (such as the one under consideration) involving non-international-level athletes, is composed of two parts: the first concerns appeals to the national second-instance court, and the second concerns appeals to the CAS against decisions issued by the aforementioned national second-instance court. The first part of this provision lists a number of individuals who are granted the right to appeal at the national level, including athletes against whom the first-instance decision was issued. The second part of the provision provides that appeals to the CAS against second-instance decisions at the national level may also be lodged by a number of additional individuals listed therein. It must be assumed (also for the reasons outlined above in paragraph 37) that the word "also" is used in the context under consideration to indicate that the right to appeal applies to both the individuals listed in the first part of the provision and those listed in the second part.

For this reason, therefore, and taking into account the need established in the NSAs themselves (see what is reported above in paragraph 36) to interpret the latter or fill any gaps in them in light of and with the assistance of the WADA Code, the right to appeal against decisions issued by Section II of the TNA at second instance also belongs to the athletes against whom the proceedings are pending and therefore, for what is relevant here, also to the Athlete".

63. Furthermore, in deciding which interpretation to favor, it is also necessary to take into account the legal framework in which the WADA Code is inserted. The latter (and therefore also the
The WADA Code (CSA) takes human rights into account, meaning that its provisions must be interpreted in light of these fundamental rights. Page 10 of the WADA Code states:

"The Code has been drafted giving consideration to the principles of proportionality and human rights".

Free translation: The Code has been drafted taking into account the principles of proportionality and human rights.

64. Similarly, on pages 17/18 of the WADA Code we read:

"These sport-specific rules and procedures, aimed at enforcing anti-doping rules in a global and harmonized way, are distinct in nature from criminal and civil proceedings. They are not intended to be subject to or limited by any national requirements and legal standards applicable to such proceedings, although they are intended to be applied in a manner which respects the principles of proportionality and human rights".

Free translation: These sport-specific rules and procedures, intended to enforce anti-doping rules in a comprehensive and harmonized manner, are distinct in nature from criminal and civil proceedings. They are neither subject to nor limited by any national requirement or legal rule applicable to such proceedings, although they are intended to be applied in accordance with the principles of proportionality and human rights.

65. Furthermore, in footnote 52 the WADA Code makes explicit reference to Article 6 of the European Convention on Human Rights ("ECHR").

66. The Sole Arbitrator therefore believes that, in case of doubt, the interpretation most compatible with human rights and, in particular, with the principles of Article 6 ECHR should be preferred. It is indisputable that the principle of equality of procedural arms is an important and fundamental expression of the principle of fair trial pursuant to

Article 6, paragraph 1, of the ECHR (FROWEIN/PEUKERT, European Convention on Human Rights, 4th edition 2024, Art. 6 no. 140; GRABENWARTER, European Convention on Human Rights, 2014, Art. 6 no. 81). This principle requires a fair balance (juste équilibre) between the parties (ECHR 27.10.1993, *Domnbo Beheer BV v. Netherlands,* No. 14448, § 33):

> *"Nevertheless, certain principles concerning the notion of a 'fair hearing' in cases concerning civil rights and obligations emerge from the Court's case-law. Most significantly for the present case, it is clear that the requirement of 'equality of arms', in the sense of a 'fair balance' between the parties, applies in principle to such cases as well as to criminal cases (see the Feldbrugge v. the Netherlands judgment of 26 May 1986, Series A no. 99, p. 17, para. 44).*
>
> *The Court agrees with the Commission that as regards litigation involving opposing private interests, 'equality of arms' implies that each party must be afforded a reasonable opportunity to present his case - including his evidence - under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent".*
>
> Nonetheless, some principles regarding the concept of "fair trial" in cases involving civil rights and obligations emerge from the Court's **case** law. In the present case, it is clear that the requirement of "equality of arms," understood as a "fair balance" between the parties, applies in principle to both such cases and criminal cases (see the judgment in Feldbrugge v. the Netherlands, 26 May 1986, Series A no. 99, p. 17, paragraph 44).
>
> The Court agrees with the Commission that, in disputes involving competing private interests, 'equality of arms' implies that each party must be afforded a reasonable opportunity to present its case – including its evidence – under conditions that do not place it at a substantial disadvantage compared with the other party.

67. According to the cited case law, each party must have an adequate opportunity to present its case under conditions that do not place it at a substantially disadvantage compared to the opposing party. The opposing parties must be treated substantially equally from a procedural standpoint. The proceedings must guarantee the parties, within the procedural rules, the opportunity to present all the relevant evidence for the judicial decision and to independently assert all procedural defenses necessary to repel the opposing party's attack. According to the Sole Arbitrator, procedural defenses also include the possibility of appealing a decision. If one party has more avenues available to challenge a decision unwelcome than the other, this constitutes, in principle, a violation of the principle of equality of arms.

The same applies if one party has the opportunity to appeal a decision before the supreme court (in this case the CAS) and the other party is denied that opportunity.

68. However, not every violation of the principles of Article 6 of the ECHR automatically entails the unlawfulness of a provision. Rather, unequal treatment of the parties may be justified in individual cases. However, such grounds are not evident, nor have they been advanced in the present case, with the result that the Sole Arbitrator prefers the view that even a national-level athlete may challenge the decision of the national appeal body before the CAS.

69. Therefore, the question of the athlete's status (national or international level) can be left open; in any case, in fact, there is the possibility of appealing to the CAS, with the consequence that the Sole Arbitrator is responsible for deciding the dispute.

VI. PROCEEDABILITY

70. Article R49 of the TAS Code provides as follows:

> *"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against".*
>
> **Free translation:** In the absence of a deadline established in the statutes or regulations of the federation, association or sports body concerned, or in a previous agreement, the deadline for filing an appeal is twenty-one days from receipt of the contested decision.

71. Article 18.5.1 CSA states that:

> *"The deadline for filing an appeal before the TAS is twenty-one (21) days from the date of receipt of the decision by the appellant …".*

72. The reasons for the Appealed Decision were notified to the Athlete on 11 November 2024. The Athlete filed his Statement of Appeal against the said decision with the CAS on 2 December 2024, thus observing the deadline set by the combined provisions of Articles R49 of the CAS Code and 18.5.1 CSA.

73. The Appealed Decision is not subject to further appeal or review and, accordingly, the appeal is admissible.

VII. OTHER PROCEDURAL ISSUES

A. Telephone Records

74. The Athlete requested in his Statement of Appeal that the CAS order NADO Italia to produce the telephone records of the DCO's telephone number for the date of 2 March 2024. The PNA opposed this request and the Sole Arbitrator informed the Parties on 1 September 2025 that the Appellant's request for production had been rejected.

75. Article R44.3(1) of the TAS Code, which is also applicable in appeal proceedings (Article R57(3) TAS Code) provides as follows:

> *"A party may request the Panel to order the other party to produce documents in its custody or under its control. The party seeking such production shall demonstrate that such documents are likely to exist and to be relevant".*
>
> **Free translation:** A party may request the arbitration panel to order the other party to produce documents in its possession or control. The party requesting such production must demonstrate that such documents are plausible and relevant.

76. In the present case, the documents are not relevant, since the Appellant's appeal must be allowed on other grounds.

B. The Biological Passport

77. The Respondent emphasized in the written procedure and at the hearing that another doping case is pending against the Athlete. This case concerns an alleged violation of Article 2.2 CSA (relating to *"Use or Attempted Use by an Athlete of a Prohibited Substance or Method")* by the Athlete in connection with a biological passport. This incident allegedly demonstrates that the Athlete had "something to hide" and that this circumstance should be taken into account when assessing the evidence. The Complainant disputes the Respondent's argument and emphasizes that the new allegation is the subject of separate proceedings. Furthermore, he would have had no opportunity to comment on this argument, since the allegation was raised for the first time in the reply and the underlying facts were completely unknown to him. He therefore opposes the inclusion of this statement of facts in the present proceedings. However, in the event that the Sole Arbitrator does not accept his objection, he asks to be granted a deadline to submit a brief, so that he can take a position on the accusation, not having documents relating to such accusation and not being able, therefore,

to express an opinion on the matter during the hearing.

78. On 8 September 2025, the Sole Arbitrator refused to take into consideration, in these proceedings, the circumstances relating to the Athlete's biological passport.
The latter are the subject of a separate pending proceeding and should not be taken into consideration here.

VIII. APPLICABLE LAW

79. Article R58 of the TAS 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".*
>
> **Free translation:** The Panel decides the dispute based on the applicable rules and, secondarily, on the legal rules chosen by the parties or, in the absence of such a choice, on the law of the country in which the federation, association, or sports body that issued the contested decision is based or on the legal rules the Panel deems appropriate. In the latter case, the Panel shall state the reasons for its decision.

80. In consideration of the provisions of Article R58 of the TAS Code, therefore, the legislation and regulations of NADO Italia appear to be applicable to the dispute.

and, in particular, the CSA, as well as, given the lack of a choice by the Parties, and where necessary and subsidiary, Italian law.

IX. MANDATE OF THE SOLE ARBITRATOR

81. Before entering into the merits of the dispute, it is useful to remember the scope of the powers of the Sole Arbitrator.

82. Pursuant to Article R57 of the CAS Code, the CAS arbitral tribunal has full power to verify the issues of fact and law at issue; to this end, it may, even on its own initiative, request a copy of the relevant case file from the disciplinary tribunal that issued the contested decision. Furthermore, the arbitral tribunal may issue a new decision that replaces the contested decision or refer the dispute back to the tribunal that issued it for a new ruling. Pursuant to Article R57 of the CAS Code, the arbitral tribunal's powers are not limited to a mere judgment on the formal regularity or "legitimacy" of the contested decision. The arbitral tribunal itself has full power to reconsider the facts that led to the decision, which may be reexamined .

83. In this regard, the Sole Arbitrator confirms, however, that the broad definition of the arbitral body's powers does not imply any deviation from the arbitral nature of these proceedings. Therefore, the arbitral body is not permitted to rule beyond what the parties request or outside the dispute arising between the parties, as defined by the contested decision.

X. MERIT

84. The case in question concerns the legal assessment of an Athlete's behavior in relation to so-called “Whereabouts”.

A. Athlete's Obligations Regarding Whereabouts

85. The Athlete has been registered in the NADO Italia RTP since February 17, 2022. He is therefore indisputably subject to the obligations set forth in Article 6.5.4 of the CSA. This provision provides the following:

> *“In accordance with the ISTI and the DT_CI of NADO Italia, each Athlete in national RTP must nevertheless do the following: (a) communicate to NADO Italia on a quarterly basis the locations where he/she can be found; (b) update this information, if necessary, so that it remains accurate and complete at all times; and (c) make himself/herself available for checks at the various locations”.*

86. The ISTI specifies the athlete's obligations as follows:

> *“3.3 The required information includes the following data for each day of the following quarter:*
>
> *a) personal data;*

b) full postal address and personal email address to which correspondence intended for the Athlete is to be sent for the purposes of formal notification. Any communication or other document sent to the aforementioned address is considered received by the Athlete seven (7) working days after it is sent and, immediately, when notification of delivery of the communication sent by certified email is generated/ obtained; it is understood that NADO Italia will send formal communications to the certified email address assigned to the Athlete pursuant to art. 2.6;

c) that he is aware that his whereabouts may be shared with others Anti-Doping Organizations that have the authority to order doping controls on him/ her;

d) name and address of the place of overnight stay (e.g. home, temporary accommodation, hotel, etc.);

e) name and address of each place where you will train, work or conduct any other activity on a regular basis (e.g. school), including the hours of operation;

f) programme of sporting events, including the name and address of the venue where the competitions in which you intend to participate will be held;

g) references to any disability, for the adaptation of procedures for the purpose of appropriately carrying out the biological sample collection session.

3.4 In addition to the information above, the Athlete will also be required to indicate a specific sixty (60) minute time slot between 5:00 a.m. and 11:00 p.m. for each day of the quarter in which he/ she will be available and reachable at a designated location for Doping Control. It is the Athlete's responsibility to ensure accessibility to the designated location during the designated sixty (60) minute time slot for Doping Control without prior notice (e.g., the location must be easily accessible to Sample Collection Personnel by displaying the street number and any other identifying information, the Athlete's name must be displayed on the intercom/ bell and/ or communicated to any concierge/ reception services within the building/ hotel, etc.). Under no circumstances will the sixty (60) minute time slot limit the Athlete's obligation to make himself/ herself available for Doping Control at any other time and location. …

3.10 If a change in circumstances causes the availability information provided to be no longer accurate or complete, the Athlete must update the data provided in the ADAMS computer system to ensure that the information is accurate and complete. The Athlete must always update his or her availability information to reflect any changes in availability on any day of the quarter, particularly with respect to: (a) the time or location of the sixty (60) minute time slot; and/ or (b) the location of the overnight stay. The Athlete must submit the update immediately after becoming aware of the change in circumstances and in any case before the start of the sixty (60) minute time slot already designated for the day in question. In certain circumstances, however, any updates made by the Athlete immediately prior to the start of the time slot may be considered as possible violations of the CSA. Failure to comply may be prosecuted as a Failure to Report and/ or (if the circumstances so warrant) an evasion of doping control pursuant to Article 2.3 of the CSA, and/ or tampering or attempted tampering in relation to any stage of doping control pursuant to Article 2.5.

of the CSA. In any case, NADO Italia will evaluate whether to conduct further targeted checks on the Athlete."

B. Athlete Behavior

87. The Athlete's behavior concerns the information he provides on the platform ADAMS in the period between February 9, 2024 and March 3, 2024. The CNAA correctly summarized this information as follows:

n.	Date/time of modification	Type of modification	Pre-modified indication	Post-modification indication
1	09.02.2024, h. 22:23	Overnight Accommodation (Article 3.3 letter d) HEAT)	Matera (Italy)	Canary Islands for days 09.-16.02.2024
2	09.02.2024 h. 22:24	Time Slot (article 3.4 ISTI)	10.02.2024 h. 06:00-7:00 AM Matera (Italy)	February 10, 2024, 9:00 PM–10:00 PM, Canary Islands (Spain)
3	09.02.2024 h. 22:27	Time Slot (article 3.4 ISTI)	11.02.-16.02.2024 h. 6:00-7:00 Matera (Italy)	11.02.-16.02.2024 h. 06:00-07:00 Canary Islands (Spain)
4	16.02.2024 h. 19:42	Time Slot (article 3.4 ISTI)	17.02.2024 h. 06:00-7:00 AM Matera (Italy)	17.02.2024 h. 06:00-07:00 Canary Islands (Spain)
5	16.02.2024 h. 19:42	Time Slot (article 3.4 ISTI)	18.02.2024 h. 06:00-7:00 AM Matera (Italy)	18.02.2024 h. 06:00-07:00 Canary Islands (Spain)
6	16.02.2024 h. 19:43	Overnight Accommodation (Article 3.3 letter d ISTI)	Matera (Italy)	Canary Islands (Spain) for February 17, 2024
7	18.02.2024 h. 17:32	Overnight Accommodation (Article 3.3 letter d ISTI)	Matera (Italy)	Canary Islands (Spain) for February 18-22, 2024
8	18.02.2024 h. 17:36	Time Slot (article 3.4 ISTI)	19.02.2024 h. 06:00-7:00 AM Matera (Italy)	19.02.-22.02.2024 h. 06:00-07:00 Canary Islands (Spain)
9	22.02.2024 h. 21:03	Time Slot (article 3.4 ISTI)	23.02.2024 h. 06:00-7:00 AM Matera (Italy)	February 23, 2024, 6:00–7:00 AM, Canary Islands (Spain)
10	22.02.2024 h. 21:03	Overnight Accommodation (Article 3.3 letter d ISTI)	Matera (Italy)	Canary Islands (Spain) for the days 23.-24.02. 2024
11	22.02.2024 h. 21:04	Time Slot (article 3.4 ISTI)	24.02.2024 h. 06:00-7:00 AM Matera (Italy)	February 24, 2024, 6:00–7:00 AM, Canary Islands (Spain)
12	26.02.2024 h. 17:54	Overnight Accommodation (Article 3.3 letter d ISTI)	Matera (Italy)	Canary Islands (Spain) for the days 26.02-27.02.2024
13	26.02.2024 h. 17:54	Time Slot (article 3.4 ISTI)	27.02.2024 h. 06:00-7:00 AM Matera (Italy)	February 27, 2024, 6:00–7:00 AM, Canary Islands (Spain)
14	26.02.2024 h. 17:55	Time Slot (article 3.4 ISTI)	28.02.2024 h. 06:00-7:00 AM Matera (Italy)	February 28, 2024, 6:00–7:00 a.m., Canary Islands (Spain)
15	26.02.2024 h. 17:55	Overnight Accommodation (Article 3.3 letter d ISTI)	Matera (Italy)	Canary Islands (Spain) for February 28, 2024
16	29.02.2024 h. 21:56	Overnight Accommodation (Article 3.3 letter d ISTI)	Matera (Italy)	Lonate Pozzolo (VA) for February 29, 2024

17	29.02.2024 h. 21:56	Time Slot (article 3.4 ISTI)	01.03.2024 h. 06:00-7:00 AM Matera (Italy)	March 1, 2024, 5:00 AM - 6:00 AM, Lonate Pozzolo (VA)
18	01.03.2024 h. 20:59	Overnight Accommodation (Article 3.3 letter d ISTI)	Matera (Italy)	Certaldo (FI) for March 1, 2024
19	01.03.2024 h. 21:00	Time Slot (article 3.4 ISTI)	02.03.2024 h. 06:00-7:00 AM Matera (Italy)	March 2, 2024, 5:00 AM - 6:00 AM, Certaldo (FI)
20	02.03.2024 h. 20:54	Overnight Accommodation (Article 3.3 letter d ISTI)	Matera (Italy)	Location Barantoli (SI) for 03.03.2024
21	2.03.2024 h. 20:55	Time Slot (article 3.4 ISTI)	03.03.2024 h. 06:00-7:00 AM Matera (Italy)	March 3, 2024, 5:00 AM - 6:00 AM, Barantoli (SI)
22	03.03.2024 h. 06:47	Competition (Article 3.3 letter f ISTI)		Siena, White Roads

C. The Positions of the Parties

88. It is common ground between the Parties that the Athlete, formally speaking, substantially complied with the provisions of Article 6.5.4 of the CSA, in conjunction with Article 3 of the ISTI. However, the Respondent does not intend to limit itself to a formal view. It believes that the Athlete, with the numerous and often sudden changes to the ADAMS system, pursued the objective of preventing controls by NADO Italia. According to the Respondent, even formally lawful conduct could be sanctioned under certain circumstances pursuant to Articles 2.3 and 2.5 of the CSA. This follows, among other things, from Article 3.8 of the ISTI. This provision states the following:

> *"If the Athlete is not available for Doping Control at the start of the sixty (60) minute time slot, but subsequently becomes available for Doping Control during the same time slot, the DCO shall collect the Sample and shall not treat the collection as an unsuccessful attempt, but shall communicate the details of the Athlete's late availability for Testing.* ***Such conduct may be subject to subsequent investigation for a potential anti-doping rule violation under Articles 2.3 or 2.5 of the CSA,*** *or may determine the order for further targeted Testing of the Athlete. If an Athlete is not available for Doping Control during the designated sixty (60) minute time slot, at the location specified for that time slot on that day, the Athlete will be liable for a Missed Test even if the Athlete becomes available later that day and a Sample is collected from the Athlete."*
>
> (bold and underline added).

89. The Appellant, however, believes that he acted legitimately and that he never had the intention of evading out-of-competition controls.

D. The Applicable Regulatory Framework

90. In this case, the question arises as to what regulatory framework is applicable to assessing the athlete's conduct. Article 3.8 of the ISTI refers in this regard to both Articles 2.3 and 2.5 of the CSA. These provisions state the following:

"2.3 Evasion, refusal or failure to present by the Athlete to undergo the collection of the biological sample

Avoiding the collection of a biological sample or refusing to undergo or failing to present oneself for the collection of a biological sample without valid justification following notification by a specifically authorised Person".

"2.5 Tampering or attempted tampering with any part of the Doping Control by an Athlete or other Person."

91. The term "Tampering" is defined in the CSA as follows:

"Tampering: Intentional conduct that alters the conduct of doping control but does not fall within the definition of a Prohibited Method. Tampering includes, but is not limited to, offering or accepting a bribe to perform or not perform an act, preventing the collection of a sample, influencing or rendering impossible the analysis of a sample, falsifying documents submitted to an Anti-Doping Organization or TUE Committee or Adjudicatory Body, providing false testimony, committing any other fraudulent act against an Anti-Doping Organization or Adjudicatory Body in order to compromise the management of results or the imposition of sanctions, and any other similar intentional interference or attempted interference inherent in any phase of doping control."

92. There is room for discussion as to how to distinguish the provisions of Article 2.3 from Article 2.5 of the CSA. The CNAA expressed the following opinion on this matter:

"37. The Court notes, in fact, that Article 2.3 and Article 2.5 of the CSA contain provisions that overlap to some extent, where, as in the case charged to the Athlete, allegedly evasive behavior is identified (i.e., one of the behaviors that fall within the category described in Article 2.3 of the CSA). Such a finding, in the anti-doping system, does not appear to be exceptional or to be the result of poor coordination between the rules: in fact, for example, even the (classic) category of the presence of a prohibited substance in an athlete's samples may coincide with that attributable to the use of the same substance by that athlete. Therefore, there is a need for coordination in interpretation in relation to the individual case under judgment. The TNA was therefore right to address the issue and to conduct an analysis of the specific case from this perspective.

38. Now, the Court notes that an athlete's conduct in relation to his or her management of whereabouts information can undoubtedly be abstractly classified as one (Article 2.3 CSA) or the other (Article 2.5 CSA) violation. This is clearly stated in Articles 3.8 and 3.10 DTCI, which refer to both provisions. And this in itself excludes (note) that such conduct can only and necessarily be classified as (merely) administrative breaches and give rise only to a violation of Article 2.4 CSA under the conditions set out therein. And this is clear from the TAS case law, which has also indicated that it can be subsumed under Article 2.4 CSA. 2.5 CSA an unlawful conduct of the athlete who had provided "incorrect" information regarding his whereabouts (see, e.g., CAS 2022/ADD/49, IWF v/ Yunder Beytula; CAS 2021/A/7983, McNeal v/ WA).

39. But the last-mentioned fact appears to be the determining factor in distinguishing between the two cases. In fact, art. 2.5 CSA and the related definition of 'Tampering' appear to emphasize (and consider illicit) behaviors that 'positively' interfere with any part of the doping control, aiming to influence its implementation and alter its execution. Such a situation can

occur, for example, through the insertion of false availability information into ADAMS, and it is precisely on this basis that an athlete's liability for violation of art. 2.5 CSA could be established, the sequence of false information provided by him being considered fraudulent.

provided, which hindered the work of doping control officers. Conversely, the provision of formally correct information, but in a manner intended to achieve evasive effect, may not be considered tampering.

40. However, the element highlighted by the TNA, which relied on the express reference in Article 2.3 of the CSA to the 'collection of the biological sample' phase as a limitation of the scope of the provision, and on the circumstance that the Athlete did not evade the control tout court, but rather the organization aimed at the controls, which the violation of the 'Tampering or attempted tampering with any part of the anti-doping control by an Athlete or other Person' referred to in Article 2.5 of the CSA aims to protect as a whole, starting from the planning phase, does not appear decisive. Indeed, it is sufficient to point out that evasive behavior, which interferes "upstream" with the planning of the control, inevitably ends up having an impact "downstream" on the 'collection of the biological sample' as well, since this is clearly the case that an athlete (who engages in evasive behavior) aims to avoid.

41. The Athlete's liability must therefore be assessed, in the opinion of this Court, with reference to art. 2.3 CSA, overcoming, from a substantial point of view, the requalification operated by the TNA, as well as, from a procedural point of view, the Athlete's objections, bringing the 'debate' back to a charge that has been debated since the Contestation, for which the right of defense was fully guaranteed".

93. The Sole Arbitrator finds these arguments convincing from every perspective and accepts them. Therefore, the relevant legal framework for the case at hand is Article 2.3 of the CSA.

AND. **The Objective and Subjective elements constituting Article 2.3 CSA**

94. Article 2.3 of the CSA corresponds to Article 2.3 of the WADA Code. Unlike Article 2.3 of the CSA, Article 2.3 of the WADA Code contains a footnote (No. 11) that states the following:

"11 [Comment to Article 2.3: For example, it would be an anti-doping rule violation of 'evading Sample collection' if it were established that an Athlete was deliberately avoiding a Doping Control official to evade notification or Testing. A violation of 'failing to submit to Sample collection' may be based on either intentional or negligent conduct of the Athlete, while ***'evading'*** *or 'refusing'* ***Sample collection contemplates intentional conduct by the Athlete]"*** (grassetto e sottolineatura aggiunta).

Free translation: 11 [Comment on Article 2.3: For example, it would be an anti-doping rule violation of 'evading sampling' if an athlete was found to have deliberately avoided a Doping Control Officer in order to evade notification or sampling. A 'failure to appear for sampling' violation may be based on intentional or negligent conduct by the athlete, while 'evading' or 'refusing' sampling involves intentional conduct on the part of the athlete.]

95. It is common ground between the Parties, and it is clear in light of note 11 of the WADA Code, that compliance with the violation pursuant to Article 2.3 CSA subjectively presupposes the intentionality of the Athlete.

96. To clarify the concept of "intentionality", it is not possible to resort to Article 11.2.3 CSA. This provision in fact defines the term "intentional", but only "[f]or the *purposes*

of the application of Article 11.2". The legal consequences of a violation of Article 2.3 CSA instead derive from Article 11.3.1 CSA, with the consequence that it is not possible to refer to the definition in Article 11.2.3 CSA.

97. For the interpretation of the term "intentional," it is therefore necessary to refer to the general provision of Article 24 of the CSA. According to this provision, the terms used in the CSA are autonomous (Article 24.3 of the CSA) and must be interpreted in light of the WADA Code (Article 24.4 of the CSA). The definitions and comments (Article 24.5 of the CSA) must also be taken into account in the interpretation. In the context of autonomous interpretation, particular attention must be paid to the wording, meaning, and purpose, as well as case law.

98. From the application of the interpretative principles cited above, it follows that the term "intentionality" within the meaning of Article 2.3 CSA requires precisely an intent aimed at deliberately evading control, therefore bad faith on the part of the athlete (see TAYLOR/ LEWIS, in Jonathan Taylor/Adam Lewis (ed.), Sport: Law and Practice, 4th ed. 2021, C8.2):

> *"… it is necessary to prove that … [the athlete]* ***intended*** *to evade the sample collection, which means proving that he was* ***aware*** *that an Anti-Doping Organization wanted to conduct a test on him, and took* ***steps that were intended*** *to avoid being tested"* (grassetto e sottolineatura aggiunta).
>
> **Free translation:** It is necessary to demonstrate that ... [the athlete] intended to avoid having the sample taken, which means demonstrating that he or she was aware that an anti-doping organization wanted to test him or her and that he or she took steps to avoid being tested.

99. In note 12, the TAYLOR/LEWIS contribution further specifies that:

> *"The violation of 'otherwise evading Sample collection', like that of tampering, is an offence of specific intent, in that there must [be] a* ***deliberate intention to avoid being tested.*** *That is inherent in the verb 'evading'. The Tribunal described this requirement as* ***one of 'bad faith'*** *(…)"* (bold and underline added).
>
> **Free translation:** The violation of 'otherwise evading sample collection,' like tampering, is an intentional offense, as there must be a deliberate intent to avoid being tested. This is inherent in the verb 'to evade.' The Court described this requirement as a 'bad faith' requirement (...).

100. From an objective point of view, the crime of "evasion" requires, as is clear from the CAS jurisprudence (see CAS 2021/A/7998, no. 91), the following:

> *"the act of avoiding somebody or of avoiding something that you are supposed to* do", *"to find a way of not doing something, especially something that legally or morally you should* do", or *"doing something to escape from somebody/ something or avoid meeting somebody".*
>
> **Free translation:** 'the act of avoiding someone or something you should do', 'finding a way not to do something, especially something you should do legally or morally', or 'doing something to escape someone/something or avoid meeting someone'.

F. The Burden of Proof and the Degree of Proof

101. It is therefore necessary to establish who bears the burden of proof and, subsequently, Identify the degree or standard of proof applicable in the specific case. The Parties agree that the burden of proof lies with NADO Italia. This follows from Article 4.1 of the CSA, which states the following:

> ***"4.1 Burden and standard of proof***
>
> ***NADO Italia has the burden of proving whether an anti-doping rule violation has been committed.*** *The standard of proof is based on the panel's comfortable belief in NADO Italia's finding of the violation, taking into account the seriousness of the accusation. The standard of proof in all cases is greater than a balance of probabilities but less than proof beyond a reasonable doubt. Where this CSA places the burden of proof on the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specific facts or circumstances, except as provided in Articles 4.2.2 and 4.2.3, the standard of proof is a balance of probabilities.*

102. Therefore, the burden of proof regarding the potential violation of Article 2.3 CSA, and in particular regarding the Athlete's intent, lies with NADO Italia.

103. Article 4.1 CSA also determines the degree of proof required:

> *"Burden and degree of proof*
>
> *The standard of proof is based on the panel's* ***comfortable belief*** in the finding of the violation conducted by NADO Italia, taking into account the seriousness of the accusation brought. The standard of proof in all cases is ***greater than a balance of probabilities but less than proof beyond a reasonable doubt"*** (emphasis added).

104. The evidentiary standard to be observed by the Sole Arbitrator in this arbitration procedure is therefore that of comfortable satisfaction *with* regard to the proof of the objective and subjective elements constituting the anti-doping violation in question.

105. The standard of proof for comfortable conviction is in any case higher than the *"more probable than not"* or *"preponderance of evidence" criteria.* Therefore, it is not sufficient to demonstrate that the (intentional) violation hypothesis is more probable or plausible than all other hypotheses. At the same time, it is not assumed that there are no residual doubts regarding the absence of intent. Indeed, the threshold of conviction that the judging authority must reach is not that of the *"beyond reasonable doubt" criterion.*

106. According to the consistent case law of the CAS, it is necessary to take into account the specific circumstances of the case, including:

> *"the paramount importance of fighting corruption of any kind in sport and also considering the nature and restricted powers of the investigation authorities of the governing bodies of*

sport as compared to national formal interrogation authorities" (CAS 2017/A/5432, no. 677 with reference to CAS 2009/A/1920 and CAS 2013/A/3258).

Free translation: The fundamental importance of combating all forms of corruption in sport, also taking into account the nature and limited powers of the investigative authorities of sports governing bodies compared to national authorities responsible for formal questioning (CAS 2017/A/5432, no. 677 with reference to CAS 2009/A/1920 and CAS 2013/A/3258)

107. Equally relevant is the gravity of the alleged infringement and its consequences. Indeed, in CAS 2017/A/5432, no. 678 (with reference to CAS 2014/A/3625), the Arbitral Tribunal emphasizes that:

"the more serious the allegation and its consequences, the higher certainty (level of proof) the Panel would require to be 'comfortable satisfied' [sic]".

Free translation: The more serious the charge and its consequences, the greater the certainty (level of proof) the Panel will require to be 'comfortably satisfied'.

108. It is important to point out, however, that the standard of proof itself remains unchanged. Simply put, this means that the more serious the alleged violation, and the more serious the charge, the more convincing the supporting evidence must be for the charge to be deemed proven (CAS 2017/A/5432, no. 679):

"It is important to be clear, however, that the standard of proof itself is not a variable one. The standard remains constant, but inherent within that immutable standard is a requirement that the more serious the allegation, the more cogent the supporting evidence must be in order for the allegation to be found proven".

It is important to clarify, however, that the standard of proof itself is not variable. The standard remains constant, but inherent in this immutable standard is the requirement that the **more** serious the charge, the more compelling the supporting evidence must be for the charge to be deemed proven.

109. Reference is also made to the theory of the cumulative weight of the evidence , according to which the presence of circumstantial evidence, which if taken individually does not provide sufficient proof of guilt, but simply raises suspicion, can – if considered as a whole – provide a strong conviction of guilt (see CAS 2021/A/784, no. 104):

"It is in the nature of circumstantial evidence that single items of evidence may each be capable of an innocent explanation but, taken together, establish guilt beyond reasonable doubt";

"One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength. Thus it may be in circumstantial evidence - there may be a combination of circumstances, no one of which would raise a reasonable conviction, or more than a mere suspicion: but ***the whole taken together, may create a strong conclusion of guilt,*** *that is, with as much certainty as human affairs can require or admit of"*
(bold and underline added).

Free translation: It is in the nature of circumstantial evidence that individual pieces of evidence may be explained away innocently, but that, taken as a whole, they prove guilt beyond a reasonable doubt;

> A single strand of rope might be insufficient to support the weight, but three strands twisted together might be strong enough. The same can be true of circumstantial evidence: there may be a combination of circumstances, none of which would give rise to a reasonable conviction, or anything more than mere suspicion, but the whole, taken as a whole, can lead to a strong conclusion of guilt, that is, with all the certainty that human affairs can require or allow.

G. Evaluation of Evidence

110. It is debatable whether the Athlete's conduct objectively satisfies the requirements of Article 2.3 of the CSA. The Appealed Decision describes the Athlete's conduct quite differently. Some parts of the decision state that the Athlete's conduct made it "factually impossible" to conduct doping controls. Other parts state that the Athlete's conduct simply "made it more difficult" to locate him.

111. Not all difficulties are synonymous with factual impossibility. Certainly, the numerous changes made to ADAMS by the Athlete have made planning and conducting testing more difficult. However, they have not made testing factually impossible. This is particularly true for the changes made on February 9, 2024 (covering the period from February 9 to February 16, 2024) or the changes of February 18, 2024 (covering the period from February 18 to February 22, 2024). During the periods covered by these changes, doping controls would have been possible. In any case, the contrary argument put forward by NADO Italia is not supported by concrete evidence.

112. The Sole Arbitrator believes that not all behaviors that hinder the planning and execution of controls already satisfy the objective requirements for evasion pursuant to Article 2.3 of the CSA. This is even more true if the Athlete's behavior in question is, from a formal standpoint, entirely lawful.

Otherwise, the objective criterion of Article 2.3 CSA would always be satisfied when the athlete travels abroad, since this always creates difficulties for the competent anti-doping organization. However, in the opinion expressed here, the "normal" difficulties and inconveniences associated with a permissible change in overnight accommodation or time slot do not satisfy the objective criterion of Article 2.3 CSA. The difficulties arising from the athlete's behavior must, rather, significantly exceed the "normal level," that is, be of "substantial importance."

and furthermore, be such as to allow the athlete to evade doping controls. This threshold should not be set too low, since the interpretation of Article 2.3 CSA must take into account that attempting to evade doping controls is not yet punishable. In the absence of concrete evidence presented by NADO Italia, it seems doubtful whether the required threshold was reached in the present case. However, given the subjective elements, there is no need to determine whether this threshold was reached in the present case.

113. The Appellate Decision and, subsequently, NADO Italia infer the Athlete's "intentionality" from the fact that he would have artificially segmented a scheduled 20-day stay in the Canary Islands through numerous changes made to the ADAMS system. This behavior – according to NADO Italia – can be

interpreted only to mean that the Athlete intended to evade doping controls. NADO Italia further argues that the Athlete failed to present any evidence that would allow a different interpretation of his behavior.

114. This argument ignores the burden of proof in this case. It is not up to the Athlete to demonstrate and prove that he or she did not act intentionally. The burden of proof regarding the objective and subjective elements referred to in Article 2.3 of the CSA rests solely with NADO Italia (see above).

115. It is certainly true that the existence of the subjective element cannot be proven Directly. The Athlete's behavior can only be inferred from objective circumstances, i.e., indirectly. NADO Italia believes that the Athlete had long been planning to participate in the Strade Bianche race. To prepare for the competition, the Athlete allegedly traveled to the Canary Islands to undergo a doping regimen. This would have made it necessary to evade NADO Italia's controls. According to NADO Italia, the numerous changes the Athlete made to the ADAMS system served precisely this purpose, the sole purpose of which was to make it more difficult for NADO Italia to plan and conduct doping controls.

116. The Athlete stated, among other things, that he had repeatedly consulted his wife, who remained at home, to find out whether he could extend his stay in the Canary Islands. This would also have been the reason why he would have made short-term and indefinite changes. short-term participation in the ADAMS system. This assertion was not substantially contested by NADO Italia. NADO Italia also failed to call or interview the Athlete's wife as a witness or request evidence of communications with her. NADO Italia also failed to request documentation relating, for example, to the date of booking the return flight to the Canary Islands or the period for which the hotel room in the Canary Islands was originally booked. Furthermore, the Athlete stated that he had previously made a series of short-term changes to ADAMS on other occasions, without NADO Italia initiating proceedings against him or issuing a warning.

117. The case in question is a borderline one. NADO Italia's thesis goes beyond pure speculation. There are objective indications that indicate potential evasion by the Athlete. However, it must also be kept in mind that the Sole Arbitrator must respect the standard of proof in his or her analysis of the evidence. In this context, the Sole Arbitrator must also take into due consideration the seriousness of the violation alleged against the Athlete and the extent of the related consequences. Indeed, the case referred to in Article 2.3 of the CSA is a case that, according to the legislator itself, denotes a high degree of seriousness, resulting in a four-year ban. The Sole Arbitrator, considering all the elements of the case and all the evidence offered by the Parties, does not believe the necessary threshold for a comfortable conviction that the Athlete intentionally evaded doping controls has been reached.

118. In light of this gravity, the amount of evidence provided in this case is not sufficient to lead the Sole Referee beyond the threshold of comfortable conviction regarding the intentional violation of Article 2.3 CSA by the Athlete.

XI. CONCLUSIONS

119. In summary, according to the Sole Arbitrator, there is no violation of Article 2.3 of the CSA by the Athlete. Therefore, the Sole Arbitrator has no choice but to uphold the Athlete's Appeal and annul the Appealed Decision.

XII. COSTS

(…)

FOR THESE REASONS

The Court of Arbitration for Sport thus rules:

1. The appeal lodged by Mr. Tommaso Elettrico against the decision issued by the National Court of Anti-Doping Appeals on 28 October 2024 is accepted.

2. The decision issued by the National Court of Anti-Doping Appeals on 28 October 2024 is cancelled.

3. (…).

4. (…).

5. Any other request made by the Parties is rejected.

Lausanne, 8 December 2025

THE COURT OF ARBITRATION FOR SPORT

Ulrich Haas
Sole Referee